

## **Wildlife Conservation Society**

### **REQUEST FOR PROPOSALS**

**Construction Management Services  
Prospect Park Zoo – Baboon Holding and Exhibit Renovation  
December 11th, 2025**

**PROPOSAL DEADLINE: February 6<sup>th</sup>, 2026**  
**PROPOSALS DELIVERED TO: Wildlife Conservation Society**  
Email: [bids@wcs.org](mailto:bids@wcs.org), [chung@wcs.org](mailto:chung@wcs.org), & [ilabutov@wcs.org](mailto:ilabutov@wcs.org)

#### **INVITATION**

The Wildlife Conservation Society (WCS) is seeking the services of qualified entities to provide construction management services for the renovation of Prospect Park Zoo’s baboon exhibit and night quarters. This Request for Proposals (RFP) provides detailed information as to the project requirements and the desired qualifications of proposers, project elements, a site plan, existing photographs of the site, drawings, and a scope of work.

#### **BACKGROUND AND OBJECTIVES OF THE PROJECT**

WCS is a not-for-profit organization dedicated to saving wildlife and wildlands through science, international conservation, education, and managing the world's largest system of urban wildlife parks. The Prospect Park Zoo is a 12-acre facility located at 450 Flatbush Ave., on the eastern side of Prospect Park, Brooklyn. It is home to more than 90 species of animals in three main indoor and outdoor exhibit areas: Discovery Trail, Animal Lifestyles, and the Hall of Animals.

The baboon exhibit is located in the Animal Lifestyles exhibit (also known as building D) and is one of the zoo’s most popular exhibits. The project includes renovation of the off-exhibit night quarters and restoration of portions of the exhibit and public viewing area. The off-exhibit night quarters area is 1,000 SF. The renovation scope includes plumbing, HVAC, flooring, caging, animal transfer gates and doors. The outdoor exhibit area is 5,000 SF. The project scope includes renovation of the viewing area window frames, replacing glass, and repairing heated artificial rocks. The project also includes an Alternate to provide the renovation of an existing off-exhibit temporary holding facility where the baboons will reside during the renovation of their exhibit and night quarters spaces.

Project scope details are included in Appendix A, attached and made a part hereof.

The project is being funded by the City of New York (City) through the Department of Parks and Recreation (DPR) and is subject to certain City requirements and WCS policies as indicated below and in Appendices A “Project Description” and B “Insurance, Contract, and Regulatory

Requirements.” Both WCS and the City are exempt from sales tax in certain states, including New York, and may be exempt in certain foreign jurisdictions.

**PROPOSAL ADMINISTRATION**

All requests for clarification and questions concerning this RFP must be submitted in writing no later than seven (7) days prior to submission deadline via email to [ilabutov@wcs.org](mailto:ilabutov@wcs.org) (Igor Labutov, WCS Director of City Zoos Operations and Maintenance) and [achung@wcs.org](mailto:achung@wcs.org) (Abby Chung, WCS City Zoos Capital Projects Manager) with an electronic cc to [bids@wcs.org](mailto:bids@wcs.org). Indicate “PPZ Baboon Exhibit CM RFP” on the subject line. Responses, if determined appropriate by WCS, will be issued in writing to all known proposers.

If a Proposer identifies either (i) an additional element not included in this RFP, which in its judgment, would be essential to accomplish the intended objectives as articulated in this RFP, or (ii) a task within the RFP that it believes could be modified or deleted without impacting the objectives of the RFP, the Proposer should raise the issue in a Request for Information (RFI). Responses to RFIs, including any resulting scope modifications, will be issued to all known proposers.

All proposals shall be submitted as an attached digital file to the submission email including attachments, exhibits or appendices. Emails shall be submitted to [ilabutov@wcs.org](mailto:ilabutov@wcs.org) (Igor Labutov, WCS Operations and Maintenance) and [achung@wcs.org](mailto:achung@wcs.org) (Abby Chung, WCS City Zoos Capital Projects Manager), and [bids@wcs.org](mailto:bids@wcs.org). Indicate “PPZ Baboon Exhibit CM RFP” on the subject line.

An interview may be requested of any proposer, and key staff should be present at the interview. Such a request for an interview does not constitute a contract award.

Proposals must be received no later than **2:00 PM EST, February 6<sup>th</sup>, 2026**

**KEY DATES**

Mandatory Pre-Proposal Site Visit/Meeting	January 7 <sup>th</sup> , 2026 at 11am
Last day to submit RFI questions	January 23 <sup>rd</sup> , 2026
Proposals Due	February 6 <sup>th</sup> , 2026 at 2pm
Possible Interviews of Proposers	February 23 <sup>rd</sup> – 27 <sup>th</sup> , 2026
Notice of Selection	March 18 <sup>th</sup> , 2026
Notice of Award	7 days after the project work order is registered by the City

The City vendor approval and project registration processes may result in a 6-9 month lag between notice of selection and notice of award. Registration of the work order is the point at which City funds are available for the project. Any activity undertaken prior to that point, such as solicitation of subcontractors, would be at the vendor’s sole risk.

## SCOPE OF WORK AND DESIRED QUALIFICATIONS

### GENERAL REQUIREMENTS

The selected proposer will be expected to do the following:

- Comply with all laws, rules and regulations governing City construction projects, including but not limited to:
  - W/MBE, EEO, and nondiscrimination requirements;
  - Payment of prevailing wages pursuant to New York State Labor Law §220;
  - Submission of payment and performance bonds for a contract over \$1 million held by the contractor or any subcontractor.
  - Competitive selection of subcontractors and subconsultants in accordance with the City Procurement Policy Board Rules;
  - Registration of the contractor and at least first-tier subcontractors through the City's PASSport system;<sup>1</sup>
  - If the contract or any subcontract exceeds \$100,000, the filing of an employment report with and obtaining approval from the City's Division of Labor Services;
  - Adherence to City Environmentally Preferable Purchasing (EPP) Minimum Standards for Construction Products, as applicable.
- Maintain insurance for itself and all subcontractors, in the types and amounts set forth in Appendix B, Insurance, Contract and Regulatory Requirements, attached and made a part hereof;
- Comply with the WCS Contract Terms and Conditions, the WCS Rules and Regulations for Contractors and the NYC Agreement Terms and Conditions set forth in Appendix B; any site specific regulations of WCS or DPR; and any directive of WCS or DPR related to site or facility conditions;
- Hold all subcontracts, take full responsibility for subcontractors' performance, and indemnify WCS from disputes and claims by subcontractors;
- Make any necessary filings to facilitate approvals and permits for construction;
- Assemble and submit to WCS all documents required for contractor and first tier subcontractor approval by DPR, including all PASSport documentation;
- Prepare applications for payment in accordance with the guidelines for the City. All necessary backup and detail must be included in all requisition packages;
- Provide a complete set of signed and sealed contract drawings for filing with the City Department of Buildings (DOB) where necessary;
- Provide all pertinent and required City DOB applications to close out, if applicable;
- Upon approval by WCS, retain and manage

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<sup>1</sup> Prospective proposers are encouraged to register in PASSport at their earliest opportunity so as to expedite the City's approval process.

- an architectural/engineering firm when required for any architectural, structural, HVAC, and electrical services required for the project;
- any specialty sub-contractor(s), *e.g.*, code contractor/expeditor;
- Provide, if needed asbestos survey, special testing services, City DOB, and other City agency filing and signing off services as required;
- Provide reimbursable services estimate.;
- Provide project schedule.

