



Brooklyn Navy Yard  
Development Corporation  
BrooklynNavyYard.org

Building 77  
141 Flushing Avenue, Suite 801  
Brooklyn, NY 11205

# REQUEST FOR PROPOSALS

## On-Call Environmental Services

### Contact Information:

Shani Leibowitz  
SVP Planning & Real Estate  
[sleibowitz@bnydc.org](mailto:sleibowitz@bnydc.org)  
718.907.5955

Release Date: October 9, 2026

Submission Deadline: November 13, 2026

### A. EXECUTIVE SUMMARY

The Brooklyn Navy Yard Development Corporation (“BNYDC”) is issuing this Request for Proposals (this “RFP” from entities (“Respondents”) interested in performing a full array of on-call environmental services (the “Work”) at the Brooklyn Navy Yard (the “Yard”), generally including:

- Planning
- Permitting
- Agency Coordination
- Investigatory/Remedial Consulting
- Emergency Management
- Design and Specifications
- Capital and Expense Budgeting and Management
- Reporting
- Contract Preparation and Administration

Locally Based Enterprises (“LBEs”) and Minority and Women-owned Businesses (“M/WBEs”) are encouraged to respond to this RFP. Respondents are also encouraged, if applicable, to include LBEs and M/WBEs as sub-consultants. Any Respondent must identify in its proposal whether it or, if applicable, any of its proposed sub-contractors are LBEs or M/WBEs.

This RFP contains the following:

- A. Executive Summary
- B. Pertinent Dates
- C. BNYDC Background
- D. Work Background Information and Context
- E. Scope of Work
- F. Proposal Submission Requirements
- G. Proposal Administration
- H. Selection Process
- I. Miscellaneous Conditions



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J. Exhibits

- A. Declaration of Understanding
- B. Confirmation of PASSPort Compliance
- C. Doing Business Data Form
- D. Vendor Information Form
- E. Form of Contract
- F. Fee Proposal Form
- G. Scope of Services
- H. Site Management Plan

**B. PERTINENT DATES**

1. A mandatory pre-submission conference will be held virtually at **10:00am on Friday, October 16, 2026**. Please contact Ben Wallen via email ([bwallen@bnydc.org](mailto:bwallen@bnydc.org)) for meeting login instructions.
2. All questions are due no later than 5 p.m. on Monday, October 26, 2026
3. Answers to questions will be provided no later than Monday, November 2, 2026.
4. All Proposals are due no later than 12 p.m. (noon) on Friday, November 13, 2026.
5. BNYDC anticipates awarding a Contract on or about Thursday, December 10, 2026.
6. BNYDC anticipates the Work will start on February 1, 2027.

**C. BNYDC BACKGROUND**

BNYDC is a not-for-profit corporation that serves as the real estate developer and property manager of the Yard on behalf of its owner, the City of New York (the “City”). The 300-acre industrial park on the Brooklyn waterfront is home to over 550 businesses employing more than 13,000 people and generates over \$2 billion per year in economic impact for New York City. BNYDC’s mission is to fuel New York City’s economic vitality by creating and preserving quality jobs, growing the City’s modern industrial sector and its businesses, and connecting the local community with the economic opportunity and resources of the Yard. Further information can be found at [www.brooklynnavyyard.org](http://www.brooklynnavyyard.org).

**D. PROJECT BACKGROUND AND CONTEXT**

BNYDC is responsible for ensuring that all environmental issues at the site are addressed fully and in accordance with all pertaining laws, regulations, best practices, and specific institutional and environmental controls required across much of the Navy Yard, as prescribed in the Yard’s Site Management Plan (SMP) available through [Exhibit H](#) attached hereto. As such, BNYDC is seeking a qualified environmental consulting firm (the “Consultant”) to perform requisite environmental tasks related to projects under the purview of the Planning & Real Estate Development and Facilities and Maintenance departments.

Two (2) separate contracts will therefore be awarded for services relating to work under each of the above-mentioned departments. The maximum value of each contract will not exceed \$100,000 per year for a total contract amount of \$300,000 over a five (5) year contract period, with options to extend at BNYDC’s discretion, to allow for the completion of projects assigned to the contracts or to allow funding allocation to be fully expended. However, no minimum award amount is guaranteed.

## **E. SCOPE OF WORK**

The full description of the Scope of Work is presented in Exhibit G, Scope of Services, attached to this RFP.

BNYDC is seeking a qualified Consultant that can provide a multitude of environmental services in a manner that is cost-effective and that minimizes risk and/or damage to the Yard's assets and disruption to the Yard's tenants. Qualified Respondents should have extensive experience with appropriate and effective approaches to identifying and solving environmental problems; a good working relationship with NYSDEC; and established relationships with potential sub-consultant(s) and laboratory facilities that use state-of-the-art engineering, technology, and chemical/materials identification.

The Consultant will be asked to work on short-term unforeseen environmental needs, a wide range of construction and redevelopment projects, and annual certifications and reporting. The scope of work under this contract may include, but is not limited to, the following:

1. Voluntary Cleanup Program Compliance Services:
  - a. Consultant will have the primary responsibility of notifying DEC of environmental activities in the Yard and coordinating with DEC to ensure compliance and achieve DEC signoffs.
  - b. Consultant shall provide guidance to BNYDC and the Yard's tenants regarding IC and EC requirements and compliance.
  - c. Consultant will be responsible for tracking and maintaining project files for all environmental activities in the Yard and will prepare the Site Management Periodic Review Report, as required by the SMP.
2. Environmental Sampling Services:
  - a. Services may include soil, groundwater, surface water, or other media sampling.
  - b. Consultant shall provide BNYDC with a project report for each assignment which summarizes field investigation and laboratory testing and presents recommendations based upon findings when required.
  - c. Consultant shall also provide remediation programs and procedures in the case of contamination as part of their recommendations.
3. Environmental Monitoring Services:
  - a. Services may include air monitoring or other QEP services.
  - b. Consultant shall provide BNYDC with a project report for each assignment which summarizes field investigation and laboratory testing and presents recommendations based upon findings when required.
  - c. Consultant shall also provide remediation programs and procedures in the case of contamination as part of their recommendations.
4. Environmental Administration and Compliance:
  - a. Consultant shall be responsible for tank monitoring and compliance and installations or removals, as necessary.

- b. Consultant shall be responsible for “Community-Right-to-Know” and other filings.
- 5. Other Environmental Services:
  - a. Provide “on-call” or as needed environmental consulting services including subjects such as soil, groundwater, asbestos, lead or other sampling guidance, procedure and protocol, recommendations, analytical interpretation assistance, defensive environmental practices that influences potential liability, and general recommendations concerning compliance with applicable, State, Federal and Local regulations.
  - b. Provide “on-call” or as needed environmental consulting services for remediation projects, including, but not limited to preparation of design and specifications, preparation of workplans, participation in bidding and awarding phases of a project including assistance in the procurement of contractors, and contract preparation and administration.
  - c. Provide “on-call” environmental consulting services for development/redevelopment projects in the campus.
- 6. Proposals for Work:
  - a. BNYDC will request fee proposals for individual projects from time to time. The Consultant shall provide an estimate identifying the tasks required, the number of hours to be worked and positions of each person performing work on a particular proposal. If during the actual work the number of hours is increased by more than 15% of the estimate, the Consultant shall notify BNYDC as soon as possible before exceeding the estimated time. BNYDC may elect to curtail the scope of work or may require a revised scope of work to cover the excess time. A Notice to Proceed will be issued for each work request.
- 7. Staff Meetings:
  - a. Meet with BNYDC staff as necessary to review project progress and deliverables throughout the duration of the contract.

## **F. PROPOSAL SUBMISSION REQUIREMENTS**

Each Respondent to this RFP must submit its Proposal on or prior to the Proposal deadline following the submission procedure set forth in this RFP.

Respondents shall respond to this RFP by submitting both a Technical Proposal and Fee Proposal (collectively, a “Proposal”), as follows:

- I. Technical Proposal: The Technical Proposal shall include the information outlined below and **should not include any fee or other consultant costs** required for the performance of the Work.
  - a. A cover letter summarizing the Respondent’s understanding of the projects and including the company’s name and address, and the name, address and telephone number of the person authorized to represent the responding firm.

- b. Respondent's proposed approach to the Project, including a description of all specific tasks to be performed. The approach must address the Potential Projects described in Exhibit G (Scope of Services). (Maximum four (4) pages).
- c. Examples of a maximum of three (3) projects of similar size and type completed by the firm in the past seven (7) years, with contact info for a project reference (Maximum six (6) pages).
- d. A statement of availability of the proposed team that will be assigned to complete the services under this contract. (Maximum one (1) page).

II. Fee Proposal:

The completed Fee Proposal (see Exhibit F attached hereto) shall be submitted in a separate sealed package. Respondent shall submit a Fee Proposal for all services to be rendered with respect to the Scope of Work. When completing the Fee Proposal, please note the following:

Each Respondent shall submit a Fee Proposal listing all anticipated staff members/job titles with the maximum hourly rates for each job title, multiplier for fringe benefits and maximum hourly billable rate. The form for the staffing cost is attached hereto as Exhibit F. BNYDC encourages participation by MBEs and WBEs in the provision of the services. For the purposes of this proposal W/MBEs must have received certification from the NYC Dept of Small Business Services or New York State. Each Respondent shall provide a completed Fee Proposal Form (see Exhibit F attached hereto), along with spreadsheet backup showing the names and titles of proposed personnel with proposed hours for this Project broken out by project phase to match the Fee Proposal Form.

III. Additional Materials:

In addition to the information described above, Respondent's Proposal must include:

- a. Declaration of Understanding (attached as Exhibit A hereto)
- b. Confirmation of PASSPort compliance (attached as Exhibit B hereto)
- c. Doing Business Data Form (attached as Exhibit C hereto)
- d. Vendor Information Form (attached as Exhibit D hereto)
- e. Acknowledged receipt of any Addendum to this RFP by attaching a signed copy of the Addendum to Respondent's Proposal.
- f. If a Respondent desires any material or substantive change(s) to the form of Contract (attached as Exhibit E hereto), Respondent must include any such proposed change(s) in its response to this RFP.

## **G. PROPOSAL ADMINISTRATION**

1. Pre-Submission Conference:

A **mandatory** pre-submission conference will be held at the time and in the format described in Section B above. Attendance at the mandatory pre-submission is a condition precedent to BNYDC acceptance of a Proposal. Therefore, if you have not attended the mandatory pre-submission conference, do not submit a Proposal.

2. Inquiries:

Any questions or explanation desired by Respondents regarding the meaning or interpretation of this RFP must be emailed and received by BNYDC no later than the date described in Section B above. BNYDC will evaluate the need to respond to inquiries. No verbal responses will be provided, and any information given to a prospective Respondent will be furnished to all prospective Respondents as an addendum to the RFP (an "Addendum").

All questions must be directed to:

Shani Leibowitz  
Senior Vice President Planning & Real Estate  
[sleibowitz@bnydc.org](mailto:sleibowitz@bnydc.org)

3. Submission Deadline:

Respondents shall deliver one (1) digital file containing the Technical Proposal via downloadable link and one (1) separate sealed hard copy of the Fee Proposal in an envelope labeled "BNYDC Environmental Consultant Fee Proposal" on or before **12:00 PM on Friday November 13, 2026** (the "Proposal Deadline"). Any Proposal received after the Proposal Deadline will be considered for evaluation solely at the discretion of BNYDC.

Proposals shall be delivered to:

Shani Leibowitz  
SVP Planning & Real Estate  
141 Flushing Avenue, Suite 801  
Brooklyn, NY 11205  
[sleibowitz@bnydc.org](mailto:sleibowitz@bnydc.org)

4. Addenda:

Receipt of an Addendum to this RFP must be acknowledged by attaching a signed copy of the Addendum to the Proposal. Any Addendum shall become a part of the requirements for this RFP.

5. Interviews:

Interviews may be held with any of the Respondents after the receipt of proposals. Interviews, if necessary, will be scheduled after BNYDC completes the initial review of Proposals.

## H. SELECTION PROCESS

1. Proposal Evaluation

A BNYDC evaluation committee (the “Committee”) will perform a two-part evaluation of all Proposals submitted by Respondents. First, the Committee will review, evaluate and score each Respondent’s Technical Proposal on its technical merits in accordance with established qualitative and quantitative criteria (see criteria in this Section H below and Section G, “Proposal Submission Requirements,” above). This evaluation and scoring will determine the Respondent’s technical rating (“Technical Score”). The Technical Proposal evaluation criteria include, but are not limited to, the following:

- a. The project team’s organization and general capacity to perform the services required by this RFP;
- b. Qualifications of the principal and project manager as well as team members, supporting staff, and sub-consultants;
- c. Relevant experience
- d. Firm’s understanding of the project, technical proposal and approach; and
- e. M/WBE Participation.

Each of the above evaluation criteria is weighted by a factor of importance that will remain confidential.

After all Respondent(s) have received a Technical Score from all Committee members, the Fee Proposals will be opened. The Respondent(s) determined by BNYDC to have the best combination of Technical Score and Fee Proposal for the Scope of Work (or designated portion thereof) will be determined.

## 2. Selection of Firm

Upon selection, the successful Respondent must execute a Contract for the Work substantially in the form attached hereto as Exhibit E (the “Contract”). If a Respondent desires any material or substantive change(s) to the Contract, it must include any such proposed change(s) in its response to this RFP. The contents of the selected Proposal, together with this RFP and any formal questions and answers provided during the Proposal process, may be incorporated into any final Contract at BNYDC’s discretion.

## **I. MISCELLANEOUS CONDITIONS**

1. Non-binding Acceptance of Qualifications: This RFP does not commit BNYDC to award a contract for any work or services described herein.
2. Incurring Costs: BNYDC is not liable for any costs incurred in the preparation of a response to this RFP.
3. Modifications: Respondents may be asked to make such revisions, additions or deletions to their Proposals as may be required by BNYDC.
4. Reserved Rights: All Proposal material submitted becomes the property of BNYDC and BNYDC reserves the right at its sole discretion to:
  - a. Reject any and all Proposals received in response to this RFP at any time prior to signing of a contract with respect to the project described herein;
  - b. Award a contract to other than the lowest fee Respondent;

- c. Waive, modify or correct any irregularities in Proposals received, after notification to the Respondent;
  - d. Change the structure of the proposed fee, if such is in the interest of BNYDC;
  - e. Negotiate the final scope, staff participation, and fee before entering into contract with successful Respondent;
  - f. Revise the fee as BNYDC may require subsequent to receipt of a competitively bid proposal for the work described herein;
  - g. Extend the time for submission of all Proposals after notification to all prospective Respondents;
  - h. Terminate negotiations with a selected Respondent and select the next most responsive Respondent, or take such other action as deemed appropriate if negotiations fail to result in a signed contract within a reasonable amount of time from the commencement of negotiations;
  - i. Terminate or modify the RFP process at any time and reissue the RFP;
  - j. Approve or reject any sub-consultants proposed by the Respondent;
  - k. Request a change of any sub-consultant at any time in the contract process; and
  - l. Any information which may have been released verbally or in writing prior to the issuance of the RFP shall be deemed preliminary in nature and bind neither BNYDC nor the Respondent.
5. Contractual Requirements:
- a. Any Respondent awarded a contract as a result of this RFP process will be required to sign a Contract substantially in the form as attached hereto as Exhibit E, except as otherwise provided for in this RFP.
  - b. Any information which may have been released verbally or in writing prior to the issuance of the RFP shall be deemed preliminary in nature and bind neither BNYDC nor the Respondent.
  - c. Any Respondent awarded a contract as a result of this RFP will be required to obtain clearance through the City's Procurement and Sourcing Solutions Portal ("PASSPort"). PASSPort moves the VENDEX process online, eliminating paper submissions. Since PASSPort clearance is a pre-requisite to BNYDC's award of a contract, Respondents are required to be registered and up-to-date in PASSPort prior to submitting their response to this RFP and to include their PASSPort identification number with submission of their Proposal. Non-compliance with these submission requirements shall result in the disqualification of the Proposal and/or the Respondent and/or the cancellation of any contract after its award.
- Notice to Vendors: Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the city" as such terms are defined in the Local Law. In order for the City to obtain necessary information to establish the required database, vendors responding to this solicitation are required to complete the Doing Business Data Form attached as Exhibit C hereto and return it with this proposal. (If the responding vendor is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form.) If the City determines that a vendor has failed to submit a Data Form or has submitted a Data Form that is not complete, the vendor will be notified by the agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete

Data Form to the agency. Failure to do so will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the vendor has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

**BNYDC appreciates your interest in this RFP and looks forward to receiving your Proposal.**

**EXHIBIT A**  
**DECLARATION OF UNDERSTANDING**

By signing in the space provided below, the undersigned certifies that the Respondent (i) has read and understands the scope and requirements of this project, as described in the RFP and all attachments; (ii) has the capacity to execute this project, (iii) agrees to accept payment in accordance with the requirements of this RFP and the Contract previously entered into with BNYDC.

