



Financial Advisory Services

Request for Proposals

Release Date: March 18, 2025

Proposals Due: April 17, 2025



REQUEST FOR PROPOSALS

TABLE OF CONTENTS

1	About NYCEEC	2
2	Overview	3
2.1	Period of Performance	3
2.2	Contract Budget and Payment Structure	3
2.3	Contract Award	3
2.4	Form of Contract	4
3	Greenhouse Gas Reduction Fund	4
4	Scope of Work	5
4.1	Task 1 - Loan Transaction Analysis	5
4.2	Task 2 - Additional Services and Support	6
5	Proposal Requirements	6
5.1	Overview and Qualifications	6
5.2	Proposal Requirements	6
5.3	Timeline for Proposed Deliverables	7
5.4	Designated RFP Contact	8
5.5	Proposal Submission	8
5.6	Submitting Questions	8
6	Selection Process and Schedule	8
6.1	Proposal Evaluation and Selection process	8
6.2	Procurement Schedule	9
7	Contract Agreement	10
	APPENDIX I	11
I.	Overview: NCIF Program Objectives	11
II.	Priority Areas and Project Categories and Qualified Projects	12
	APPENDIX II	14
	APPENDIX III	17



REQUEST FOR PROPOSALS

1 ABOUT NYCEEC

The New York City Energy Efficiency Corporation (“**NYCEEC**”) is an independent, tax-exempt 501(c)(3) not-for-profit specialty finance corporation organized under the laws of the State of New York. Although NYCEEC was originally created by the City of New York (the “**City**”) in October of 2010, NYCEEC is now independent and is no longer a component unit of the City.

NYCEEC’s mission is to: *deliver financing solutions and advance markets for energy efficiency and clean energy in communities*. To achieve this mission, NYCEEC works with contractors, building owners and managers, project sponsors and developers, lenders and others to provide financing products for clean energy projects in buildings and communities.

Headquartered in midtown Manhattan, NYCEEC makes predevelopment, construction, permanent and other loans, and provides credit enhancement in the form of loan loss reserves, all of which is exclusively for energy efficiency and clean energy projects in buildings and communities. NYCEEC also partners with various other lending organizations to finance such projects while encouraging best practices with respect to energy efficiency retrofit implementation and clean energy financing generally, and ongoing performance monitoring.

NYCEEC’s current service territory includes Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania and Rhode Island. In addition, NYCEEC may also consider financing projects outside of this service area.

NYCEEC loans are primarily funded with Federal funds as well as funds received from the City, State, private banks and philanthropic foundations. NYCEEC’s operations are primarily funded through earnings on its project loans and funds received through a contract with the City, and a contract with the State, as well as several philanthropic grants that NYCEEC has been awarded since inception in 2010.

NYCEEC has an annual operating budget of approximately \$5.5 million and it generates income from interest and fees on loans and from its various City, State and other contracts. Since inception, NYCEEC has originated aggregate commitments of around \$151 million in loans and loan-loss reserve facilities.

NYCEEC currently has a staff of 18 professionals and utilizes vendors to provide outsourced services for certain functions where NYCEEC management has determined it to be appropriate to do so and/or where specialized expertise is required.

Some of the Corporation’s primary vendors include a fiscal agent, an HR consultant, various IT service providers, and engineering consultants. NYCEEC holds contracts with these and other vendors that provide services in support of NYCEEC’s day-to-day operations.

Additional information about NYCEEC can be found by visiting: <https://nyceec.com>.



REQUEST FOR PROPOSALS

2 OVERVIEW

The purpose of this Request for Proposals ("**RFP**") is to identify and retain one or more service providers to perform all or a portion of the services described in [Section 4](#) below.

By issuing this RFP, NYCEEC hereby invites qualified and experienced service providers (each a "**Respondent**") to each submit a proposal in accordance with this RFP, to provide all or a portion of such services (each, a "**Proposal**"). To support the NYCEEC team each Respondent (if any) that is awarded a contract resulting from this RFP (each a "**Consultant**") will utilize its knowledge and experience to perform the services contracted for, while ensuring compliance with all laws and other requirements, including those arising under the Greenhouse Gas Reduction Fund ("**GGRF**") which is described in more detail in [Section 3](#).

In keeping with NYCEEC's commitment to maintain the highest standards, NYCEEC seeks to ensure the services it purchases are obtained in a cost-effective manner and in compliance with funder agreements and regulations and applicable federal laws.

All attachments and appendices to this RFP shall be deemed to be part of this RFP.

2.1 PERIOD OF PERFORMANCE

NYCEEC expects to award one or more contracts, each with an initial term of one or two years and with options to renew or extend the initial term.

2.2 CONTRACT BUDGET AND PAYMENT STRUCTURE

Each contract awarded under this RFP (if any) is anticipated to be fulfilled on a time-and-materials basis; however, Respondents may propose a different fee structure for NYCEEC's consideration in its sole discretion. Each Proposal should clearly indicate the proposed scope of work, specify in each instance the expected level of effort needed to fulfill such work as further described in [Sections 4](#) and [5](#).

2.3 CONTRACT AWARD

NYCEEC will notify all Respondents of a contract award decision by e-mail. NYCEEC reserves the right to negotiate the final terms and conditions of contract award with the winning Respondent(s) selected (if any) and to reject any winning Respondent with whom NYCEEC, in NYCEEC's sole discretion, cannot agree to terms and conditions.

The General Terms and Conditions for this RFP are included in [Appendix II](#) to this RFP.



REQUEST FOR PROPOSALS

2.4 FORM OF CONTRACT

If applicable to this RFP, NYCEEC expects that each contract awarded under this RFP (if any) will be on NYCEEC's standard form of services contract (the "**Standard Contract**"). A copy of NYCEEC's Standard Contract is attached to this RFP at Appendix III. This is the template that will serve as the basis for the services agreement between the winning Respondent(s) and NYCEEC. NYCEEC and the selected Respondent(s) may negotiate further terms and conditions as might be appropriate, subject in all events to approval by NYCEEC in its sole discretion. Any contract will include a nondisclosure agreement in form and substance satisfactory to NYCEEC. Certain information regarding NYCEEC borrowers or other clients that have participated or that may participate in a NYCEEC program shall be deemed confidential and subject to such agreement.

Funding for each contract awarded under this RFP, if any, may derive in whole or in part from federal sources and carry with it certain federally prescribed terms and conditions that must be included in contracts using such funds (such as Appendix II to 2 CFR Part 200 "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards" and additional requirements). Any contract award will be subject to the required federal contract flow-down provisions. The Standard Contract may be revised prior to execution and may be amended from time to time with mutual consent of the parties, to reflect any federal funding requirements associated with the capital funding for the contract.

A Respondent may propose their own form of contract or other agreement as part of their Proposal. Each Proposal should clearly indicate whether the Respondent, if awarded the contract, would be willing to enter into NYCEEC's form of contract or would prefer to use its own form(s). If a Respondent prefers to use their own form, copies of all applicable contract documentation should be provided with the Proposal.