#### **SPECIFIC CONSTRUCTION MANAGER (CM) REQUIREMENTS**

The CM will have overall responsibility for managing, supervising, and coordinating all aspects of design/engineering and construction, including but not limited to the following:

- Create bid documents and materials specifications for the construction/engineering firms and submit them to WCS for approval;
- Assist WCS in answering bidders' Requests for Information (RFI's);
- Review bids, references, and qualifications of the bidders;
- Award subcontracts pursuant to the City Procurement Policy Board Rules with the approval of WCS;
- Coordinate all phases of the Project with subcontractors and WCS;
- Facilitate pre-construction project meetings with WCS and relevant subcontractors;
- Provide on-site supervision. A CM superintendent must be present anytime a contractor is working on-site. Foremen or other employees of a contractor cannot substitute for a CM employee in this regard. The superintendent must also be present to receive all related truck deliveries. Equipment needed for off-loading deliveries is the responsibility of the CM/Contractor;
- Maintain daily contractor sign-in/sign-out sheets and daily activity reports and provide copies to WCS;
- Provide certified site safety personnel responsible for general site safety and comply with all government safety regulations;
- Hold bi-weekly Owner meetings with WCS and subcontractors' coordination meetings;
- Participate in WCS meetings on site, including when requested to review additional scope or additional code-related upgrades not already part of the scope of work;
- Maintain site security, cleanliness, and control of dust during construction;
- Assemble and submit to WCS all documents required for contractor approval by the City, including documents required for subcontractor approval, insurance, etc.;
- Compile maintenance manuals, warranties, and as-built drawings. In addition to hard copies, all documents should be delivered to WCS in PDF format;
- Closeout subcontractor contracts subject to the proper submission of documents; Closeout should include "As Built" documentation in accordance to DPR and WCS requirements;

- Close out all pertinent DOB applications prior to final payment.

## **PROPOSAL CONTENT**

Proposals should be clear and concise and should address in detail and with appropriate documentation each of the items listed below. Proposals that fail to do so may be disqualified as non-compliant. WCS may request clarification of any proposal during the evaluation process, but it is not bound to do so, and proposers should not assume they will have any further opportunity to clarify their proposals after the proposal due date.

### **A. Technical Qualifications**

#### **1. Contact Information**

On a single cover sheet, please provide:

1. The proposer's name.
2. The proposer's contact person.
3. Contact information for the principal(s) or lead individual(s) who are anticipated to work on the project, including e-mail addresses, main telephone, fax and mobile telephone numbers.
4. Street address and web address of proposer.
5. Year proposer was established.
6. Size of proposer.
7. List of proposed staff assigned to this project.
8. Signature of principal and date of the signature.

#### **2. Project Approach**

Provide a summary of the proposer's understanding of the objectives of this RFP and a description of the methods to be used to achieve those objectives, including technical quality assurance, and general management practices for comparable projects.

Specifically include the following:

- Additional Services (identification list)
- Exclusions (if any)
- Assumptions and Clarifications

#### **3. Qualifications**

Provide detailed information that demonstrates the following:

- experience of providing pre-construction and construction management services;
- proficiency with projects of comparable size and complexity;
- expertise of key staff in relevant professional disciplines;
- financial capacity as indicated by a sound credit history.

#### **4. Staffing Plan**

List the principals and key employees who will carry out the work, including their experience with same, identifying the proposed project manager and staff members and including a resume of each key member of the project team, indicating that member's role in the project and relevant experience. After award of the contract, substitutions of personnel will require the prior written consent of WCS.

#### **5. Timetable/Schedule**

Produce a draft schedule for both pre-construction and construction phases that outlines critical milestones for the work.

#### **6. References**

Provide examples of up to five (5) projects of similar size and scope, recently completed or in progress, with the following information for each:

- Client
- Description of the work
- Nature of the work
- Size and complexity of the project
- Construction value of the project
- Name of a contact person who can be contacted for a reference or site visit.

#### **7. Solicitation Acknowledgement in the form attached as Appendix C.**

**B. Fee Proposal**

Respondents must propose a lump-sum fee for executing the Project in its entirety, including overhead, profit, staff time, mobilization, material handling, and travel expenses.

The fee proposal shall be broken out according to the following major categories:

Phase 1: Temporary Holding Renovation – Preconstruction Services (Architectural/Engineering Services, Construction Documentation, etc.) \$ \_\_\_\_\_

(Provide cost detail by firm. Add lines as necessary.)

**Phase 1: Subtotal Temporary Holding Preconstruction Services** \$ \_\_\_\_\_

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Phase 1: Temporary Holding Renovation – Construction Services \$ \_\_\_\_\_

(Provide construction cost details by CSI Division, details of CM fees, and other costs. Add lines as necessary.)

Reimbursable Expenses \$ \_\_\_\_\_

**Phase 1: Subtotal for Temporary Holding Construction Services** \$ \_\_\_\_\_

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Phase 2: Exhibit & Night Quarters Renovation – Preconstruction Services (Architectural/Engineering Services Construction Documentation, etc.) \$ \_\_\_\_\_

(Provide cost detail by firm. Add lines as necessary.)

**Phase 2: Subtotal for Exhibit & Night Quarters Renovation Preconstruction Services** \$ \_\_\_\_\_

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Phase 2: Exhibit & Night Quarters Renovation – Construction Services: \$ \_\_\_\_\_

(Provide construction cost details by CSI Division, details of CM fees, and other costs. Add lines as necessary.)

Reimbursable Expenses \$ \_\_\_\_\_

**Phase 2: Subtotal for Exhibit & Night Quarters Renovation Construction Services** \$ \_\_\_\_\_

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**TOTAL PROJECT COST** \$ \_\_\_\_\_

**Add Alternates**

**Phase 1 – Add Alternate #1: New Outdoor Temporary Holding Space**     \$ \_\_\_\_\_

(Provide cost detail by CSI Division. Add lines as necessary.)

**Additional Required Fees**

Code Consulting / Expediting Services     \$ \_\_\_\_\_

Asbestos Abatement Survey     \$ \_\_\_\_\_

Controlled Inspection Agency work     \$ \_\_\_\_\_

(Provide cost details. Add lines as necessary)

Fee proposals shall also include the following:

- Any conditions or provisions related to changes in the Scope of Work and exclusions.
- Hourly and per diem rates for additional work of similar nature that are not currently included in this RFP for each of the team members.
- Any other anticipated fees not included above.

## GENERAL CONDITIONS OF PROPOSAL SUBMISSIONS

The following general conditions apply to all proposals submitted in response to any RFP issued by WCS.

- Non-Binding: The solicitation of proposals does not commit WCS to award a contract, and this RFP is not an offer to enter into a contract for the services described herein.
- Proposal Materials and Costs: WCS is not liable for any costs incurred in the preparation, submission or negotiation of a response to its RFP or incurred for any other purpose in connection with the RFP. No materials submitted with this RFP will be returned.
- Confidentiality: All information and material contained in any WCS RFP or issued by WCS or any of its agents as part of any WCS RFP process is confidential and is the exclusive property of WCS.
- Modifications: As a condition of award, WCS may request any proposer to make revisions, additions, or deletions to its proposal.
- Subcontractors: After award of contract, WCS will have no obligation, financial or otherwise, to any subcontractor of the awardee. Nevertheless, any subcontract will be required to be subject to and consistent with the prime contract between WCS and the awardee, and WCS may require any subcontract to include specific terms and conditions.
- Reserved Rights: WCS at any time in its sole discretion may, without notice and without liability to any proposer or any other party, do any and all of the following:
  - o Amend or withdraw this RFP;
  - o Accept or reject any and all proposals received in response to this RFP;
  - o Award the contract to a proposer other than the one offering the lowest fee;
  - o Request additional materials and clarification or modification of any submitted proposal;
  - o Extend the time for submission of all proposals after notification to all prospective proposers;
  - o Terminate negotiations with a selected proposer and select another proposer;
  - o Take such action as WCS deems appropriate if negotiations fail to result in a signed agreement within a reasonable amount of time;
  - o Terminate or modify the solicitation and selection process at any time and re-issue the solicitation to whomever WCS deems appropriate.

## **INSURANCE REQUIREMENTS**

The types and amounts of insurance required of the awardee are set forth in Appendix B, Insurance, Contract and Regulatory Requirements, attached hereto and made a part hereof.

## **CONTRACT TERMS**

The selected proposer will be expected to enter into a contract with WCS reflecting its proposal, this RFP, including any written questions and answers, the requirements for performance of this project, the insurance requirements and the WCS and City terms and conditions set forth in Appendix B.

## **CRITERIA FOR SELECTION**

### Selection Process:

- WCS will review and evaluate all proposals to determine each proposer's Technical Rating. This evaluation may include a request by WCS to interview proposers and visit their offices for purposes of clarifying their proposals.
- The proposer with the best combination of Technical Qualifications and Fee Proposal will be selected for the award. WCS may reject any and all proposals if, in its sole opinion, no proposal satisfies its criteria.