The undersigned further stipulates that the information in this Proposal is, to the best of his/her/their knowledge, true and accurate.

|                             |      |
|-----------------------------|------|
| Authorized Signature, Title | Date |
|-----------------------------|------|

Respondent Firm

Business Address

|      |       |     |
|------|-------|-----|
| City | State | Zip |
|------|-------|-----|

|                  |            |
|------------------|------------|
| Telephone Number | Fax Number |
|------------------|------------|

Federal Tax Identification Number

|                                      |                                        |
|--------------------------------------|----------------------------------------|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Partnership   |
| <input type="checkbox"/> Individual  | <input type="checkbox"/> Other (State) |

\_\_\_\_\_  
(Seal, if a Corporation)

**EXHIBIT B**  
**CONFIRMATION OF PASSPORT COMPLIANCE**

Respondent hereby certifies that:

(Check appropriate box)

☐

The Respondent has submitted PASSPort questionnaire information through the link below but has not yet received confirmation of PASSPort Compliance. Respondent acknowledges and agrees that Confirmation of PASSPORT Compliance will be required prior to award of any On-Call Contract.

☐

The Respondent has received Confirmation of PASSPort Compliance. Its PASSPort identification number is \_\_\_\_\_.

All VENDEX processes are now completed in the PASSPort Portal, this replaces the paper forms. Please register and complete new questionnaires as soon as possible. PASSPort will not be importing any information from VENDEX. The main purpose of PASSPort is to be a completely paperless interactive system.

Please access the NYC.gov PASSPort website through the link below:

<https://www.nyc.gov/site/mocs/passport/about-passport.page>

**EXHIBIT C**  
**DOING BUSINESS DATA FORM**

[Attached]

**EXHIBIT D**  
**VENDOR INFORMATION FORM**

[Attached]

**EXHIBIT E**  
**FORM OF CONTRACT**

[Attached]

**BROOKLYN NAVY YARD DEVELOPMENT CORPORATION**  
**[PROJECT NAME]**  
**CONSULTANT CONTRACT**  
**FOR [PROFESSIONAL SERVICES]**  
**BNYDC CONTRACT NO. \_\_\_\_\_**

# ***CONSULTANT CONTRACT***

**BROOKLYN NAVY YARD DEVELOPMENT CORPORATION**  
**[PROJECT NAME]**  
**CONSULTANT CONTRACT**  
**FOR [PROFESSIONAL SERVICES]**  
**BNYDC CONTRACT NO. \_\_\_\_\_**

**PART I      SPECIFIC TERMS AND CONDITIONS**

**PART II     GENERAL TERMS AND CONDITIONS**

**PART III    APPENDICES**

**BROOKLYN NAVY YARD DEVELOPMENT CORPORATION**  
**[PROJECT NAME]**  
**CONSULTANT CONTRACT**  
**FOR [PROFESSIONAL SERVICES]**  
**BNYDC CONTRACT NO. \_\_\_\_\_**

**PART I**  
**SPECIFIC TERMS AND CONDITIONS**

Brooklyn Navy Yard Development Corporation (“BNYDC”) and the Consultant identified below, in consideration of the mutual covenants contained in this Contract (as defined below) and other good and valuable consideration, hereby agree to the terms and conditions set forth in:

- a. These Specific Terms and Conditions (“Part I”) set forth immediately below; and
- b. The General Terms and Conditions (“Part II”) annexed hereto and made a part hereof; and
- c. The Appendices (“Part III”) annexed hereto and made a part hereof.

Capitalized terms shall have the meaning set forth in Appendix A (Definitions) unless otherwise defined in this Contract or the context otherwise requires.

**1. The Contract**

1.1 **Contract:** These Specific Terms and Conditions (Part I), the General Terms and Conditions (Part II) and the Appendices (Part III).

1.2 **BNYDC Contract No.** [\_\_\_\_\_]

1.3 **Contract Date:** The date of the Contract is as of [\_\_\_\_\_]

1.4 **Commencement Date:** [\_\_\_\_\_]

1.5 **Term:** [\_\_\_\_\_]

1.6 **Maximum Contract Price:** [\_\_\_\_\_]

1.7 **Project:** [\_\_\_\_\_]

1.8 **Project Site:** [\_\_\_\_\_]

1.9 **Allowable Additional Costs:** The Allowable Additional Costs are set forth on Part II, Appendix B

**2. Parties**

2.1 **BNYDC:** BROOKLYN NAVY YARD DEVELOPMENT CORPORATION, a not-for-profit corporation, organized under the laws of the State of New York.

2.2 **President:** the President of BNYDC or his designee. BNYDC has the right to delegate the responsibilities of the President to any person or entity as the President deems appropriate.

2.3 **The Consultant:** [\_\_\_\_\_] , a [INSERT STATE  
**CONSULTANT WAS ORGANIZED AND TYPE OF BUSINESS ENTITY, e.g. a New York corporation (or partnership, LLP or LLC)]**, having an office at:

[ADDRESS: \_\_\_\_\_]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_]

[FEDERAL TAX ID# \_\_\_\_\_]

2.4 Principal: [\_\_\_\_\_]

2.5 Person in Charge: [\_\_\_\_\_]

3. **Notice Parties and Addresses**

3.1 Notices to BNYDC:

Brooklyn Navy Yard Development Corporation  
Building 77  
141 Flushing Avenue, Suite 801  
Brooklyn, New York 11205  
Attn: General Counsel

3.2 Notices to the Consultant:

[NAME: \_\_\_\_\_]  
[ADDRESS: \_\_\_\_\_]  
\_\_\_\_\_  
\_\_\_\_\_  
[Attn: \_\_\_\_\_]

**[INSERT SECTION 4 ONLY WHEN OUTSIDE FUNDING IS BEING UTILIZED]**

4. **Funding Source** The payments to be made to the Consultant by BNYDC pursuant to this Contract will be made from funds identified below and in accordance with the provisions of Appendix I and **[INSERT “APPENDIX J” IF FEDERAL ARE BEING UTILIZED AND “APPENDIX K” IF STATE FUNDS ARE BEING UTILIZED]**.

The Consultant agrees to comply with the provisions of each of such Appendices.

4.1 **Type of Funds:** [\_\_\_\_\_]

4.2 **Funding Agencies:** [\_\_\_\_\_]

4.3 **Inspectors:** [INSERT APPROPRIATE ENTITIES AS DESCRIBED IN PART II, Section 9.3, \_\_\_\_\_]

4.4 **Applicable Statutes:** [\_\_\_\_\_]

4.5 **Applicable Agreements:** [\_\_\_\_\_].

**[INSERT SECTION 5 ONLY IN SPECIAL CIRCUMSTANCES AS REQUIRED AND APPROVED BY COUNSEL]**

Consultant Contract Number \_\_\_\_\_  
Consultant \_\_\_\_\_

5. **Special Provisions** The provisions set forth below are hereby added to and made part of this Contract. In the event any conflict exists between any of the General Terms and Conditions (Part II) of this Contract and these special provisions, these special provisions shall govern.

**5.1 Other Interested Parties:**

**5.2 [INSERT SPECIAL PROVISIONS HERE]**

This Contract may be executed in counterparts, all of which counterparts, when taken together, shall be deemed a fully executed instrument.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be duly executed as of the Contract Date hereinabove written.

**BBROOKLYN NAVY YARD  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[INSERT CONSULTANT NAME]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BROOKLYN NAVY YARD DEVELOPMENT CORPORATION**  
**[PROJECT NAME]**  
**CONSULTANT CONTRACT**  
**FOR [DESCRIBE SERVICES]**  
**BNYDC CONTRACT NO. \_\_\_\_\_**

**PART II**  
**GENERAL TERMS AND CONDITIONS**

|           |                                             |    |
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**BROOKLYN NAVY YARD DEVELOPMENT CORPORATION**  
**[PROJECT NAME]**  
**CONSULTANT CONTRACT**  
**FOR [DESCRIBE SERVICES]**  
**BNYDC CONTRACT NO. \_\_\_\_\_**

**PART II**  
**GENERAL TERMS AND CONDITIONS**

BNYDC and the Consultant agree as follows:

**ARTICLE 1**  
**PERFORMANCE OF SERVICES**

1.1 Services. The Consultant acknowledges that there must be a relationship of trust and confidence established between the Consultant, BNYDC, and all other service providers, therefore, Consultant covenants to furnish its best skill, judgment, expert business administration and management in performing Consultant's Services under this Contract ("Consultant's Covenant") In reliance on Consultant's Covenant and the terms and Conditions of this Contract BNYDC hereby retains and engages the Consultant and the Consultant agrees to perform the Services as described in **Appendix B** (Scope of Services), attached hereto.

1.2 Time for Performance of Services/Term/Delays and Force Majeure.

1.2.1 The Consultant shall commence the Services upon or promptly after the Commencement Date and shall complete the Services and each phase of the Services within the time or times stated for Final Completion as set forth in **Appendix B**, and in accordance with any directive given and Progress Schedule approved by BNYDC, unless this Contract is earlier terminated pursuant to Article 3 hereof.

1.2.2 This Contract shall be for the Term as set forth in Part I, Section 1.5 unless sooner terminated pursuant to Article 3 hereof.

1.2.3 If the Consultant has been delayed and as a result will be unable to complete performance fully and satisfactorily within the time fixed therefor, the Consultant may be granted an extension of time fixed for performance equal to the period the Consultant was actually and necessarily delayed upon submission of evidence of the causes of the delay, subject to the written approval of the President in his or her sole discretion. The decision of the President as to the granting of the extension and its length shall be binding upon the Consultant.

1.2.4 Subject to BNYDC's determination and approval, BNYDC may extend the time or times for performance of the Services where such performance has been substantially obstructed, hindered or delayed by reason of acts of Force Majeure. The Consultant shall have no claim against BNYDC or the City for any loss or damage sustained by the Consultant or for

Consultant Contract Number \_\_\_\_\_  
Consultant \_\_\_\_\_

any extra compensation in the form of an increase in the Maximum Contract Price, or otherwise, through such delay, hindrance or obstruction.

1.3 Complete Work and Timing and Sequence/Meetings. It is the intent of the parties that the provisions of this Contract shall not be construed so as to limit the Services, but that the Services shall include all acts necessary to fully and finally complete the work described in **Appendix B** hereof. The Consultant shall schedule and perform the Services in a manner so as to permit their completion diligently and expeditiously. The Principal, the Person in Charge and such other Representatives of the Consultant as may be required under the circumstances shall be available to meet with the President or her or his designee as often as necessary to effectively perform the Services, and as often as may be specified in **Appendix B**.

1.4 Authority of President/Performance of Services.

1.4.1 The Services to be performed by the Consultant shall at all times be subject to the review, direction and control of the President, whose decision shall be final and binding upon the Consultant. The President shall have the right to determine the amount, quality, acceptability and fitness of the Services and her or his approval shall be a condition precedent to the right of the Consultant to receive any compensation under this Contract. The President shall act reasonably in exercising her or his authority under this Contract. The President and any other person or agent duly authorized to act for and on behalf of BNYDC shall not, by virtue of such authority or action, be liable in any manner to the Consultant.

1.4.2 The Consultant's performance under this Contract shall be judged by standards typical of consultants in the same or similar practice areas in the New York City Statistical Metropolitan Area ("NYCSMA"). The Consultant agrees to perform all of the Services in a professional manner and in accordance with the highest standard and practices as are customary for such Services in the NYCSMA, as the President may deem appropriate and acceptable.

1.5 Changes to the Services.

1.5.1 The Consultant shall not make any changes in the Services without prior authorization in writing from the President. The Consultant shall revise or correct any Work Product submitted in accordance with this Contract until accepted by the President and accepted by all agencies whose approval is required, without additional compensation or time extension. Any changes to the performance of the Services or the Work Product which are necessary due to improper performance of the Services, a defect of design, unworkability of details or other fault or error of the Consultant shall be made by the Consultant, also without additional compensation or time extension.

1.5.2 The President shall have the right to alter the Services, provided however, that if the Consultant believes that any work or services that it has been directed to perform as a result of such alteration is beyond the Scope of Services and constitutes Extra Work, the Consultant shall so notify the President in writing within three (3) days of such directive. The President shall determine whether such altered Services are (i) within the Scope of Services; or (ii) Extra Work that is substantially within the general purview of the Scope of Services and constitutes an

Allowable Additional Cost; or (iii) Extra Work requiring an amendment to the Scope of Services and the Contract. The President's determination shall be final, binding and conclusive.

1.5.3 The President reserves the right to reduce the Scope of Services under this Contract by notice to the Consultant specifying the nature and extent of such reduction. The Consultant shall be compensated for all Services satisfactorily performed prior to the reduction and for Services satisfactorily performed thereafter. If said reduction results in a credit for BNYDC, such credit shall be immediately due and owing to Corporation, and the Consultant shall either pay such credit to BNYDC or BNYDC may withhold the credit amount from any future payments by BNYDC to the Consultant, at the exclusive option of BNYDC.

#### 1.6 Equipment.

1.6.1 The Consultant, at its own expense, shall secure all supplies, materials and equipment required to perform and complete the Services.

1.6.2 The Consultant, at its sole cost and expense, shall bear the risk of loss for any supplies, materials and equipment used to perform the Services whether such loss arises by reason of fire, theft, vandalism, negligence or any other cause whatsoever. Consultant, at its sole cost and expense, shall promptly replace or repair all such lost, stolen or damaged supplies, materials and equipment.

1.6.3 The Consultant, at its sole cost and expense, shall maintain all of its supplies, materials and equipment in good working and serviceable order so as to enable the Consultant to perform the Services in a first-class and professional manner.

1.6.4 The Consultant shall be solely responsible for the means and methods and the safety and protection of all its employees and shall assume all liability for injuries, including death that may occur to such employees due to the act, omission, negligence, fault or default of the Consultant.

#### 1.7 Services Subject to the City Contract and/or the Lease, Indemnification and Third Party Beneficiary.

This Contract is a subcontract under either the City Contract or the Lease. The Consultant acknowledges that it has reviewed the City Contract and the Lease and agrees to comply with the City Contract or the Lease with respect to the Services and not to violate, or through its acts or failure to act cause BNYDC to violate, the City Contract or the Lease. To the fullest extent permitted by law, the Consultant agrees to defend, indemnify and hold harmless BNYDC from any claim, liability or judgment to which BNYDC may be subject because of any such action or failure to act. The City shall be a third party beneficiary of this Contract and shall have a direct cause of action against the Consultant in the event that any claim be made or any cause of action be brought against BNYDC or City or if the Consultant breaches this Contract.

