



NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE
Thomas Farley, MD, MPH
Commissioner

Patricia A. Thomas
Agency Chief Contracting
Officer
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**Agency Chief Contracting
Office**

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Animal Care & Control of New York City, Inc.
11 Park Place
New York, NY 10007
Attn: Julie Bank
Executive Director

August 2, 2010

Subj.: Veterinary and Pest Control Services
Pin: 10AA024001R0X00
Term: 7/1/10 -- 6/30/15
Amt: \$35,793,710.

Dear Ms. Bank:

The attached agreement between the New York City Department of Health & Mental Hygiene and your organization has been forward to the Comptroller's office for registration. Please keep the agreement in your file for future reference.

If you have any questions, please contact me at 212-219-5885. Thank You.

Sincerely,

Maria Correa
Office of Contracts



NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE
Thomas Farley, MD, MPH
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Department No.: 10AA024001R0X00

Registration No.: _____

Term of Agreement: 7/01/10 - 6/30/15

Total Contract Amount: \$ 35,793,710.00

Name of Contractor: Animal Care & Control of New York City, Inc,

Address: 11 Park Place, New York, NY 10007

Type of Service: Animal Shelter Type of Procurement: Negotiated Acquisition

AGREEMENT effective as of the first day of July, 2010 between THE CITY OF NEW YORK, (the City acting by and through the Commissioner ("the Commissioner") of the New York City Department of Health and Mental Hygiene (the "DOHMH" or "Department"), having its principal office located at 125 Worth Street, New York, New York 10013 and **ANIMAL CARE & CONTROL of NEW YORK CITY, INC.** ("AC" or "the Contractor" or "the Corporation"), a not-for-profit corporation currently having its principal office 11 Park Place, New York, New York 10007.

WITNESSETH

WHEREAS, the Department has jurisdiction under the City Charter to regulate all matters affecting health within the City of New York including the control of disease and conditions hazardous to life and health and the abatement of nuisances affecting or likely to affect public health; and

WHEREAS, pursuant to the New York City Dog License Law, Chapter 115 of the Laws of 1894, as amended (codified after §107 of the Agriculture and Markets Law), the City is authorized to maintain, in each Borough, shelters or facilities for animals and has designated the Department as the agency to exercise such authority and powers; and

WHEREAS, within the Department there exists the Bureau of Veterinary and Pest Control, Veterinary Public Health Services (the Bureau) under the direction of the Commissioner's designee having the power and duty to administer Departmental programs relating to the impact of animals on public health, including, but not limited to, issuing dog licenses, collecting fees therefore, seizing unlicensed dogs, and cats whose owners cannot be identified, the surveillance of animal bites, the surveillance of rabies, the investigation of all animal related diseases, the inspection of animal shelters and holding facilities; and

WHEREAS, the Contractor was established as a not-for-profit corporation under Section 201 of the Not-For-Profit Corporation Law, in part, for the public purposes of seizing animals deemed to be a threat to the public health, providing and operating facilities to shelter, hold, examine, test, treat, spay, neuter, place for adoption, assure humane care and disposition of and otherwise control animals which the Corporation or the City has seized or accepted for shelter; and

WHEREAS, pursuant to an Agreement dated July 1, 2001 and renewed July 1, 2006, the Corporation successfully performed animal control functions and duties on behalf of the Department and City, including but not limited to those authorized by the New York City Dog License Law (Chapter 115 of the Laws of 1894, as amended) the New York State Public Health Law, the New York City Health Code, the New York Administrative Code, and rules and regulations promulgated there under; and

WHEREAS, the Department wishes to enter into an Agreement with Animal Care and Control for the term of July 1, 2010 through June 30, 2015, with the option to two 3-year renewals, as a negotiated acquisition pursuant to the Procurement Policy Board (PPB) rules.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

PART I

TERM, SCOPE OF SERVICES, PAYMENT, ETC.

I. **TERM**

The term of this Agreement shall commence on July 1, 2010 and shall terminate June 30, 2015, unless terminated at an earlier date as hereinafter provided (the "Term"). This Agreement may be renewed at the option of the City for two additional three-year periods, subject to availability of funds and all approvals required by law.

II. **SCOPE OF SERVICES**

a. The Corporation shall provide services under this Agreement, which shall include, but not be limited to seizing animals deemed to be a threat to the public health, providing and operating facilities to shelter, hold, examine, test, spay, neuter, place for adoption, assure humane care and disposition of and otherwise control animals which the Corporation has seized or accepted for shelter. The term "program" or "program services" shall be deemed to refer to such services. The Corporation shall provide all these services in the manner set forth in the Scope of Services, annexed hereto and incorporated here in as Annex A.

b. **Other Provisions Applicable to the Services/Related Services**

- (1) The Corporation shall meet all its obligations under this Agreement in accordance with all Federal, State and Local laws, rules and regulations pertaining hereto.
- (2) The Corporation shall meet all its obligations under this Agreement in a humane manner and respecting the rights of the legal owners of animals as required by law.
- (3) The Corporation shall provide all reports required to be provided under this Agreement according to the terms of this Agreement and shall provide all other reports (and other information) when and as requested from time to time by the Department.
- (4) Each party shall, upon request and with reasonable notice, meet with representatives of the other party with reasonable frequency to discuss reasonable and appropriate additional accounting principles and procedures, or other matters associated with the Contract.

III. **REIMBURSEMENT; BOOKS AND RECORDS; AUDITS**

(a) **Maximum Reimbursable Amount**

The Maximum Reimbursable Amount for this Agreement shall not exceed \$35,793,710. Of this total, an amount not to exceed \$7,158,742 shall be available for use in the first fiscal year of the Agreement beginning on July 1, 2010 and ending on June 30, 2011 in accordance with the budget contained in Annex B, which is attached hereto and hereby made a part of this Agreement. It is understood that with regard to funding for the second, third, fourth, and fifth years, an amount not to exceed \$7,158,742 shall be deemed executory only to the extent of the monies being available for the purpose of the contract, and no liability on account thereof shall be incurred by the City beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer, creates any legal or moral obligation to request, appropriate or make available additional monies for the purpose of the contract. It is further understood that the maximum reimbursable amount for each subsequent budget year will be incorporated into this Agreement by written modification.

b. **Schedule of Payments and Recoveries**

- (1) On or about July 1, 2010, the City shall make an advance payment for the first budget period described above in the amount of \$596,561.83. Thereafter, the City shall, on or about the first day of each remaining month within the first budget year, make an advance payment of \$596,561.83.
- (2) The City's advance, as described above, shall be deposited by the Corporation in a money market bank account, earning interest at prevailing rates, and will be drawn upon by the Corporation as needed to meet the actual expenditures incurred while fulfilling its responsibilities under this Agreement.
- (3) Upon delivery of the Corporation's Final Report required by Section (d)(3) below, the Corporation shall also remit to the City, by check made payable to the Comptroller of the City of New York, the net interest earned in the money market bank account wherein the City's advances were deposited. The calculation of net interest earned will be the total interest earned less any interest due to the Corporation for delays experienced in receiving monthly advances from the City as stipulated in subsection III (b)(1) above.
- (4) Upon delivery of the Corporation's Final Report containing a comprehensive statement of actual expenditures and revenue pursuant to Section (d) below, the City shall pay to the Corporation an amount equal to the difference between the cumulative approved net actual expenditures for the period, such net expenditures reported in accordance with the line item budget contained in Annex B, the specifications contained in subsection III (b)(5) below, and the cumulative payments made, consisting of the initial payment, subsequent payments, and the succeeding monthly advance payments. If the Corporation is expending funds at an annual rate which will result in costs less than the amount budgeted, the Corporation, with written approval of the Department, shall be permitted to use retained earnings to enhance services within the same program in the subsequent budget year.
- (5) The Corporation shall be reimbursed for, and the Final Report may include miscellaneous expenditures incurred in providing the services including such items as advertising, petty cash, travel, and conferences and seminars, within the line item limits set forth in Annex B. In no event shall such miscellaneous expenditures result in an increase in the total Maximum Reimbursable Amount of this Agreement.
- (6) All revenue derived directly from shelter activities funded or paid for by the Department, up to the amount specified in Annex B, shall, with the written approval of the Department be used to support program operations and enhancements. All such revenue shall be itemized and reported to the Department monthly. The Monthly Revenue Report shall be made in a form designated and approved by the Department, shall fully disclose all information required by the Department, and shall be subject to Department audit. Gifts, donations and grants received by ACC shall be used to support program operations and enhancements. To the extent required to meet the revenue target specified in Annex B, gifts, donations and grants, unless otherwise restricted by the donor or grantor, shall be deemed revenue derived from or as a result of shelter activities.
- (7) The Corporation shall maintain separate interest bearing escrow accounts as may be necessary, including an account for adoption receipts in an amount sufficient to honor vouchers issued for the spaying and neutering services, and receipts and deposits for animal traps and return of deposits. Unclaimed voucher amounts and unclaimed deposits (liabilities

of the Corporation) as well as interest earned on such accounts shall, upon the conversion of such unclaimed liabilities to unobligated assets of the Corporation, be deemed revenue to be credited to the City as part of the Corporation's revenue production obligation set forth in Annex B. The Corporation shall submit to the Department, documentation demonstrating that such accounts have been established and shall submit in a form designated and approved by the Department a quarterly Report detailing all income and expenses relating to such accounts.

- (8) To the extent that expenditures are made from funds provided to the Corporation by the Department to purchase supplies, equipment, fixtures or other personal property the Corporation shall retain all purchase orders and invoices for the purposes of reports and audit, shall provide a copy of the same to the Department and the Comptroller upon request, and such purchased items shall be deemed the property of the City.
- (9) It is understood that all supplies, equipment, fixtures or other personal property purchased with funds provided under this Agreement, or otherwise purchased, acquired or installed in shelter, receiving or other facilities by the City shall remain the property of the City and shall be subject to the provisions of Part II, Article 4 Section 4.4 of this Agreement or any other agreements.
- (10) The parties agree that the City may provide additional or incremental funding to the Corporation for aggregate increases in salaries and fringe benefits. Before awarding any additional or incremental aggregate increase in salaries and fringe benefits to its' employees subject to collective bargaining, the Corporation must obtain the City's approval. Furthermore, the parties agree that any aggregate increase in salaries and benefits awarded to the Corporation's employees subject to collective bargaining cannot exceed the percentage increase granted by the City to its employees in analogous job titles.

c. Electronic Funds Transfer

- (1) In accordance with Section 6-107.1 of the New York City Administrative Code, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, Contractor shall designate one financial institution or other authorized payment agent and shall complete the attached "EFT Vendor Payment Enrollment Form" in order to provide the Commissioner of Finance with information necessary for Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the full amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.
- (2) The Agency head may waive the application of the requirements herein to payments on contracts entered into pursuant to §315 of the City Charter. In addition, the Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Contractor may waive the requirements hereunder for payments in the following

circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the interest of the City.

d. Budget Modifications

- (1) To further the purpose of this Agreement, the Corporation may without prior notice to the Department reallocate budgeted amounts for services to be provided hereunder, provided that the Maximum Reimbursable Amount specified in Section (a) of this Article is not increased and provided that such reallocations do not exceed \$50,000.
- (2) All budget reallocations in excess of \$50,000 shall be reported to the Department in the monthly financial report for which it pertains, along with commentary explaining the reason(s) for the reallocation.

e. Financial Reports

(1) Allocation Report

On or before June 15th prior to the fiscal year in question, the Corporation shall submit to the Department an estimated annual line item budget detailing how the Corporation anticipates spending its funds.