### Technical Evaluation Criteria:

The Technical Proposal evaluation criteria and weight will be as follows:

- Proposer's professional services capability (20%)
- Project related experience of the proposed staff (20%)
- Experience working with City contracts and agencies (20%)
- Proposed methodology for executing the scope of work (20%)
- Staffing plan and projected workload (15%)
- Client references (5%)

## **APPENDIX A PROJECT DESCRIPTION**

This project has two phases: renovation of the temporary holding facility where the baboons will live while construction is done on their exhibit and holding, and the renovation of the baboon exhibit and night quarters spaces. In order to begin construction on Phase 2 of the project, Phase 1 must be completed and the animals moved into the temporary facility. Contractor should plan accordingly based on this sequencing when putting together this proposal.

Drawings, existing condition photos, and other documents can be accessed here:

[https://drive.google.com/drive/folders/1hCA1hsGP\\_RY25DzlmK0uWHqTE7abXTIK?usp=sharing](https://drive.google.com/drive/folders/1hCA1hsGP_RY25DzlmK0uWHqTE7abXTIK?usp=sharing)

### **Phase 1: Temporary Holding Renovation**

Reference Drawing: Proposed Temporary Baboon Holding Renovation Plan 10-30-2025-combined

#### **Demolition**

1. Cut, remove, and dump existing chain-link mesh ceiling and existing mesh wire ties from all poles and crossbars in (5) existing cages.
2. Cut, remove, and dump (4) existing shift doors.

#### **Fences & Gates**

1. Furnish and install new 1" chain-link mesh ceiling panels in (5) existing cages.
2. Furnish and install new tension to all existing vertical and horizontal poles and cross bars to replace wire ties in (5) existing cages.
3. Furnish and install (4) new aluminum manual pull shift doors with tracks and all assemblies and locking devices. Based on LGL Animal Care Products door sketch.

### **Phase 1 – Add Alternate #1: Construction of New Outdoor Temporary Holding Space**

Reference Drawing\*: Proposed Temporary Baboon Holding Renovation Plan 10-30-2025-combined

\*Retain structural engineer to verify provided drawings and modify as needed.

#### **Demolition**

1. In existing cage AC-12, saw-cut existing concrete slab for 5'-0" long by 12" deep from existing floor drain for new floor drain connection in outdoor holding area.
2. Saw-cut existing retaining wall for new roof flashing.

#### **Excavation**

1. Dig, remove, and dump existing soil for new outdoor holding foundation.
2. Furnish and install 6" deep new  $\frac{3}{4}$ " blue stone base and compact it to 95% of compaction for new outdoor holding foundation footing.

### **Concrete**

1. Furnish and install formwork for new concrete footing.
2. Furnish and install concrete reinforcing for new concrete foundation.
3. Furnish and install 4000psi concrete for new outdoor holding foundation.

### **Fences & Gates**

1. Furnish and install new perimeter fencing for outdoor holding space.
2. Furnish and install new shift door between AC-12 and outdoor holding space.
3. Furnish and install new secondary containment vestibule with keeper doors.

### **Roof**

1. Furnish and install new pressure treated purlin battens onto new 2” dia. roof joist poles.
2. Furnish and install new dynaglas clear corrugated roofing polycarbonate panels.
3. Furnish and install new aluminum flashing into new saw-cut of existing retaining wall and caulk top of flashing and retaining concrete wall.

### **Plumbing**

1. Furnish and install new 8” dia. cast metal floor drain in center of floor flush with top of concrete pitched floor with all new 4” piping and all tees and elbows connecting to existing drain pipework in existing indoor case AC-12.

## **Phase 2: Exhibit and Night Quarters Renovation**

Reference Drawing: PPZ Baboon Exhibit and Holding Renovation - WCS Drawings

### **Holding – General**

1. Clean up rusty metal angles by the ceiling in cages.
2. Fill holes in the walls.
3. Replace lintels above the windows.
4. Paint the entire holding area.
5. Replace Sunalite shelves in holding rooms using 1" polypropylene.
6. Replace water pipe insulation.
7. Demolish the CMU wall in front of holding room #2.
8. Relocate scale from holding room #1 to the chute.
9. Relocate the Micro-Quat system to the wall across the hallway.
10. Relocate water line for animal drinkers. Run it from the top.
11. Cut the wall and install a 3' x 3' x 1" laminated glass window between holding #3 and the keeper vestibule.
12. Fix the water leak above the door leading to the Exhibit.
13. Remove FRP panels from the wall in the chute area. Repair the wall as necessary.

### **Holding – Electrical**

1. Replace existing lighting in the hallway, holding rooms, chute area, and keeper work area/above keeper desk with LED. Choose vandal-resistant light fixtures in the holding rooms.

2. Replace rusty electrical conduits.
3. Relocate the electrical conduit at the bottom of the cage face in front of the holding room #1.

#### **Holding – HVAC**

1. Engage licensed NYS HVAC engineer to design a new system to serve 11,000 CF (VIF) holding with the proper amount of air circulation. Use a preliminary study done by Honeywell as a guide. Provide shop drawings for WCS approval.
2. Demolish existing HVAC ductwork.
3. Furnish and install the new HVAC system.
4. Integrate the new HVAC system into the existing BMS.
5. Modify exhaust system: Install new roof fan and exhaust duct.
6. Provide as-built drawings.
7. All expediting, permit, DOB filing, registration, and sign-off should be a part of the scope.

#### **Holding – Floor**

1. Provide shop drawings for floor slope/drainage.
2. Submit manufacturer's material specifications for coating system and other materials proposed for use on the Project.
3. Provide samples of selected color and texture for WCS approval.
4. Remove curbs inside and in front of the cages.
5. Eliminate drains and cleanouts in holding rooms #1 & #2.
6. Install a 6" W x 25' L trench drain in front of holding rooms #1 & #2 in the keeper area with a trap and proper cleanout.
7. Provide a new floor drain and clean out in the keeper's vestibule area.
8. Install seamless epoxy-based flooring and curb material or other material approved by WCS (STONHARD is preferred). Slope finished surface 3/8" to 1/4" per foot to provide positive drainage to appropriate floor or trench drains.
9. Adjust the top elevation of existing floor drains scheduled to remain in order to achieve the desired drainage with installed new flooring.
10. Flooring vendor must provide a 5-year warranty.

#### **Holding – Caging, Shift Doors, & Feeders**

1. Meet with PPZ animal and operations staff to discuss replacement/design of the animal shift doors, caging, and feeders.
2. Modify or replace guillotine doors and closing mechanisms.
3. Use Denver Zoo primate holding drawings as a guide. (Drawings and pictures are provided as a reference to the Baboon project design)
4. Engage a subcontractor who has experience with design/fabrication/installation of specialty zoo caging and animal shift doors of the types needed for this project. Recommended providers are listed in Appendix A1.
5. Allow several meetings with WCS staff to finalize the design.
6. Based on the outcome of the meetings, provide detailed shop drawings for WCS

review and approval.

7. Replace cage fronts in each holding room. There should be (1) swing keeper door to each holding room.
8. Provide animal feeders on the front cage fence for each of the three holdings (Pictures of feeder design are provided).
9. Furnish the new shipping crate and squeeze cage (Pictures of the crate and cage are provided. WCS must approve shop drawings).
10. Provide a gate to transfer the animals from the shipping crate.
11. Provide a gate to transfer the animals from the squeeze cage.
12. Create an ante area and secondary mesh door to Exhibit.
13. Replace all animal chute cages in kind. Keep the height of the cages consistent.
14. Provide as-built drawings.

#### **Holding – FRP Doors**

1. Demolish and discard doors #25, #26, & #27 according to provided drawing.
2. Replace doors #25 & #27 with new FRP doors.
  - Provide a 8" x 24" wire mesh glass view window in door #27.
  - Provide a 12" x 24" opening with 2" x 2" galvanized mesh in door #25.
3. Replace door #26 with a new wire mesh door.

#### **Exhibit – Glass**

1. Retain A/E firm to provide stamped shop drawings.
2. Remove existing laminated glass.
3. Replace existing structural steel framing
4. Furnish and install new 1 " clear laminated glass for a total of 500 sq. ft. (VIF)
5. Furnish and install vandal-resistant clear film on the new glass panels from the exhibit side.
6. Replace the glass stops and corner covers on the exhibit side.
7. Furnish and install new steel paint primer and two coats of finish paint on the structural steel framing.