3 GREENHOUSE GAS REDUCTION FUND

In late 2022, Congress passed the Inflation Reduction Act ("**IRA**"). An important provision of the IRA authorized the U.S. Environmental Protection Agency ("**EPA**") to implement the Greenhouse Gas Reduction Fund ("**GGRF**"), a historic \$27 billion investment that will be used to capitalize green banks to facilitate development of energy efficiency and clean energy projects. The EPA is implementing the GGRF through three programs namely, the National Clean Investment Fund ("**NCIF**"), the Clean Communities Investment Accelerator ("**CCIA**") and the Solar for All competitions. Two of the three GGRF programs, the NCIF and the CCIA, total \$20 billion and will rely on eight nonprofit investment coalitions to create a national clean energy finance network that drives investment in projects that meet GGRF's three program objectives.

In April of 2024, the GGRF awardees under the \$14 billion NCIF competition and the \$6 billion CCIA competition were announced. Under the NCIF competition, among other awardees the Coalition for Green Capital ("**CGC**") and the Climate United Fund ("**Climate United**") were each awarded \$5 billion and \$6.97 billion, respectively. Under the CCIA competition, the Opportunity Finance Network ("**OFN**") was



REQUEST FOR PROPOSALS

awarded \$2.29 billion. NYCEEC expects to be a sub-awardee of CGC and that it may also receive GGRF funding from Climate United, OFN and/or other GGRF awardees. This RFP relates to NYCEEC's prospective role with respect to the NCIF and CCIA programs as a potential sub-awardee of GGRF funds under those programs. Specifically, NYCEEC anticipates that GGRF funding provided to NYCEEC as a sub-awardee or subrecipient ("**GGRF Funds**") may serve as a primary funding source for contracts awarded under this RFP.

While a brief overview of the NCIF program objectives is contained in [Appendix I](#), each Respondent to this RFP, and each vendor to whom a contract is awarded based upon this RFP, is expected to be reasonably familiar with requirements related to the use of federal funding generally (and ideally with GGRF Funds in particular) and all relevant compliance aspects related thereto. NYCEEC anticipates receiving funds under the NCIF and CCIA awards and might have the opportunity to assist in deployment of SFA monies awarded to New York City and NYSERDA.

Selected contractors will need to comply with all relevant reporting and other requirements contained in the terms and conditions agreed upon between NYCEEC and relevant GGRF awardees like CGC. Certain of these additional requirements are described in more detail in [Section 4](#) below. While our initial focus will be on NCIF, Respondents should be prepared to support NYCEEC's work under CCIA and SFA, as well.

4 SCOPE OF WORK

Under this RFP, NYCEEC seeks to retain one or more qualified and experienced service providers (engaged as independent consultants or advisors) to provide all or a portion of the Services described below. Each Respondent that submits a Proposal and that is selected under this RFP (if any) should be able to provide all or a select portion of the Services in a timely and professional manner and as will be further set forth in the contract with NYCEEC.

The services, scopes of work and/or tasks described below (collectively, the "**Services**") represent the Services that NYCEEC wishes to procure under this RFP. In their Proposals, Respondents should clearly identify which specific portion of the Services they propose to perform for NYCEEC, should they be awarded a contract.

4.1 TASK 1 - LOAN TRANSACTION ANALYSIS

- a. Analyze potential loan transactions for creditworthiness (in conjunction with NYCEEC credit underwriting guidelines)
- b. Examine other transaction factors including green measures, other positive impacts for communities, and potential compliance with NCIF or CCIA requirements
- c. Prepare reports on analysis performed, up to and including full credit memos



REQUEST FOR PROPOSALS

4.2 TASK 2 - ADDITIONAL SERVICES AND SUPPORT

- a. Provide any other services, advice, or opinions relating to NYCEEC's financing program, and other financial matters, as requested
- b. Perform additional services related to the financial advisory position including, but not limited to, special projects upon the request of NYCEEC.
- c. Attend credit committee meetings with NYCEEC transaction team, if requested

5 PROPOSAL REQUIREMENTS

This Section 5 sets out the information that each Respondent should include in its Proposal. Respondents should provide comprehensive but concise responses. Substance and meaningful content are important and should be included without extraneous material (which may be provided separately as attachments, but may not be considered as part of the evaluation of the Proposal). In the Proposal, please endeavor to use the same section headings as are used below to facilitate a fair and consistent review of your Proposal. All pages of the Proposal should be numbered consecutively.

5.1 OVERVIEW AND QUALIFICATIONS

The Proposal should include information sufficient to demonstrate that the Respondent, and the individual team members who would perform the Services, all have an appropriate level of experience and qualifications to perform the proposed Services in a professional and efficient manner that complies with all applicable contractual and legal requirements (including requirements arising from the use of GGRF Funds).

5.2 PROPOSAL REQUIREMENTS

Each Proposal should include the following information:

- a. The full name, main office address and main telephone number of the Respondent.
- b. A brief description of the Respondent company, including the year the company was established and the number of years the company has been providing services that are the same or similar to the Services being procured under this RFP; if applicable, the number of years of experience the Respondent company has with compliance with Federal requirements (including, for example, Davis Bacon and Related Acts); the size of the Respondent, and the number of employees; whether the Respondent has a New York office and the office location(s) and the location(s) of the office(s) from which the Services contemplated would be primarily provided.
- c. An overview of the specific Services the Respondent proposes to provide.
- d. A description of the Respondent's staffing plan in performing the proposed Services.



REQUEST FOR PROPOSALS

- e. The name and contact information of the individual who will be NYCEEC's primary point of contact for purposes of the Proposal and for performing the Services proposed, and also the name(s) of other persons who are likely to perform all or portion of the Services as part of the Respondent's proposed team.
- f. A biography, resume or curriculum vitae (CV) for each team member, including years of professional experience, education, and types of relevant experience. In addition, to the extent applicable please elaborate on each team members' experience working with not-for-profit and/or specialty finance companies, and/or their knowledge or experience with relevant Federal laws, rules and regulations including those mentioned in this RFP (and especially with GGRF Funds) where applicable.
- g. A list of two or three References (including name and contact information) representing specific examples of the Respondent company's current and/or prior experience providing similar services to small business clients, (and if applicable, with particularly emphasis on work for not-for-profit (501(c)(3) organizations and/or specialty finance companies). Please note that NYCEEC may choose to speak to any, all or none of the references provided.
- h. A description of any relevant licenses, certifications or other similar qualifications that may be relevant and that are held by the Respondent, or applicable team members.
- i. A description of any sub-contractors or other vendors the Respondent may use that are relevant to delivery of the Services.
- j. If the Respondent company is a small-business enterprise ("**SBE**") minority-owned business enterprise ("**MBE**") women-owned business enterprise ("**WBE**"), clearly indicate such status in the Proposal. Please also indicate if Respondent intends to work with subcontractors that are SBE, MBE or WBE.
- k. A description of the Respondent's equal employment opportunity policy and program, if any.
- l. A description of all limitations, if any, on the amount of time Respondent and each of its identified team members can devote to this engagement.
- m. The proposed fees/fee structure and compensation. If Respondent is proposing a traditional time and materials compensation arrangement, they should provide a fee schedule that clearly identifies the "fully loaded" hourly rate to be paid for each team member's time (with an indication of team members' roles). The Proposal should also describe the instances in which additional costs would be incurred, and if applicable the fee schedule for services not included in the proposed Services.