1.8 Acts to be performed by BNYDC.

BNYDC shall perform the following acts in connection with this Contract:

1.8.1 BNYDC shall make available to the Consultant all relevant technical data (subject to the provisions of Part II, Section 5.3 herein) in regard to this Contract which is under the control of, or in the possession of BNYDC.

1.8.2 BNYDC shall designate a Project Manager to serve as a liaison between BNYDC and the Consultant.

**ARTICLE 2**  
**COMPENSATION**

2.1 Payments.

2.1.1 Subject to, and in accordance with this Article 2, BNYDC shall pay to the Consultant, and the Consultant agrees to accept, in full consideration for the Services, and for all expenses of the Consultant in connection therewith, including Subcontractors' Costs and Allowable Additional Costs, an amount not to exceed the Maximum Contract Price, payable as provided for in this Section 2.1 and in Appendix C.

2.1.2 Requisitions shall be in a form acceptable to BNYDC and shall be supported by all appropriate and necessary documentation or other evidence relating to the amounts set forth in the Requisition, as BNYDC may require including, but not limited to invoices, receipts and vouchers from subcontractors and suppliers and where applicable, the time sheets and/or certified payroll reports of the Consultant's staff and its Principal.

2.1.3 The President shall review the Requisitions and the Work Product. If, in her or his judgment, the Services have been satisfactorily performed in accordance with this Contract, the President will approve the Requisition. All payments to the Consultant will be made in accordance with this Article 2.

2.1.4 Subject to 3.5.3, Final Payment will be due only upon Final Completion.

2.1.5 The Consultant, with the President's prior approval, may exceed the Maximum Payment allocated to a particular Portion of the Services if the Consultant determines that the Maximum Payment initially allocated to the Portion is insufficient to adequately perform the Portion of the Services and if the Consultant demonstrates to the President a savings with respect to another Portion of the Services which is at least equal to the amount of such excess. However, notwithstanding the above, in no event shall BNYDC pay the Consultant more than the Maximum Contract Price.

2.2 Miscellaneous Payment Provisions.

2.2.1 If BNYDC shall have reasonable grounds for believing that:

(i) the Consultant will be unable to perform the Services or any Portion thereof fully and satisfactorily in accordance with any Progress Schedule; or  
(ii) a meritorious claim exists or will exist against BNYDC, the Consultant or the City arising out of the act, omission or negligence of the Consultant or the Consultant's breach of any provision of this Contract,

then BNYDC may withhold payment of any amount otherwise due and payable to the Consultant hereunder. Any amount so withheld may be retained by BNYDC for such period as it may deem advisable to protect BNYDC and the City against any loss and may, after written notice to the Consultant, be applied in satisfaction of any claim herein described.

2.2.2 By virtue of making payments to the Consultant BNYDC shall not be deemed to have released the Consultant from any claim or liability, or to have waived any cause of action arising from any breach of this Contract.

2.2.3 Upon acceptance by the Consultant of the Final Payment, the Consultant agrees that it shall be deemed to have fully released BNYDC and the City from any and all claims, demands and causes of action whatsoever which the Consultant has or may have against BNYDC or the City in connection with this Contract and, upon the request of BNYDC, shall execute a release to such effect.

2.2.4 All payments to the Consultant under this Contract shall be subject to all applicable Legal Requirements.

### **ARTICLE 3** **SUSPENSION OR TERMINATION**

#### **3.1 Delay, Postponement or Suspension of Work.**

3.1.1 BNYDC shall have the right to delay, postpone or suspend the Services, or any Portion thereof, immediately or upon a specified date, for a period of not more than ninety days (90) upon written notice to the Consultant, for any reason deemed by BNYDC to be in its interest. The Consultant and all of its Subcontractors and Representatives shall cease all Services, or any specified Portion thereof, immediately or as of the date specified in the notice.

3.1.2 Any such delay, postponement or suspension shall not give rise to any cause of action for damages against BNYDC or the City, but the Term specified in Part I of this Contract and the Contractor's time for performance of the Services shall be extended for the period of the delay, postponement or suspension.

3.1.3 In the event of any delays, postponements or suspensions, the Consultant shall resume the Services upon the date specified in the notice or upon such other date as BNYDC may thereafter specify in writing.

3.2 Termination for Convenience. BNYDC shall have the absolute right to terminate the Services, or any Portion thereof, immediately or upon a specified date, upon written notice to the Consultant and for any reason deemed by BNYDC to be in its interest.

3.3 Defaults and Termination for Cause.

3.3.1 In addition to any other right that BNYDC may have, upon the occurrence of an Event of Default, BNYDC shall have the right to declare the Consultant in default and terminate this Contract, in whole or in part, for cause, by giving notice in writing to the Consultant of the cause and the date of such termination.

3.3.2 An Event of Default shall be deemed to have occurred if any of the following events has occurred, each is independently an "Event of Default":

- i. The Consultant fails to assign workers, order materials or enter into subcontracts in a manner sufficient to permit completion of the Services, or any Portion thereof, within the time limits of the Progress Schedule or in accordance with any Progress Schedule approved by BNYDC;
- ii. The Consultant fails to complete the Services, or any Portion thereof, within the time limits provided in this Contract or any Progress Schedule approved by BNYDC;
- iii. The Consultant violates any term, covenant or provision of this Contract;
- iv. The Consultant fails to comply with any Applicable Statutes or any Applicable Agreements;
- v. Any representation or warranty made by the Consultant in Article 7 or in any other Article in this Contract shall prove to be untrue or be breached;
- vi. The Consultant becomes insolvent, files for bankruptcy or is adjudged a bankrupt; or
- vii. The Consultant voluntarily, or by operation of law, assigns, transfers, conveys or otherwise disposes of its interest in this Contract or its right to receive funds hereunder without the prior written consent of BNYDC;

3.4 Effects of Termination for Convenience or for Cause.

3.4.1 The Contract, or such portion of the Contract described in the notice of termination, shall terminate as of the termination date set forth in the notice given pursuant to Section 3.3.1, or immediately if no date is specified.

3.4.2 Upon receipt of a notice of termination for cause or for convenience, the Consultant shall cease any or all Services, immediately or on the date specified, in accordance with the terms of the notice.

3.4.3 Termination, whether for convenience or for cause, shall not give rise to any cause of action for damages against BNYDC or the City.

3.4.4 Within ten (10) days after the effective date of termination, the Consultant shall surrender and turn over to BNYDC all Work Product and any other materials related to this Contract requested by BNYDC including, without limitation, all materials, equipment and supplies purchased by the Consultant on behalf of BNYDC in connection with this Contract.

### 3.5 Compensation Upon Termination.

3.5.1 Upon termination with or without cause, the Consultant shall promptly present to BNYDC a verified statement of all costs actually incurred prior to the date of termination, together with all documents in the Consultant's possession related thereto that BNYDC may demand in order to verify such statement of costs including, without limitation, canceled checks, subcontracts, and paid receipts and bills from Subcontractors. BNYDC will review the statement of costs and review or audit any supporting documentation provided by or in the Consultant's possession. BNYDC will notify the Consultant in writing of the results of such review or audit and the amount approved for payment ("Costs").

3.5.2 If the termination was for cause, BNYDC may, in its sole discretion, have the Services completed by another consultant or elect not to complete the Services. BNYDC shall deduct from all monies then due to the Consultant, an amount equal to:

- i. if BNYDC elects to have the Services completed by another consultant, the sum of (a) all expenses incurred in completing the Services, and (b) all incidental expenses incurred by BNYDC as a result of the termination for cause including, without limitation, all actual legal fees and accounting fees; or
- ii. if BNYDC elects not to complete the Services, the sum of (a) the value of the Services not completed, as determined by BNYDC, in its sole judgment, and (b) all incidental expenses incurred by BNYDC as a result of the termination for cause including, without limitation, all actual legal fees and accounting fees.

3.5.3 If BNYDC determines that there are Costs due the Consultant, then, subject to any other applicable provisions of this Contract including, without limitation, Sections 3.5.4 and 3.5.5 hereof, BNYDC will pay the Costs due Consultant. Such payment shall constitute full and Final Payment to the Consultant and the Consultant's Requisition therefor will be so marked and list the amount verified and approved for payment by BNYDC. However, if BNYDC determines that there is a balance due from the Consultant to BNYDC, then the last payment made by BNYDC to the Consultant less the balance due from the Consultant shall constitute the full and Final Payment.

3.5.4 BNYDC need not wait until the completion of the Services to seek the enforcement of its rights against the Consultant terminated for cause, and no monies shall be due or payable to the terminated Consultant until the Services are completed.

3.5.5 Notwithstanding any provision in this Contract to the contrary, the Consultant shall not recover as part of its Costs any unearned or anticipated overhead or profit for itself or for its Subcontractors as a result of any termination, whether for convenience or for cause.

3.5.6 The provisions of this Section 3.5 shall be in addition to any other rights BNYDC may have under this Contract, any Applicable Statute, any Applicable Agreement, or otherwise, in law or in equity.

3.6 No Release. Termination of this Contract, whether by expiration of its Term or otherwise, shall not release the Consultant from any liability to BNYDC or from the Consultant's indemnification and other obligations under this Contract that have not been specifically terminated pursuant to this Article of the Contract.

## **ARTICLE 4**

### **PERSONNEL AND SUBCONTRACTORS**

#### **4.1 Personnel.**

4.1.1 The Consultant shall employ at its own expense all personnel and retain all Subcontractors as may be required to perform the Services, and shall be solely responsible for their work, compensation, direction and conduct during the performance of this Contract. The personnel of the Consultant and any Subcontractor shall cooperate fully with the personnel of BNYDC including, without limitation, the President, and, in the event any personnel of the Consultant or any Subcontractor fails to cooperate, the Consultant shall relieve them of their duties of performance under this Contract.

4.1.2 The Consultant shall submit to the President, prior to performance of Services by such personnel, resumes of the Consultant's personnel and those of its Subcontractors' personnel who will perform the Services. The experience and training of such personnel is a material inducement for BNYDC to enter into this Contract and make payment for the Services the Consultant and its Subcontractors are expected to use such personnel to perform the Services. If the Consultant or a Subcontractor proposes to substitute any other personnel for those heretofore identified, it shall assign persons with equivalent or better experience and training and shall submit the resumes of such proposed substitute personnel to the President and obtain the President's prior approval of the substitution. Notwithstanding anything contained herein to the contrary, all personnel furnished by the Consultant as required under this Contract are employees of the Consultant or approved Subcontractors of the Consultant and not employees or subcontractors of BNYDC or the City.

#### **4.2 Subcontractors.**

4.2.1 The Consultant is authorized to enter into subcontracts for specialized professional services as required for performance of the Services subject to the prior written approval of the President as to the Subcontractor, the scope of services, compensation, and the Principal or other member(s) of the Consultant's staff responsible for supervising the

performance of the Subcontractor's activities. The Consultant, and not BNYDC, is responsible for the Subcontractor's work, acts and omissions.

4.2.2 The Consultant is solely is responsible for the payments to the Subcontractors. Upon receipt of evidence of Consultant default hereunder with respect to its obligations to make payments to its Subcontractors, BNYDC reserves the right, after three (3) calendar days prior written notice, to retain any money due the Consultant and pay directly for labor, materials, equipment, Services and all other obligations of the Consultant and to deduct the amount of any such direct payments from any payments or amounts then due or thereafter to become due to the Consultant.

4.2.3 The Consultant shall inform all Subcontractors fully of the terms and conditions of this Contract. All subcontracts shall provide that:

- i. There is no privity of contract between the Subcontractor and BNYDC or the City; and
- ii. Neither BNYDC nor the City incur any liability by virtue of any act, omission, negligence, or obligation of the Subcontractor or the Consultant; and, to the fullest extent permitted by law, the Subcontractor shall indemnify, defend and hold harmless BNYDC and the City and their agents, employees, members, officials and officers against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon BNYDC and/or the City and/or their Representatives, including reasonable attorneys fees and/or any fee charge or expense due to any act or omission of the subcontractor, its agents and employees; and
- iii. All work under the subcontract shall strictly comply with the requirements of this Contract.

If the Consultant fails to include the provisions set forth in this Section 4.2.3 in any subcontract, to the fullest extent permitted by law, the Consultant hereby agrees to and shall indemnify, defend and hold harmless BNYDC and the City and their agents, employees, members, officials and officers against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon BNYDC and/or the City and/or their Representatives, including reasonable attorneys fees and/or any fee charge or expense, as a result of said failure.

4.2.4 The Consultant shall provide BNYDC with a list of all Subcontractors employed for the performance of the Services. The Consultant will furnish each such subcontractor whose subcontract:

- i. amount totals \$100,000 or more; or
- ii. whose aggregate business directly with the City, or as a subcontractor in the preceding twelve months (12) totals \$100,000 or more to complete vendor profiles in the MOC PASSport portal. The Consultant shall cause each such Subcontractor to complete a PASSport profile and submit the profile to MOC in a timely fashion so that the MOC may perform its contract specific responsibility determination and communicate its finding to BNYDC no later

than the commencement of the Services performed by such Subcontractor pursuant to its subcontract.

#### 4.3 Person in Charge.

The Consultant has designated a Person-in-Charge who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services. Substitution of said person shall be made only with the prior written approval of the President. Failure to make such person(s) available to the extent necessary to perform the Services skillfully and promptly shall be a material violation of the terms of this Contract.

### **ARTICLE 5** **DOCUMENTS AND MATERIALS**

#### 5.1 Approval.

The Work Product to be prepared or furnished by the Consultant pursuant to this Contract or publicizing the work of the Consultant hereunder must be:

- i. Approved in writing by the President before any Work Product or publication as to the work of the Consultant shall be considered accepted and before any distribution;
- ii. Revised by the Consultant in accordance with the directions of the President prior to approval; and
- iii. Prepared so as not to violate any provisions of law including, without limitation, the City Charter and the Administrative Code of the City.

#### 5.2 Work Product.

5.2.1 The Work Product is the exclusive property of BNYDC. BNYDC may use any Work Product prepared by the Consultant in such manner, for such purposes, and as often as BNYDC may deem advisable, in whole, in part or in modified form, in all formats now known or hereafter to become known, without further employment of or additional compensation to the Consultant.

5.2.2 The Consultant shall not use, transmit, display, publish or otherwise license such Work Product without BNYDC's prior written consent.

5.2.3 The Work Product shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and BNYDC is the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might subsist. To the extent that the Work Product does not qualify as a "work-made-for-hire", the Consultant hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Work Product to BNYDC, free and clear of any liens, claims or other encumbrances. The Consultant shall retain no copyright or other intellectual property interest in the Work Product.

5.2.4 To the extent that the Work Product does not qualify as a “work-made-for hire”, Consultant acknowledges the existence, if any, of its statutory moral rights as those rights are described in 17 U.S.C. § 106A(a), and knowingly executes this Contract on the following terms: (i) this waiver applies to the Work Product and to any promotional materials connected with the Work Product; (ii) the Consultant hereby expressly and forever waives any and all rights under 17 U.S.C. § 106A, and any rights arising under U.S. federal or state law or under the laws of any other country that conveys rights of the same nature as those conveyed by 17 U.S.C. § 106A, or any other type of moral right or *droit moral*.

5.2.5 The Consultant represents and warrants that, except for material which is in the public domain and non-original material that meets the requirements of §5.2.6, the Work Product:

- i. Shall be wholly original material not published elsewhere;
- ii. Shall not violate any copyright, trademark or other applicable law; and
- iii. Shall not, to the best of Consultant’s knowledge, constitute a defamation or invasion of the right of privacy or publicity, or an infringement of any kind, of any rights of any third party.