#### **Exhibit – Hot Rocks**

1. Saw cut and remove existing artificial rock work over existing heating pads in three locations.
2. Furnish and install three new heating pads.
3. Install new thermostats if needed.
4. Furnish and install the new matching concrete texture and color over newly installed electrical pads (Engage professional services for artificial rock work covering the pads. Recommended vendors are listed in Appendix A1).

**Exhibit – Hot Wire**

1. Replace an entire run of the hot wire around the perimeter of the exhibit.
2. Replace fiberglass rods where necessary.

**APPENDIX A1  
LIST OF RECOMMENDED FIRMS**

**Artificial rockwork and heated rockwork**

Animal Exhibit & Design, Bay Head, NJ

Cemrock, Tucson, AZ

COST of Wisconsin, Jackson, WI

Edge Concrete Construction, Lynnwood, WA

Nassal, Orlando, FL

**Flooring**

Stonhard

**Animal caging and animal shift door design, fabrication, and installation**

A Thru Z Consulting, Tucson, AZ

LGL Animal Care Products, College Station, TX (doors)

Thermeq, Waterville, OH

**HVAC system integration with the existing BMS**

Honeywell: Contact person: Cara Marino ([cara.marino@honeywell.com](mailto:cara.marino@honeywell.com) Ph.#516.302.9415)

**FRP Doors**

C&M Door Controls

**APPENDIX B**  
**CONTRACT, INSURANCE AND REGULATORY REQUIREMENTS**

CONTRACTOR AGREEMENT

CONTRACTOR AGREEMENT (this "Agreement"), dated [insert], by and between Wildlife Conservation Society, the "Owner"), and [insert](the "Contractor"). Owner and Contractor are also named below as "Party" or "Parties" as the case may be,

WITNESSETH:

WHEREAS, Owner and the Contractor desire that the Contractor assist in the work more fully described in Exhibit A.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

THE CONSTRUCTION TEAM AND OWNER  
REPRESENTATIVE

1.1. The Contractor and Owner (hereinafter, collectively, called the "Construction Team") shall work together from the start of the Project through construction completion as more fully defined herein.

1.2. From time to time, Owner may designate in writing a representative or representatives (in each case, "Owner Representative") who shall have full power and authority to administer this Agreement on behalf of Owner, including, without limitation, the granting or withholding of consents and/or approvals hereunder; the giving of instructions and directions regarding the Contractor services hereunder; and the giving of notices and communications required or desired to be given by Owner hereunder.

1.3. The Project is being funded by the City of New York ("City") under an agreement between the City and Owner (the "NYC Agreement"). The NYC Agreement requires that this Agreement between Contractor and Owner contain certain terms and conditions applicable to Contractor. Such terms and conditions are attached to this Agreement as Exhibit [insert] and made a part hereof. Contractor hereby represents and warrants that it and any subcontractors have, and will continue to have during the Term of this Agreement, a current valid PASSport certification with the City and, if required, have received the approval of the City's Division of Labor. Contractor understands that maintaining the truth of the preceding sentence for the Term of this Agreement is a condition precedent to receiving payment from Owner. In the event of any misrepresentation or failure to disclose pertinent information by Contractor or any subcontractor on its PASSport certification or on any other forms required by the City, Owner shall have the right to withhold payment and/or terminate this Agreement.

1.4. Rules and Regulations for Contractor are annexed hereto as Exhibit [insert] and made

a part hereof.

## ARTICLE II

### SCOPE OF THE WORK/CONTRACTOR DUTIES

2.1. The Contractor shall act pursuant to and in accordance with the terms, covenants and provisions hereof and shall cause to be performed and provided, through subcontractors (as hereinafter defined) or its own workforces all labor, materials, equipment, tools and services required to produce and achieve the complete construction of the Project in accordance with the terms of the Contract Documents (as hereinafter defined) and any and all work reasonably inferable therefrom {the "Work"}.

2.2. "Contract Documents" consist of (a) this Agreement, and all Exhibits and Appendixes hereto, (b) the plans, drawings and specifications set forth in Exhibit B (List of Drawings), which drawings will be developed into Construction Documents by the Contractor's design consultant (as the same may be amended, modified or supplemented, the "Drawings and Specifications") and all other Schedules and Exhibits contained herein.

2.3. The Contractor warrants that all of the Work will be performed in a good first-class quality and workmanship, free from faults and defects and otherwise in accordance with the Contract Documents; and that materials installed into the Project shall be new and in current production unless otherwise specified in the Contract Documents.

2.4. The Contractor accepts the relationship of trust and confidence established between it and Owner by this Agreement. The Contractor shall furnish its best efforts and best skill and judgment and shall cooperate with all members of the Construction Team in furthering the interests of Owner and in achieving first-class quality of construction. The Contractor shall furnish efficient business administration, manpower, coordination and management, and shall use its best efforts and best skill and judgment to cause the Work to be performed in the most expeditious manner consistent with the interests of Owner and in conformance with the intent of the Contract Documents. The Contractor shall cooperate with the Architect and Owner and their respective consultants, engineers and representatives in furthering the interests of Owner and the Project.

2.5.1 Coordination of Activities. To the extent directed by Owner, the Contractor shall use its best efforts to cooperate with and coordinate its activities with the activities of any occupants of the Project Site.

2.5.2 The Contractor shall perform value engineering, so that Owner objectives are met, consistent with the standards established by Owner for the Project.

2.5.3 Permits and Approvals. The Contractor shall use its best efforts to identify all construction-related filings, inspections approvals certifications, or sign-off required for commencement, continuation and completion of construction and occupancy of the Project.

2.5.4 Regulatory Submissions and Governmental Hearings. The Contractor shall attend all governmental or quasigovernmental hearings, if requested by Owner. The Contractor shall also attend, at Owner request, all hearings in connection with violations relating to the construction of the Work issued by any governmental agency.

2.5.5 Procurement Analysis. The Contractor shall report on the availability of materials and equipment specified for the Project and provide advice regarding long lead delivery items. The Contractor shall provide a procurement plan and coordinate the delivery and storage of purchases.

2.5.6 Project Schedule. Upon preparation by Contractor and approved in writing by Owner, the Project Schedule will be annexed hereto as Exhibit D for the Project indicating the major trades, critical paths, tasks, durations and milestone dates associated with all aspects of the Project development (the "Project Schedule"). The Contractor shall update the Project Schedule on a monthly basis, or as otherwise requested by Owner, which update shall include a narrative report to Owner of any anticipated delay in achieving any task or milestone contained therein, together with an explanation by the Contractor of the reason or reasons for such expected delay and the Contractor recommendations *for* minimizing the effect of such delay on the overall Project Schedule.

2.5.7 Project Meetings. The Contractor shall attend all Project meetings and other meetings related to the Project design and approval. The Contractor shall attend meetings relating to the Project. The Contractor shall, after construction commences, prepare minutes of all meetings that the Contractor attends and, after Owner approval of a draft of such minutes, which shall be furnished to Owner within three (3) business days of such meeting, circulate the same to all parties in attendance and such other parties as Owner may designate. Unless otherwise agreed, Project meetings shall be on a weekly basis and shall be held at the Project Site, or such other location as Owner shall designate.

2.5.8 Safety Recommendations. The Contractor shall solely be responsible for establishing safety and security programs during construction and shall be responsible for implementing and maintaining these programs during construction in compliance with all laws, rules and regulations of all governmental agencies having jurisdiction over the Project and the requirements of any insurance carrier.

2.5.9 Documents Coordination. In consultation with Owner and the Architect, the Contractor shall assist in coordinating the Contract Documents and advise on separation

of contracts for the various categories and disciplines of Work.

2.5.10 Subcontractor Selections. The Contractor shall insure that the work of separate Subcontractors is coordinated and the likelihood of jurisdictional and labor disputes are minimized. Contractor will be responsible for labor harmony and the resolving all jurisdictional and/or labor disputes resulting from the performance of the Work.