(2) Final Report

Within sixty (60) days after each budget year or budget interval of this agreement, or within sixty (60) days after the termination or expiration of this Agreement, the Corporation shall furnish the Department with a report (the Final Report) of its fiscal operations during the preceding budget year or budget interval under this Agreement, including a comprehensive statement of actual gross expenditures and revenues generated, in such form as to indicate sources and uses for the program services under this contract. The Department shall establish the format of this report.

The Final Report shall contain a summary of all PS and all OTPS expenditures. All invoices shall be retained by ACC and made available to internal and external auditors, or for review by DOHMH. In the event that the Corporation submits a supplemental claim, such claim shall be accompanied by all supporting documentation. The Final Report shall be subject to audit by designees of the Department, in accord with generally accepted accounting principles, but in no event shall the Corporation use such audits to challenge or refute any audit or finding of the City Comptroller.

The Final Report shall show the calculation of interest earned by the Corporation as required in subsection III (b) (3) above.

The City shall review the Final Report, the comprehensive statement of actual gross expenditures and revenues generated, and such other documentation and information as the City may deem appropriate, and may disallow payment for services and/or expenses which were not rendered, authorized or documented in accordance with the terms of this Agreement.

The Corporation shall prepare all financial reports and supporting schedules in accordance with generally accepted accounting principles.

The Corporation shall furnish to the City a copy of the Corporation's annual audit report, including the auditor's opinion or management letter, covering all of the Corporation's activities during each budget year of this Agreement. A copy of any additional correspondence, including but not limited to management letters from the auditors shall also be provided. Such audit report shall be provided to the Department when distributed to the Corporation's Board of Directors. The corporation shall disclose and describe to the Department all other financial and operational reports that are prepared by or on behalf of the Corporation, and when requested to do so, shall provide copies of such to the Department. Failure of Contractor to submit required reports may be deemed a breach of contract and shall have a minimum of forty-five (45) days to remedy. In case the breach is not remedied, the Department shall notify the Contractor's Board of Directors.

f. Leases

In the event that the Corporation, using funds provided hereunder, leases facilities, vehicles or equipment, the Corporation shall submit copies of any such leases to the Department for written approval prior to execution, and shall attach to such lease a cover sheet indicating the name and address of the lessor, the term of the lease, the annual rental amount, and, in the case of facilities, the total usable floor area of the facility, and shall provide any information requested by the Department.

g. Contractual/Consultant Services

(1) The Corporation may enter into and renew various contracts and consultant and rental agreements for the provision of services or equipment to the Corporation related to performance of this Agreement. Written prior approval of the Department is required for any contract or agreement obligating the Contractor to pay more than \$5,000. Such approval shall not be required for agreements for the services of legal counsel.

(2) Notwithstanding (f) (1) above, the Corporation may contract for the services of legal counsel without the prior approval of the Department, except for legal services described in Article V, Section (b) hereof unless otherwise agreed between the Department and ACC. However, the Corporation shall notify the Department when payment for legal fees reaches 90% of the amount budgeted for legal fees.

h. Fidelity Bond or Equivalent Insurance

The Corporation shall obtain, at the commencement of this Agreement, and maintain at all times during the term of this Agreement, a fidelity bond equal to the amount of any advance covering the activities of each person who receives, handles or disburses the monies granted under this Agreement. This bond shall be issued by an insurer duly licensed by the Superintendent of Insurance of the State of New York to transact fidelity bond business in the State of New York, and shall name the City of New York as a loss payee. A copy of said fidelity bond shall be provided to the Department for review and approval. If said bond is at any time canceled, the Department shall be provided with written notice thereof at least thirty (30) days prior to the effective date of said cancellation.

i. Insurance

The Corporation may elect to participate in the New York City insurance pool, if available, for coverage against claims for property loss or damage, general liability, workers compensation and automobile insurance.

In addition to the insurance requirements set forth in Part II hereof, ACC shall maintain or cause to be maintained at least the minimum of the following:

1. Professional liability insurance for veterinarians - \$500,000 per occurrence, \$1,000,000 aggregate.
2. Automobile liability insurance - \$1,000,000 combined single limit (per accident).
3. Directors and Officers Liability Insurance.

IV. ADDITIONAL CONTRACTOR REPORTS AND RECORDS

a. Monthly Reports

The Corporation shall submit to the City monthly reports, in statistical and narrative form, and in a form that is approved by the Department, that shall contain sufficient information and data to allow evaluation of Corporation's monthly operations and activities agreed to hereunder. These reports will include, but not be limited to, number, type, origin of animals, numbers of animals adopted, euthanized, spayed or neutered, number and type of activities, length of stay, holding cases, dog licensing activities and other specific information related to the types and quantity of services provided during the report period as more specifically set forth in Annex A.

The Corporation shall also submit to the Department monthly financial reports, in a form approved by the Department, which shall include a "sources and uses" statement for the program services under this contract, a sources and uses statement for donations, special projects and capital projects. The Corporation shall also submit a printout of their Trial Balance entry sheets for the month. Failure of Contractor to submit required reports may be deemed a breach of contract and shall have a minimum of forty-five (45) days to remedy. In case the breach is not remedied, the Department shall notify the Contractor's Board of Directors.

b. Organization and Timing of Monthly Reports

The monthly reports provided under Section (a) of this Article shall distinguish among dogs, cats, and other animals and shall categorize such other animals by country, or state or other place of origin and source within the City, method by which such animal came into possession of the Contractor, and such other characteristic as may be specified by the Department. The reports for a given month shall be submitted to the Department no later than 15th of the month after the end of the month to which such reports pertain. Failure of Contractor to submit required reports may be deemed a breach of contract and shall have a minimum of forty-five (45) days to remedy. In case the breach is not remedied, the Department shall notify the Contractor's Board of Directors.

c. Abstract of Minutes of Meetings of Board of Directors

The Corporation shall submit or have available on request and for audit or review to the Department, the minutes and resolutions of all public meetings of the Board of Directors of the Corporation. The minutes shall be submitted to the Department with the next monthly report after

the Board of Directors has approved the minutes. The Corporation agrees that once submitted to the Department, the minutes are records subject to the Freedom of Information Law.

d. Other Reports

The Corporation will provide written responses to any findings of deficiencies in the Corporation's operations which are forwarded to it by the Department, within a reasonable time as agreed upon by both parties, but no later than 60 days from when findings are submitted. The Corporation shall provide such other reports as the Department may reasonably request.

e. Publicity

Notwithstanding the provisions of paragraph 4.12 (Publicity) of Part II, the Corporation shall advise the Department and secure Department approval before making any statement other than factual information to the press concerning Department funded activities.

f. Complaints

The Department shall promptly forward to the Corporation for appropriate action, all complaints it receives, including but not limited to, complaints concerning adopted animal health, shelter care and those pertaining to actions or lack of action experienced by members of the public in interacting with the Corporation.

DEFENSE AND INDEMNIFICATION BY THE CITY

- a. The City is not obligated to defend, hold harmless or indemnify the Corporation, its employees, agents, officers, directors, trustees, volunteers or independent contractors as a result of any allegation or finding of negligence or tortious conduct, or as otherwise provided in this Agreement.
- b. Subject to the conditions set forth below, the City shall defend the Corporation, its employees, agents, officers, directors, and volunteers in the event both the City and the Corporation are sued in regard to the seizure of any animal pursuant to an order of the Commissioner of the Department of Health and Mental Hygiene where the issue in question is the propriety of the Commissioner's Order or in regard to the Corporation's work as the holding agent, pursuant to the New York City Administrative Code Section 14-140, of those animals seized by the New York City Police Department (NYPD) and in any case where the corporation has been sued based on challenges to the spaying or neutering of an animal. Such defense shall not be provided to the Corporation or any of its employees, agents, officers, directors and volunteers in the event there is a related action for money damages arising out of negligent acts or omissions of the Corporation, or where the City's Corporation Counsel determines there is a conflict of interest.
 - (1) The defense provision set forth in this Article shall in each case be conditioned upon the following conditions: (i) The Corporation's representative shall deliver to the General Counsel of the Department or his/her designee the original or a copy of any summons, complaint, process, notice, demand or pleading served on the Corporation prior to a required response or court appearance, immediately upon receipt of such documents, after service thereof upon the Corporation; and (ii) the Corporation shall cooperate fully in aiding the City to investigate or defend any claim, action or proceedings.

v

- (2) The Corporation Counsel of the City shall act as attorney in connection with and shall control the defense of all claims or actions or proceedings within the purview of this section.
- (3) The City agrees that it will indemnify, defend and hold harmless each director of the Corporation when such director is acting on behalf of the Corporation, except as otherwise provided hereinafter, to the extent that such person is entitled to indemnification from the Corporation under the Corporation's corporate by-laws and in the event that the Corporation is obligated, by contract or otherwise, to indemnify, defend and/or hold harmless the directors, provided, however, that the obligation of the City to indemnify any such person, in any such case, as described above shall be conditioned upon a prior finding by the City's Corporation Counsel that the acts of such person giving rise to the suit, action or proceeding against which that such person reasonably believed to be in the best interests of the Corporation, and that such person had no reasonable cause to believe that his or her conduct was unlawful. In such instances, if the Corporation is also a named defendant in such a suit, the City shall defend and indemnify the Corporation. It is understood that for purposes of this section and the indemnification provisions of the Corporation's by-laws, unlawful conduct means conduct that is violative of criminal law. The City's obligation under this section, with regard to indemnification relating to acts of a person that occurred when this Contract was in effect, shall survive the termination of this Contract. The actions taken by the City pursuant to this section shall be as directed by the City's Corporation Counsel.
- (4) Nothing in this Agreement shall require representation or indemnification by the City for actions taken by the Corporation, directors, or employees, or agents, which the City's Corporation Counsel determines are outside the scope of services provided pursuant to this Agreement.

VI. USE AND OCCUPANCY OF CITY-OWNED BUILDINGS

- a. The Corporation shall be authorized to enter into the following City-owned buildings without charge and shall occupy such for the sole purpose of and for so long as it is performing the services specified in this Agreement. The City reserves the right in its sole discretion to designate suitable alternative sites for shelter and receiving operations.