5.3 TIMELINE FOR PROPOSED DELIVERABLES

As applicable, the Proposal should describe the Respondent's overall approach to providing the Services in a manner consistent with the Services described in Section 4 above, and the date the Respondent is



REQUEST FOR PROPOSALS

available to begin providing Services and any other relevant information that may be relevant to the timely performance of the Services proposed. The overall approach should be consistent with, and reflect the Respondent's understanding of, the scope and requirements described in this RFP.

5.4 DESIGNATED RFP CONTACT

All correspondence regarding the RFP should be directed to the attention of Jane Wolterding (Associate Director of Operations) at RFP@nyceec.com.

5.5 PROPOSAL SUBMISSION

Please submit a Proposal of no more than five (5) pages (not including attachments). Each Proposal submitted in response to this RFP should be submitted in electronic form by email, as a .PDF attachment to: RFP@nyceec.com. The "Subject" line of the e-mail should read: "Financial Advisory Services RFP – [name of Respondent]".

5.6 SUBMITTING QUESTIONS

It is the responsibility of Respondents and other interested parties to examine the entire RFP and to submit all requests for clarification in writing to NYCEEC. Questions regarding this RFP must be submitted by e-mail to the Designated RFP Contact listed in Section 5.4 by the due date for questions noted in this Section 6.2 ("Procurement Schedule"). The subject line of an e-mail requesting clarification should be: "Inquiry: Financial Advisory Services RFP". Responses to questions will be posted on the NYCEEC website (<https://nyceec.com/rfp>), as will all clarifications and amendments (if any) released in regard to the RFP (if any). It is the responsibility of all interested parties to check NYCEEC's website regularly to obtain and stay current with respect to all clarifications and amendments.

6 SELECTION PROCESS AND SCHEDULE

6.1 PROPOSAL EVALUATION AND SELECTION PROCESS

Proposals will be reviewed and evaluated by a Selection Committee comprised of NYCEEC staff members. The criteria to be used in evaluating Proposals will include:

- Respondent's demonstrated competence and capacity to perform the proposed Services;
- Respondent's qualifications, relevant knowledge and experience;
- Respondent's industry reputation;
- Respondent's availability to be responsive and perform the Services within required timeframes;
- Reasonableness of cost or pricing model proposed by Respondent and extent to which Respondent is willing to offer a "nonprofit" discount; and



REQUEST FOR PROPOSALS

- Respondent's integrity, public policy compliance, past performance record, and Respondent's financial and technical resources.

6.2 PROCUREMENT SCHEDULE

The following is NYCEEC's anticipated timeline for selecting winning Respondent(s):

Procurement Schedule	
RFP Issued	March 18, 2025
Questions Due	March 31, 2025 (by 4:00pm EST)
Responses to Questions posted	April 7, 2025
Proposals Due	April 17, 2025 (by 4:00pm EST)
Meetings with Finalists (if requested by NYCEEC)	Late April/early May 2025
Selection of winners	May 2025

- Request for Proposals (RFP) Issued:** March 18, 2025
- Deadline for Questions:** Respondents should direct any questions to the Designated RFP Contact listed in Section 5.4 at RFP@nyceec.com by no later than 4:00pm EST on March 31, 2025. Responses will be distributed/posted by April 7, 2025.
- Deadline for Proposals:** Respondents must submit proposals by no later than 4:00pm EST on April 17, 2025 (the "**Submission Deadline**"). As such, Respondents may submit proposals until the Submission Deadline and, except as otherwise instructed, there is no other prescribed due-date for submissions. All suitable proposals received before the Submission Deadline will be reviewed by NYCEEC on an ongoing basis. Proposals should be e-mailed to the Designated RFP Contact listed in Section 5.4 at RFP@nyceec.com.
- Meetings with Finalists:** If NYCEEC chooses to conduct meetings with one or more Respondents, they will be held in late April or early May 2025 in NYCEEC's offices located at 1359 Broadway, New York, NY, 10018 or virtually by video conference (e.g., Zoom). Respondents may wish to reserve time on their calendars in case NYCEEC elects to schedule such meetings.
- Consultant Selection:** NYCEEC intends to notify Respondents of the results of the RFP process on or around May 2025.
- Contract Execution:** NYCEEC hopes to complete the procurement process and officially retain the Consultant as soon as possible after the winning Respondent is selected.

Please note that the aforementioned dates are subject to change.



REQUEST FOR PROPOSALS

7 CONTRACT AGREEMENT

A copy of NYCEEC's form Standard Contract is attached. This is a template that will serve as a basis for the services agreement between the winning bidder(s) and NYCEEC. NYCEEC and the awardee(s) may negotiate further terms and conditions as may be determined appropriate by NYCEEC in its sole discretion. Any contract will include a nondisclosure agreement in form and substance satisfactory to NYCEEC

GGRF Funds are expected to serve as a likely source of funding for the contract(s) awarded under this RFP. GGRF Funds carry with them certain federally required terms and conditions that must be included in contracts using such funds (such as Appendix II to 2 CFR Part 200 "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards" and additional requirements). Any contract awarded under this RFP that will or may be paid for with GGRF Funds will be subject to the required federal contract flow-down provisions. The Standard Agreement may be revised prior to execution and may be amended from time to time with mutual consent of the parties, to reflect any federal funding

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REQUEST FOR PROPOSALS

APPENDIX I

Overview: GGRF and NCIF

I. OVERVIEW: NCIF PROGRAM OBJECTIVES

The NCIF focuses on the program objectives of reducing emissions of greenhouse gases and other air pollutants; delivering benefits to American communities, particularly low-income and disadvantaged communities; and mobilizing financing and private capital as briefly described below.