2.5.11 Labor Review/Equal Employment Opportunities. The Contractor shall review the availability of all appropriate categories of labor for all phases of the Project and make recommendations for actions designed to minimize adverse effects of labor shortages. The Contractor shall comply with all applicable requirements for equal employment opportunity programs for inclusion in all Subcontracts.

2.5. During the phase of the Project during which construction of the Project is being carried out (the "Construction Phase"), which shall be deemed to commence with the delivery of a notice to proceed from Owner, the Contractor shall provide the following services, as part of the Work.

2.5.1 The Contractor shall obtain and prepare all necessary documentation to assist Owner in obtaining reimbursement from the City and submit to Owner each month an application for payment, together with appropriate waivers, affidavits and waivers of mechanic liens and all documents required by Owner or the City. Contractor has acknowledged that they will provide the following documents based upon contract:

- a. Contractor and its Subcontractors will provide a conditional lien release included with each progress billing. The fully executed conditional lien release will be provided and attached to the monthly requisition.
- b. Contractor and its Subcontractors will provide an unconditional lien release for each submitted progress invoice within 30 days after receiving payment. A hard copy of the fully executed unconditional lien release will be sent via FEDEX for delivery next business morning or delivered by messenger.
- c. Contractor and their subcontractors will provide an unconditional final lien release within 30 days after receiving final payment. A hard copy of the fully executed unconditional lien release will be sent via FEDEX for delivery next business morning or delivered by messenger.
- d. The monthly requisition schedule is as follows:

- a. Pencil copy of the monthly requisition will be submitted to Owner's designated representative no later than the 20<sup>th</sup> of the month projected through the end of the month.
- b. The final version of the monthly requisition will be submitted to Owner's designated representative no later than the 27<sup>th</sup> of the month.

2.5.2 The Contractor shall supervise the performance of the Work by the Subcontractors and coordinate and schedule the Work of all Subcontractors on the Project with the activities of the Owner, Owner separate contractors, if any, and take all necessary and appropriate steps to cause such Subcontractors to complete their respective portions of the Work in strict accordance with the Contract Documents and all legal requirements.

2.5.3 The Contractor shall review the Work performed by Subcontractors to determine whether the Work is being performed in accordance with the requirements of the Contract Documents and generally to guard Owner against defects and deficiencies in the Work and advise Owner of any such discovered deficiencies. If, during the progress of the Work, the Contractor's supervisory personnel discover Work being performed contrary to the Contract Documents, violates the Building Code or deviates from sound construction practices and procedures, the Contractor shall reject such Work and promptly notify the Architect and Owner of such, and make recommendations to Owner regarding possible methods of correcting such defective Work. The Contractor shall require any Subcontractor to stop Work or any portion thereof and require special inspection or testing of any Work determined by Owner not to be in accordance with the Contract Documents, whether or not such Work has been fabricated, installed or completed. If, at any time before the completion of all inspections, approvals and Owner acceptance of the Work, the Contractor (or Owner) has reasonable cause to believe that any Work is not in accordance with the Contract Documents, the Contractor shall so advise Owner and Owner may direct the Contractor to remove or uncover any portion of the completed Work for examination. If such Work is not in conformance with the Contract Documents, the cost of such removal or uncovering corrective work and subsequent restoration work shall be borne by the Contractor.

2.5.4 The Contractor shall perform its Work in accordance with the AIA A201 2017 General Conditions for the Contract for Construction as amended, attached hereto as Exhibit E hereof (the "A201 General Conditions") which is hereby incorporated by reference. In the event of any conflict, ambiguity and/or inconsistency between this Agreement and the A201 General Conditions, the terms and conditions of this Agreement shall govern and control.

2.5.5 The Contractor shall arrange for expediting procurement of long-lead materials, equipment and supplies required in connection with the Work and advise Owner with respect to potential delays in their purchase and delivery.

2.5.6 The Contractor shall prepare and deliver to Owner on a monthly basis, an anticipated cost report of construction costs for the Project, showing past, present and anticipated future expenditures required to complete the Project, which report shall be reconciled with the then current approved Project Budget. The form of the Anticipated Cost Report shall be as set forth in Exhibit F.

2.5.7 The Contractor shall schedule and conduct weekly job meetings with Owner and relevant trades when necessary, coordinate meetings with appropriate parties as necessary and prepare and furnish to all attendees minutes of such meetings after Owner's written approval of a draft of the same, which draft shall be furnished to Owner within three (3) business days of such meeting.

2.5.8 The Contractor shall identify and perform or, if such performance is prohibited by law, cause others to perform, such tests as shall be necessary and appropriate, including, without limitation, controlled inspections.

2.5.9 The Contractor shall obtain or assist Owner in obtaining all necessary licenses, access agreements to adjacent properties and permits relating to the performance of the construction of the Project, any required building permit, and temporary and permanent certificates of occupancy. If, however, under applicable law or practice, such licenses, permits and/or certificates must be or are normally obtained by Owner, or trade contractors, then in such event, the Contractor shall obtain all documents required to be filed or submitted to governmental authorities and shall cooperate with Owner or the appropriate trade contractor in obtaining such licenses, permits and certificates of occupancy and coordinating building department and other necessary inspections. The Contractor shall also collect from all Subcontractors all required permits, approvals and/or sign-offs that have been obtained.

2.5.10 The Contractor shall recommend, institute and coordinate safety and security precautions and procedures which are to be maintained and supervised by the Contractor, in full compliance with the Contract Documents and all laws, rules, regulations and requirements of all governmental and quasi- governmental agencies having jurisdiction over the Project, as well as with all requirements of all insurance carriers involved in the Project.

2.5.11 The Contractor shall assist and cooperate with Owner in any legal actions or proceedings that may arise out of or relate to the Work, including appearances, as reasonably necessary.

2.5.12 The Contractor shall, during the term of this Agreement, monitor the performance by Subcontractors of correction of defective Work, including, without limitation,

performance of all guarantees and warranties given by Subcontractors.

2.5.13 The Contractor shall prepare a submittal schedule for the Project. The Contractor shall coordinate the submission by Subcontractors for approval by the Architect and other consultants of all required shop drawings, samples and catalogue cuts; maintain a log of all such submissions; promptly advise Owner of any potential problems pertaining to the timeliness of such submissions and approvals; advise Owner periodically as to the status of such submissions, including a listing of outstanding submissions, trade jurisdiction issues, contractual responsibility and completeness of submissions (without assuming the responsibility of the Architect or other consultants for reviewing and approving such submissions); and coordinate and schedule the various disciplines before installation.

2.5.14 The Contractor shall be responsible for maintaining and providing "as-built" drawings of the Work and for delivering the same to Owner as a condition to receipt of final payment of the Contract Amount (as hereinafter defined).

2.5.15 The Contractor shall on a daily basis, as part of the General Conditions, remove waste material or rubbish caused by the Work in accordance with the Contract Documents and maintain a safe working environment and as otherwise required by any governmental authority having jurisdiction over the Project. Prior to Substantial Completion (as hereinafter defined) of the Work, the Contractor shall cause any and all remaining waste material and rubbish to be removed from the Project Site and from the areas about the Project Site, and shall so cause to be removed, to the extent practicable, all tools, construction equipment, machinery and surplus materials.

2.5.16 The Contractor shall review requests for changes by Owner, submit recommendations to Owner regarding same, make independent recommendations regarding changes to the Work to enable expeditious completion of the Work, assist in negotiating Change Orders (as hereinafter defined), prepare and process written Change Orders and transmit same to the appropriate Subcontractors. Copies of all Change Orders shall be forwarded to Owner within five (5) days of issuance.

2.5.17 The Contractor shall review Subcontractors monthly requisitions for progress payments and make recommendations to Owner regarding approval of same and shall otherwise comply with all of the requirements set forth herein relating to the same.

2.5.18 The Contractor shall, if requested, cooperate with Owner in the selection and retention of professional and other consultants in connection with the Work.

2.5.19 The Contractor shall promptly give notice to Owner of any dispute, claim *or* potential claim which may arise during construction of the Project, assist in the resolution

of any such dispute or claim and make recommendation regarding settlement of such disputes and claims.