Manhattan Shelter 326 East 110th Street New York, NY 10128	Brooklyn Shelter 2336 Linden Boulevard Brooklyn, NY 11208	Staten Island Shelter 3139 Veterans Road West Staten Island, NY 10314
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- b. To the extent that funds are provided herein for the purpose, the Corporation will ensure that all necessary repairs of the above-specified shelter facilities or animal receiving facility, or of equipment purchased or leased for the provision of the services set forth in Annex A, are made in an expeditious manner by qualified and responsible contractors, at a reasonable cost, through a competitive selection and procurement process. Repairs shall mean and include all remedial work necessary to preserve and protect the buildings and their contents. Individual repairs costing the City, pursuant to this Agreement, more than \$2,000 must be approved in writing in advance by the Department except in the case of emergency repairs, costing the City no more than \$5,000. In such emergency situations, the Corporation will obtain the written approval of the Department as soon as practicable during or after the emergency repair. The Corporation shall solicit at least three comparable bids for all repairs costing the City more than \$2,000,

except for emergency repairs costing the City no more than \$5,000, and shall accept the lowest responsible bid unless otherwise authorized by the Department.

The Department will be responsible for the maintenance contracts, utility and electricity costs.

c. The Corporation shall provide all facilities management services for the above premises including repairs of the building and grounds, and including, but not limited to:

- _ Basic maintenance of any sidewalk, public area, and landscaped area.
- _ Basic maintenance, repair and replacement of windows and skylights.
- _ Basic maintenance of the building's mechanical systems (air conditioning/ventilation/heating water supply, fire alarm/security alarm and plumbing system). At the end of the Agreement mechanical systems and other infrastructure supporting services must be in good working condition.
- _ Maintenance of and supply of fire extinguishers (including placement and code compliance)
- _ Window washing as needed
- _ Daily cleaning and sanitization once per day of bathrooms, public areas, offices, kitchen, lounge, and animal areas.
- _ Routine Maintenance - Light bulbs, ballasts, minor repairs, for example faucets, toilet/drain stoppages, loose floor tiles, interior and exterior keys and cylinders, as needed.
- _ Contractor services as required for installation and maintenance of equipment (including computer associated equipment), fixtures or services such as water-treatment and disposal of regulated or hazardous waste.
- _ Installation, provision for, and maintenance of telephones and telephone services.
- _ Trash disposal and placement for collection by City Sanitation.
- _ Extermination (monthly).
- _ Cleaning of all kennel areas, water bowls, hallways, floors and cleaning equipment.
- _ Collection and proper disposal of animal waste throughout the day.

The Corporation shall be reimbursed by the City at a cost not to exceed the amounts specified in Annex B, for facilities management.

d. The Corporation shall cooperate in all respects with the City, acting through its agencies, in any capital improvement project, renovation, inspection, or other activity related to the repair, maintenance, integrity or safety of City facilities and shall allow access at any time.

e. The Department may conduct an engineering audit review of major capital repairs.

VII. OPERATION OF LEASED FACILITIES

- a. The City holds leases for the following animal receiving facilities and the Corporation shall occupy and operate same for the purposes set forth in Annex A for as long as such leases are in effect and for the sole purpose of and for so long as it is performing the services specified in this Agreement. The City reserves the right in its sole discretion to designate suitable alternative sites for shelter and receiving operations should the existing leases not be renewed or reassigned during the term of this Agreement.

Queens Animal
Receiving Facility
92-29 Queens Blvd
Rego Park, NY 11374

Bronx Animal
Receiving Facility
1 Fordham Plaza
Bronx, NY 10458

- b. The Contractor shall lease space at an adequate facility for use and occupancy as its corporate headquarters and offices.
- c. The Corporation shall provide such facilities management services as may be required by the existing leases, and renewals if any, and as may be required pursuant to any new leases entered into for the purpose of providing services hereunder, and in addition, to the extent funds are provided herein for the purpose, shall provide the following services to the extent such are not provided by the lessor thereof:
- Basic maintenance of any sidewalk, public area, and landscaped area; including but not limited to, snow shoveling, rubbish removal and repair of minor sidewalk defects.
 - Maintenance of and supply of fire extinguishers (including placement and code compliance).
 - Window washing at least twice per year.
 - Daily cleaning and sanitization once per day of bathrooms, public areas, offices, kitchen, lounge, and animal areas.
 - Routine Maintenance - Light bulbs, ballasts, minor repairs, for example faucets, toilet/drain stoppages, loose floor tiles, interior and exterior keys and cylinders, as needed.
 - Contractor services as required for installation and maintenance of equipment (including computer associated equipment), fixtures or services, such as refrigeration, water treatment, disposal of regulated or hazardous waste.
 - Installation, provision for, and maintenance of telephones and telephone services.
 - Trash disposal and placement for collection by City Sanitation.
 - Extermination at least once per month.

- _ Cleaning of all kennel areas, water bowls, hallways, floors and cleaning equipment.
- _ Collection and proper disposal of animal waste throughout the day.

The Corporation shall be reimbursed by the City at a cost not to exceed the amount specified in Annex B, for facilities management.

The Department may conduct an engineering audit review of major capital repairs.

VIII. MISCELLANEOUS PROVISIONS

a. Late Filing of Vendex Information

All information required to be filed pursuant to the City's Procurement Policy Board Rules (Vendex) concerning the Corporation's Directors or Officers shall be filed within thirty (30) days of the registration of this Agreement with the Comptroller of the City of New York. The City may terminate this Agreement without penalty if this condition is not met, or in the event that:

- (i) The Mayor or his/her designee determines on the basis of the belatedly filed information that it is in the best interest of the City to terminate the contract; and/or
- (ii) The Comptroller or his/her designee determines that the belatedly filed information reveals matters which if provided earlier would have provided a basis for an objection to registration of the contract by the Comptroller and the Mayor or his/her designee determines that he/she would have agreed with such determination and therefore it is in the best interest of the City to terminate the contract.

b. Affirmation

The Corporation shall complete and execute the affirmation annexed to this Agreement.

c. This Agreement is not intended to create or convey a right or benefit to any person not a party hereto.

d. A breach of any provision of this agreement by the Contractor shall not automatically void, terminate, or otherwise affect this agreement unless and until the Department takes such specific action upon notice to the Contractor.

IX. CONTRACT MONITORING AND CONTRACTOR PERFORMANCE STANDARDS

a. The Department shall monitor the Corporation's performance under this Agreement to ensure compliance with the programmatic and fiscal requirements of the Agreement. The operations will be evaluated based upon a monitoring plan established by the Department that will include all services provided by the Corporation. The Department will specify performance measures and establish guidelines based on nationwide "best practices" for other comparable municipal animal shelters.

- (1) Monitoring shall include regular veterinary and sanitary inspections of facilities and any other visits necessary to expeditiously carry out the Department's program of rabies observation and control. Additionally, the Department's veterinarians shall observe animals at the Corporation's facilities for any evidence of unusual patterns of death or illness that might signal an unusual infectious disease outbreak.
 - (2) The Department shall conduct quarterly comprehensive assessments as well as unannounced site visits. A team consisting of a contract monitor, veterinarian, and additional personnel deemed appropriate by the Department shall conduct these visits. Comprehensive assessments will include, but not be limited to a review of shelter records, policies, facilities, and condition of animals. The Contractor shall render all assistance and cooperation to the Department, its employees, representatives and designees in making such inspections and shall assure ready access to the project site(s) and all medical, financial or other records and reports relating to the services provided hereunder.
 - (3) The Corporation shall be notified in writing of any deficiencies found during contract monitoring or inspection of the facility/site. Any deficiencies noted shall be remedied to the satisfaction of the Department within an established time frame. Any urgent condition requiring immediate abatement should be remediated to the satisfaction of the Department's representative during the site visit. If the condition is abated immediately, no further action may be required.
 - (4) For the purposes of the Corporation's statistics regarding the adoption of animals reflected in such documents as the monthly reports submitted pursuant to Administrative Code Section 17-805, the transfer of an animal from the Corporation to an Alliance Participating Member or other qualifying rescue group, defined by the Corporation as New Hope Partners, shall be deemed as an adoption to the public.
- b. The Department shall review quarterly financial reports submitted by the Corporation and reconcile those reports through the examination of records and site visits. The Department shall notify the Corporation of any expense deemed to be disallowable under the contract to the extent of City funding.

X. MAYOR'S ALLIANCE FOR NYC'S ANIMALS

- a. The Corporation shall comply with the Memorandum Of Understanding between the City of New York and the Mayor's Alliance for NYC's Animals as well as all the obligations and responsibilities as a participant in the Alliance set forth in the Memorandum of Understanding between the Mayor's Alliance for NYC's Animals and Animal Care and Control (ACC), incorporated herein by reference.
- b. The Corporation shall include in the Monthly Reports specified in Article IV Section (a) the progress and status made toward completion of Protocols, as well as quantitative and descriptive data specific to activities related to the Corporation's participation in the Alliance.
- c. The Department shall include in its monitoring plan a plan to monitor and evaluate the Corporation's participation with the Alliance, including but not limited to, the Corporation's compliance with the MOU and Protocols, the distribution of animals, collection of costs from participants, and dispute resolutions, if any.

XI. NOTICES

All notices and requests hereunder by either party shall be in writing and directed to the address of the parties as follows:

NYC Department of Health
and Mental Hygiene
125 Worth Street
New York, NY 10013

Animal Care & Control of,
New York City, Inc.
11 Park Place
New York, NY 10011

Attn: Daniel E. Kass
Title: Acting Deputy Commissioner
Bureau: Environmental Health Services

Attn:
Title: Executive Director

XII. Insurance

The Contractor shall provide the Department with evidence of insurance complying with requirements set forth in this Agreement.

XIII. Americans with Disabilities Act

The Contractor shall comply with the provisions of the American with Disabilities Act of 1990, and shall submit and implement a compliance plan with such Act in accordance with the Rider annexed to Part I of this Agreement.

XIV. Voter Registration

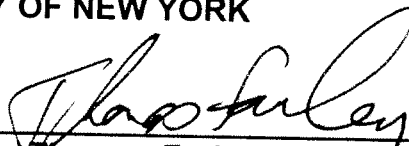
The Contractor shall comply with the provisions of "Section 1057-a" of the New York City Charter (Agency Based Voter Registration) in accordance with the Rider annexed to Part I of this Agreement.

XV. Termination

Reference Part II, Article 5.1. Termination of Agreement.

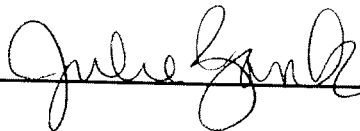
IN WITNESS WHEREOF, the City has caused these presents to be executed in triplicate by the Commissioner, and the Contractor has caused these presents to be executed by the duly authorized officer and its corporate seal to be hereunto affixed as of the day and year first above written.