- Program Objective 1: Reduce emissions of greenhouse gases and other air pollutants. Grantees will invest in projects, activities, and technologies that reduce emissions of greenhouse gases and other air pollutants that harm communities and contribute to climate change. Grantees will accelerate progress toward the climate goals of the United States, including reducing greenhouse gas emissions 50-52 percent below 2005 levels in 2030, reaching 50 percent zero emission vehicles share of all new passenger cars and light trucks sold in 2030, achieving a carbon pollution-free electricity sector by 2035, and achieving net-zero emissions by no later than 2050.
- Program Objective 2: Deliver benefits of greenhouse gas- and air pollution-reducing projects to American communities, particularly low-income and disadvantaged communities. Grantees will ensure that the projects they invest in directly benefit Americans by improving health outcomes, lowering energy costs, creating high-quality jobs, and more. At least 40% of funds awarded under this competition must be used for the purposes of providing financial assistance in low-income and disadvantaged communities.
- Program Objective 3: Mobilize financing and private capital to stimulate additional deployment of greenhouse gas- and air pollution-reducing projects. Grantees will mobilize financing and private capital for underinvested projects and underinvested communities, which will demonstrate the market-wide opportunity for financial markets and institutions to finance clean technology projects. As a result, grantees will spur market transformation, supporting market-wide accessibility of affordable financing for clean technology projects to multiply the impact of grant funds.

EPA NCIF Terms and Conditions (which may be provided upon request) define the tools available to NYCEEC for fulfilment of these objectives as:

1. Financial Assistance. Section 134(b)(1) of the Clean Air Act directs that the recipient use funds for “financial assistance.” Consistent with the definition of Federal financial assistance in 2 CFR 200.1, financial assistance means financial products, including debt (such as loans, partially forgivable loans,



REQUEST FOR PROPOSALS

forgivable loans, zero-interest and below-market interest loans, loans paired with interest rate buydowns, secured and unsecured loans, lines of credit, subordinated debt, warehouse lending, loan purchasing programs, and other debt instruments), equity investments (such as equity project finance investments, private equity investments, and other equity instruments), hybrids (such as mezzanine debt, preferred equity, and other hybrid instruments), and credit enhancements (such as loan guarantees, loan guarantee funds, loan loss reserves, and other credit enhancement instruments). Subgrants are not financial assistance. Expenditures for financial assistance are in the form of subawards, participant support costs, acquisitions of intangible property, or cash reserves, as defined in this award agreement.

2. Market Building Activities. “Market-building activities” means activities that meet all three of the following criteria: (1) build the market for financeable qualified projects, (2) are not tied directly to qualified projects the recipient intends to finance, and (3) are necessary and reasonable for the deployment of financial assistance to qualified projects.

3. Predevelopment Activities. “Predevelopment activities” means activities that meet all three of the following criteria: (1) improve the likelihood of the recipient financing qualified projects, (2) are tied directly to qualified projects the recipient intends to finance, and (3) are necessary and reasonable for the recipient to deploy financial assistance to qualified projects.

II. PRIORITY AREAS AND PROJECT CATEGORIES AND QUALIFIED PROJECTS

The NCIF program defines three priority project categories. These are:

- Distributed Energy Generation and Storage: Projects, activities, and technologies that deploy small-scale power generation and/or storage technologies (typically from 1 kW to 10,000 kW), plus enabling infrastructure necessary for deployment of such generation and/or storage technologies. Projects, activities, and technologies within this category must support carbon pollution-free electricity, which is electrical energy produced from resources that generate no carbon emissions, consistent with the definition specified in Executive Order 14057 (Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability).

Net-Zero Emissions Buildings: Projects, activities, and technologies that either (1) retrofit an existing building, making a substantial contribution to that building being a net-zero emissions building and as part of a plan for that building achieving net-zero emissions over- time, or (2) construct a new net-zero emissions building in a low-income and disadvantaged community. Net-zero emissions buildings are buildings that have been verified to be highly energy efficient, free of on-site emissions from energy use, and powered solely from clean energy, in accordance with the National Definition for a Zero Emissions Building.

- Zero-Emissions Transportation: Projects, activities, and technologies that deploy zero-emissions transportation modes, plus enabling infrastructure necessary for zero-emissions transportation modes—especially in communities that are overburdened by existing diesel pollution,



REQUEST FOR PROPOSALS

particulate matter concentration, and degraded air quality. Projects, activities, and technologies within this category must be consistent with the zero-emissions transportation decarbonization strategies in The U.S. National Blueprint for Transportation Decarbonization.

Across all priority areas and business segments, NCIF has specific criteria for a “qualified project.”

Any project, activity, or technology must meet all six of the following criteria:

- The project, activity, or technology would reduce or avoid greenhouse gas emissions, consistent with the climate goals of the United States to reduce greenhouse gas emissions 50-52 percent below 2005 levels in 2030, reach 50 percent zero-emission vehicles share of all new passenger cars and light trucks sold in 2030, achieve a carbon pollution-free electricity sector by 2035, and achieve net-zero emissions by no later than 2050. The project, activity, or technology may reduce or avoid such emissions through its own performance or through assisting communities in their efforts to deploy projects, activities, or technologies that reduce or avoid such emissions.
- The project, activity, or technology would reduce or avoid emissions of other air pollutants. The project, activity, or technology may reduce or avoid such emissions through its own performance or through assisting communities in their efforts to deploy projects, activities, or technologies that reduce or avoid such emissions.
- The project, activity, or technology would deliver additional benefits (i.e., in addition to primarily reducing or avoiding emissions of greenhouse gases and other air pollutants) to communities within one or more of the following seven categories: climate change; clean energy and energy efficiency; clean transportation; affordable and sustainable housing; training and workforce development; remediation and reduction of legacy pollution; and development of critical clean water infrastructure.
- The project, activity, or technology may not have otherwise been financed.
- The project, activity, or technology would mobilize private capital.
- The project, activity, or technology would support only commercial technologies, defined as technologies that have been deployed for commercial purposes at least three times for a period of at least five years each in the United States for the same general purpose as the project, activity, or technology.

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REQUEST FOR PROPOSALS

APPENDIX II

GENERAL TERMS AND CONDITIONS

In addition to those stated elsewhere, this RFP is subject to the additional conditions, terms and limitations stated below:

1. Proposal as Offer to Contract. Unless a specific exception is noted, submission of a Proposal in response to this RFP shall constitute an offer on the part of the successful Respondent to execute the Standard Contract [substantially in the form annexed to this RFP]. Any supporting documents or other items attached as exhibits to this RFP may be incorporated into the Contract. The successful Respondent shall cooperate in supplying any information as may be required with respect to the Vendex Clearance Forms, and any other government review and approval forms. Respondent's Proposal shall remain open for acceptance by NYCEEC and shall remain firm and binding upon the Respondent for at least [thirty (30)] days after the date on which the Proposals are received by NYCEEC, except that NYCEEC may by written notice to the Respondent extend that date for an additional [thirty (30)] days.
2. NYCEEC Rights. This is a Request for Proposals **not** a Request for Bids. NYCEEC shall be the sole judge of each response (and each Respondent's) conformance with the requirements of this RFP and of the merits of the individual Proposals received. NYCEEC reserves the right, in its sole discretion, to take any of the following actions in connection with this RFP: amend, modify, supplement or or withdraw this RFP; waive any requirements of this RFP; require supplemental statements and information from any Respondents; award a contract to as many or as few or none of the Respondents as NYCEEC may select; accept or reject any or all Proposals received in response to this RFP; extend the deadline for submission of Proposals; negotiate or hold discussions with one or more of the Respondents; permit the correction of deficient Proposals that do not completely conform with this RFP; waive any conditions or modify any provisions of this RFP with respect to one or more Respondents; and/or reject any or all Proposals and cancel this RFP, in whole or in part, for any reason or no reason. NYCEEC may exercise any such rights at any time, without notice to any Respondent or other parties and without liability to any Respondent or other parties for their costs, expenses or other obligations incurred in the preparation of a Proposal or otherwise. All Proposals become the property of NYCEEC.
3. City and GGRF Recipients Not a Party. Neither the City of New York (the "**City**"), nor any of the GGRF recipients, including (without limitation) CGC, Climate United, OFN, and any other direct recipient of GGRF funds from EPA (collectively the "**GGRF Recipients**") shall be deemed to be a party to this RFP, nor shall the City nor any GGRF Recipients be deemed to have made any representation hereunder or to have covenanted to perform any obligation.
4. Acceptance of RFP Terms. By submitting a Proposal, each Respondent submitting the proposal agrees to the terms of this RFP.



REQUEST FOR PROPOSALS

5. Confidential Information. Respondent (and their representatives and agents) must treat this RFP and their respective Proposal including, without limitation, all information obtained from NYCEEC in connection with this RFP (the “**Confidential Information**”) confidentially. A Respondent shall not discuss, publish, divulge, disclose or allow to be disclosed the Confidential Information to any other Respondent or any other person, firm or entity, including press or other media, without NYCEEC's prior written approval. Respondents shall refer all press and other inquiries concerning this RFP or the Confidential Information, without further comment, to NYCEEC.
6. No Obligation to Award. Issuance of this RFP does not commit NYCEEC to make an award.
7. A Respondent that is awarded a contract resulting from this RFP will be required to comply with all laws, rules and regulations and their reporting and other requirements as appropriate.
8. NYCEEC (and its officers, employees, and agents) make(s) no representation or warranty and assume(s) no responsibility for the accuracy of the information set forth in this RFP.
9. The selection of a Respondent, if any, will depend on satisfaction of the documentation and review requirements described in this RFP and as otherwise required by NYCEEC.
10. NYCEEC will not be liable for any cost or expense incurred by any Respondent in the preparation of its Proposal or for any work or services performed by any Respondent prior to the execution and delivery of a contract with NYCEEC. NYCEEC is not obligated to pay and shall not pay any costs or expenses incurred by any Respondent at any time unless NYCEEC has expressly agreed to do so in writing.
11. NYCEEC is subject to the requirements of Article 6 of the New York Public Officers Law (the “**Freedom of Information Law**” or “**FOIL**”). Consequently, Proposals submitted to NYCEEC will be subject to disclosure pursuant to FOIL demands that may be made upon NYCEEC. A Respondent may, in writing, at the time it submits its Proposal, provide a detailed description of specific information contained in such Proposal constituting trade secrets or proprietary information that, if disclosed, would substantially harm the Respondent’s competitive position. This characterization will not be determinative, but will be considered when evaluating the applicability of any exemptions in response to a FOIL request.
12. Disclaimer. NYCEEC, together with its directors, officers, employees and agents, makes no representation or warranty and assumes no responsibility for the accuracy of the information set forth in this RFP. Further, NYCEEC does not warrant or make any representations as to the quality, content, accuracy or completeness of the information, text, graphics, links or any other facet of this RFP once it has been downloaded or printed from any website or any server, and hereby disclaims any liability for any technical errors or difficulties of any nature that may arise in connection with the website on which this RFP is posted, or in connection with any other electronic medium utilized by Respondents or potential Respondents in connection with or otherwise related to this RFP. It is each Respondent’s responsibility to conduct due diligence on the applicable laws, rules and other requirements governing the use of GGRF Funds and otherwise make its own independent assessment prior to submitting its Proposal. Respondents



REQUEST FOR PROPOSALS

are encouraged to seek their own professional technical, legal and financial advice in developing a responsive Proposal.

13. GGRF Requirements.

a. NYCEEC anticipates that the RFP and all GGRF funded activities undertaken by NYCEEC, as applicable, may also be subject to all, or applicable provisions of, the following (the “GGRF Requirements”):

- Inflation Reduction Act of 2022;
- EPA’s Notice of Funding Opportunity (designated as Funding Opportunity Number: EPA-R-HQ-NCIF-23) concerning the National Clean Investment Fund (NCIF) funding opportunity, as released by EPA on or around July 14, 2023;
- EPA’s Notice of Funding Opportunity (designated as Funding Opportunity Number: EPA-R-HQ-CCIA-23) concerning the Clean Communities Investment Accelerator (CCIA) funding opportunity, as released by EPA on or around July 14, 2023;
- NCIF program Terms and Conditions as approved by EPA
- CCIA program Terms and Conditions as approved by EPA
- Federal Regulations provided in 2 CFR 200 (*Uniform Requirements, Cost Principles, and Audit Requirements for Federal Awards*); and
- any other notices, rules, requirements or other guidance promulgated by EPA from time to time in connection with the GGRF program, or specifically in connection with the NCIF, CCIA and/or SFA programs (as applicable).

b. The GGRF Requirements are in addition to any new or supplemental rules, guidelines or other documents that may be promulgated from time to time by EPA or any other governmental authority. Respondents should note that not all of the GGRF Requirements will necessarily have been finalized as of the date this RFP is released and as such, the GGRF Requirements are subject to being amended or supplemented, as is this RFP, including the form of Standard Contract. NYCEEC also anticipates that services funded with GGRF Funds, this RFP and each applicable contract entered into with a consultant will need to be consistent with each applicable subgrant or other agreement entered into between NYCEEC and each GGRF Recipient, as well as other legal or contractual requirements to be identified.