2.5.20 The Contractor shall make recommendations to Owner regarding the advisability of pre-purchasing materials to be incorporated into the Work, cooperate with Owner in making arrangements for on and off-site storage of the same, if approved in advance by Owner (including, without limitation, such arrangements as Owner shall deem necessary or desirable for (i) access to such materials for the purpose of inspection and removal of the same, (ii) protecting Owner title to such materials, free and clear of all liens, encumbrances and rights of others, and (iii) insuring and protecting the same), and not permit any payments for materials stored off-site, unless all such payment has been approved in advance, in writing, by Owner and, if applicable, the City.

2.5.21 The Contractor, from time to time, shall prepare a list of incomplete or unsatisfactory items (a "Completion Listing") for submission to the Architect and Owner, and thereafter prepare a schedule for completion of such items.

2.5.22 The Contractor shall request of Owner a determination of Substantial Completion of the Work or designated portions thereof. "Substantial Completion" of the Work, or designated portions thereof, shall be deemed to have occurred when construction is complete in the opinion of Owner in full compliance with the Drawings and Specifications and the other Contract Documents, sufficiently so that Owner can occupy and/or utilize the Project or designated portions thereof for the use for which it was intended and a temporary or permanent certificate of occupancy has been obtained as to the use and occupancy of the Project or the designated portions thereof as contemplated by Owner. Warranties called **for** by this Agreement and/or by the other Contract Documents shall commence on the date of Substantial Completion of the Work or of full and final acceptance by Owner of such item or system to be warranted, whichever is later, or otherwise to the extent available from the various specified manufacturers or suppliers. All warranties shall be in the name of both Owner and the Contractor.

2.5.23 The Contractor shall request of Owner and, if directed by Owner, the Architect, a determination of Final Completion (as hereinafter defined) and provide written notice to Owner and the Architect that the Work is fully completed and ready for final inspection. This will be preceded by a Punchlist inspection by the Contractor and approval of the corrective work by Owner and, if directed by Owner, the Architect. "Final Completion" shall be deemed to have occurred when the Project shall have been fully completed; all required filings to be performed by the Contractor and the Subcontractors in order for Owner to obtain a permanent certificate of occupancy have been provided; all required final as-built drawings have been delivered to Owner; all Punchlist items have been completed, as certified by the Architect; and all warranties, manufacturer warranties, special warranties, operational and maintenance manuals for all equipment have been delivered to Owner.

2.5.24 The Contractor shall cooperate with and arrange for training when required for Owner maintenance or operational personnel during initial start-up and testing of utilities, equipment, machinery and systems installed as part of the Work.

2.5.25 The Contractor shall cooperate and consult with Owner and its respective consultants and engineers in closing-out Subcontractors, and receive and transmit to Owner all required guarantees, warranties, affidavits, releases, certificates of compliance (if required), maintenance manuals, keys, final lien and other waivers, bonds and other documents required by the Contract Documents and the Subcontracts prior to final payments being made to Subcontractors.

2.5.26 The Contractor shall review and make recommendations with respect to the form of guarantees, warranties, and releases.

2.5.27 The Contractor shall maintain a complete set of drawings, Plans and Specifications, purchase orders, subcontracts, shop drawings and related documents at the Project Site or at the Contractors main office in New York, and turn over all as-built drawings to Owner upon Final Completion of the Work, or earlier, as directed by Owner.

2.5.28 The Contractor shall enforce the guarantees and warranties of Subcontractors during the term of this Agreement.

2.5.29 The Contractor shall review Subcontractors insurance certificates to determine whether they comply with Owner's requirements, as set forth in the Contract Documents.

2.5.30 The Contractor shall take such action as shall be reasonably necessary in an emergency to protect life and property and notify Owner of such actions as soon as practicable, with a written report of the incident to follow within twenty-four (24) hours thereafter.

2.5.31 The Contractor shall use all reasonable efforts to maintain good relations with labor unions as well as minority and other related interest groups to maintain peaceful labor relations and a trouble- free job site for the duration of the Project and advise Owner of any anticipated problems in connection therewith.

2.5.32 It shall be the continuing obligation of Contractor (and its Subcontractors) to use commercially reasonable efforts to provide labor harmony, and to properly staff the job with qualified and skilled workmen and employees without interruption or delay and without any increase to the Contract Price. Contractor hereby warrants that it is not now nor will Contractor be delinquent in the payment or reporting to any labor management benefit trust fund and further warrants that Contractor is not now nor will Contractor

appear on any delinquency list published by any labor management benefit trust fund. Consistent with Contractor's indemnification obligations as set forth in Article 17, Contractor indemnifies, defends and holds Owner entirely harmless from and against all costs, claims, liabilities, damages, delays, losses and expenses (including attorneys' fees and costs) arising directly or indirectly from Contractor's failure to comply with the provisions of this Section 2.5.32.

2.5.33 The Contractor shall, in accordance with the Contract Documents or as otherwise directed by Owner, or City institute and supervise a program for minority participation in the labor force and in the ownership of Subcontractors in accordance with requirements of any tax incentive or other program if applicable to the Project.

2.5.34 [intentionally deleted]

2.5.35 The Contractor shall at the Owner's request obtain payment and performance bonds from individual Subcontractors or if acceptable to the City utilize the Subguard Program as otherwise required by Owner or Lender. In either such case, the cost of such bonds shall be paid for by Owner.

2.5.36 Contractor will strictly enforce the prohibition of use and consumption of alcoholic beverages, illicit drugs, drug paraphernalia and smoking on the Project site.

2.5.37 Contractor will require all Trade Contractors that will be furnishing and/or utilizing any lifting or hoisting equipment to certify that such equipment is less than five (5) years old (from the date it was manufactured), and that such equipment has been properly serviced and maintained from the date that it was initially placed in service. This provision includes, but is not limited to, equipment such as truck mounted cranes, crawler cranes, tower cranes (of any type whether fixed or climbing), derricks, cherry-pickers, personnel and material hoists, crabs, and chain falls, which equipment will be utilized for lifting or hoisting materials, equipment or personnel.

2.5.38 Contractor will designate [insert] as the full time lead Project Superintendent for the full duration of this project. The Contractor cannot remove the Project Superintendent at any time without the prior written approval of the Owner.

### ARTICLE III

#### SUBCONTRACTS

3.1. Award of Subcontracts: All portions of the Work that the Contractor does not perform with its own forces, and all materials that the Contractor does not supply, shall be performed or supplied under contracts ("Subcontracts") between the Contractor and trade contractors, laborers, materialmen or suppliers ("Subcontractors"). Each Subcontract shall

be on the Contractor standard form(s) (which standard form(s) shall have been approved in advance by Owner), with such additions, changes and modifications as shall be reasonably required or approved by Owner. The Contractor shall not materially alter the form of Subcontract without notifying and obtaining the advance written approval of Owner. In furtherance thereof, the Contractor shall furnish to Owner, in advance of execution, all Subcontracts showing, in computer "redlined" or other equivalent form, the revisions from the general form of

Subcontract approved by Owner. Where required by the Contract Documents, the City or Owner, Subcontracts shall include payment and performance bonds (that shall be in form and substance satisfactory to Owner and the City) or enroll the Subcontractor into the Subguard Program and shall contain such endorsements and name such parties as co-obligees as Owner shall require. If such bonding is required, the cost thereof shall be paid for by Owner. As used herein, the term "Subcontracts" shall be deemed to include any subcontract between a Subcontractor and a sub-subcontractor, at any tier.

### 3.2. Contractor Responsibilities:

3.2.1 The Contractor shall be responsible to Owner for the acts and omissions of its agents and employees and Subcontractors.

3.2.2 The Contractor shall review the Work done by Subcontractors to determine whether the Work is being performed in accordance with the requirements of the Contract Documents and sound construction practices and procedures, generally to guard Owner against defects and deficiencies in the Work, and advise Owner of any discovered deficiencies. Any cost or expenses due to the negligent or intentional misconduct of any Subcontractor (including any persons or entities directly or indirectly employed or engaged by any such Subcontractor) in connection with the Work, or due to the failure of such Subcontractor to perform any of its covenants, agreements or obligations in accordance with its Subcontract, shall be borne by the Contractor. If any such Subcontractor fails to perform any of its Subcontract covenants, agreements or obligations in connection with the Project, then the Contractor shall take prompt action to enforce such Subcontractor's Subcontract covenants, agreements and obligations. If it appears that any such enforcement actions will materially delay the progress of the Work, the Contractor shall promptly so notify Owner and the Contractor shall cause any such Subcontractor covenants, agreements, and obligations under its Subcontract to be performed by others, and the costs and expenses thereof shall be borne by the Contractor.