THE CITY OF NEW YORK

BY: 
Thomas Farley, M.D., M.P.H.
Commissioner
NYC Department of Health and Mental Hygiene

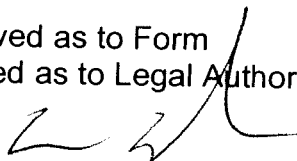
ANIMAL CARE & CONTROL OF NEW YORK CITY, INC.

(Corporate Seal)

BY: 

TITLE: Executive Director
(Executive Director)

Approved as to Form
Certified as to Legal Authority:



Acting Corporation Counsel



APR 19 2010

Date

STATE OF NEW YORK)
COUNTY OF NEW YORK)

SS:

On this 5th day of May, 2010 before me personally came **Thomas Farley, M.D., M.P.H.**, to me known and known to me to be the Commissioner of the Department of Health and Mental Hygiene of the City of New York, the person described in, and who as such Commissioner executed, the foregoing agreement, and he duly acknowledged to me that he executed the same on behalf of the City of New York and the Department of Health and Mental Hygiene for the purpose herein mentioned.

Celloy Williams
Notary Public or Commissioner of Deeds

WILLIAMS CELLOY
Notary Public, State of New York
No. 01W18185772
Qualified in Kings County
Commission Expires April 21, 2012

STATE OF NEW YORK)
COUNTY OF NEW YORK)

SS:

On this 29 day of APRIL, 2010 before me personally came Julie BANK who being by me duly sworn, did depose and say that (s)he resides in the City of NY; that (s)he is the EXEC. DIV of **ANIMAL CARE AND CONTROL OF NEW YORK CITY, INC. (AC&C)** the corporation described in and which executed the foregoing instrument; that (s)he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation; and that (s)he signed his/her name thereto by like order for the purposes therein mentioned.

Joseph V. Capua
Notary Public or Commissioner of Deeds

JOSEPH V. CAPUA
Notary Public, State of New York
Qualified in Kings County
Reg. No. 24-4849275
My Commission Expires Dec. 31, 2012

RIDER

COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132 (“ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs or activities pursuant to this Agreement. To ensure Contractor’s compliance with the ADA during the term of this Agreement the Contractor shall prepare a plan (“Compliance Plan”) which lists its programs site(s) and describes in detail how it intends to make the services, programs or activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s) listed. In the event the program site is not readily accessible and usable by individuals with disabilities, Contractor shall also include in the Compliance Plan a description of reasonable alternative means and methods that result in making the services, programs or activities set forth in herein readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, audio, or mobility disabilities. Contractor shall submit the Compliance Plan to the ACCO of the Agency for review within 10- days after execution of this agreement. Upon approval by the Agency of the Compliance Plan, Contractor shall abide by the Compliance Plan to make the services, programs or activities accessible and usable by the disabled. Implementation of the Compliance Plan shall be in accordance with the schedule for Compliance agreed upon by the Agency and the Contractor.

Contractor’s failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of the Agreement and result in the City Terminating this Agreement.

AFFIRMATION

The undersigned contractor Affirms and declares that said contractor is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the contractor to receive public contracts except

Full name of contractor Animal Care & Control of NYC, Inc.
Address_ 11 Park Place, Suite 805
City New York State New York Zip 10007

CHECK ONE AND INCLUDE APPROPRIATE NUMBER:

() A -- Individual or Sole Proprietorship
SOCIAL SECURITY NUMBER

_____ - _____ - _____

() B -- Partnership, Joint Venture or other unincorporated organization
Employer Identification Number

_____ - _____ - _____

() C -- Corporation
Employer Identification Number

13 - 378 - 8986

By: Signature Julie Bank

Title Executive Director
If a corporation, place seal here:

Must be signed by an officer or duly authorized representative.

Under the Federal Privacy Act the furnishing of Social Security Number by bidders on City contracts is voluntary. Social Security Numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws as well as to provide the City a means of identifying businesses which seek City contracts.

RIDER

VOTER REGISTRATION: NEW YORK CITY CHARTER §1057-a

A. Participating Agencies

Pursuant to Section 1057-a of the Charter of the City of New York, participating City agencies are required to include in all new or renewed agreements with contractors having regular contact with the public in the daily administration of their business a mandate that they follow the guidelines of the Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; the community boards; the Department of Business Services; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Employment; the Department of Environmental Protection; the Department of Finance; the Department of Health; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Mental Health, Mental Retardation and Alcoholism Services; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. Distribution of Voter Registration Forms

In accordance with Section 1057-a of the Charter of the City of New York, the Contractor, if a contractor having regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

(1) The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

(2) The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of supplying clients with application, renewal or recertification for services and change of address relating to such services materials. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon request.

(3) The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form, via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a bank on that system where such a form may be downloaded.

(4) The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage paid New York City Board of Elections voter registration form to or with its application, renewal, recertification and change of address forms.

(5) The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the New York City or New York State Board of Elections.

(6) For the purposes of Part A of this article, the word "contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

(7) The provisions of Part A of this article shall not apply to services that must be provided to prevent actual or potential danger to life, health or safety of any individual or of the public.

C. Assistance in Completing Forms

In accordance with Section 1057-a of the Charter of the City of New York, the Contractor hereby agrees as follows:

(1) In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

(2) In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the New York City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

(3) If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the New York City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

(4) The provision of Part B services by the Contractor may be subject to Department protocols, including one on confidentiality.

D. Required Statements

In accordance with Section 1057-a of the Charter of the City of New York, the Contractor hereby agrees as follows:

(1) The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor's or government services are not conditioned on being registered to vote.

(2) No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.

(3) The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.

(4) The Contractor and the Contractor's employees shall not:

(a) seek to influence an applicant's political preference or party designation;

(b) display any political preference or party allegiance;

(c) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(d) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not

to register has any bearing on the availability of services or benefits.

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this article are material conditions of this Agreement. In the event the Department receives information that the Contractor is in violation of the provisions of this article, the Department shall review such information and give the Contractor an opportunity to respond. If the Department finds that a violation has occurred, the Department shall have the right to terminate this Agreement and procure the services or work from another source in any manner the Department deems proper. In the event of such termination, the Contractor shall pay to the Department, or the Department in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the contract price for the uncompleted portion of this Agreement and the cost to the Department of completing performance of this Agreement either itself or by engaging another contractor or contractors.

PART II
GENERAL PROVISIONS GOVERNING CONTRACTS FOR
CONSULTANTS, PROFESSIONAL AND TECHNICAL SERVICES

ARTICLE 1. DEFINITIONS

As used throughout this Agreement, the following terms shall have the meaning set forth below:

- a. "City" shall mean the City of New York, its departments and political subdivisions.
- b. "Comptroller" shall mean the Comptroller of the City of New York.
- c. "Department" or "Agency" shall mean the DEPARTMENT OF HEALTH AND MENTAL HYGIENE
- d. "Commissioner" or "Administrator" shall mean the COMMISSIONER OF HEALTH AND MENTAL HYGIENE or his duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his or her authority.
- e. "Law" or "Laws" shall include but not be limited to the New York City Charter, the New York City Administrative Code, a local law of the City of New York, and any ordinance, rule or regulation having the force of law.
- f. "Contractor" or "Consultant" shall mean The Louis Berger Group Inc.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.1 PROCUREMENT OF AGREEMENT

- A. The Contractor represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. The Contractor further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution hereof.
- B. For a breach or violation of such representations or warranties, the Administrator shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid hereunder and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the City for the falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Agreement.

2.2 CONFLICT OF INTEREST

The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Contractor further represents and warrants that in the performance of this Agreement no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Department, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Agreement or in the proceeds thereof.

2.3 FAIR PRACTICES

The Contractor and each person signing on behalf of any contractor represents and warrants and certifies, under penalty of perjury, that to the best of its knowledge and belief:

- A. The prices in this contract have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- B. Unless otherwise required by law, the prices which have been quoted in this contract and on the proposal submitted by the Contractor have not been knowingly disclosed by the Contractor prior to the proposal opening, directly or indirectly, to any other bidder or to any competitor; and
- C. No attempt has been made or will be made by the Contractor to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition. The fact that the Contractor (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of the above.

ARTICLE 3. AUDIT BY THE DEPARTMENT AND CITY

- 3.1 All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the Department and by the Comptroller of the City of New York pursuant to the powers and responsibilities as conferred upon said Department and said Comptroller by the New York City Charter and Administrative Code of the City of New York, as well as all orders and regulations promulgated pursuant thereto.
- 3.2 The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by said Department and said Comptroller so that they may evaluate the reasonableness of the charges and shall make its records available to the Department and to the Comptroller as they consider necessary.
- 3.3 All books, vouchers, records, reports, canceled checks and any and all similar material may be subject to periodic inspection, review and audit by the State of New York, Federal Government and other persons duly authorized by the City. Such audit may include examination and review of the source and application of all funds whether from the City, any State, the Federal Government, private sources or otherwise.
- 3.4 The contractor shall not be entitled to final payment under the Agreement until all requirements have been satisfactorily met.

ARTICLE 4. COVENANTS OF THE CONTRACTOR

- 4.1 **EMPLOYEES**
- A. All experts or consultants or employees of the Contractor who are employed by the Contractor to perform work under this contract are neither employees of the City nor under contract to the City and the Contractor alone is responsible for their work, direction, compensation and personal conduct while engaged under this Agreement. Nothing in this contract shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor any person, firm company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent, or for taxes of any nature including but not limited to unemployment insurance, workmen's compensation, disability benefits and social security, or, except as specifically stated in this contract, to any person, firm or corporation.
- B. The Contractor shall be solely responsible for all physical injuries or death to its agents, servants, or employees or to any other person or damage to any property sustained during its operations and work on the project under this agreement resulting from any act of omission or commission or error in judgment of any of its officers, trustees, employees, agents, servants, or independent contractors, and shall hold harmless and indemnify the City from liability upon any and all claims for damages on account of such injuries or death to any such person or damages to property on account of any neglect, fault or default of the Contractor, its officers, trustees, employees, agents, servants, or independent contractors. The Contractor shall be solely responsible for the safety and protection of all of its employees whether due to the negligence, fault or default of the Contractor or not.
- C. **Workmen's Compensation and Disability Benefits**
If this Agreement be of such a character that the employees engaged thereon are required to be insured by the provision of Chapter 615 of the Laws of 1922, known as the "Workmen's Compensation Law" and acts amendatory thereto, the Agreement shall be void and of no effect unless the Contractor shall secure compensation for the benefit of, and keep insured during the life of this Agreement such employees in compliance with the provisions of said law, inclusive of Disability Benefits,; and, shall furnish the Department with two (2) certificates of these insurance coverages.
- D. **Unemployment Insurance**
Unemployment Insurance coverage shall be obtained and provided by the Contractor for its employees.
- E. **Minimum Wage**
Except for those employees whose minimum wage is required to be fixed pursuant to Section 220 of the Labor Law of the State of New York, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by law, not less than the minimum wage as prescribed by law. Any breach or violation of the foregoing shall be deemed a breach or violation of a material provision of this Agreement.
- 4.2 **INDEPENDENT CONTRACTOR STATUS**
The Contractor and the Department agree that the Contractor is an independent contractor, and not an employee of the Department or the City of New York, and that in accordance with such status as independent contractor, the Contractor covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the City of New York, or of any department, agency or unit thereof, by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the City of New York, including, but not limited to, Workmen's Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