REQUEST FOR PROPOSALS

APPENDIX III

FORM OF STANDARD CONTRACT

attached hereto

**NEW YORK CITY ENERGY EFFICIENCY CORPORATION
SMALL PURCHASE AGREEMENT¹**

This SMALL PURCHASE AGREEMENT (this “**Agreement**”) dated as of [____] [____], 20[____], between the NEW YORK CITY ENERGY EFFICIENCY CORPORATION, a New York not-for-profit corporation (“**NYCEEC**”) and [____], a [____] organized under the laws of the State of [____] (“**Consultant**”). The parties hereto agree as follows:

- 1. Services to be Provided.** Consultant shall perform the services described in Exhibit A (the “**Services**”). Consultant agrees to perform all Services in a professional manner in accordance with the standards and practices that are customary for such Services in the New York City Metropolitan Statistical Area.
- 2. Term.** The term of this Agreement starts on the date first set forth above and ends on [____] [____], ____]. NYCEEC may delay, postpone or suspend the Services, or any portion thereof, immediately or upon a specified date, for a period of not more than 90 days, upon notice to Consultant, for any reason determined by NYCEEC in its sole discretion to be in its interest. Any such delay, postponement or suspension shall not give rise to any cause of action for damages against NYCEEC or The City of New York (“**City**”). Consultant’s time for performance of the Services shall be extended for the period of the delay, postponement or suspension. This Agreement may be earlier terminated by NYCEEC on five calendar days’ notice, for any reason whatsoever. If this Agreement is terminated, Consultant shall receive equitable compensation for the Services that have been satisfactorily performed by Consultant up to the date of the termination.
- 3. Compensation.** Consultant agrees to perform the Services for the compensation set forth in Exhibit B. Except as set forth in Paragraph 2 above, payments shall be made in accordance with the terms and conditions in Exhibit B. Notwithstanding anything else to the contrary contained herein, compensation and reimbursement to Consultant under this Agreement, including all fees and expenses set forth in Exhibit B, shall in no event exceed \$[____] in the aggregate, irrespective of the hours worked and the expenses incurred by Consultant pursuant to the Services performed by Consultant.
- 4. Work Product.** All work product prepared or furnished by Consultant pursuant to this Agreement, including reports, plans, studies, surveys, data, databases, programs, processes, systems, drawings, tracings, blueprints, photographs, computer drawings, schematics, specifications, log books, correspondence, models, studies, permits approvals, designs, deliverables, samples, presentation materials, analyses, punch lists, submissions, filings, applications, schedules, documents and materials, including those related to inspections, tests and test results, in all formats now known or hereinafter known (collectively, “**Work Product**”), is the exclusive property of NYCEEC. Work Product, however, shall not include Consultant’s underlying intellectual property that is disclosed to NYCEEC in writing prior to the date hereof. Consultant acknowledges and waives Consultant’s statutory and moral rights, including rights of attribution and integrity, regarding any Work Product that is produced by Consultant pursuant to this Agreement.

¹ NOTE REGARDING FORM: This form of agreement is for procurements where the maximum contract price is \$100,000 or less.

Except for material that is in the public domain and non-original material that is licensed, the Work Product shall be wholly original material not published elsewhere; shall not violate any copyright, trademark or other applicable law; and shall not constitute a defamation or invasion of the right of privacy or publicity, or an infringement of any kind, of any rights of any third party. Consultant agrees to defend, indemnify and hold harmless NYCEEC and its officers, officials, agents, members, directors, and employees against any damage or liability arising out of Consultant's infringement, unauthorized use, or any other cause of action arising out of the use of any such material.

To the extent the Work Product incorporates non-original material, Consultant shall obtain and provide NYCEEC with copies of all necessary consents, in writing, for the use of such non-original material under this Agreement. Since some licenses for materials may be for a limited duration, Consultant shall specify, in writing, to NYCEEC all applicable restrictions. Consultant shall notify NYCEEC, in writing, of any changes in such restrictions during the term of this Agreement.

5. Confidential Information. Consultant and its employees may have access to or learn of information and records that are not rightfully in the public domain in the course of providing Services under this Agreement. Consultant agrees that it and each of its employees shall treat such information confidentially and not share it with persons other than those directly involved within NYCEEC on the matter that it relates to.

6. Independent Contractor. Consultant is an independent contractor and is solely responsible for Consultant's actions or inactions. Consultant is solely responsible for the manner of performing Services under this Agreement. Consultant is not, and shall not be, an agent or servant of NYCEEC or the City by virtue of this Agreement or by virtue of any approval, permit, license, grant, right, or other authorization given by NYCEEC or the City or any of their representatives in connection with this Agreement.

7. Taxes. Consultant is solely responsible for withholding and paying all applicable workers' compensation, disability benefits, unemployment insurance and income taxes with respect to the performance of Services hereunder. Consultant is also solely responsible for filing tax returns and making any related payments with respect to the performance of Services hereunder.

8. Indemnification. Consultant shall indemnify, defend and hold harmless NYCEEC and its officers, officials, agents, members, directors, and employees from any and all claims, judgments or liabilities due to any act or omission of Consultant, its agents, employees or subcontractors.

9. Insurance. Consultant shall purchase and maintain the insurance described in Exhibit C at its own cost and expense.

10. Assignment, Subcontractors. The purpose of this Agreement is to secure the Services of Consultant. Consultant shall neither subcontract out any portion of the Services, nor assign this Agreement without the express written approval of NYCEEC.

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

12. Compliance With Law. Consultant shall maintain the highest standards of personal and business ethics. Consultant shall perform all Services under this Agreement in accordance with the applicable

provisions of federal, state and local laws, rules and regulations, including all applicable laws relating to non-discrimination.

13. Right to Audit and Inspect. NYCEEC, its auditors and the Comptroller of the City have the right at all times to audit and inspect the operations and records of Consultant relating to this Agreement.

14. Assistance by Consultant. Consultant and each of its employees shall diligently provide any and all assistance that NYCEEC may require of Consultant if any claim is made or any action brought relating to this Agreement, whether or not Consultant is a party. Consultant agrees that it and each of its employees shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by a state or City governmental agency or authority. Consultant represents that all information provided to NYCEEC concerning Consultant in connection with any questionnaire or investigation by NYCEEC is materially true as of the date of this Agreement.

15. No Political Activity, Solicitation or Media Communication. Consultant's actions or omissions to act under this Agreement shall not include political activity or any activity to further the election or defeat of any candidate for public, political or party office as a part of or in connection with this Agreement. Consultant may not solicit from NYCEEC employees. Consultant shall forward all media inquiries concerning any matter relating to NYCEEC to the NYCEEC CEO and shall not communicate with the media on NYCEEC matters.

16. Corporate Status. Consultant hereby represents and warrants to NYCEEC that it: is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization or formation; is in good standing and authorized to do business in the State of New York; has all requisite power and authority to execute, deliver and perform this Agreement; and has duly authorized, executed and delivered this Agreement.

17. City Funding and Required Terms. A portion of NYCEEC's funding is provided by the City pursuant to a contract between the City and NYCEEC (the "**City Contract**") and NYCEEC may, from time to time, elect to use such funding as its source of funds to pay for the Services. Accordingly certain additional terms and conditions apply to this Agreement. In accordance with Section 3.02(B) of Appendix A to the City Contract: (a) Services performed hereunder by Consultant must be in accordance with the applicable terms of the City Contract; (b) nothing contained herein shall impair the rights of the City; (c) nothing contained in the City Contract or herein shall create any contractual relationship between Consultant and the City; and (d) Consultant agrees to be bound by the provisions of Section 4.05(D) and Article 5 of Appendix A to the City Contract (the relevant portions of which are attached hereto at Appendix A) and that the City may enforce such provisions directly against Consultant as if the City were a party to this Agreement.