3.3. Contractor to Supervise Subcontracts: The Contractor shall supervise and

coordinate the work of the Subcontractors and shall execute all Subcontracts. It is expressly understood and agreed that no portion of the Work shall be performed and no materials, supplies or equipment on account of the Work shall be furnished by any Subcontractor unless and until a Subcontract has been executed with such Subcontractor in accordance with the terms of this Agreement.

3.4. Right to Require Subcontractor; Union labor: Notwithstanding anything herein to the contrary, all of the Work shall be performed with union labor.

3.5. Assignment of Subcontracts:

All Subcontracts shall contain the following provision, which provision may be modified at the request of the City: "Owner or the City may elect at any time or from time to time, including in connection with the termination of the Agreement between Owner and the Contractor, to have this Subcontract Agreement assigned from the Contractor to Owner or any entity designated by Owner or by the City, and the parties agree that such assignment shall be effective upon the delivery of a notice of such election by Owner to the Subcontractor."

3.6. Insurance Requirements for Subcontractors:

3.6.1 If an OCIP is not implemented, then the Contractor shall cause each Subcontractor to purchase and maintain in full force and effect until final payment is made under the particular Subcontract insurance coverages in accordance with Article X hereof.

3.6.2 Each Subcontractor shall provide the Contractor with certificates of insurance evidencing protection to be purchased and maintained pursuant to this Agreement and the Subcontract. Such Certificates shall specifically state that Owner, the Contractor, the City and such other parties as Owner shall designate will be given 30-days prior written notice in the event of a reduction, cancellation, non-renewal or change in the insurance. The Contractor shall be responsible for obtaining from all Subcontractors all such certificates of insurance, assuring that such insurance is maintained throughout the entire Project together with any required updated certificates and, upon the request of Owner, such Certificates shall be forwarded by the Contractor to Owner.

3.6.3 The Contractor shall advise each Subcontractor that Owner property insurance does not afford any coverage with respect to the property of Subcontractors, including, but not limited to, tools and equipment not intended to be incorporated into the Work. Each Subcontractor, at its option, may purchase insurance on its property. Each Subcontractor and its insurer shall waive all rights of subrogation against Owner and the Contractor for loss to such tools and equipment.

3.6.4 Compliance with this Section 3.6 shall in no way, and to no extent, relieve the Contractor of any other duties, responsibilities or liabilities that it may have under this Agreement or the Contract Documents, and compliance with this Section 3.6 shall not in any way relieve or diminish to any extent the obligations of the Contractor to comply with the requirements of Article X of this Agreement.

#### ARTICLE IV

##### OWNER RESPONSIBILITIES

4.1. Owner shall provide all information reasonably requested regarding its requirements for the Project with reasonable promptness.

4.2. Owner shall furnish for the Project Site all necessary surveys describing the physical characteristics, subsurface conditions, soil reports, legal limitations and utility locations.

4.3. Owner shall notify the Contractor as soon as practical of any fault or defect in the Work or non-compliance with the Contract Documents of which it actually becomes aware, and the Contractor shall promptly cause such fault or defect to be corrected in accordance with the terms of this Agreement.

4.4. Owner and the Contractor acknowledge that standard job procedures will provide that primary communications with the Subcontractors shall be through the Contractor; provided, however, that nothing contained herein shall prevent Owner from communicating directly with any Subcontractor. Owner shall advise the Contractor of all meetings and communications **with** any Subcontractor.

#### ARTICLE V

##### SCHEDULE OF THE WORK

5.1. Project Time Schedule: **TIME IS OF THE ESSENCE**. The Contractor shall achieve Substantially Completion of the Work within the time provided in the Project Schedule.

5.2. Delay: If the Contractor is delayed at any time in the progress of the Project by Force Majeure (as hereinafter defined), or by the failure through no fault of the Contractor by governmental entities to process or issue permits, approvals, licenses or ordinances within customary time periods, and such delay results in the extension of the Project Schedule beyond the twelve (12) adverse weather days included in the Project Schedule,

and the delay adversely impacts the critical path of the project, the Project Schedule shall be extended for such reasonable length of time as shall mutually be agreed upon between Owner and the Contractor, and the Contractor shall be entitled to any actual, direct and verifiable additional General Conditions (as hereinafter defined) incurred directly from such delay. In no event, however, shall the Contractor or any Subcontractor be entitled to an additional fee, cost reimbursement (other than additional General Conditions to the Contractor as set forth above), compensation or damages (consequential or otherwise) for such delays.

Force Majeure shall mean: Strikes, lock-outs, fire or other casualties, citywide labor disputes, unforeseen material or labor shortages not reasonably capable of anticipation by the Contractor, adverse weather conditions not reasonably anticipated, unusual concealed or subsurface conditions not reasonably anticipated from test results prior to the commencement of the Work, war, acts of terrorism, or governmental regulations or controls not in existence as of the commencement of the Construction Phase, acts of God, epidemics, pandemics or other similar causes beyond the Contractor control and provided that such event is not caused by the act or omission of the Contractor or any Subcontractor. Notwithstanding the foregoing, in no event shall Force Majeure be construed or deemed to include any delay caused by (i) the bankruptcy or insolvency of any Subcontractor; (ii) the failure of any Subcontractor to perform any portion of the Work in accordance with the terms of its Subcontract; (iii) the negligence or willful misconduct of the Contractor or any Subcontractor; (iv) any event or circumstance which constitutes a breach or default by the Contractor under this Agreement; or (v) any event the results of which could have been avoided or ameliorated by or through the implementation of alternative measures or methods by the Contractor. Nothing contained herein shall be deemed to relieve the Contractor from its obligation to mitigate the effects of any Force Majeure upon the timely performance of the Work to the extent possible. The Contractor agrees to provide Owner with prompt notice of the occurrence of any event of Force Majeure and the Contractor estimate of the delay and any additional cost relating thereto.

## ARTICLE VI

### CONTRACT AMOUNT/COSTS NOT TO BE REIMBURSED

6.1. The term "Contract Amount" shall mean the agreed upon lump sum of \$[insert], subject to adjustment as set forth elsewhere in this Agreement, representing payment in full for all materials, labor, tools, equipment, supervision, and insurance required for the performance of the Work. The Contract Amount will include all work being performed by subcontractors, General Conditions, insurance, and a general construction fee.

6.2. The Contract Amount shall include the following:

6.2.1 Cost of all labor, materials, supplies and equipment incorporated in the Work, including costs of transportation thereof.

6.2.2 Cost of all insurance (in the event Owner does not institute an OCIP), General Conditions, Contractor overhead and Fee (as hereinafter defined).

6.2.3 Sales, use or other similar taxes incurred in connection with the Work. Contractor acknowledges and agrees that this project will be sales and use tax exempt (for which a Sales Tax Exemption Certificate will be issued by Owner). Contractor will issue a credit to Owner, and reduce the Contract Amount by the amount of Sales and Use Tax that would have otherwise been assessed and paid to the taxing authorities having jurisdiction.

6.2.4 Permit fees, royalties and licenses required in the performance of the Work. The Owner acknowledges that the value for same is excluded in the current budget however the Contractor will include these costs as an allowance in their final GMP or lump sum value.

6.2.5 Costs for materials purchased and received for the Work in advance of their need.

6.2.6 Payments required to be made to Subcontractors in connection with the Work in accordance with this Agreement.

6.2.7 Other costs incurred with Owner's prior written approval.

6.3 The aforesaid costs shall be requisitioned as provided in Article X hereof.

6.4 The Contract Amount shall be credited for the benefit of the Owner with all rebates, trade discounts, credits on taxes or credits realized on cash deposits or insurance premiums. The Contractor shall take such steps as are reasonably necessary and appropriate to obtain such discounts, rebates and credits. Owner shall be credited with charges made to Subcontractors for use of hoisting facilities or elevator service, to the extent such Subcontractors are responsible for such costs pursuant to the terms of their respective Subcontracts.

6.4.1 The Contract Amount shall be credited with the amount of Sales and Use Tax that would have otherwise been collected and paid to the taxing authority.