4.3 INSURANCE

A. INSURANCE REQUIREMENTS FOR CONTRACTORS

Contractors shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A-7 or a Standard and Poor's rating of at least AA, unless prior written approval is obtained from the Mayor's Office of Operations. The cost of such insurance shall be included in the Contractor's bid.

a. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).(ED 11/85).
2. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsements CA 2232 and CA 0112.
3. Workers' Compensation insurance as required by Labor Code of the State of New York and Employers Liability insurance.

b. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. Comprehensive General Liability: \$1,000,000.00 combined single limit per accident for bodily injury and property damage.
2. Professional liability: As set forth in Part I, III (i)
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of New York and Employers Liability limits of \$1,000,000.00 per accident. Pursuant to Section 57 of the NYS Workers' Compensation Law, the vendor has submitted proof of workers' compensation and disability benefits coverage to the agency.
Any deficiencies in the minimum limits of insurance required of Contractor may be satisfied by the Contractor's Umbrella or Excess Liability Insurance Policy.

c. Deductibles and Self-Insured Retentions

Any deductibles and self-insured retentions must be declared to and approved by the Agency. At the option of the Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects and Agency, its officers, officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

1. General Liability and Automobile Liability Coverages

- a. The City, its officers, officials and employees are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leases or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials and employees.
- b. The Contractor's insurance coverage shall be primary insurance as respect the City, its officers, officials, and employees. Any other insurance or self-insurance maintained by the Agency, its officers, officials and employees shall be excess of and not contribute with the Contractor's insurance.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, its officers, officials, and employees.
- d. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurers liability.

2. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against the Agency, its officers, officials, and employees for losses arising from work performed by the Contractor for Agency.

3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after sixty (60) days prior written notice by certified mail, return receipt requested, has been given to the City.

d. Acceptability of Insurers

Insurance is to be placed with insurers with an A.M. Best rating of at least A-7 or a Standard and Poor=s rating of at least AA, unless prior written approval is obtained from the Mayor=s Office of Operations.

e. Verification of Coverage

Contractor shall furnish the City with Certificates of Insurance effecting coverage required by this clause. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificates are to be on forms provided by the Agency and are to be received and approved by the Agency before work commences. The Agency reserves the right to obtain complete, certified copies of all required insurance policies, at any time.

f. Subcontractors

Contractor shall include all subcontractors as insured under its policies or shall furnish separate Certificates for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

- B. In the event that any claim is made or any action is brought against the City arising out of negligent or careless acts of an employee of the Contractor, either within or without the scope of his employment, or arising out of Contractor's negligent performance of this Agreement, then the City shall have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the said claim or action. The rights and remedies of the City provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

4.4 PROTECTION OF CITY PROPERTY

- A. The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement; and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of the Contractor, its officers, managerial personnel and employees, or any person, firm, company, agent or others engaged by the Contractor as expert, consultant, specialist or subcontractor hereunder.
- B. In the event that any such City property is lost or damaged, except for normal wear and tear, then the City shall have the right to withhold further payments hereunder for the purpose of set-off, in sufficient sums to cover such loss or damage.
- C. The Contractor agrees to indemnify the City and hold it harmless from any and all liability or claim for damages due to any such loss or damage to any such City property described in subsection A above.
- D. The rights and remedies of the City provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

4.5 CONFIDENTIALITY

All of the reports, information or data, furnished to or prepared, assembled or used by the Contractor under this Agreement are to be held confidential, and prior to publication, the Contractor agrees that the same shall not be made available to any individual or organization without the prior written approval of the Department.

4.6 BOOKS AND RECORDS

The Contractor agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

4.7 RETENTION OF RECORDS

The Contractor agrees to retain all books, records, and other documents relevant to this Agreement for six years after the final payment or termination of this Agreement, whichever is later. City, State and Federal auditors and any other persons duly authorized by the Department shall have full access to and the right to examine any of said materials during said period.

4.8 COMPLIANCE WITH LAW

Contractor shall render all services under this Agreement in accordance with the applicable provisions of federal, state and local laws, rules and regulations as are in effect at the time such services are rendered.

4.9 INVESTIGATION CLAUSE

1. The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (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.
- 2(a) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her 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 Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;
 - (b) If any person refuses to testify for a reason other than the assertion of his or her 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 any local development corporation within the City, then;
- 3(a) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license 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.
- 3(b) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph 5 below without the City incurring any penalty or damages for delay or otherwise.
4. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:
 - (a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for 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; and/or
 - (b) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, 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 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.
5. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate:
 - (a) The party'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.
 - (b) 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.

- (c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
 - (d) 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 4 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in 3(a) 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.
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.
- (a) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
 - (b) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.
 - (c) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.
7. In addition to and notwithstanding any other provision of this agreement the Commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the contractor, or affecting the performance of this contract.

4.10 ASSIGNMENT

- A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement or of Contractor's rights, obligations, duties, in whole or in part, or of its right to execute it, or its right, title or interest in it or any part thereof, or assign, by power of attorney or otherwise, any of the notices due or to become due under this contract, unless the prior written consent of the Administrator shall be obtained. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.
- B. Failure of the Contractor to obtain any required consent to any assignment, shall be cause for termination for cause, at the option of the Administrator; and if so terminated, the City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees or transferees, and all monies that may become due under the contract shall be forfeited to the City except so much thereof as may be necessary to pay the Contractor's employees.
- C. The provisions of this clause shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the laws of the State of New York.
- D. This Agreement may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

4.11 SUBCONTRACTING

- A. The Contractor agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Agreement without the prior written approval of the Department. Two copies of each such proposed subcontract shall be submitted to the Department with the Contractor's written request for approval. All such subcontracts shall contain provisions specifying:
 - 1. that the work performed by the subcontractor must be in accordance with the terms of the Agreement between the Department and the Contractor,
 - 2. that nothing contained in such agreement shall impair the rights of the Department,

3. that nothing contained herein, or under the Agreement between the Department and the Contractor, shall create any contractual relation between the subcontractor and the Department, and
 4. that the subcontractor specifically agrees to be bound by the confidentiality provision set forth in this Agreement between the Department and the Contractor.
- B. The Contractor agrees that it is fully responsible to the Department for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it.
 - C. The aforesaid approval is required in all cases other than individual employer-employee contracts.
 - D. The Contractor shall not in any way be relieved of any responsibility under this Contract by any subcontract.
- 4.12 PUBLICITY
- A. The prior written approval of the Department is required before the Contractor or any of its employees, servants, agents, or independent contractors may, at any time, either during or after completion or termination of this Agreement, make any statement to the press or issue any material for publication through any media of communication bearing on the work performed or data collected under this Agreement.
 - B. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, the Department shall have a royalty free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.
- 4.13 PARTICIPATION IN AN INTERNATIONAL BOYCOTT
- A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.
 - B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Contractor or a substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render forfeit and void this contract.
 - C. The Contractor shall comply in all respects, with the provisions of Section 6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.
- 4.14 INVENTIONS, PATENTS AND COPYRIGHTS
- A. Any discovery or invention arising out of or developed in the course of performance of this Agreement shall be promptly and fully reported to the Department, and if this work is supported by a federal grant of funds, shall be promptly and fully reported to the Federal Government for determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.
 - B. No report, document or other data produced in whole or in part with contract funds shall be copyrighted by the Contractor nor shall any notice of copyright be registered by the Contractor in connection with any report, document or other data developed for the contract.
 - C. In no case shall subsections A and B of this section apply to, or prevent the Contractor from asserting or protecting its rights in any report, document or other data, or any invention which existed prior to or was developed or discovered independently from the activities directly related to this Agreement.
- 4.15 INFRINGEMENTS

The Contractor shall be liable to the Department and hereby agrees to indemnify and hold the Department harmless for any damage or loss or expense sustained by the Department from any infringement by the Contractor of any copyright, trademark or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of this Agreement.

4.16 ANTI-TRUST

The Contractor hereby assigns, sells, and transfers to the City all right, title and interest in and to any claims and causes of action arising under the anti-trust laws of the State of New York or of the United States relating to the particular goods or services purchased or procured by the City under this Agreement.

ARTICLE 5. TERMINATION

5.1 TERMINATION OF AGREEMENT

- A. The Department and/or City shall have the right to terminate this Agreement, in whole or in part:
1. Under any right to terminate as specified in any section of this Agreement.
 2. Upon the failure of the Contractor to comply with any of the terms and conditions of this Agreement.
 3. Upon the Contractor's becoming insolvent.
 4. Upon the commencement under the Bankruptcy Act of any proceeding by or against the Contractor, either voluntarily or involuntarily.
 5. Upon the Commissioner's determination, termination is in the best interest of the City.
- B. The Department or City shall give the Contractor written notice of any termination of this Agreement specifying therein the applicable provisions of subsection A of this section and the effective date thereof which shall not be less than ten (10) days from the date the notice is received.
- C. The Contractor shall be entitled to apply to the Department to have this Agreement terminated by said Department by reason of any failure in the performance of this Agreement (including any failure by the Contractor to make progress in the prosecution of work hereunder which endangers such performance), if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; or any other cause beyond the reasonable control of the Contractor. The determination that such failure arises out of causes beyond the control and without the fault or negligence of the Contractor shall be made by the Department which agrees to exercise reasonable judgment therein. If such a determination is made and the Agreement terminated by the Department pursuant to such application by the Contractor, such termination shall be deemed to be without cause.
- D. Upon termination of this Agreement the Contractor shall comply with the Department or City close-out procedures, including but not limited to:
1. Accounting for and refund to the Department or City, within thirty (30) days, any unexpended funds which have been paid to the Contractor pursuant to this agreement.
 2. Furnishing within thirty (30) days an inventory to the Department or City of all equipment, appurtenances and property purchased through or provided under this Agreement carrying out any Department or City directive concerning the disposition thereof.
 3. Not incurring or paying any further obligation pursuant to this Agreement beyond the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after such date shall be paid by the Department or City in accordance with the terms of this Agreement. In no event shall the word "obligation," as used herein, be construed as including any lease agreement, oral or written, entered into between the Contractor and its landlord.
 4. Turn over to the Department or City or its designees all books, records, documents and material specifically relating to this Agreement.
 5. Submit, within ninety (90) days, a final statement and report relating to this Agreement. The report shall be made by a certified public accountant or a licensed public accountant.