5.2.6 The Consultant represents and warrants that to the extent that the Work Product incorporates non-original material, the Consultant shall obtain and provide BNYDC with copies of all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract. Since some licenses for materials may be for a limited duration, the Consultant shall provide and/or specify the following to BNYDC with respect to all non-original materials included in its Work Product:

- i. All information as to any durational limitations on use;
- ii. Any requirement that a notice be displayed in connection with display, including the specific owner of the rights to be credited, and any limitation on the use under the Consultant’s license; and
- iii. A statement certified by the Principal verifying the foregoing in the form annexed hereto as Appendix D.

Consultant will update the foregoing information and promptly provide such updates to BNYDC during the Contract Term.

5.2.7 The Consultant acknowledges that BNYDC or the City may, in their sole discretion, register copyright in the Work Product with the U.S. Copyright Office or any other government agency authorized to grant registrations to copyright. The Consultant will cooperate in this effort, and agrees to provide any further documentation necessary to accomplish this.

5.2.8 The Consultant agrees that BNYDC and the City may use the Consultant’s name and the names, biographies and likenesses of its members, in advertising and promotion related to the Work Product, and in any and all ancillary products related to the Services regardless of the format in which such use occurs.

5.2.9 Prior to acceptance of any Work Product by the President, upon the President's request and within a reasonable time following delivery of the Work Product, the Consultant shall submit revised Work Product incorporating any revisions, changes or alterations reasonably requested by the President. If the original Work Product or the revised Work Product is not acceptable to the President, BNYDC shall have the right to use the Work Product, to prepare or finalize the Work Product or to commission a third party to do so without further employment of or compensation to the Consultant.

5.2.10 The Consultant acknowledges that the decision to accept the Work Product for use, incorporation, transmission, display or publication is within the sole discretion of the President.

5.2.11 Consultant agrees that it will cooperate in providing any other documentation necessary to effectuate the intent of this Section of the Contract.

5.2.12 The Consultant shall not make any unauthorized use of copyrighted, trademarked or other protected materials or intellectual property and shall, to the fullest extent permitted by law, indemnify, defend and hold harmless BNYDC and the City and their agents, employees, members, officials and officers against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon BNYDC and/or the City and/or their Representatives, including reasonable attorneys fees and/or any fee charge or expense due to or arising out of the Consultant's infringement or unauthorized use of any such material or property.

### 5.3 Confidential Information.

5.3.1 The Consultant shall hold all Confidential Information provided by BNYDC in the strictest confidence. Consultant agrees to:

- i. Use the Confidential Information solely for evaluation and the performance of the Services under this Contract;
- ii. Not disclose the Confidential Information outside of its Subcontractors who have agreed in advance in writing to be bound by the terms of this Section 5.3 and its employees and to limit dissemination to only those Subcontractors and employees who have a need to know it in order to accomplish the Services;
- iii. Execute any confidentiality agreements required by any governmental or other entities or individuals which provide any information, records, data, materials, documents or electronic files to Consultant for use in performance of the Services; and
- iv. Not disclose the Confidential Information for five (5) years following Final Completion.

5.3.2 Consultant represents that it has adequate safeguards and procedures to protect the confidentiality of records and information and to limit dissemination only to authorized

employees as necessary for the performance of the Services. All Confidential Information provided to Consultant shall remain the property of BNYDC.

5.3.3 Consultant agrees that money damages would not be a sufficient remedy in the event of any breach of this Section 5.3 and that, in addition to all other remedies which may be available, BNYDC shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless BNYDC and the City and their agents, employees, members, officials and officers against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon BNYDC and/or the City and/or their Representatives, including reasonable attorneys fees and/or any fee charge or expense due to or arising out of breach of this Section 5.3 or unauthorized use of the Confidential Information.

## **ARTICLE 6**

### **INDEMNIFICATION, CLAIMS AND INSURANCE**

#### **6.1 Indemnification of BNYDC and the City.**

6.1.1 To the fullest extent permitted by law, the Consultant shall indemnify, defend and hold harmless BNYDC and the City and their agents, employees, members, officials and officers against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon BNYDC and/or the City and/or their Representatives, including reasonable attorneys fees and/or any fee charge or expense due to or because of any act or omission of the Consultant, its agents, employees or subcontractors in connection with this Contract or because of any negligence or any fault or default of the Consultant, its agents, employees or subcontractors.

6.1.2 The Consultant shall be solely responsible for all injuries to persons, including death, or damage to property sustained during its operations and work under this Contract resulting from any negligence, fault or default of the Consultant or of its employees, authorized agents, servants, independent contractors or subcontractors retained by the Consultant pursuant to this Contract. To the fullest extent permitted by law, the Consultant shall indemnify, defend and hold harmless BNYDC and the City and their agents, employees, members, officials and officers against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon BNYDC and/or the City and/or their Representatives, including reasonable attorneys fees and/or any fee charge or expense due to or arising out of injuries to persons (including death) and damage to property on account of negligence, fault or default of the Consultant, its employees, authorized agents, servants, independent contractors and subcontractors retained by the Consultant.

#### **6.2 Claims or Actions Against BNYDC.**

6.2.1 The Consultant shall look solely to the funds appropriated by BNYDC for this Contract for the satisfaction of any claim or cause of action the Consultant may have against BNYDC in connection with this Contract or the failure of BNYDC to perform any of its

obligations hereunder. In no event shall BNYDC's aggregate liability hereunder in connection herewith or related to the performance of the Services exceed the Maximum Contract Price.

6.2.2 Upon acceptance by the Consultant of the Final Payment to be paid pursuant to this Contract, the Consultant agrees that it shall be deemed to have released BNYDC from any and all claims, causes of action, and liability to the Consultant, its Representatives, successors and assigns, in connection with this Contract or the performance of the Services.

6.2.3 No member, employee, servant, officer, agent or other person authorized to act on behalf of BNYDC shall have any personal liability in connection with this Contract or any failure of BNYDC to perform its obligations hereunder.

6.2.4 No person or entity shall have any right against the President or any member, employee, servant or officer, agent of the City or BNYDC or other person authorized to act on their behalf or any claim against the City or BNYDC by reason of the failure or refusal to withhold money pursuant to Section 2.3.1 hereof.

6.2.5 The Consultant agrees that no cause of action against BNYDC in connection with this Contract or the Services shall lie or be maintained by the Consultant, its successors or assigns unless such action is commenced within six months after:

- i. the termination of this Contract; or
- ii. the accrual of the cause of action, whichever is earlier.

6.2.6 If any claim is made or any action brought relating to this Contract or the Services, whether or not the Consultant is a party, the Consultant shall diligently render to BNYDC any and all assistance, which BNYDC may require of the Consultant, without compensation.

6.2.7 The provisions of this Section shall not waive, limit or in any way prejudice any other right of BNYDC or the City.

### 6.3 Insurance.

6.3.1 At all times during the performance of the work or Services in connection with this Contract or for such other time periods as BNYDC may require, the Consultant, at its sole cost and expense, shall purchase and maintain the insurance described in this Section 6.3 and the annexed **Appendix E**, as may be applicable and as may be required by BNYDC.

6.3.2 The insurance policies purchased and maintained by the Consultant shall:

- (i) Be in form and substance satisfactory to BNYDC;
- (ii) Be in the minimum face policy amounts set forth in **Appendix E**; and
- (iii) List as Additional Insureds all the entities identified in **Appendix E**.

6.3.3 The Consultant shall make and maintain timely premium payments for all policies required hereunder.

6.3.4 The Consultant shall require each of its Subcontractors to purchase and maintain, or be covered by, at no cost or expense to BNYDC or the City, the same types and amounts of insurance and meet all of the same requirements as required of the Consultant as set forth in this Article 6 and Appendix E. The Consultant hereby covenants and warrants that its Subcontractors shall purchase, maintain and forward to BNYDC, the certificates of insurance required by this Section in the amounts and for the periods required by this Section prior to the commencement of their work.

6.3.5 Prior to the commencement of the Services the Consultant shall provide BNYDC with original certificates of insurance for each policy required for compliance with this Contract, for itself and its Subcontractors as set forth in **Appendix E**.

6.3.6 The Consultant shall provide BNYDC and the Additional Insureds written confirmation of the renewal of any policy required hereunder at least thirty (30) days prior to the expiration of any such policy.

6.3.7 Unless otherwise agreed to in writing by BNYDC, the types of insurance to be purchased and maintained by the Consultant and its Subcontractors are as follows:

(i) Workers' Compensation, and Employer's Liability Insurance. The Consultant shall purchase and maintain and shall require each of its Subcontractors to purchase and maintain workers' compensation insurance in statutory amounts, and employer's liability insurance, for all of its employees engaged in the Services. Consultant's failure to comply with this Section 6.3.8(i) shall render this Contract voidable at the sole option of BNYDC.

(ii) Commercial General Liability. The Consultant shall purchase and maintain commercial general liability insurance. The certificate of insurance must indicate that such insurance is on a "per occurrence" and a "per project" aggregate basis. The commercial general liability policy shall not contain any provisions for exclusions from liability other than provisions for exclusion from liability forming part of the standard, basic unamended and unendorsed commercial general liability policy. If there is more than one named insured on the liability policy (ies) then the certificate of insurance must include a cross-liability endorsement providing severability of interests so that coverage will respond as if separate policies were in force for each named insured. If at any time the commercial general liability policy should be canceled, terminated, or modified so that the insurance is not in effect as above required, then the Consultant must immediately suspend performance of the Services. If the Contract is so suspended, no extension of time shall be due on account thereof. If the Contract is not suspended, whether or not because of omission of BNYDC to order suspension, then BNYDC may, at its sole option, obtain insurance affording coverage equal to that required hereunder, the cost of such insurance to be payable by the Contractor to BNYDC.

(iii) Automobile Liability Insurance. The Consultant shall purchase and maintain automobile liability insurance covering all automobiles and vehicles used in connection

with the work or Services under this Contract whether owned, non-owned and/or hired vehicles or automobiles.

(iv) Umbrella/Excess Liability Coverage. If required by BNYDC the Consultant shall purchase and maintain umbrella/excess liability insurance, specifically listing commercial general liability, comprehensive automobile liability and workers' compensation and employer's Liability as primary coverages. The certificate of insurance must indicate that such insurance afforded by this Section 6.3.8(iv) is on a "per occurrence" basis and a "per project" aggregate basis.

(v) All additional policies listed in Appendix E.

6.3.8 As a condition precedent to payment of any amounts owing to the Consultant by BNYDC, the Consultant shall, unless otherwise expressly agreed to in writing by BNYDC, provide to BNYDC original certificates of insurance required under this Contract and shall on demand provide true copy of policies and endorsements to policies showing compliance with the insurance requirements set forth in this Article 6 and **Appendix E**.

6.3.9 The policies to be maintained by the Consultant hereunder shall be primary for claims due to and/or arising out of this Contract, and shall state that insurance, if any, carried by BNYDC, the City or any other Additional Insured will excess over all Consultant's policies combined. The Consultant shall comply with the provisions of all policies required pursuant to this Contract, and shall upon its acquiring knowledge of any claim, accident and/or losses give the insurer, BNYDC, the City and the Additional Insureds prompt and timely notice of such claims, accidents and losses.

6.3.10 The insurance provisions of this Article 6 shall be in addition to any rights that BNYDC, the City and the Additional Insureds may have under any hold harmless and indemnification provisions of this Contract and any other right provided by this Contract or by law. The Consultant shall not violate or permit to be violated any term or condition of the policies.

## **ARTICLE 7**

### **REPRESENTATIONS AND WARRANTIES**

The Consultant represents and warrants that:

7.1 The Consultant is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and has all requisite power and authority to authorize, execute, deliver and perform this Contract in accordance with its terms. The Consultant is authorized to do business in the City of New York.

7.2 The authorization, execution and delivery of this Contract, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any statute, indenture, mortgage, deed of trust or other agreement or instrument to which the Consultant is bound, or, to the knowledge of the Consultant, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Consultant or any of its activities or properties.

7.3 The Consultant has not been asked to pay, and has neither offered to pay, nor paid, any illegal consideration, whether monetary or otherwise, in connection with the procurement of this Contract.

7.4 The Consultant has not employed any person to solicit or procure this Contract, and has not made and shall not make, except to full-time employees of the Consultant, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with the procurement of this Contract.

7.5 The Consultant has not acquired nor will it acquire any interest of any nature, direct or indirect (including any interest in land in an area related to the Services or any interest in any corporation, partnership, or other entity with any such interest), which would conflict in any manner or degree with the performance of the Services. The Consultant further represents and covenants that in the performance of this Contract the Consultant shall employ no person having any such conflicting interest.

7.6 The Consultant is not in arrears to the City upon any debt, contract or taxes and is not a defaulter, as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of the Consultant to receive public contracts. The Consultant represents that it has paid all applicable New York City income, excise and other taxes for all years it has conducted business activities in New York City.

7.7 All questionnaires and/or disclosure forms delivered by the Consultant and its Representatives to BNYDC to date are, to the best of the Consultant's knowledge, true and correct in all material respects; no material change has occurred in the circumstances of the Consultant, or any of its principals or affiliated persons or entities since the respective dates upon which such disclosure forms were executed that would otherwise require disclosure on such forms; and such disclosure forms do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make any statement contained in such form not misleading.

## **ARTICLE 8**

### **APPLICABLE LAWS, RULES AND REGULATIONS**

8.1 New York Law Governs. The Contract shall be governed by and construed in accordance with the laws of the State of New York. Any and all claims asserted by or against BNYDC arising under this Contract or related hereto shall be heard and determined either in the Federal or State Courts, located in the City and County of New York, State of New York. To effect this agreement and intent, the Consultant agrees as follows:

8.1.1 If BNYDC initiates any action against the Consultant in Federal Court or in New York State Court, service of process may be made on the Consultant in person, wherever the Consultant may be found, or by registered mail addressed to the Consultant at its address as set forth in this Contract, or to such other address as the Consultant shall have provided to BNYDC in writing.

8.1.2 With respect to any action between BNYDC and the Consultant in New York State Court, the Consultant hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, and (ii) to move for a change of venue to a New York State Court outside New York County.

8.1.3 With respect to any action between BNYDC and the Consultant in Federal Court located in the City and County of New York, State of New York, the Consultant expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City and County of New York, State of New York.

8.1.4 If the Consultant commences any action against BNYDC in a court located other than in the City and County of New York, State of New York, then, upon request of BNYDC, the Consultant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and County of New York, State of New York or, if the court where the action is pending will not or cannot transfer the action, the Consultant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City and County of New York, State of New York.

8.2 Modification Required by Law. The parties agree that each and every provision of federal or state or local law, rule, regulation or order, required to be inserted in this Contract, is deemed by this reference to be so inserted in its correct form, and upon the application of either party, this Contract shall be amended by the express insertion of any such provision not so inserted or so inserted incorrectly so as to comply strictly with the law, without prejudice to the rights of either party.

8.3 Compliance with the Law. The Consultant agrees that all acts to be performed by it in connection with this Contract shall be performed in strict conformity with all Legal Requirements, including without limitation, Applicable Statutes and Applicable Agreements, including those set forth in Appendix M with regard to the Paid Sick Leave Law and Appendix L with regard to the Whistleblower Protection Expansion Act. Consultant shall ensure that the Services are performed in a location and manner free from recognized hazards and shall comply with Occupational Safety and Health Administration (“OSHA”) standards, rules and regulations. Consultant shall regularly examine workplace conditions and use safe and well-maintained tools, equipment and Personal Protective Equipment to ensure conformance with applicable OSHA standards. Failure by the Consultant to abide by such Legal Requirements shall be a material default under this Contract.