18. Iran Divestment Act; Russia.

(a) In accordance with Section 2879-c of the New York State Public Authorities Law, Consultant certifies, for itself and its affiliates (if any), under penalty of perjury, to the best of its knowledge and belief, that neither Consultant nor any of its affiliates (if any) is on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the New York State Finance Law.

(b) Consultant hereby represents and warrants to NYCEEC that neither it nor any person or entity affiliated with it: (i) is a Covered Entity; (ii) is owned or controlled by a Covered Entity; (iii) acts for or on behalf of, or provides assistance, support, sponsorship, or services of any kind to, a Covered Entity; (iv) engages in any dealings or transactions, or is otherwise associated with, a Covered Entity; or (v) has used or will use any amount paid to it under this Agreement in violation of the directives and principles set forth in any NYS Executive Order. Consultant shall not take any action (or by omission

permit to occur any action) which would cause any of the foregoing representations and warranties to become untrue in any material respect.

(c) As used in in this Paragraph 18, (i) the term “**Covered Entity**” means a “Russian entity”, “Supporting entity” or “Entity conducting business operations in Russia” (as such terms are defined in the NYS Executive Orders); and (ii) the term “**NYS Executive Orders**” means (1) Executive Order No. 14 (Directing State Agencies and Authorities to Divest Public Funds Supporting Russia) issued by Governor Kathy Hochul of the State of New York on February 27, 2022; (2) Executive Order No. 16 (Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia) issued by Governor Kathy Hochul of the State of New York on March 17, 2022; and (3) any executive order relating to the Russian government’s campaign to invade the sovereign country of Ukraine that is issued by the Governor of the State of New York after the Closing Date.

19. WAIVER OF JURY TRIAL. CONSULTANT HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT.

20. FORUM SELECTION. CONSULTANT HEREBY AGREES THAT ANY AND ALL CLAIMS ASSERTED AGAINST NYCEEC ARISING UNDER THIS AGREEMENT OR RELATED HERETO SHALL BE HEARD AND DETERMINED EITHER IN THE FEDERAL COURTS OF THE SOUTHERN DISTRICT OF NEW YORK, OR IN THE NEW YORK STATE COURTS LOCATED IN THE CITY AND COUNTY OF NEW YORK.

21. No Construction Against Drafter. Each party hereby represents and warrants to the other party that it, together with its counsel, has had the opportunity to review and participate in the drafting and negotiation of this Agreement. As such, this Agreement shall be deemed to be the product of both parties and any rules of construction relating to interpretation against the drafter of an agreement shall not apply to this Agreement and are expressly waived to the maximum extent permitted by applicable law.

22. Miscellaneous. All notices by either party to this Agreement shall be in writing and directed to the respective address indicated after the signatures below. References to any document, instrument, contract or agreement (including this Agreement) means such document, instrument, contract or agreement, inclusive of all Exhibits, Appendices and other attachments attached thereto, and means such document, instrument, contract or agreement as it may be duly amended, amended and restated, modified or supplemented from time to time. Except as may otherwise be set forth herein, the words "include", "includes" and "including" are not limiting. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose unless in writing and duly executed by the party against whom the same is asserted.

23. Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in separate counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument. Any signature (including any signature delivered by e-mail in “.pdf” format and any electronic symbol or process attached to, or associated with, this Agreement and adopted or approved by an authorized individual with the intent to sign, authenticate or accept this Agreement for and on behalf of any party hereto) to this Agreement shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based recordkeeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state law based

on the Uniform Electronic Transactions Act, and the parties hereto hereby waive any objection to the contrary.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first set forth above.

**NEW YORK CITY ENERGY
EFFICIENCY CORPORATION**

[LEGAL NAME OF COUNTERPARTY]

By: _____

By: _____

Name: [●]

Name: [●]

Title: [●]

Title: [●]

Address: 1359 Broadway, 19th Floor
New York, New York 10018
Attn: General Counsel

Address: [●]
[●]
[●]

Federal Tax ID Number: 273731338

Social Security Number (or) Federal Tax ID
Number: [●]

EXHIBIT A

SERVICES

[description of Services to be inserted here]

EXHIBIT B
FEE AND PAYMENT SCHEDULE

[Services shall only be performed pursuant to specific fully executed Task Order(s).] [Unless otherwise duly agreed to by the parties in a Task Order or other signed writing,] compensation for work performed by Consultant [under a given Task Order] will be based on the number of hours the Consultant spent performing such work *multiplied by* the Consultant's hourly rate. Consultant shall also be reimbursed for Allowable Additional Costs, if any, incurred by Consultant in performing the work and which were approved in advance by NYCEEC, however no multiplier, overhead, administrative fee or other mark up will be paid to Consultant for Allowable Additional Costs.

<u>Fee Table</u>		
	Name	Hourly Rate*
	[●]	\$(●)
* Hourly Rate is the "fully loaded" rate		

[Unless otherwise indicated in a given Task Order,] requests for payment submitted by Consultant for work [under a given Task Order] shall include the following:

- the billing period covered by the payment request
- [the Task Order number for the Task Order under which the work was performed]
- a description of the services performed by the Consultant
- the number of hours (broken-out by employee) worked by the Consultant; and
- Allowable Additional Costs incurred, if any.

All requests for payment under this Agreement should be submitted by e-mail (as an attachment in “.pdf”) format to the Consultant’s primary point of contact at NYCEEC and also to billing@nyceec.com . All such requests for payment must be submitted at least once per calendar quarter and no more often than on a monthly basis, and should provide the information required above. Upon receipt NYCEEC will review the request and will seek to advise Consultant of any objection to or dispute with the statement and the work reflected in the statement within fifteen (15) days of the date received. If there is no objection or dispute regarding the payment request, then NYCEEC will pay the amounts indicated on the payment request within thirty (30) days of the date the payment request was received. If NYCEEC disputes part of Consultant’s payment request, the undisputed part (if any) shall be paid within thirty (30) days of the date the payment request is received.

Payments to Consultant under this Agreement will be made by electronic deposit into the Consultant’s bank account through the automated clearinghouse system (“ACH”). Accordingly, at the time the Consultant signs this Agreement, the Consultant must also complete, execute and return to NYCEEC an ACH enrollment form using NYCEEC’s most recent version of the form which will be provided upon request.

The term "**Allowable Additional Costs**" means Consultant's reasonable documented out-of-pocket costs and expenses which were incurred by Consultant in performing the work, which were **approved in advance** by NYCEEC, and which may include, without limitation, travel costs, the cost of printing, special mailings (such as overnight delivery and messenger services), services-related long distance telephone charges, and any other reasonable documented out-of-pocket expenses, approved in advance by NYCEEC in writing, on a direct cost basis (with no additional provisions or overhead fee). Allowable Additional

Costs shall not include those costs considered to be overhead such as normal mailing, local telephone and facsimile charges, in-house copying, secretarial, clerical and typist time and the purchase of office or graphic supplies.