- E. In the event the Department or City shall terminate this Agreement, in whole or in part, as provided in paragraphs 1, 2, 3, or 4 of subsection A of this section, the Department or City may procure, upon such terms and in such manner as deemed appropriate, services similar to those so terminated, and the Contractor shall continue the performance of this Agreement to the extent not terminated hereby.
- F. Notwithstanding any other provisions of this contract, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of Contractor's breach of the contract, and the City may withhold payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City from the Contractor is determined.
- G. The provisions of the Agreement regarding confidentiality of information shall remain in full force and effect following any termination.
- H. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to all other rights and remedies provided by law or under this Agreement.

ARTICLE 6. MISCELLANEOUS

6.1 CONFLICT OF LAWS

All disputes arising out of this Agreement shall be interpreted and decided in accordance with the laws of the State of New York.

6.2 GENERAL RELEASE

The acceptance by the Contractor or its assignees of the final payment under this contract, whether by voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a general release to the City from any and all claims of and liability to the Contractor arising out of the performance of this contract.

6.3 CLAIMS AND ACTIONS THEREON

- A. No action at law or proceeding in equity against the City or Department shall lie or be maintained upon any claim based upon this Agreement or arising out of this Agreement or in any way connected with this Agreement unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.
- B. No action shall lie or be maintained against the City by Contractor upon any claims based upon this Agreement unless such action shall be commenced within six (6) months after the date of filing in the Office of the Comptroller of the City of the certificate for the final payment hereunder, or within six (6) months of the termination or conclusion of this Agreement, or within six (6) months after the accrual of the Cause of Action, whichever first occurs.
- C. In the event any claim is made or any action brought in any way relating to the Agreement herein, the Contractor shall diligently render to the Department and/or the City of New York without additional compensation any and all assistance which the Department and/or the City of New York may require of the Contractor.
- D. The Contractor shall report to the Department in writing within three (3) working days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

6.4 NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

No claim whatsoever shall be made by the Contractor against any officer, agent or employee of the City for, or on account of, anything done or omitted in connection with this contract.

6.5 WAIVER

Waiver by the Department of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the Department or City as required and attached to the original Agreement.

6.6 NOTICE

The Contractor and the Department hereby designate the business addresses hereinabove specified as the places where all notices, directions or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Actual delivery of any such notice, direction or communication to a party at the aforesaid place, or delivery by certified mail shall be conclusive and deemed to be sufficient service thereof upon such party as of the date such notice, direction or communication is received by the party. Such address may be changed at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified above. Nothing in this section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by law, including the Civil Practice Law and Rules.

6.7 ALL LEGAL PROVISIONS DEEMED INCLUDED

It is the intent and understanding of the parties to this Agreement that each and every provision of law required to be inserted in this Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

6.8 SEVERABILITY

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

6.9 POLITICAL ACTIVITY

There shall be no partisan political activity or any activity to further the election or defeat of any candidate for public, political or party office as part of or in connection with this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

6.10 MODIFICATION

This Agreement may be modified by the parties in writing in a manner not materially affecting the substance hereof. It may not be altered or modified orally.

A. CONTRACT CHANGES

Changes may be made to this contract only as duly authorized by the Agency Chief Contracting Officer of his or her designee. Vendors deviating from the requirements of an original purchase order or contract without a duly authorized change order document, or written contract modification or amendment, do so at their own risk. All such duly authorized changes, modifications and amendments will be reflected in a written change order and become a part of the original contract. Contract changes will be made only for work necessary to complete the work included in the original scope of the contract, and for non-material changes to the scope of the contract. Changes are not permitted for any material alteration in the scope of the work. Changes may include any one or more of the following:

- Specification changes to account for design errors or omissions;
- changes in contract amount due to authorized additional or omitted work. Any such changes require appropriate price and cost analysis to determine reasonableness. In addition, except for non-construction requirements contracts, all changes that cumulatively exceed the greater of ten percent of the original contract amount or \$100,000 shall be approved by the City Chief Procurement Officer;
- Extensions of a contract term for good and sufficient cause for a cumulative period not to exceed one year from the date of expiration of this current contract. Requirements contracts shall be subject to this limitation;
- Changes in delivery location;
- Changes in shipment method; and
- Any other change not inconsistent with '4-02 of the P.P.B. Rules (ed. 9/00), or any successor Rule.

The Contractor may be entitled to a price adjustment for extra work performed pursuant to a written change order. If any part of the contract work is necessarily delayed by a change order, the Contractor may be entitled to an extension of time for performance. Adjustments to price shall be validated for reasonableness by using appropriate price and cost analysis.

6.11 PARAGRAPH HEADINGS

Paragraph headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this contract and in no way affect this contract.

6.12 NO REMOVAL OF RECORDS FROM PREMISES

Where performance of this Agreement involves use by the Contractor of Departmental papers, files, data or records at Departmental facilities or offices, the Contractor shall not remove any such papers, files, data or records, therefrom without the prior approval of the Department's designated official.

6.13 INSPECTION AT SITE

The Department shall have the right to have representatives of the Department or of the City or of the State or Federal governments present at the site of the engagement to observe the work being performed.

6.14 PRICING

A. The Contractor shall when ever required during the contract, including but not limited to the time of bidding, submit cost or pricing data and formally certify that, to the best of its knowledge and belief, the cost or pricing date submitted was accurate, complete, and current as of a specified date. The Contractor shall be required to keep its submission of cost and pricing date current until the contract has been completed.

B. The price of any change order or contract modification subject to the conditions of paragraph A, shall be adjusted to exclude any significant sums by which the City finds that such price was based on cost or price data furnished by the supplier which was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

C. Time for Certification. The Contractor must certify that the cost or pricing data submitted are accurate, complete and current as of a mutually determined date.

D. Refusal to Submit Data. When any contractor refuses to submit the required data to support a price, the Contracting Officer shall not allow the price.

E. Certificate of Current Cost or Pricing Data. Form of Certificate. In those cases when cost or pricing data is required, certification shall be made using a certificate substantially similar to the one contained in Chapter 4 of the PPB rules and such certification shall be retained in the agency contract file.

ARTICLE 7. MERGER

This written Agreement 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 Agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

ARTICLE 8. CONDITIONS PRECEDENT

This contract shall neither be binding nor effective unless:

A. Approved by the Mayor pursuant to the provisions of Executive Order No. 42, dated October 9, 1975, in the event the Executive Order requires such approval; and

B. Certified by the Mayor (Mayor's Fiscal Committee created pursuant to Executive Order No. 43, dated October 14, 1975) that performance thereof will be in accordance with the City's financial plan; and

C. Approved by the New York State Financial Control Board (Board) pursuant to the New York State Financial Emergency Act for the City of New York, as amended, (the "Act"), in the event regulations of the Board pursuant to the Act require such approval.

D. It has been authorized by the Mayor and the Comptroller shall have endorsed his certificate that there remains unexpended and unapplied a balance of the appropriation of funds applicable thereto

sufficient to pay the estimated expense of carrying out this Agreement. The requirements of this section of the contract shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this contract to be effective and for the expenditure of City funds.

ARTICLE 9. PPB RULES

This contract is subject to the Rules of the Procurement Policy Board of the City of New York effective March 2004, as amended. In the event of a conflict between said Rules and a provision of this contract, the Rules shall take precedence.

ARTICLE 10. STATE LABOR LAW AND CITY ADMINISTRATIVE CODE

1. As required by New York State Labor Law Section 220-e:
 - a. That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, neither the Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
 - b. That neither the Contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex or national origin;
 - c. That there may be deducted from the amount payable to the Contractor by the City under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this contract; and
 - d. That this contract may be canceled or terminated by the City and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract.
 - e. The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.
2. As required by New York City Administrative Code Section 6-108:
 - a. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.
 - b. It shall be unlawful for any person or any servant, agent or employee of any person, described in subdivision (a) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.
 - c. Disobedience of the foregoing provisions shall be deemed a violation of a material provision of this contract.
 - d. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.

ARTICLE 11. FORUM PROVISION CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

This Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the laws of the State of New York. The parties agree that any and all claims asserted by or against the City arising under this Contract or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this Agreement and intent, the Contractor agrees:

- a. If the City initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered mail addressed to the

- Contractor at its address as set forth in this Contract, or to such other address as the Contractor may provide to the City in writing; and
- b. With respect to any action between the City and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have (I) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.
 - c. With respect to any action between the City and the Contractor in Federal Court located in New York City, the Contractor expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.
 - d. If the Contractor commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City. If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

ARTICLE 12. EQUAL EMPLOYMENT OPPORTUNITY

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 it:

1. 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. the contractor agrees that when it subcontracts it will not engage in any unlawful discrimination in the selection of subcontractors on the basis of the owner's race, color, creed, national origin, sex, age, disability, marital status or sexual orientation;
3. 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. 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. 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 Director of the Bureau of Labor Services ("Bureau"), and will permit access to its books, records and accounts by the Bureau 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 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 the E. O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Bureau, the Director may direct the imposition by the contracting agency held 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 Director may impose an employment program. The Director of the Bureau 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 rule 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 Director of the Bureau of Labor Services 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.

ARTICLE 13. NO DAMAGE FOR DELAY

The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the City or any of its representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work as provided herein.

ARTICLE 14. CONSULTANT REPORT INFORMATION

A copy of each consultant report submitted by a consultant to any City official or to any officer, employee, agent or representative of a City department, agency, commission or body or to any corporation, association or entity whose expenses are paid in whole or in part from the City treasury shall be furnished to the Commissioner of the department to which such report was submitted or, if not a City department, then to the chief controlling officer or officers of such other office or entity. A copy of such report shall also be furnished to the Director of the Mayor's Office of Construction for matters related to construction or to the Director of the Mayor's Office of Operations for all other matters.

ARTICLE 15. RESOLUTION OF DISPUTES

15.1 Except as provided in 1(a) and 1(b) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Contract shall be finally resolved in accordance with the provisions of this section and Section 4-09 of the Rules of the Procurement Policy Board ("PPB Rules"), and any successor Rule. This procedure shall be the exclusive means of resolving any such disputes.

- a. This section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software.
- b. For construction and construction-related services this section shall apply only to disputes about the scope of work delineated by the Contract, the interpretation of Contract Documents, the amount to be paid for extra work or disputed work performed in connection with the Contract, the conformity of the Contractor's work to the Contract, and the acceptability and quality of the Contractor's work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner makes a determination with which the Contractor disagrees.

15.2 All determinations required by this section shall be made in writing, clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time period required by this section shall be deemed a non-determination without prejudice that will allow appeal to the next level.

15.3 During such time as any dispute is being presented, heard, and considered pursuant to this section, the contract terms shall remain in full force and effect and the Contractor shall continue to perform work in accordance with the Contract and as directed by the Agency Chief Contracting Officer or Engineer Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this section and a material breach of Contract.