8.4 Equal Employment Opportunity/Employment Reports.

8.4.1 The Consultant shall comply with the applicable provisions of the Equal Employment and Affirmative Action Compliance for Non-Construction Contracts Addendum (the “Executive Order No. 50 (1980) Supply and Service Rider” or “E.O. 50”) attached hereto as **Appendix F** and made a part hereof.

8.4.2 The Consultant covenants that it shall complete and submit and shall require all Subcontractors to complete and submit Employment Reports (as required by E.O. 50) to BNYDC in the form annexed to this Contract as **Appendix G**.

8.4.3 The Consultant and any Subcontractors that provide any on-site construction activity shall complete and submit the Payroll Report to BNYDC in the form annexed to this Contract as **Appendix H**.

8.4.4 The provisions of this Section 8.4 shall be deemed supplementary to, and not in lieu of, or in substitution for, the applicable provisions of the New York State Labor Law relating to non-discrimination, and other applicable Legal Requirements.

8.5 Women and Minority-Owned Business Enterprises. The Consultant understands that, while not a requirement to undertake the provision of Services, BNYDC encourages participation by MBEs and WBEs in the provision of the Services. In order to be considered W/MBEs for purposes of this Contract, the W/MBEs must have received certification as such by DSBS. Businesses that have been certified as W/MBEs by the PANYNJ may be eligible to receive expedited certification from DSBS after completing the Expedited Certification Affidavit, a copy of which is available from DSBS. The Consultant hereby covenants and agrees that it shall provide BNYDC with report(s) as often and with such details as may be reasonably required by BNYDC of any W/MBE used in the provision of Services.

8.6 Minimum Wages. Except for any employees whose prevailing wage is required to be fixed pursuant to Section 220, et seq. and Section 230, et seq. of the New York State Labor Law, which employees shall be paid such prevailing wage, all persons employed by the Consultant or any subcontractor in the manufacture or furnishing of the supplies, materials, or equipment, or the furnishing of work, labor or services, used in the performance of this Contract, shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum hourly rate required by law, unless a higher amount is required pursuant to any other provision of this Contract.

8.7 No Tropical Hardwoods. Tropical hardwoods, as defined in Section 165 of the New York State Finance Law, shall not be used in the performance of this Contract except as expressly permitted by the foregoing provision of law.

8.8 Sales and Use Tax.

8.8.1 The Consultant acknowledges that BNYDC and the City are exempt from sales and use taxes imposed by Article 28 of the New York State Tax Law for purchases of tangible personal property, to the extent that such property is used to alter, maintain or improve, and becomes an integral component part of real property. This exemption does not apply to tools, machinery, equipment or other property leased by BNYDC's contractors and subcontractors or to supplies, materials or other property that are consumed in the construction or for any reason not incorporated into real property.

8.8.2 The Consultant shall inform its Subcontractors of this exemption and shall advise its Subcontractors to exclude sales and use taxes from their bids, as applicable.

8.9 MacBride Principles. The Consultant stipulates and agrees to comply with the MacBride Principles.

## **ARTICLE 9** **MISCELLANEOUS**

9.1 Consultant as Independent Contractor. Notwithstanding anything contained herein to the contrary including, without limitation, the provisions of Section 5.2 hereof, it is specifically understood and agreed that in the performance of the terms, covenants and conditions of this Contract, the Consultant and its Representatives shall not be deemed to be acting as agents, servants or employees of BNYDC or the City by virtue of this Contract or by virtue of any approval, permit, license, grant, right, or other authorization given by the City or BNYDC or any of their Representatives in connection with this Contract, but shall be deemed to be independent contractors performing work or professional services for BNYDC, and shall be deemed solely responsible for all acts taken by them pursuant to this Contract.

9.2 Assignment. This Contract is intended to secure the Services of the Consultant or a competent Representative or Representatives of the Consultant approved by the President. The Consultant shall not assign, convey, sublet or transfer this Contract or the Consultant's rights hereunder without the written consent of the President. BNYDC shall have the right to assign, convey, sublet or transfer this Contract or BNYDC's rights hereunder without the written consent of the Consultant to the City or any other corporation, agency or instrumentality having authority to accept the assignment.

9.3 Right to Inspect. BNYDC, the City Comptroller, the Inspectors and any other individual or entity authorized under any Legal Requirement shall have the right on reasonable notice to inspect the operations and records of the Consultant and its Subcontractors relating to this Contract.

9.4 Maintenance of Records. In order to facilitate any audit provided herein, the Consultant agrees to maintain accurate, readily auditable records and accounts with supporting documentation in accordance with generally accepted accounting principles of the Services performed by it, its employees, and its subcontractors under this Contract and of all financial accounts and transactions maintained or undertaken in connection with this Contract, including, but not limited to, time cards and records reflecting the nature of the work performed and time consumed, bank statements, cancelled checks, bills and receipts, Requisitions, and deposit slips, and to make such records available for inspection and audit in the City by BNYDC, the City, the Inspectors and any other individual or entity authorized under any Applicable Statute or Applicable Agreement upon reasonable notice. Said records shall be maintained for a period of seven years after termination of this Contract.

9.5 Modification in Writing. No modification, amendment, waiver or release of any provision of this Contract or of any right, obligation, claim or cause of action arising hereunder

shall be valid or binding for any purpose unless in writing and duly executed by the party against whom the same is asserted.

9.6 Captions. The tables of contents and captions of this Contract are for convenience of reference only and in no way define, limit or describe the scope or intent of the Contract or in any way affects this Contract.

9.7 Completeness. This Contract contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either of the parties hereto.

9.8 Severability. If any clause, provision or section of this Agreement is ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

9.9 Notices.

9.9.1 Each written notice, demand, request or other communication in connection with this Contract shall be either: (i) served in person, with delivery of service acknowledged in writing by the party receiving the same; (ii) sent by nationally known overnight delivery service; or (iii) deposited in the U.S. mails, first class mail, postage prepaid, and addressed to the respective address herein set forth in Part I, Section 3 or to such other address as may be specified by written notice sent in accordance herewith.

9.9.2 Every notice, demand, request or other communication hereunder shall be deemed to have been given: (i) at the date of receipt by the respective party in the case of personal delivery, overnight delivery and (ii) five (5) business days after the date of deposit in the first class U.S. mails.

9.10 Non-Waiver Failure of BNYDC or its Representatives to enforce or otherwise require the performance of any of the terms and conditions of this Contract, at the time or in the manner that said terms and conditions are set forth herein, shall not be deemed a waiver of any such terms or conditions by BNYDC and the same may be selectively enforced or raised as a basis of a claim or cause of action at the option of BNYDC.

9.11 Refusal to Testify.

9.11.1 The Consultant agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City governmental agency or authority that is empowered, directly or by designation, to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

9.11.2 If (i) any person who has been advised that her or his statement, and any information from such statement, will not be used against her or him in any subsequent criminal

proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the PANYNJ, or BNYDC, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or

(ii) any person refuses to testify for a reason other than the assertion of her or his privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof, or BNYDC, or any local development corporation within the City, then the commissioner or agency head (each of which is hereinafter referred to as the "Commissioner") whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license involved in such investigation, audit or inquiry shall convene a hearing, upon not less than five (5) days written notice to the parties involved, to determine if any penalties should attach for the failure of a person to testify.

9.11.3 If any non-governmental party to the hearing requests an adjournment, the Commissioner who convened the hearing or BNYDC may, upon the Commissioner granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to subsection 9.11.5 below without the City or BNYDC incurring any penalty or damages for delay or otherwise.

9.11.4 BNYDC or the City may impose the following penalties after a final determination by the Commissioner that penalties should attach for the failure of a person to testify:

- i. the disqualification for a period not to exceed five (5) years from the date of an adverse determination of any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City or BNYDC, as the case may be; and/or
- ii. the cancellation or termination of any and all such existing City or Corporation contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Contract, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City or BNYDC incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City or BNYDC, as the case may be.

9.11.5 The Commissioner shall consider and address, in reaching her or his determination, and BNYDC and the Commissioner shall consider and address, in assessing an appropriate penalty, the factors in subparagraphs (i) and (ii) below. The Commissioner and BNYDC may also consider, if relevant and appropriate, the criteria established in subparagraphs (iii) and (iv) below in addition to any other information which may be relevant and appropriate:

(i) The entity's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including, but not limited to, the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(ii) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(iii) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City or BNYDC.

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity (subject to penalties under subsection 9.11.4 above), provided that the party or entity has given actual notice to the Commissioner upon the acquisition of the interest, or at the hearing called for in subsection 9.11.2(2) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

9.11.6 The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

9.11.7 The term "entity" as used herein shall mean any firm, partnership, corporation, association, joint venture or person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.

9.11.8 The term "member" as used herein shall mean any person associated with another person or entity as a partner, President, officer, principal or employee.

9.11.9 The term "person" as used herein shall mean any natural person doing business alone or associated with another person or entity as a partner, officer, principal or employee.

9.12 No Political Activity. The Consultant agrees that there shall be no political activity or any activity to further the election or defeat of any candidate for public, political or party office as a part of or in connection with this Contract, nor shall any of the funds provided under this Contract be used for such purposes.

**BROOKLYN NAVY YARD DEVELOPMENT CORPORATION  
[PROJECT NAME]  
CONSULTANT CONTRACT  
FOR [PROFESSIONAL SERVICES]  
BNYDC CONTRACT NO. \_\_\_\_\_**

**PART III  
APPENDICES**

|                   |                                                                                                           |
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## APPENDIX A

### DEFINITIONS

Any of the defined terms listed below found in this Contract shall have the following corresponding meanings unless otherwise defined therein or the context otherwise requires. The singular shall include the plural and vice versa as the context may dictate. The gender used herein shall be deemed to refer to the masculine, feminine, or neuter gender, as the context or the identity of the person, act or thing being referred to may require.

|                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Additional Insureds           | All individuals and entities listed in Appendix E                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Allowable<br>Additional Costs | As defined in Appendix B Scope of Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Applicable<br>Agreements      | Various governing agreements related to the Funds, the Project and/or this Contract, including, without limitation, any specific "Applicable Agreements" identified in Part I, and any other governing agreement or MOU with the City, State and/or federal governments, or any agency thereof                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Applicable Statutes           | Any and all federal, state and local laws, statutes, rules, regulations and orders applicable to this Contract, the Funds or the Project, including, without limitation, any specific "Applicable Statutes" identified in Part I                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Art Commission                | The City Art Commission                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| BNYDC                         | Brooklyn Navy Yard Development Corporation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Change Proposal<br>(CP)       | <p>The result of the application of Value Engineering to a Project which will result in a decrease in cost or an advance in Project schedule while maintaining or improving quality, reliability, durability, effectiveness and/or other desirable characteristic of the Projects. The CP shall describe the difference between the existing Project requirements (i.e., a specification, a drawing, or a scope of Work) and the proposed change and at a minimum the CP shall address each of the following:</p> <ol style="list-style-type: none"><li>1 The comparative advantages and disadvantages of each alternative and provide justification when a function or characteristic of an item is being altered.</li></ol> |

- 2 An analysis and itemization of each contractual requirement that must be changed if the CP is accepted. Describe and price each contract change. Include any recommendations for changing specifications.
- 3 The effect the proposed change will have on the performance of the Project and shall include all pertinent objective test data.
- 4 A detailed cost estimate for both the old and proposed methods.
- 5 A description and estimate of costs BNYDC may incur in implementing the CP.
- 6 An as close as possible prediction of the collateral cost savings or increases that BNYDC will experience upon implementation of the CP.
- 7 Identify the point in time that a contract modification implementing the CP must be issued in order to maximize possible savings.
- 8 Note any effect the contract modification will have on the Project schedules.

City The City of New York

City Contract The Contract between the City and BNYDC, in effect at the time this Consultant Contract becomes effective.

Comptroller The Comptroller of the City or his or her designee

Commencement Date The date stated in Part I, Section 1.4 hereof upon which the Consultant shall commence the Services.

Comptroller General The Comptroller General of the United States of America

Confidential Information Any and all information, records, data, materials, documents, electronic files or Work Product provided by BNYDC and/or the City or any of its agencies to the Consultant except that which (i) shall have otherwise become publicly available through no fault of Consultant or its Representatives; (ii) becomes available to the Consultant on a nonconfidential basis from a source other than BNYDC, the City or any of its agencies; or (iii) is known by the Consultant prior to its receipt from BNYDC, the City or any of its agencies without any obligations of confidentiality with respect thereto

Consultant The person or entity stated in Part I, Section 2.3 hereof contracted

Consultant Contract Number \_\_\_\_\_  
Consultant \_\_\_\_\_

|                       |                                                                                                                                                                                                           |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                       | by BNYDC to perform the Services pursuant to this Contract,                                                                                                                                               |
| Consultant Contract   | This Contract as defined in Part I, Section 1.1 hereof between the Consultant and BNYDC to which this Appendix A is attached,                                                                             |
| Contract Date         | The date stated in Part I, Section 1.3 hereof.                                                                                                                                                            |
| Corporation           | Brooklyn Navy Yard Development Corporation, a local development corporation organized pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York, ("NPCL") or any successor. |
| CPL                   | Contractor Pollution Liability Insurance                                                                                                                                                                  |
| Consultant's Covenant | The Covenant between Consultant and BNYDC contained in Part II, Article 1, section 1.1                                                                                                                    |
| DBEs                  | Disadvantaged Business Enterprises                                                                                                                                                                        |
| President             | The President of BNYDC or his or her designee                                                                                                                                                             |
| Disability Benefit    | A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for all of its employees engaged in the Services                                       |
| DCAS                  | New York City Department of Citywide Administrative Services                                                                                                                                              |
| DCP                   | New York City Department of City Planning                                                                                                                                                                 |
| DEP                   | New York City Department of Environmental Protection                                                                                                                                                      |
| Division              | Division of Labor Services of DSBS                                                                                                                                                                        |
| DOB                   | New York City Department of Buildings                                                                                                                                                                     |
| DOS                   | New York City Department of Sanitation                                                                                                                                                                    |
| DOT                   | New York City Department of Transportation                                                                                                                                                                |
| DPR                   | New York City Department of Parks and Recreation                                                                                                                                                          |
| DSBS                  | New York City Department of Small Business Services                                                                                                                                                       |
| E.O. 50               | Executive Order No. 50 (1980), as amended or revised from time to time                                                                                                                                    |

|                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Employment Report | Required by E. O. 50, these reports are to be completed and submitted to BNYDC in the form annexed to this Contract as Appendix G                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Extra Work        | A significant alteration to the work or Services that the Consultant has been directed to perform by the President as described in Part II, Section 1.5.2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Event of Default  | As described in Part II, Section 3.3.2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| FDNY              | New York City Fire Department                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Federal Courts    | United States Federal Courts located in the City, County and State of New York.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| FHWA              | United States Federal Highway Administration                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Final Completion  | The date when all Services contemplated in this Contract are completed to the satisfaction of the President                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Final Payment     | The last payment by BNYDC to the Consultant under the Contract upon Final Completion or as provided in Part II, Section 3.5.3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Force Majeure     | Any of the following acts and events that occur without the negligence or fault, and beyond the reasonable control, of Consultant and that of any of its successors, heirs, assigns, and/or Representatives and of which Consultant has given BNYDC express written notice within three (3) days after the commencement of the alleged cause of the delay, hindrance, or obstruction: governmental preemption in connection with a national emergency, war or act of war, insurrection, riot, act of public enemy, terrorist acts, labor disputes, accidents, mechanical failure and acts of God (including fire, flood or abnormal adverse weather conditions not reasonably anticipatable) |
| FTA               | United States Federal Transit Administration                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Funding Agencies  | All federal, State or local agencies or entities that are the source of the Funds including, without limitation, any specific "Funding Agencies" identified in Part I                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Funds             | All funds from the federal, State or local sources to be applied to payments for Services under this Contract including, without limitation, any specific "Funds" identified in Part I                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