* * *

EXHIBIT C

INSURANCE SCHEDULE

Consultant shall maintain all insurance coverage necessary to perform the Services under this Agreement as required by this Agreement and New York State law.

Prior to the delivery of Services, Consultant shall provide NYCEEC with three (3) copies of certificates of insurance for the types and coverage described herein, as applicable. In addition, if requested by NYCEEC the certificates of insurance must be accompanied by the actual policy language that extends the required additional insured protection to NYCEEC.

Insurance Requirements

Required Policies and Amounts:

Workers' Compensation/ Employer's Liability / Disability Benefits:	In statutory amounts
Commercial General Liability (<i>written on ISO Form CG 00 01 or its equivalent, with no modification to the contractual liability provisions contained therein</i>):	A minimum of \$1,000,000 per occurrence, with an annual aggregate of not less than \$2,000,000 in the aggregate. The maximum deductible or self-insured retention ("SIR") for the Commercial General Liability policy shall be \$10,000, unless a higher deductible or self-insured retention is approved by NYCEEC.
Automobile Liability:	\$1,000,000 combined single limit per occurrence
[Professional Liability/Errors & Omissions Insurance:]	<p>[Professional liability ("PL") and/or errors and omissions ("E & O") insurance policies shall be written with minimum amount of \$1M per claim and \$2M in the aggregate.]</p> <p>[If the Consultant cancels its PL or E & O policy during, or lets its PL or E & O policy coverage lapse after, the policy period in which the term for services under the Consultant Contract ends, the Consultant must obtain tail coverage, or an extended reporting period endorsement, that extends coverage of the professional liability insurance for a period of at least 3 years.]</p>

NOTES:

1. The above noted policies must all include a provision that waives the carrier's right of subrogation against NYCEEC.
2. The General Liability policy must be endorsed to protect NYCEEC as an additional insured on a primary and non-contributory basis.
3. NYCEEC reserves the right to require limits of liability higher than those shown above, and agrees to the use of Umbrella/Excess Liability policies to satisfy these higher required limits. In the event an Umbrella or Excess policy is put in effect it must satisfy provisions 1 and 2 above.

Appendix A

[attached hereto]

APPENDIX A

GENERAL PROVISIONS GOVERNING CONTRACTS FOR CONSULTANTS, PROFESSIONAL, TECHNICAL, HUMAN, AND CLIENT SERVICES

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

A. “Agency Chief Contracting Officer” or “ACCO” means the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.

B. “Agreement” means the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. “City” means the City of New York.

D. “City Chief Procurement Officer” or “CCPO” means the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

E. “Commissioner” or “Agency Head” means the head of the Department or his or her duly authorized representative. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.

F. “Comptroller” means the Comptroller of the City of New York.

G. “Contractor” means the entity entering into this Agreement with the City.

H. “Days” means calendar days unless otherwise specifically noted to mean business days.

I. “Department” or “Agency” means the City agency or office through which the City has entered into this Agreement.

J. “Law” or “Laws” means the New York City Charter (“Charter”), the New York City Administrative Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

K. “Procurement Policy Board” or “PPB” means the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules that have

broad application throughout the City.

L. “PPB Rules” means the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York (“RCNY”), § 1-01 *et seq.*

M. “SBS” means the New York City Department of Small Business Services.

N. “State” means the State of New York.

(NOTE: Articles 2 and 3 intentionally omitted)

ARTICLE 4 - LABOR PROVISIONS

(NOTE: Sections 4.01 - 4.05(C) and 4.06 - 4.07 intentionally omitted)

Section 4.05 Non-Discrimination in Employment

D. E.O. 50 -- Equal Employment Opportunity

1. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) (“E.O. 50”), as revised, and the rules set forth at 66 RCNY §§ 10-01 *et seq.* No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:

- a. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status 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;
- b. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners’, partners’ or shareholders’ race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;
- c. 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, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;
- d. 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;

- e. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the SBS, Division of Labor Services ("DLS"); and
- f. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

2. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

- a. Disapproval of the Contractor; and/or
- b. Suspension or termination of the Agreement; and/or
- c. Declaring the Contractor in default; and/or
- d. In lieu of any of the foregoing sanctions, imposition of an employment program.

3. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor to be non-responsible.

4. The Contractor agrees to include the provisions of the foregoing Sections 4.05(D)(1)-(3) in every subcontract or purchase order in excess of \$100,000.00 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 DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Section 4.05(D)(4).

5. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof 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. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Section 4.05(D)(5).

6. Nothing contained in this Section 4.05(D) shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

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

Section 5.02 Retention of Records

The Contractor agrees to retain all books, records, documents, other evidence relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim, or audit. Any books, records, documents, and other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as a paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice Law and Rules ("CPLR") 4539(b), including the requirement that the reproduction is created in a manner "which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes." Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

Section 5.03 Inspection

A. At any time during the Agreement or during the record retention period set forth in Section 5.02, the City, including the Department and the Department's Office of the Inspector General, as well as City, State, and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, documents, and other evidence maintained or retained by or on behalf of the Contractor pursuant to this Article 5. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department's Office of the Inspector General, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the City. The Contractor shall make such books, records, documents, and other evidence available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed. If observation of particular services or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession's services in New York State, the Contractor shall promptly inform the Department or other entity seeking to observe such work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in

accordance with this Agreement.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section 5.03.

Section 5.04 Audit

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources, or otherwise.

B. Audits by the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.

C. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Department and by the Comptroller in the exercise of his/her powers under Law.

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section 5.04.

Section 5.05 No Removal of Records from Premises

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such items or material (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during the Agreement or after the Agreement has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

Section 5.06 Electronic Records

As used in this Appendix A, the terms "books," "records," "documents," and "other evidence" refer to electronic versions as well as hard copy versions.

Section 5.07 Investigations Clause

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City 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.

B.

1. 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, or 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, or;

2. 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;

C.

3. 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.

4. 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 E below without the City incurring any penalty or damages for delay or otherwise.

5. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:

6. The disqualification for a period not to exceed five 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

7. 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.

D. 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 (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

1. 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.

2. 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.

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

4. 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 Paragraph D 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 Paragraph(C)(1) 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.

E. Definitions

1. The term "license" or "permit" as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

2. The term "person" as used in this Section 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.

3. The term "entity" as used in this Section 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.

4. The term "member" as used in this Section shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

F. 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 the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be

related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

Section 5.08 Confidentiality

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The obligation under this Section 5.08 to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise (“disclosure demand”), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner, in writing or by e-mail, that it received a disclosure demand for to disclose such reports, information or data and (2) if requested by the Department, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the Department the disclosure demand for such reports, information or data.

B. The Contractor shall provide notice to the Department within three days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City’s discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least 24 hours prior to any statement to the press or at least five business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section 5.08 shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

(NOTE: Articles 6 - 14 intentionally omitted)