15.4 Presentation of Dispute to Agency Head.

(A) Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein or, if no time is specified, within thirty (30) days of receiving notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) days after receipt of the detailed written submission, the Agency Chief Contracting Officer or, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Wilful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

(B) Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the Agency Chief Contracting Officer and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Contract, and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights to make presentations and to seek review as the Contractor initiating the dispute.

(C) Agency Head Determination. Within thirty (30) days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and Agency Chief Contracting Officer and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, together with a statement concerning how the decision may be appealed.

(D) Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board pursuant to this section. The City may not take a petition to the Contract Dispute Resolution Board. However, should the Contractor take such a petition, the City may seek, and the Board may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

15.5 Presentation of Dispute to the Comptroller. Before any dispute may be brought by the Contractor to the Contract Dispute Resolution Board, the Contractor must first present its claim to the comptroller for his or her review, investigation, and possible adjustment.

(A) Time, Form, and Content of Notice. Within thirty (30) days of its receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief written statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the written decision of the Agency Head, and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

(B) Agency Response. Within thirty (30) days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in

connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head except at the request of the Comptroller.

(C) Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in sections 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Wilful failure of the Contractor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

(D) Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in 5. (C) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the Contract Dispute Resolution Board until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Contract between the parties.

15.6 Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this section as may be necessary in the execution of the Contract Dispute Resolution Board's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

the City Chief Procurement Officer or a designee; or in the case of disputes involving construction, the Director of the Office of Construction or his/her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated, and

a neutral person with appropriate expertise. This person shall be selected by the presiding administrative law judge from a pre-qualified panel of individuals, established and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represents persons, companies, or organizations having disputes with the City.

15.7 Petition to Contract Dispute Resolution Board. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this section, the Contractor, within thirty (30) days thereafter, may petition the Contract Dispute Resolution Board to review the Agency Head determination.

(A) Form and Content of Petition by Contractor. The Contractor shall present its dispute to the Contract Dispute Resolution Board in the form of a Petition, which shall include (i) a brief written statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the written decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the written decision of the Comptroller, if any, and (v) copies of all correspondence with, or written material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four complete sets of the Petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the Contract Dispute Resolution Board at OATH's offices with proof of service on the Corporation Counsel. In addition, the supplier shall submit a copy of the statement of the substance of the dispute, cited in (i) above to both the Agency Head and the Comptroller.

(B) Agency Response. Within thirty (30) days of its receipt of the Petition by the Corporation Counsel, the Agency shall respond to the brief written statement of the Contractor and make available to the Board at OATH's offices and one to the Contractor. All material it submitted to the Agency Head and Comptroller. Extensions of time for submittal of the agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) days.

(C) Further Proceedings. The Board shall permit the Contractor to present its case by the submission of memoranda, briefs, and oral argument. The Board shall also permit the Agency to present its case in response to the Contractor by the submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the Board. The Board, at its discretion, may seek such technical or other expertise as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The Board, in its discretion, may combine more than one dispute between the parties of concurrent resolution.

(D) Contract Dispute Resolution Board Determination. Within forty-five (45) days of the conclusion of all written submissions and oral arguments, the Board shall render a written decision resolving the dispute. In an unusually complex case, the Board may render its decision in a longer period of time, not to exceed ninety (90) days, and shall so advise the parties at the commencement of this period. The Board's decision must be consistent with the terms of the Contract. In reaching its decision, the Board shall accord no precedential significance to prior decisions of the Board involving other non-related contracts.

(E) Notification of Contract Dispute Resolution Board Decision. The Board shall send a copy of its decision to the Contractor, the Agency Chief Contracting Officer, the Corporation Counsel, the Comptroller, and in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Day shall be thirty (30) days after the date the parties are formally notified of the Board's decision.

(F) Finality of Contract Dispute Resolution Board Decision. The Board's decision shall be final and binding on all parties. Any party may seek review of the Board's decision solely in the form of a challenge, made within four (4) months of the date of the Board's decision, in a court of competent jurisdiction of the State of New York, County of New York, pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the Board's decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the Board in accordance with Section 4-09 of the PPB Rules.

15.8 Any termination, cancellation, or alleged breach of the Contract prior to or during the pendency of any proceedings pursuant to this section shall not affect or impair the ability of the Agency Head or Contract Dispute Resolution Board to make a binding and final decision pursuant to this section.

ARTICLE 16. PROMPT PAYMENT

The Prompt Payment provisions set forth in Chapter 4, Section 4-06 of the Procurement Policy Board Rules in effect at the time for this solicitation will be applicable to payments made under this contract. The provisions require the payment to the contractors of interest on payments made after the required payment date except as set forth in Section 4-06 of the Rules.

The contractor must submit a proper invoice to receive payment, except where the contract provides that the contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

Determinations of interest due will be made in accordance with the provisions of the Procurement Policy Board Rules and General Municipal Law Section 3-a.

ANNEX A
SCOPE OF SERVICES

July 1, 2010 TO JUNE 30, 2015

The Corporation shall provide the following animal control and related public health services:

1. Animal Control and Seizure Services

The Corporation will provide the following services:

- 1.1 Animal Surveillance and Capture - Respond to complaints or other information concerning the presence of unlicensed or unleashed dogs, non-exotic cats whose owners are not identified, vicious and dangerous animals, animals that have bitten, rabid or suspected rabid animals, prohibited, exotic or wild animals, venomous reptiles and bats, within the five boroughs of New York City and attempt to humanely remove such animals as may be appropriate. Such response to complaints regarding public health emergencies shall be within 24 hours of receipt of complaint during normal hours of operation or on the next day of normal hours of operation. The Corporation shall provide the above services in accordance with applicable public health and safety laws and regulations, specifically, the New York City Health Code Article 161, New York City Dog Licensing Law, Title 17 of the NYC Administrative Code and applicable provisions of the NYS Agriculture and Markets Law.
- 1.2 Animal Seizure - The Corporation shall, when directed by the Department or the New York Police Department (NYPD), assist in seizure, and shall humanely seize and capture when appropriate, unlicensed or unleashed dogs, non-exotic cats whose owners are not identified, dogs or cats that are hoarded, vicious and dangerous animals, animals that have bitten, rabid or suspected rabid animals, prohibited, exotic or wild animals, venomous reptiles and bats from persons in possession of such animals, and from places within the City both public and private. The Corporation shall provide the above services in accordance with applicable public health and safety laws and regulations, specifically, the New York City Health Code Article 161, New York City Dog Licensing Law, Title 17 of the NYC Administrative Code and applicable provisions of the NYS Agriculture and Markets Law.

- 1.3 Lost, Stray, Homeless, and Abandoned Animals - The Corporation shall accept at its facilities all animals which are lost, stray, homeless, unwanted or abandoned, or otherwise requested by the Department.
- 1.4 The Corporation shall establish, advertise and staff an emergency telephone number for receiving complaints Monday through Friday 8 a.m. to 8 p.m., Saturday and Sunday 10 a.m. to 6 p.m., excluding holidays, concerning animals described in paragraph (1.1) above. A recorded message will be placed on the above referenced telephone during non-working hours. Records must be utilized so that all calls are documented and the disposition of the action to each call is properly entered. The Corporation shall make these records available for review by the Department upon request. Such telephone complaint system shall be subject to approval by the Department. Notwithstanding the foregoing, the Corporation may fulfill any or all of the requirements herein through the services of "311", provided that the Corporation furnishes to the Department for its approval a copy of the script "311" operators shall use for animal related complaints.
- 1.5 The Corporation shall utilize with the approval of the Department, a customer service quality assurance program which monitors customer satisfaction with services provided by Animal Care and Control and the quality of these services.
- 1.6 The Corporation shall humanely seize animals and humanely hold animals in accordance with applicable Federal, State, and City laws.
- 1.7 The Corporation may require all shelter and field personnel who will handle or be in contact with animals suspected of rabies be immunized against rabies according to recommendations appearing in CDC. Human Rabies Prevention - United States, 1999. MMWR 1999; 48 [No. RR-1]: 4-6. Personnel who are unwilling or unable to be pre-immunized against rabies must sign a waiver so stating and releasing the Corporation and the Department from any and all responsibility for any possible harm.
- 1.8 In accordance with applicable law, the Corporation shall notify the owners of licensed or otherwise identified dogs and non-exotic cats or other legal pet animals with identification collars or microchips, when such animals are seized. The Corporation shall maintain a procedure such that owners of licensed or otherwise identified dogs and owner-identified cats or other legal pet animals are given notice within 24 hours of identifying the pet owner's contact information, in

accordance with applicable law. All animals entering a shelter or receiving facility must be scanned for a microchip.

1.9 The above specified Animal Control and Seizure Services shall, except as indicated below, be provided Sunday through Saturday on the following schedule and basis:

1.9.1 The Corporation shall have dispatch personnel available to both receive telephone complaints from the public through 311, which shall dispatch such emergency calls on a prioritized basis in accordance with Corporation procedures, approved by the Department of Health and Mental Hygiene, to the fleet of vehicles, or, when appropriate, to the ASPCA or other entity for referral. Dispatch services shall be available from 8:00 a.m. to 8:00 p.m. Monday through Friday, exclusive of all holidays.

1.9.2 For all other time frames, on a 24 hour a day basis, the Corporation shall provide personnel and equipment necessary for on-call animal emergency response services only to handle special requests from the Department of Health and Mental Hygiene (including the Poison Control Center) and police agencies to capture and seize animals specified in paragraph (1.2) above, and have said animals held at an animal shelter for rabies observation or have the animal made ready for testing for rabies, as necessary. The Corporation shall provide to the Department and NYPD a separate telephone number for direct contact. Animal seizure services will be provided Monday to Friday from 8:00 a.m. to 8:00 p.m. exclusive of holidays. Saturday, Sunday and holidays, services will be provided on an on-call basis.

2. Related Services

The Corporation shall provide related services as follows:

- 2.1 The City will continue an existing contract between the Department of Sanitation and a private qualified contractor for the removal of all dead animal bodies from the shelter facilities. The Corporation shall properly and safely dispose of all regulated hazardous and/or medical waste pursuant to all Federal, State and City laws.
- 2.2 The Corporation shall operate animal shelter facilities in the boroughs of Manhattan, Brooklyn, and Staten Island. These shelters will be open to the public on a 7 day a week, 12 hours a day schedule, every day of the year excluding major holidays. All

three shelters will hold animals and care for such animals in conformity with all applicable laws. The Corporation shall maintain access to the Brooklyn and/or Manhattan Shelters 24 hours a day to accept animals transported by the New York Police Department (NYPD) or the Department and/or its designee(s), including DOHMH "on-call" emergencies.

2.3 The Corporation shall provide professional, veterinary care at the animal shelter facilities and at the receiving facilities, performed by New York State licensed veterinarians or under the general supervision of licensed shelter veterinarians, as permitted by law. Trained animal care assistants may assist veterinarians or veterinary technicians as needed to provide routine care.