Consultant Contract Number \_\_\_\_\_  
Consultant \_\_\_\_\_

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| IDA                               | New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized pursuant to Article 18-A of the General Municipal Law of the State of New York                                                                                                                                                                                                                        |
| Inspectors                        | All individuals or entities specifically identified as “Inspectors” in Part I, if any                                                                                                                                                                                                                                                                                                                                                                                   |
| Insurer                           | Any insurance company retained by the Consultant pursuant to Part II, Section 6.3.2                                                                                                                                                                                                                                                                                                                                                                                     |
| Landmarks Preservation Commission | The City of New York Landmarks Preservation Commission                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Lease                             | The lease dated October 17, 1971, between the City of New York, as lessor, and Commerce Labor Industry Corporation of Kings (now known as the Brooklyn Navy Yard Development Corporation), as Lessee, as amended by agreements dated October 28, 1973, October 30, 1977, and August 5, 1982, and as amended and restated as of June 1, 1996, and as the same may have been and may hereafter be further amended, and shall include any severed lease created therefrom. |
| Legal Requirements                | All applicable laws, rules, regulations, ordinances, codes and orders of all federal, state and local governmental authorities, agencies, departments or bureaus having jurisdiction over and which affect the work and/or Services under this Contract including, without limitation, all Applicable Agreements and all Applicable Statutes                                                                                                                            |
| LPC                               | City of New York Landmarks Preservation Commission                                                                                                                                                                                                                                                                                                                                                                                                                      |
| MacBride Principles               | Those principles relating to nondiscrimination in employment and freedom of workplace opportunities that requires employers doing business in Northern Ireland to comply with specific terms set forth in Section 6-115.1 of the City’s Administrative Code                                                                                                                                                                                                             |
| Maximum Contract Price            | As stated in Part I, Section 1.6 the maximum amount that shall be paid for all Services under the Contract,                                                                                                                                                                                                                                                                                                                                                             |
| Maximum Payment                   | The maximum amount payable for each Portion of the Services during a billing period                                                                                                                                                                                                                                                                                                                                                                                     |

|                          |                                                                                                                                                                                                            |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| MOC                      | The Mayor's Office of Contract Services                                                                                                                                                                    |
| MBEs                     | Minority-owned Business Enterprises                                                                                                                                                                        |
| MOU                      | Memorandum of Understanding                                                                                                                                                                                |
| New York State Courts    | Courts of the State of New York in the City and County of New York                                                                                                                                         |
| NYCDEP                   | New York City Department of Environmental Protection                                                                                                                                                       |
| NYCTA                    | New York City Transit Authority                                                                                                                                                                            |
| NYPD                     | New York City Police Department                                                                                                                                                                            |
| NYSDEC                   | New York State Department of Environmental Conservation                                                                                                                                                    |
| NYSDOH                   | New York State Department of Health                                                                                                                                                                        |
| NYSDOS                   | New York State Department of State                                                                                                                                                                         |
| NYSDOT                   | New York State Department of Transportation                                                                                                                                                                |
| OMB                      | New York City Office of Management and Budget                                                                                                                                                              |
| OPRHP                    | New York State Office of Parks, Recreation and Historic Preservation                                                                                                                                       |
| PANYNJ                   | The Port Authority of New York and New Jersey                                                                                                                                                              |
| PASSport                 | Procurement and Sourcing Solutions Portal                                                                                                                                                                  |
| Payroll Report           | Forms that the Consultant and any Subcontractors that provide any on-site construction activity must complete in the form annexed to this Contract in Appendix I                                           |
| Percentage of Completion | An amount equal to the percentage of completion of each Portion of the Services                                                                                                                            |
| Person In Charge         | As identified in Part I, Section 2.5, the member(s) of the Consultant's professional staff who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services |
| PLL                      | Pollution Legal Liability Insurance Policy                                                                                                                                                                 |

|                               |                                                                                                                                                                                                                                                  |
|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Portion                       | Each portion, task or phase of the Services as described in Appendix B and/or Appendix C                                                                                                                                                         |
| Principal                     | The most senior officer, or member of the Consultant's staff responsible for the performance of Services as identified in Part I, Section 2.4                                                                                                    |
| Progress Reports              | Reports which Consultant is obligated to prepare that show the status of the Services in accordance with the Progress Schedule                                                                                                                   |
| Progress Schedule             | Any schedule issued or approved by BNYDC for the performance of the Services, including, without limitation, Project or Services milestones, deadlines or delivery dates                                                                         |
| Project                       | As identified in Part I, Section 1.7, and described in detail in Appendix B                                                                                                                                                                      |
| Project Manager               | A person designated by BNYDC to serve as a liaison between BNYDC and the Consultant                                                                                                                                                              |
| Project Site                  | The location of the Project as identified in Part I, Section 1.8 and described in detail in Appendix B                                                                                                                                           |
| RAP                           | Remedial action plan                                                                                                                                                                                                                             |
| Representatives               | The employees, agents, servants, officers, directors, members, independent contractors and subcontractors of a person or entity                                                                                                                  |
| Requisition                   | A request for payment, to be submitted by Consultant not more than once per month, setting forth in detail, for the billing period for which partial payment is requested, the amount requested and Services performed during the billing period |
| Scope of Services             | The Services to be provided by the Consultant in connection with this Contract, as set forth in Appendix B                                                                                                                                       |
| Services                      | All of the services to be provided to BNYDC by the Consultant pursuant to the Contract, as described in greater detail in Appendix B                                                                                                             |
| SHPO                          | State Historic Preservation Officer                                                                                                                                                                                                              |
| Specific Terms and Conditions | Part I of this Contract                                                                                                                                                                                                                          |

|                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Staff and Fee Schedule | Schedule listing names of Consultant's staff, hourly rates and estimated number of days to be spent providing Services                                                                                                                                                                                                                                                                                                                              |
| State                  | State of New York                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Subcontractor          | Any person or entity including, without limitation, contractors, consultants, subconsultants, vendors and subcontractors of such persons or entities, employed or retained by the Consultant in accordance with the Contract to provide any services, work, materials, equipment or supplies in connection with the Services                                                                                                                        |
| Subcontractors' Cost   | The compensation payable by the Consultant to any subcontractor(s) of the Consultant pursuant to a contract(s) entered into pursuant to Part II, Section 4.2                                                                                                                                                                                                                                                                                        |
| Term                   | The time period of this Contract, as stated in Part I, Section 1.5                                                                                                                                                                                                                                                                                                                                                                                  |
| USACOE                 | United States Army Corps of Engineers                                                                                                                                                                                                                                                                                                                                                                                                               |
| USDOT                  | United States Department of Transportation                                                                                                                                                                                                                                                                                                                                                                                                          |
| UST                    | Underground storage tanks                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Value Engineering      | A systematic and creative analysis of the Project for the purpose of identifying essential function(s) and alternate methods to satisfy those essential functions in the most cost-effective manner.                                                                                                                                                                                                                                                |
| WBEs                   | Women-owned Business Enterprises                                                                                                                                                                                                                                                                                                                                                                                                                    |
| W/MBESs                | WBEs and MBEs, collectively                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Worker's Compensation  | A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for all of its employees engaged in the Services                                                                                                                                                                                                                                                                                 |
| Work-Made-For-Hire     | As defined in Section 101 of the United States Copyright Act, 17 U.S.C. § 101                                                                                                                                                                                                                                                                                                                                                                       |
| Work Product           | All reports, plans, studies, surveys, data, databases, programs, processes, systems, drawings, tracings, blueprints, computer drawings (including, but not limited to, computer-aided design ("CAD") files), schematics, specifications, log books, correspondence, models, studies, permits approvals, designs, deliverables, samples, presentation materials, analyses, punch lists, submissions, filings, applications, schedules, documents and |

materials, including, without limitation, those related to inspections, tests and test results, in all formats now known or hereinafter known, prepared or furnished by the Consultant pursuant to this Contract

**APPENDIX B**  
**SCOPE OF SERVICES**

Consultant Contract Number \_\_\_\_\_  
Consultant \_\_\_\_\_

**APPENDIX C**

**PAYMENTS**

Consultant Contract Number \_\_\_\_\_  
Consultant \_\_\_\_\_

## APPENDIX C

### (OPTION 1)

#### **[INSERT WHERE PAYMENT IS BASED ON PERCENTAGE OF SERVICES COMPLETED]**

The Maximum Payment for each Portion of the Services shall be the respective amounts set forth for in the following table:

#### PAYMENT SCHEDULE

SAMPLE; TASKS SET FORTH BELOW ARE EXAMPLES ONLY

| <b>Task</b>                                    | <b>Maximum<br/>Payment</b> |
|------------------------------------------------|----------------------------|
| <u>Task 1 – Concept Development and Review</u> |                            |
| Information Gathering                          | \$                         |
| Analysis and Surveys (including Utilities)     | \$                         |
| Conceptual Design                              | \$                         |
| Concept Book                                   | \$                         |
| <i>Task 1 Total</i>                            | <hr/> \$                   |
| <br><u>Task 2 – Schematic Design</u>           |                            |
| Three Schematic Designs                        | \$                         |
| One Schematic Design                           | \$                         |
| Schematic Book                                 | <hr/> \$                   |

|                                                |    |
|------------------------------------------------|----|
| <i>Task 2 Total</i>                            | \$ |
| <u>Task 3 – Preliminary Design Development</u> |    |
| Preliminary Design Development                 | \$ |
| Agency Approvals                               | \$ |
| Preliminary DD Package                         | \$ |
| <i>Task 3 Total</i>                            | \$ |
| <u>Task 4 – Final Design Development</u>       |    |
| Final Design Development                       | \$ |
| Final Design Development Package               | \$ |
| Additional Documents                           | \$ |
| <i>Task 4 Total</i>                            | \$ |
| Total Tasks 1-4                                | \$ |
| Allowable Additional Costs                     | \$ |
| Total Amount                                   | \$ |

Consultant Contract Number \_\_\_\_\_  
Consultant \_\_\_\_\_

Interim payments shall be made to the Consultant. The interim payments will be made no more frequently than once a month in an amount equal to the Percentage of Completion of each Portion of the Services, multiplied by the Maximum Payment for each Portion performed during the billing period. The Consultant shall also be reimbursed for Allowable Additional Costs as such costs accrue.

To request an interim payment, the Consultant shall submit to the President a Requisition, not more than once per month setting forth in detail, for the period for which partial payment is requested (i) the Percentage of Completion for each Portion of the Services performed by the Consultant during the billing period, (ii) Allowable Additional Costs incurred during the billing period and (iii) the amount of partial payment requested.

In addition, the Consultant shall submit Progress Reports at least monthly or in accordance with any other schedule approved by the President, or at the President's request. Such Progress Reports shall clearly state the reasons for any actual or anticipated delays in completion of the Services.

## Section 2 - Payment for Extra Work and Definitions

A. Subject to Section 1.5.1, payment for extra work shall be made at the rate of no more than [\_\_\_] times the Technical Salary Costs (as hereinafter defined) of the Consultant, plus compensation for Principal's Time (as hereinafter defined).

B. "Technical Salary Costs" shall mean direct payroll of technical and professional employees (excluding the Principal for time spent performing extra work, but shall not include amounts for vacation or holiday pay, social security, unemployment insurance, workers compensation or other fringe benefits). For a full-time employee, the daily salary cost for said employee shall be computed by dividing the employee's normal annual base remuneration by 260; the hourly rate shall be computed by dividing the daily salary cost by eight. For a part-time employee, the salary cost for said employee shall mean the amount paid per hour to said part-time employee by the Consultant.

C. "Principal's Time" shall mean the actual time that \_\_\_\_\_ or any other principal of the Consultant (all such principals are hereinafter referred to individually and as a group as the "Principal") spends on extra work pursuant to this Contract. Except as hereinafter provided, the hourly salary rate of each Principal shall not exceed \$[\_\_\_] for actual extra work performed (exclusive of time spent in general administrative or supervisory activities) and shall be calculated in the same manner as that for full-time employees stated in paragraph B above, provided that if the hourly salary rate exceeds \$[\_\_\_], the Consultant shall provide to the President a notarized statement by a certified public accountant stating that such rate does not exceed such Principal's most favored client rate. The Principal shall maintain daily

diaries or logs of her or his actual participation in the extra work hereunder, which shall be available for inspection by the President and the office of the Comptroller. The amount payable for Principal's Time shall not be included in the Technical Salary Costs and is not subject to any multiplier. In no event shall the total payment for Principal's Time exceed [\_\_\_\_\_] % of the total cost of the extra work.

D. "Reimbursable Costs" may include the cost of printing, special mailings (such as overnight delivery and messenger services), services-related long distance telephone and facsimile charges, and any other out-of-pocket expenses, approved in advance by the President by issuance of a Change Order to the Contract prior to the end of the contract term, on a direct cost basis (with no additional provisions for overhead or fee). Reimbursable Costs shall not include travel to and from the project site, meals, and those costs considered to be overhead such as normal mailing, local telephone and facsimile charges, in-house copying, secretarial, clerical and typist time and the purchase of office or graphic supplies.

## APPENDIX C

### (OPTION 2)

#### **[INSERT WHERE PAYMENT IS BASED ON HOURLY RATES:]**

Interim payments shall be made to the Consultant no more frequently than monthly based on the number of hours members of the Consultant's staff, as shown on the following Staff and Fee Schedule, spent providing the Services, multiplied by the hourly rate and applicable multiplier for each such member of the Consultant's staff on the Staff and Fee Schedule. The Consultant shall also be reimbursed for Allowable Additional Costs incurred.

#### STAFF AND FEE SCHEDULE

SAMPLE, POSITIONS AND OFFICES ARE EXAMPLES ONLY

| <b>Position</b> | <b>Name</b> | <b>Hourly<br/>Rate</b> | <b># of days</b> | <b>Estimated<br/>Multiplier</b> |
|-----------------|-------------|------------------------|------------------|---------------------------------|
|-----------------|-------------|------------------------|------------------|---------------------------------|

#### A. SITE OFFICE EMPLOYEES

Project Manager  
Engineer/Contract Administrator  
Engineer  
Architect  
Field Superintendent  
Field Superintendent  
Other (Specify)

#### B. HOME OFFICE EMPLOYEES

Chief Estimator  
Senior Estimator  
Estimating Engineer  
Other (Specify)

#### C. PRINCIPAL/PROJECT EXECUTIVE

#### D. PROJECT ACCOUNTANT

Consultant Contract Number \_\_\_\_\_  
Consultant \_\_\_\_\_

On or before the Commencement Date, the Consultant shall provide to the President an estimate of the number of hours members of the Consultant's staff, as set forth on the Staff and Fee Schedule, and its Principal are anticipated to spend providing the Services. Such estimate shall be subject to the President's approval.

The Consultant shall submit to the President, not more than once per calendar month, a Requisition setting forth in detail, for the period for which partial payment is requested (i) Services performed by Consultant's Principal and by its professional and technical staff; (ii) the number of hours worked by each such Principal and its professional and technical staff in connection with the Services performed during the billing period (iii) actual salaries incurred during such month; (iv) Allowable Additional Costs incurred; (v) Subcontractors' Costs incurred during the billing period; and (viii) the amount of partial payment requested. No multiplier overhead, administrative fee or other mark up will be paid to Consultant for Subcontractors' Costs or Allowable Additional Costs.

In addition, the Consultant shall submit Progress Reports at least monthly or in accordance with any other schedule approved by the President, or at the President's request. Such Progress Reports shall clearly state the reasons for any actual or anticipated delays in completion of the Services.

**APPENDIX D**

**FORM OF CERTIFIED STATEMENT REGARDING**  
**USE OF NON-ORIGINAL MATERIALS**

Consultant Contract Number \_\_\_\_\_  
Consultant \_\_\_\_\_

## FORM OF CERTIFIED STATEMENT REGARDING USE OF NON-ORIGINAL MATERIALS

The undersigned, being first duly sworn, deposes and states as follows:

- Consultant Contract Number \_\_\_\_\_  
Consultant \_\_\_\_\_

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Consultant: \_\_\_\_\_

Printed \_\_\_\_\_

Name: \_\_\_\_\_

BNYDC Contract No.: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn to before me this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

[illegible]

Consultant Contract Number \_\_\_\_\_  
Consultant \_\_\_\_\_

## APPENDIX E

### INSURANCE REQUIREMENTS

The following is minimum acceptable insurance coverage requirements for Contracting Services

I. Insurance Requirements

- A. Commercial General Liability Policy issued on an Occurrence form with a combined single limit for Bodily Injury, Personal Injury and Property Damage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Coverage shall include endorsements for: Products/Completed Operations; Underground Hazards where applicable; Contractual Liability for tort liability assumed under contract, Personal Injury; Waiver of Subrogation; Policy Aggregate shall apply on per project basis; Mobile Equipment if such equipment not subject to any motor vehicle statutory law.

Additional Insured endorsement as per Insurance Services Organization (a/k/a ISO) form CG 20 10 07 04 Additional Insured Scheduled Organization and form CG 20 37 07 04 Additional Insured – Completed Operations. Such endorsement shall include BNYDC and any other designated party as Additional Insured, as required by written contract to which this Exhibit is attached and part of.

There shall be no coverage restrictions or coverage exclusions on the General Liability Policy pertaining to, but not limited to: gravity related injuries, unsafe workplace, injuries sustained by employee of Contractor or sub-contractor, Third Party over type actions, construction operations, and construction activity.

The insurance procured by the Contractor shall be primary and non-contributory to any other insurance that may be in effect.

- B. Statutory Workers Compensation Policy and Employer's Liability Policy of \$1,000,000 for work operations in State where project work is performed, including any applicable other states coverage endorsement.
- C. Automobile Liability Insurance Policy for Bodily Injury and Property Damage in the amount of \$1,000,000 per occurrence covering all owned, non-owned, hired, borrowed vehicles subject to statutory motor vehicle law.
- D. Contractors Pollution Liability policy of at least \$1,000,000 for damages arising out of bodily injury, property damages, environmental damages caused by a pollution incident from Contractors work, completed operations, or transportation whether work performed by or on behalf of Contractor.
- E. Umbrella/Excess Liability Policy of at least \$5,000,000 per occurrence. Umbrella Liability policy is to be provided on at least a follow form basis of the underlying General Liability Insurance policy, Automobile Insurance Policy, and Workers'

Compensation Insurance policy. The insurance procured by the Contractor shall be primary and non- contributory to any other insurance that may be in effect.

- F. Professional Liability (Errors and Omissions) of at least \$1,000,000 each claim for wrongful acts while performing and/or providing professional services. Coverage shall continue for at least three (3) years beyond the final performance of services.
- G. The following are to be included as additional insured(s) for coverage required in sections A,C,D and E. Each additional listed below shall be issued a separate Certificate of Insurance.

**Certificate Holder**

Brooklyn Navy Yard Development Corporation  
Building 77  
141 Flushing Avenue, Suite 801  
Brooklyn, New York 11205

And as Additional Insureds  
Brooklyn Navy Yard Development Corporation  
City of New York

**Certificate Holder**

City of New York  
c/o City of New York Department of Small Business Services  
One Liberty Plaza, 165 Broadway  
New York, NY 10006

And as Additional Insureds  
City of New York  
Brooklyn Navy Yard Development Corporation

- H. A Certificate of insurance using the ACCORD 25 form is to be provided to the Additional Insured and the Certificate must specifically include a copy of the stipulated additional insured endorsement as required in Section A. Certificate Holder must be notified of any cancellation, non-renewal or material modification of existing policy. Notice is to be received 30 days prior to any change in status. In addition to ACCORD 25 form, a completed New York Construction Certificate of Liability Insurance Addendum (ACCORD 855 form) shall be provided.
- II. If the Contractor utilizes the services of subcontractor for work performed, the same provisions of this Insurance Requirement Exhibit shall be required of those parties. It is the sole responsibility of the Contractor to maintain compliance of such.

III. Insurance coverage shall be maintained with responsible insurance companies licensed and admitted to do business in the State of New York and such companies shall have an A.M. Best Rating of A- VII. If a Non-Admitted Insurance Company is used, an AM Best rating of A- shall apply.

IV. Any self-insured insurance retentions and, or any deductibles utilized on any of the above required insurance coverage is the sole responsibility of the Contractor, and Contractor agrees to satisfy those retention and or deductible obligations directly with their insurance company.

V. The policies required hereunder shall contain the following provisions:

“A. Notices from the insurer (the “Insurer”) to BNYDC (“BNYDC”) and the City of New York (the “City”), in connection with this policy, shall be addressed to the General Counsel, BNYDC, at Building 77, 141 Flushing Avenue, Suite 801, Brooklyn, New York 11205 (with a copy to BNYDC’s Deputy General Counsel at the same address);

B. The Insurer shall accept notice of accident from BNYDC or the City, within 120 days after receipt by an official of such Additional Insured (as identified above) of notice of such accident as valid and timely notice under this policy;

C. The Insurer shall accept notice of claim from the City within 120 days after such claim has been filed with the Comptroller of the City and notice of claim from BNYDC, within 120 days after receipt by such party as valid and timely notice under this policy;

The Insurer understands and agrees that notice of accident or claim to such Insurer by any one of the following entities shall be deemed notice by all under the policy:  
Contractor; or  
BNYDC; or  
The City; or  
Any other Additional Insured.

E. This policy shall not be canceled, terminated or modified by the Insurer or Contractor unless 30 days prior written notice is sent by registered mail to BNYDC or the City, nor shall this policy be canceled, terminated or modified by the Contractor without prior written consent of BNYDC;

F. The presence of engineers, inspectors or other employees or agents of Contractor, BNYDC or the City at the site of the Services performed by Contractor shall not invalidate this policy of insurance;

G. Violation of any of the terms of any other policy issued by the Insurer to Contractor or a subcontractor of Contractor shall not invalidate this policy; and

H. Insurance, if any, carried by BNYDC, the City or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Insurer.”

Consultant Contract Number \_\_\_\_\_  
Consultant \_\_\_\_\_

APPENDIX F  
EQUAL EMPLOYMENT AND AFFIRMATIVE  
COMPLIANCE FOR NON-CONSTRUCTION  
CONTRACTS ADDENDUM  
[E.O. 50 SUPPLY AND SERVICE RIDER]

## APPENDIX F

### E.O. 50 SUPPLY & SERVICE RIDER

#### EQUAL EMPLOYMENT OPPORTUNITY

**[Note: for purposes of this rider, the “contractor” means the Consultant identified in this Contract]**

This Contract is subject to the requirements of Executive Order No. 50 (1980) as revised (“E.O.50”) and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this Contract, the contractor agrees that:

- (1) it will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
- (2) when it subcontracts it will not engage in any unlawful discrimination in the selection of subcontractors on the basis of the race, color, creed, national origin, sex, age, disability, marital status or sexual orientation of the owner, manager or any officer, President, agent or employee of such subcontractors.
- (3) it will state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or that it is an equal employment opportunity employer;
- (4) it will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder; and
- (5) it will furnish all information and reports including an Employment Report before the award of the contract which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the Division of Labor Services of DSBS (the “Division”), and will permit access to its books, records and accounts by the Division for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

The contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the contract and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Division, the President may direct the imposition upon the Contractor of any or all of the following sanctions:

- (i) disapproval of the contractor;
- (ii) suspension or termination of the contract;
- (iii) declaring the contractor in default; or
- (iv) in lieu of any of the foregoing sanctions, the President may impose an employment program.

The President of the Division may recommend to the contracting agency head that a Board of Responsibility be convened for purposes of declaring a contractor who has repeatedly failed to comply with E.O. 50 and the rules and regulations promulgated thereunder to be nonresponsible.

The contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$50,000 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Division as a means of enforcing such provisions including sanctions for noncompliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.

**APPENDIX G**

**E.O. 50 EMPLOYMENT REPORT FORM**

Consultant Contract Number \_\_\_\_\_  
Consultant \_\_\_\_\_

## APPENDIX H

### E.O. 50 PAYROLL REPORT FORM AND INSTRUCTIONS

Consultant Contract Number \_\_\_\_\_  
Consultant \_\_\_\_\_



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
Bureau of LABOR LAW

PAYROLL REPORT  
(TO BE SUBMITTED WITH REQUISITION FOR PAYMENT)

Agency

NAME OF CONTRACTOR(SUB)CONTRACTOR

CONTRACT REQ. NO.

JOB CODE

ADDRESS

WEEK ENDING DATE:

PROJECT NAME & LOCATION

PHONE No.

PAYROLL No.

TAX ID. No.

|                                          |                                                                                 |                     |                       |  |  |  |  |  |                | SUPPLEMENTAL BENEFITS              |                   |                  |                                           |            |           |                                 |         |  |
|------------------------------------------|---------------------------------------------------------------------------------|---------------------|-----------------------|--|--|--|--|--|----------------|------------------------------------|-------------------|------------------|-------------------------------------------|------------|-----------|---------------------------------|---------|--|
| (1)                                      | (2)                                                                             | (3)                 | (4)                   |  |  |  |  |  | (5)            | (6)                                | (7)               | (8)              | (9)                                       | (10)       | (11)      | (12)                            | (13)    |  |
| NAME,<br>ADDRESS,<br>SOCIAL SECURITY No. | LIST TRADE & SINGLE<br>CLASSIFICATION<br>JOURNEYPERSON<br>APPRENTICE<br>ELECTOR | TIME<br>IN<br>HOURS | DAY AND DATE          |  |  |  |  |  | TOTAL<br>HOURS | BASE<br>RATE OF<br>PAY PER<br>HOUR | TOTAL<br>BASE PAY | RATE PER<br>HOUR | PAID TO<br>LOCAL # IF Union<br>is Checked | TOTAL PAID | GROSS PAY | TOTAL TAX &<br>OTHER DEDUCTIONS | NET PAY |  |
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|                                          | J<br>A<br>H                                                                     | RT                  |                       |  |  |  |  |  |                |                                    |                   |                  |                                           |            |           |                                 |         |  |
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# INSTRUCTIONS FOR PREPARING AND SUBMITTAL OF A PAYROLL REPORT

1. All persons who perform any on-site construction activity, during the period of requisition, shall be listed on the Payroll Report.
2. Separate Payroll Reports shall be submitted by the prime contractor and each sub-contractor who performs any on-site construction activity during the period of the requisition.
3. Failure to provide the required Payroll Report may result in the requisition for payment being returned unpaid or the payment reduced.
4. **PAYROLL REPORT HEADING:** The spaces between the first set of double lines shall be referred to as the Payroll Report Heading and shall require the following information:

**NAME OF CONTRACTOR / SUB-CONTRACTOR:** Circle either the word CONTRACTOR or SUB-CONTRACTOR as applicable. The legal name of the firm submitting the Payroll Report shall be placed immediately below this designation.

**ADDRESS:** Insert the current address (i.e. Street, City, State & Zip Code) of the firm submitting the Payroll Report.

**PHONE No.:** Enter the telephone number of the firm in the space provided.

**PAYROLL No.:** In the space provided, enter the Payroll Number of the Contractor or Sub-Contractor.

**CONTRACT REG. No.:** Enter the Contract Registration Number here. This may be obtained from the "Notice of Award" and / or the "Order to Commence Work" letters.

**JOB CODE:** In the space provided enter the Contractor/ Sub-Contractor's in-house labor distribution code or job number where applicable.

**WEEK ENDING - DATE:** In the space provided enter the last date of the payweek (i.e. month, day, year).

**PROJECT NAME & LOCATION:** In this space enter the Project Name & Location where contract work is being performed.

**TAX I.D. No.:** Enter in this space the Federal Tax Identification Number of the Contractor or Sub-Contractor as applicable.

5. For every employee who performs any on-site construction activity during the period of the Payroll Report, the following information shall be provided:

- 1) **NAME, ADDRESS, SOCIAL SECURITY NO.:** The Legal name, current address and social security number of each employee.
- 2) **LIST TRADE & CIRCLE WORK CLASSIFICATION:** Specify & insert the Trade applicable to the work performed by each employee. The Trade identified must be one listed on the Prevailing Wage & Supplemental Benefits Schedule of the Comptroller. Circle the letter J if the individual is a Journeyman, the letter A if the person is a Registered Apprentice with the Department of Labor of the State of New York, or the letter H if the person is a Helper and listed as such against the appropriate Trade on the Comptroller's Schedule of Prevailing Wages.
- 3) **TIME:** RT relates to Regular Time, and OT relates to Over Time.
- 4) **DAY AND DATE:** Below this heading, in the first row enter the appropriate sequence of the contractor's pay records. MTWTFSS, for example, is the sequence to use if the workweek ends on a Sunday and SSMWTF is the sequence if the workweek ends on a Friday. In the second row, below each letter representing the day of the payweek, insert the corresponding date. Below the heading HOURS WORKED EACH DAY at the intersection of the column of the particular day and date and the horizontal row of the employee's name, insert the hours worked each day in the appropriate Box either for RT (Regular Time) and / or OT (Over Time). If an employee worked Shift Time the RT (Regular Time) row shall be used and adjusted accordingly.
- 5) **TOTAL HOURS:** Sum the hours worked for Regular and / or Shift Time, the hours worked Overtime, and enter separate totals in this column.
- 6) **BASE RATE OF PAY PER HOUR:** Specify the actual base rate of pay per hour paid to the employee. Do not include supplemental benefits in this amount.
- 7) **TOTAL BASE PAY:** Total amount earned by the employee, not including benefits.

## SUPPLEMENTAL BENEFITS:

- 8) **RATE PER HOUR:** Amount of Supplemental Benefits paid / provided per hour.
- 9) **TO:** Place a check mark in the appropriate box: U for Union if benefits paid to a Union, E for Employee if benefits paid in cash (or check) directly to the Employee or O for other, if benefits otherwise paid / provided. If U is checked you must insert the "Local" number of the union in that box.
- 10) **TOTAL PAID:** Total amount of Supplemental Benefits paid / provided for the payweek.
- 11) **GROSS PAY:** Total amount earned for payweek. This amount comprises the Total Base Pay plus any benefit paid in cash (or check) directly to the employee (i.e. column (7) + column (9) E if Box E is checked and payment made directly to employee). No other type of benefit must be included in this column's total.
- 12) **TOTAL TAX AND OTHER DEDUCTIONS:** Enter the sum total of all deductions in this column (including FICA, Federal, State & City Taxes, etc.). This does not absolve you from maintaining appropriate tax & other records required by law).
- 13) **NET PAY:** Total amount of pay after all deductions (i.e. the actual Take-Home Pay).