2.4 Animals within the possession of the Corporation shall be cared for in a humane manner in accordance with applicable law. The Corporation shall provide for immediate first aid and treatment as required, including but not limited to isolation of sick animals as necessary and as determined by a licensed veterinarian. The Corporation shall endeavor to increase present veterinary staffing (New York State licensed) at the Brooklyn and Manhattan shelters from minimal 8 hours to 12 hours (8:00 a.m. to 8:00 p.m.) per day, as funding becomes available.

2.5 Adoption Services

2.5.1 The Corporation shall provide adoption services (including adoption to animal rescue organizations) at the shelters and receiving facilities in accordance with applicable law and shall promote adoption as a means of placing animals that have been assessed for behavior using a recognized method approved by the Department. No animal should be placed for adoption that has the potential to pose serious injury to the public. Animal Care and Control shall operate an adoption program at each shelter seven (7) days a week for a minimum of six (6) hours each day during the hours that would allow for maximum exposure and availability of adoptable animals to the public.

2.5.2 The Corporation shall require each person adopting or redeeming an unlicensed dog to complete a license application and pay all required dog licensing fees, unless the person adopting or redeeming their dog signs a waiver stating that the dog to be adopted or returned to the owner will be harbored outside of the five boroughs. Such applications and fees or waivers shall be completed by the person adopting or redeeming their dog prior to completing

the adoption or redemption process and leaving the shelter with the animal. The Corporation shall mail the completed applications and fees to an address specified by the Department on a schedule specified by the Department. The Corporation must also submit proof and appropriate documentation, including but not limited to spay/neuter certificate, as required by the Department for those license applications which the Corporation sold using the Dog Licensing On-Line System. The Corporation shall submit waivers to the Department monthly with the monthly report required pursuant to Section IV of Part I. Application forms, receipt books and voter registration forms will be provided by the Department.

- 2.6 For all dogs and cats that are returned to owners or adopted, the Corporation shall administer rabies immunizations, collect all applicable licensing fees and issue rabies registration certificates and tags pursuant to the New York City Health Code. All animals held by the Corporation under the terms of this Agreement, shall be provided necessary veterinary medical care in an effort to contain and control the spread of communicable diseases to humans and other animals. The Corporation shall provide, spay/neuter services in accordance with the New York City Spay/Neuter Law and NYC Health Code 161.23(b) and permanent identification by administering a microchip if directed by the Department, prior to being returned to the owner or adopted; except when the animal is released to an animal rescue organization. The Corporation will record all microchip numbers and corresponding owner information in their database and for Department's review. All other adoptable animals, such as rabbits, must be altered prior to adoption if surgically feasible.
- 2.7 The Corporation shall have the professional capability to humanely euthanize animals, including the use of sodium pentobarbital injection, and to provide pre-tranquilization when necessary. All staff handling and administering controlled drugs (defined as drugs or medications whose general availability is restricted and are federally regulated under the Controlled Substance Act) must be certified and registered pursuant to New York State rules and regulations to perform euthanasia. Humane euthanasia shall only be administered when necessary by proficient and certified euthanasia technicians, licensed veterinary technicians or a New York state licensed veterinarian, as allowed by law. The Corporation shall make every reasonable effort to place animals for adoption or shall offer to rescue partners for adoption and shall euthanize animals only when necessary. The Corporation shall

create and develop a list of criteria and a plan for identifying and assessing animals to expedite proper animal dispositions based on, but not limited to factors such as health and behavior. Such plan shall be submitted to the Department for approval within 120 days of the start of this Agreement. If the plan is not approved by the Department, the Corporation shall make such revisions as requested by the Department and re-submit the plan to the Department for final approval within 14 days after the request for revisions has been made.

- 2.8 The Corporation shall have the professional capability to, and shall prepare specimens from all animals suspected of rabies or other zoonotic diseases for submission to either the New York State Department of Health Wadsworth Laboratories in Albany, New York or the New York City Bureau of Laboratories for examination as required by the New York State Sanitary Code, New York City Health Code, and established guidelines and procedures of the State and City Departments of Health. Processing and taking of specimens for rabies testing shall include appropriate infection control, disinfection of all instruments and contaminated surfaces as a result of preparing the animal specimen for rabies examination, and proper disposal of hazardous, infectious, and medical waste.
- 2.9 The Corporation shall coordinate all intake, management and disposition of animals by means of the Corporation's computer tracking system, which shall be approved by the Department. The Corporation shall procure and maintain all appropriate licenses and shall be responsible for maintenance of the computer system. Within two (2) months of registration of this Agreement, ACC must submit to the Department for review and approval, a plan for the Department to have "read-only" access to the computer system. The plan shall include, but not be limited to a description of the necessary hardware, software, training and associated costs of the read-only access, the data fields that will be accessible to the Department and a timeline for implementation of the plan.

2.9.1 Computer Access

At the Department's expense for the hardware and hook-up, the Corporation shall provide the Department with online access to the "Bite Investigation" window on their computer database including, but not limited to the fields of "Victim", "Treatment", "Quarantine", "Lab" and "Animal". Should the Department request a search regarding a possible bite or dangerous animal investigation, the Corporation shall respond within 24 hours unless specified a priority

by the Department in which case the Corporation shall respond by the time specified by the Department.

2.9.2 The Corporation shall develop, implement and maintain a record keeping system to ensure identification of animals, location within shelter system, whether animal is candidate for adoption, and which shall encompass, at a minimum, the following reports: recording the receipt and disposition of all animals by type, elapsed time at the shelter for each animal, return to owner or other placement, a clear description of animal's health status, and documentation of nature and level of care including medical treatment provided while at the shelter, number of animals captured or seized and reasons for such actions. The Corporation shall prepare periodic reports on these and other statistics and operating information as shall be specified by the Department.

- 2.10 The Corporation shall provide and maintain a lost and found program for animals to help reunite lost pets with their owners. The Corporation shall maintain a 24 hour web-site with a link to an on-line database of lost animals. The Corporation shall promptly make every possible effort to reunite owners with lost pets entering the shelters. However, this program is not intended to replace the owners' responsibility to actively search for lost pets.
- 2.11 The Corporation shall hold on request or order of the Department or the Police Department of the City, any biting animal for rabies observation or any animal suspected by the Department of being vicious or a threat to the public health until a Departmental decision, pursuant to applicable law, is made regarding the disposition of that animal. The Corporation shall notify DOHMH within one (1) business day, when the Corporation has knowledge that an animal brought into the shelter has either bitten a person or another animal, whether or not the bites were inflicted while the animal was in ACC custody; or has sustained bite wounds believed to have been inflicted by another animal; or when the animal is one whose possession is prohibited by the NYC Health Code.
- 2.12 The Corporation may enlist the aid of volunteers and conduct education and community outreach concerning animal population control, proper pet care, animal behavioral or training issues and public health issues related thereto.
- 2.13 Refrigerators and cabinets containing controlled substances shall be locked. Standards for safeguarding and record keeping must be adhered to as outlined by Federal, State and City laws. Access shall be limited to designated employees only, as required by law.

- 2.14 Records regarding controlled substances shall indicate the date, name of the employee, name and lot number of the controlled substance, the amount used, purpose of use and the identification number of the animal treated. An inventory of all drugs used in the shelter shall be monitored and accounted for through the Corporation's computer system. The Department shall be granted access to these records upon request.
- 2.15 The Corporation shall assist the Police Department in dangerous dog sweeps, the removal of bullets when possible and when surgical resources are available, from animals shot by the Police and brought to the shelters and shall act as the holding agent, pursuant to the New York City Administrative Code Section 14-140, of those animals seized by the Police Department.

3. Animal Receiving Facilities Services

- 3.1 The Corporation shall operate and maintain animal receiving facilities to be provided by the Department in the boroughs of the Bronx and Queens, shall establish appropriate fee schedules for accepting other than dangerous, or unlicensed dogs or cats whose owners cannot be identified, lost, stray, or homeless or animals abandoned with professional caretakers, and shall care for such animals in conformity with all applicable laws. All animals accepted at the Bronx and Queens receiving facilities shall be transferred at the end of the workday to the Manhattan and/or Brooklyn full service shelter facility.
- 3.2 Receiving facilities shall be operated at the following sites, or such other suitable sites as may be designated by the Department:

Queens Animal Receiving Facility	92-29 Queens Blvd. Rego Park, NY 11374
Bronx Animal Receiving Facility	1 Fordham Plaza Bronx, NY 10458
- 3.3 The Animal Receiving Facilities must be open to the public to accept animals on a two (2) day a week, eight (8) hour a day schedule for the Bronx, and a one (1) day a week, eight (8) hour a day schedule for Queens on a year round basis, exclusive of holidays.
- 3.4 Animals temporarily held at the animal receiving facility of the Corporation shall be cared for in a humane and appropriate manner in accordance with applicable law.

3.5 The Corporation shall publish and maintain a telephone number so citizens can call for a schedule of services.

ANNEX B
ANNUAL BUDGET
ANIMAL CARE AND CONTROL of NEW YORK CITY, INC.
10AA024001R0X00

FISCAL YEAR 2011
Budget Term: July 1, 2010 to June 30, 2011

<u>Budget Category</u>	FY 2011 Projected Budget Not To Exceed
Salaries and Wages	\$ 4,466,097
Overtime	\$ 122,576
Fringe Benefits	\$ 1,238,942
Total Personnel Costs	\$ 5,827,615
Professional Fees	
Legal Fees	\$ 25,000
Financial Management Fees	\$ 120,000
Accounting, Payroll, Security Fees	\$ 83,294
Human Resources (including human rabies vaccines)	\$ 56,423
Medical Expenses	
In Shelter Professional Consultants (Vets & Vet Techs)	\$ 163,000
Medical Drugs and Diagnostics	\$ 178,430
Surgical Supplies	\$ 324,440
Euthanasia Solution and Drugs	\$ 17,674
Vaccines	\$ 183,492
Microchip for Adopted Animals	\$ 36,000
Medical Waste Misc.	\$ 12,243
Supplies	
Animal Shelter Supplies	\$ 197,509
Office Supplies	\$ 49,394
Janitorial Supplies	\$ 120,000
Uniforms	\$ 14,000
Animal Food	\$ 147,341
Vehicle Expense	\$ 176,327
Telecommunications	\$ 103,550
Postage & Delivery	\$ 15,221
Occupancy	\$ 182,753
Facilities Maintenance	\$ 67,021
Equipment Operating Costs	\$ 58,295
Technology Expenses	\$ 79,194
Equipment Purchases	\$ 25,194
Printing & Copying	\$ 4,296
Conference & Meetings	\$ 6,877
Interest/Investment	\$ 8,397
Bank Charges	\$ 28,107
Insurance	\$ 209,022