**APPENDIX I**

**OUTSIDE FUNDING SOURCES**

**[NOTE: IF NOT APPLICABLE, ADD THE FOLLOWING:  
"INTENTIONALLY DELETED"]**

## APPENDIX I

### Outside Funding Source Provisions

#### 1. General Terms.

This Contract will be funded in whole or in part by the Funds identified in Part I, Section 4.1 of this Contract. The receipt of such Funds is conditioned upon the Consultant's compliance with certain mandatory federal, State and City terms and conditions. The Consultant must comply with all applicable mandatory terms and conditions set forth in the Applicable Statutes and Applicable Agreements including, without limitation, those set forth in Part I, Section 4.3, 4.4, this Appendix, Appendix J and in **Appendix K**. This Appendix shall be annexed to and made a part of any subcontract entered into by the Consultant pursuant to this Contract, and shall be binding on any Subcontractor. To the extent any terms and conditions set forth in this **Appendix** conflict with any other terms of this Contract, the terms and conditions of this **Appendix** shall govern. In the event any terms and conditions set forth in this **Appendix** conflict with the terms and conditions of **Appendix J or Appendix K**, the more stringent of the conflicting provisions shall govern.

Consultant acknowledges and agrees that BNYDC has the right to delegate the responsibilities of the President to the City or such agency of the City as may be appropriate.

The Funds have been made available for the Project under the Applicable Statutes and Applicable Agreements including, without limitation, those listed in Part I, Section 4.4 and 4.5, and any other governing statute or agreement related to the Funds, the Project and/or the Contract.

Notwithstanding anything to the contrary in this Contract, BNYDC shall be under no obligation to make such payments except when, and to the extent, such Funds are available. BNYDC shall not be liable to the Consultant in the event any or all of such Funds are not made available.

#### 2. Termination or Suspension Related to Unavailability of Funds.

In addition to any other right to postpone, delay suspend or terminate the Services or the Contract set forth in this Contract, if, pursuant to the Applicable Statutes or Applicable Agreements or otherwise, there shall be a suspension, termination or reduction of the Funds funding this Contract as a result of which Funds are not available for some or all payments under this Contract, BNYDC shall so notify the Consultant and the Consultant shall, and agrees to, cease to perform the activities specified in the notice (permanently or temporarily, as specified in the notice) on the

Consultant Contract Number \_\_\_\_\_  
Consultant \_\_\_\_\_

date set forth therein, which may be immediately. The Consultant shall assume no further binding obligations in connection with any Services specified in the notice to be stopped, after the date set forth in the notice, except that such cessation need only be for the period of suspension if the Services are suspended rather than terminated. The award of Funds funding this Contract may be suspended or terminated if the Consultant materially fails to comply with any term of such award. The award may also be terminated for convenience in accordance with the Applicable Statutes and Applicable Agreements.

Consultant Contract Number \_\_\_\_\_  
Consultant \_\_\_\_\_

**APPENDIX J**

**STANDARD FEDERAL REQUIREMENTS**

**[NOTE: IF NOT APPLICABLE, ADD THE FOLLOWING:  
"INTENTIONALLY DELETED"]**

**[CONSULT BNYDC COUNSEL AND INSERT APPLICABLE FEDERAL  
REQUIREMENTS, STATUTES, REGULATIONS AND/OR AGREEMENTS]**

**APPENDIX K**

**STANDARD STATE CLAUSES**

**[NOTE: IF NOT APPLICABLE, ADD THE FOLLOWING:  
"INTENTIONALLY DELETED"]**

[CONSULT BNYDC COUNSEL AND INSERT APPLICABLE STATE  
REQUIREMENTS, STATUTES, REGULATIONS AND/OR AGREEMENTS]

## APPENDIX L

### WHISTLEBLOWER PROTECTION EXPANSION ACT

1. In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,

- (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
- (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
- (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
  - (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
  - (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower

Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.

- (d) For the purposes of this rider, “adverse personnel action” includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.
- (e) This rider is applicable to all of Contractor’s subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

2. Paragraph 1 is not applicable to this Contract if it is valued at \$100,000 or less. Subparagraphs (a), (b), (d), and (e) of paragraph 1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph (c) of paragraph 1 is neither applicable to this Contract if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

**REPORT**  
***CORRUPTION, FRAUD, UNETHICAL CONDUCT***  
**RELATING TO A NYC-FUNDED CONTRACT**  
**OR PROJECT**  
**CALL THE NYC DEPARTMENT OF INVESTIGATION**  
**212-825-5959**



**DOI CAN ALSO BE REACHED BY MAIL OR IN PERSON AT:**

New York City Department of Investigation (DOI)  
80 Maiden Lane, 17th floor  
New York, New York 10038  
Attention: COMPLAINT BUREAU

**OR FILE A COMPLAINT ON-LINE AT:**

[www.nyc.gov/doi](http://www.nyc.gov/doi)

**All communications are confidential**

**THE LAW PROTECTS EMPLOYEES OF  
CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- **To be protected by this law, an employee must report to DOI – or to certain other specified government officials** – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages



← **Scan the QR Code at Left to File a Complaint**

## APPENDIX M

### PAID SICK LEAVE LAW

#### Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.<sup>1</sup> Contractors of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

1 Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. Contractor further acknowledges that such compliance is a material term of this agreement and that failure to comply with the PSLL in performance of this agreement may result in its termination.

Contractor must notify the Agency Chief Contracting Officer of the City agency or other entity with whom it is contracting in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of Contractor. Contractor is advised to review the PSLL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which Contractor can get more information about how to comply with the PSLL.

Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

#### Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant

Consultant Contract Number \_\_\_\_\_  
Consultant \_\_\_\_\_

to the PSL (‘‘Year’’) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSL may use sick time for any of the following:

- such employee’s mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee’s need for medical diagnosis or preventive medical care;
- such employee’s care of a family member (an employee’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee’s spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee’s place of business by order of a public official due to a public health emergency; or
- such employee’s need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an

employee's use of sick time pursuant to the PSLL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

### Exemptions and Exceptions

Notwithstanding the above, the PSLL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

### Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSL.

### Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language.

Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice.

### Records

An employer must retain records documenting its compliance with the PSL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSL.

### Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSL has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSL civil penalties not to exceed \$500 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

### More Generous Policies and Other Legal Requirements

Nothing in the PSL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to

comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSSL provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSSL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

**EXHIBIT F**  
**FEE PROPOSAL FORM**

Complete and submit the form on the following page in a separate, sealed envelope in accordance with the requirements of the RFP.

Submitted by:

---

Authorized Signature, Name, Title

Date

---

Firm Name  
Number

Federal Tax Identification

---

Business Address

---

Telephone Number

Email Address

## Request For Proposals For On-Call Environmental Services at Brooklyn Navy Yard Fee Proposal Form

### STAFF AND FEE SCHEDULE

| TITLE                                   | NAME | MAXIMUM<br>HOURLY RATE (A) | MULTIPLIER (B) | MAXIMUM HOURLY<br>BILLABLE RATE(C)<br>=(A) X (B) |
|-----------------------------------------|------|----------------------------|----------------|--------------------------------------------------|
| <b>REQUIRED SERVICES:</b>               |      |                            |                |                                                  |
| <b><u>I. ENVIRONMENTAL SERVICES</u></b> |      |                            |                |                                                  |
| <b>NAME OF FIRM:</b>                    |      |                            |                |                                                  |
|                                         |      |                            |                |                                                  |
|                                         |      |                            |                |                                                  |
|                                         |      |                            |                |                                                  |
|                                         |      |                            |                |                                                  |
|                                         |      |                            |                |                                                  |
|                                         |      |                            |                |                                                  |
|                                         |      |                            |                |                                                  |
| <b>OTHER OPTIONAL SERVICES:</b>         |      |                            |                |                                                  |
|                                         |      |                            |                |                                                  |
|                                         |      |                            |                |                                                  |
|                                         |      |                            |                |                                                  |
|                                         |      |                            |                |                                                  |

Consultant shall be paid for each Portion of the Services at either (i) the respective amounts set forth in the above table for Task Orders requesting a cost proposal broken down on an hourly basis or, (ii) with respect to Services performed pursuant to a Task Order requesting a total lump sum cost proposal broken down by Task, as set forth in the Progress Schedule approved

The frequency of payments made to the Consultant shall be no more frequent than monthly. For payments based on hourly rates, the payment shall be for the hours performed during such period for the Portion of Services provided multiplied by the applicable Maximum Hourly Billable Rate. For payments based on Tasks completed, the payment shall be equal to the percentage of completion of each Portion of the Services, multiplied by the Maximum Payment for each Portion performed during the billing period, less any Retainage. The Consultant shall also be reimbursed for Allowable Additional Costs incurred and determined as such in accordance with Section 1.5.2 of the Contract.

With respect to payments based on hourly rates set forth above, the Consultant shall submit to the President, not more than once per calendar month, a Requisition setting forth in detail, for the period for which partial payment is requested (i) the Portion of the Services performed by Consultant's Principal and by its professional and technical staff; (ii) the number of hours worked by each such Principal and its professional and technical staff in connection with the Services performed during the billing period (iii) Allowable Additional Costs incurred; (iv) and the amount of partial payment requested. No multiplier overhead, administrative fee or other markup will be paid to Consultant for Subcontractors' Costs or Allowable Additional Costs. In no event will be the amount paid under the Contract exceed the Maximum Contract Price or the Maximum Annual Payment.

With respect to payments based on Tasks completed, the Consultant shall submit to the President, not more than once per calendar month, a Requisition setting forth in detail, for the period for which partial payment is requested, the following: (i) the Percentage of Completion for each Portion of the Services performed by the Consultant during the billing period; (ii) Allowable Additional Costs incurred during the billing period; and (iii) the amount of partial payment requested. In no event will be the amount paid under the Contract exceed the Maximum Contract Price or the Maximum Annual Payment.

In addition, the Consultant shall submit Progress Reports at least monthly in accordance with Appendix B of the Contract or in

Exhibit F Fee Proposal Form

accordance with any other schedule approved by the BNYDC, or at the BNYDC's request. Such Progress Reports shall clearly state the reasons for any actual or anticipated delays in completion of the applicable Portion of Services.

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Authorized Signature Title

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Consultant Firm

---

Business Address

---

City

---

State

---

Telephone Number

---

Fax Number

---

Federal Tax Identification Number

## **EXHIBIT G**

### **SCOPE OF SERVICES**

#### **LIST OF POTENTIAL PROJECTS AND RELATED SERVICES**

The Work will be divided into two components based on the type of projects. Individual projects may require the Consultant to secure sub-contracts with other service providers for laboratory testing, sampling and analysis, environmental clean-up services, transformer removal services, material identification and disposal, etc.

#### **A. Planning & Real Estate Development Projects**

1. Specific anticipated projects that will require environmental services include:
  - a. Voluntary Clean-up Agreement implementation, compliance and DEC coordination
  - b. Consultation and coordination on redevelopment of Former Manufactured Gas Plant Site that National Grid is Obligated to Remediate Under Consent Order
    - Cost share agreement between BNYDC and National Grid for National Grid to reimburse MGP-related costs during BNYDC-led construction.
    - Review of National Grid documents, coordinate with National Grid on their remedial activities and advise BNYDC on resultant environmental and institutional controls.
    - Guidance on site redevelopment.
  - c. Construction of Transportation and Open Space improvements
2. Other tasks that may be required within the Planning & Development Projects contract include:
  - a. Advisory Services
  - b. Liaising with New York State Department of Environmental Coordination (and other agencies as appropriate) for both BNYDC and certain Yard tenants
  - c. Design and specification development
  - d. Hazmat analysis for Environmental Assessments and/or Environmental Impact Statements
  - e. Contract Administration Services
  - f. Construction Management Services
  - g. Project-Specific Scope Development
  - h. Coordination with third party developers in the Yard
  - i. Engineering/Preparation of Construction Documents
  - j. Procurement and Project Management
  - k. Construction Supervision
  - l. Response to Incidents during Construction and/or Structural Rehabilitation Projects
  - m. Environmental Investigations
  - n. Emergency Services including responses to incidents during the course of a project such as:
    - Fire

- Flood
  - Pestilence
  - Storage
  - Spills and/or releases of hazardous materials and/or wastes
  - Any other incidents deemed by the President to require emergency services
3. Record keeping and completion of Site Management Periodic Review Report and any other required compliance documentation.

**B. Facilities and Maintenance Projects**

1. There are no specific projects anticipated from the outset under this contract.
2. Tasks listed below may be required on an as-needed basis within the Facilities Management contract:
  - a. Acquisition and maintenance of environmental permits for air, water, sewer, underground and aboveground storage tanks for BNYDC.
  - b. Provision of assistance to BNYDC with operations of existing or proposed tenants.
  - c. Provision of assistance in maintaining existing permits and filings for air, water, sewer, hazardous materials and wastes.
  - d. Emergency Services including responses to incidents such as:
    - Fire
    - Flood
    - Pestilence
    - Storage
    - Spills and/or releases of hazardous materials and/or wastes
    - Any other incidents deemed by the President to require emergency services
  - e. Bulk Petroleum Storage Management
  - f. Underground Storage Tank management
    - Response to regulatory reporting requirements
    - Building #74 – 1,200 and 2,000 gallons (Gasoline and Diesel)
    - Registration, Inventory record keeping, Corrosion Protection testing, Monitoring Equipment and Tightness Tests
    - Physical Inspection – Annual, 5-Years (Tightness Testing)
  - g. Aboveground Storage Tanks
    - Response to regulatory reporting requirements
    - Building #542 - 3 x 5,000 gallons (Diesel - Monthly - Inspection)
    - Building #41A - 2 x 12,500 gallons (No.2 Fuel Oil 1 x 15,000 gallons (No.2 Fuel Oil)
    - Building #270 - 1 x 7,000 gallons (No. 2 Fuel Oil)
  - h. Review of Tenant Spill Prevention Countermeasure Control Plans (RCRA)
  - i. Inspections – Transformers, Underground Storage Tanks and Aboveground Storage Tanks, Inventory Control and Monitoring, Tracking
  - j. Voluntary Clean-up Agreement/Notifications

- k. Environmental Impact Statements
- l. Preparation of Individual Project Scopes
- m. Engineering/Preparation of Construction Documents
- n. Procurement and Project Management
- o. Construction Supervision/Oversight
- p. Buildings and Structural Rehabilitation Review
- q. Hazardous Materials Management
- r. Recycling Programs
- s. Environmental Investigations (Property Management)
- t. NY State DEC Coordination
- u. Hazardous Waste Management (RCRA)
  - Manifest Tracking
  - Tax & Finance Reporting
  - Annual Hazardous Waste Reporting
  - Biannual Fee Reporting
  - Quarterly Hazardous Waste Reporting
- v. Hazardous Material Transportation (USDOT)
  - Hazardous Material Transportation Reports
  - Hazardous Material Program Fee(s) Annual/Triennial Reports
- w. Emergency Planning Committee Right TO Know (SARA)
  - Material Safety Data Sheet preparation
  - Tracking RTK Assessment Fee Program Reporting
  - Annual Reporting Requirements
- x. Industrial Boiler Permitting (CAA)
  - State Facility Permit for Small Industrial Boilers/Title V (CCA)
  - Air Emissions Tracking Reports
  - Emissions Tracking
  - Annual Reporting and Maintenance of Emission Statements
- y. NYCDEP Bureau of Air Resources - Testing required of all boilers (DEP) Maintenance Logs/Certificate posting.
  - Building 542/Substation C - Emergency Generators
  - Building #234 Boiler
  - Building #41A Boilers Triennial Inspections and Performance
  - Building #270 Boiler Tri-annual Certification
- z. PCB Transformer Management (TSCA)
  - Rehabilitation/Repairs
  - Disposal/Certificates of Destruction/Regulated Transformer & Oil Reports
  - Spill Cleanup Documentation
  - Disposal Reporting to NYCDEP (as needed)
- aa. New Permits
  - SPEDES
  - Air Permit Information Submission

- Asbestos filings (ACP)

**EXHIBIT H**  
**SITE MANAGEMENT PLAN**

The Site Management Plan can be found at [Site Management Plan 10-18-2022.pdf](#)