6.4.2 The Contractor shall provide detailed documentation from Subcontractors and vendors to evidence the amount of tax that would have been payable.

6.5 Notwithstanding the foregoing, the Contract Amount as defined in this Article VI shall not include the following non-reimbursable costs:

6.5.1 Expenses of the Contractor home office and branch offices, and also including, but not limited to, overhead and general expenses such as corporate franchise and income taxes.

6.5.2 Expenses relating to the Contractors home office executive, accounting (including data processing), estimating, legal, contract administration, scheduling, permit expediting, purchasing and design development departments.

6.5.3 Losses and expenses covered by the Contractor insurance provided under Article X.

6.5.4 Salaries and other compensation of the Contractor employees and agents at the Contractor home office whose time is devoted to the general conduct of the Contractor business.

6.5.5 Costs arising out of violations of any federal, state or local ordinance, statute, rule or regulation by the Contractor.

6.5.6 Costs not covered by this Agreement, except with respect to costs that are incurred with Owner's prior written approval.

## ARTICLE VII

### CONTRACTOR RETENTION

7.1. The Contract Amount shall be paid to the Contractor commencing with the actual start of the Construction Phase on a percentage of completion basis based upon the budget for the Work approved by Owner, subject to retention of ten percent (10%) including approved Change Orders, until fifty percent (50%) of the Project is complete, at which time the Contractor may request a reduction in retainage. The retained amount shall be released to the Contractor upon Final Completion of the Project. Owner, at Owner's sole discretion, may further reduce the retained amount to Two Percent (2.00%) when the project is 95% complete.

ARTICLE VIII

CHANGES IN THE WORK

8.1. Changes in the Work: Owner, without invalidating this Agreement, may order changes within the general scope of the Work consisting of additions, deletions or other revisions. All such changes in the Work shall be authorized by Change Order signed by the Owner and, to the extent applicable, such Change Order shall contain an adjustment of fifteen percent (15%) for overhead and profit, General Conditions, Insurance (excluding ICIP or CCIP Premiums) and Bond (excluding any Subguard Premium). Notwithstanding anything to the contrary set forth in this Agreement, the Contractor shall not be permitted to bind Owner to any Change Orders with Subcontractors without Owner's prior written consent thereto.

8.2. A "Change Order" is a written order, prepared by the Contractor and signed by Owner after the execution of this Agreement, authorizing a change in the Work.

8.2.1 If unit prices are subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order or, as a result of several Change Orders, that application of the agreed unit prices to the quantities of Work proposed in any Change Order will cause substantial inequity to Owner or the Contractor, the applicable unit prices shall be equitably adjusted.

8.3. Changes in the Project.

Owner will have authority to order minor changes in the Project not involving an adjustment in the Contract Amount, so long as such minor changes are not materially inconsistent with the intent of the Contract Documents. Such changes may be effected by written order and shall be binding on Owner and the Contractor.

8.4. Emergencies.

In any emergency affecting the safety of persons or property, the Contractor shall act, at its reasonable discretion, to prevent, and respond to, any threatened damage, injury or loss.

ARTICLE IX

PAYMENTS

9.1. Application for Payment:

Contractor shall submit to Owner each month an application for payment, together with appropriate waivers, affidavits and waivers of mechanic liens and all documents reasonably required by Owner and as otherwise required by any reasonable and customary requirements of the City. The Contractor shall be responsible for certifying and approving applications for payment by its Subcontractors and shall be responsible for correcting any errors made by it in connection therewith. Without limiting the foregoing, each Subcontract shall include the following provision:

"Each application for payment, which shall be made on forms provided by the Contractor and which are acceptable to Owner, shall constitute a representation by the Subcontractor that (i) the partial payment then requested to be disbursed has been incurred by the Subcontractor on account of the Work, (ii) the materials, supplies and equipment for which such requisition is being submitted have been installed or incorporated in the Project or have been stored at the Project Site or at such off-site storage locations as shall have been previously approved in writing by Owner and Contractor; provided, however, Contractor and Owner shall not be obligated hereby to pay or advance monies for materials stored off-site, unless, at Owner sole option and discretion, such is approved in advance and in writing by Owner and Owner construction lender, (iii) the materials, supplies and equipment are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic, laborer, vendor, material man or other liens or claims have been filed and there is no threat of any lien or claim being filed in connection with the Project or any of the materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) the Work which is the subject of such requisition has been performed in strict accordance with the Contract Documents and all applicable legal requirements, (vii) that any amounts to be paid from this partial payment to a Subcontractor, vendor or supplier will be remitted within three (3) business days of receipt, and (viii) the partial payment then requested to be disbursed, together with all sums previously disbursed under prior requisitions, does not exceed that portion of the Contract Price which is allocable to the portion of the Work actually completed up to the date of such requisition and that the remainder of the Contract Price (as the same may have been adjusted hereunder) will be sufficient to pay in full the costs necessary to perform and complete the Work under this subcontract."

Subject to any different and/or additional requirements of the City, the application for payment so approved will include the following:

(a) Payment on account of materials ordered by the Contractor only and delivered and suitably stored at the Project Site but not incorporated in the Work shall be requested on the basis of 80% of the actual cost of such materials.. provided said materials were purchased pursuant to a Subcontract to supply materials and Owner and the

Construction Lender has given its approval to the payment terms of said Subcontract and all other applicable terms and conditions. Payment shall be conditioned upon submission by the Contractor of receipts and bills of sale, certificate of insurance, which covers the specific material or upon such other procedure as will establish Owner title to such material or to adequately protect Owner interest.

(b) Payment on account of Subcontract work performed to date (with such appropriate retainage as shall be provided for in the Subcontract(s) in question) based upon the percentage of the Work completed in accordance with the Contract Document.

(c) A pro rata share of the Fee as provided for in Article VII for the Fee and a pro rata portion for General Conditions.

9.2. Payments: In accordance with the aforementioned payment procedure (subject, however, to any additional requirements of the City, the amount thereof shall be due and payable within thirty (30) days after approval by Owner of such application for payment and such other documents as shall be required with respect thereto pursuant to Section 9.1. All payments made to the Contractor on behalf of Subcontractors shall be paid by the Contractor to the Subcontractors within five (5) business days of receipt of such funds from Owner. All such payments (whether payable to Contractor or directly to Subcontractors) shall be delivered to the respective Subcontractors by the Contractor, who shall obtain waivers of lien (and, upon final payment, general releases) therefor and deliver the same to Owner.

9.3. No payment made by Owner, whether to the Contractor or to a Subcontractor, shall constitute acceptance by Owner of any Work or stored materials, nor as a waiver of any right or claim by Owner in connection with such Work or stored materials or otherwise.

9.4. Notwithstanding anything to the contrary contained in the Contract Documents, Owner may withhold a reasonable portion of any payment due to the Contractor hereunder if and for so long as the Contractor fails to perform any of its obligations hereunder or otherwise is in material default under any of the Contract Documents.

9.5. IN THE EVENT OF ANY DISPUTE BETWEEN THE OWNER AND THE CONTRACTOR, AND PROVIDED THE OWNER CONTINUES TO PAY ALL UNDISPUTED AMOUNTS IN ACCORDANCE WITH THE PROVISIONS OF THE CONTRACT DOCUMENTS, THE CONTRACTOR SHALL PROCEED WITH THE PERFORMANCE OF ITS OBLIGATIONS UNDER THE CONTRACT DOCUMENTS IN ACCORDANCE WITH THE PROGRESS SCHEDULES, WITH RESERVATION OF ALL RIGHTS AND REMEDIES CONTRACTOR MAY HAVE AT LAW OR IN EQUITY.

ARTICLE X

INDEMNIFICATION AND INSURANCE  
OBLIGATIONS

10.1 To the fullest extent permitted by law, upon demand of the Owner, the Contractor agrees to defend, indemnify and hold harmless as additional insureds the Owner, its officers, directors, agents, employees, affiliates, subsidiaries, members, shareholders, partners, and the City (hereafter collectively "Indemnitees") from and against any and all demands, claims (including, but not limited to claims asserted under New York State Labor Law Sections 200,240 and 241), suits, actions, proceedings, damages, liabilities, professional fees, judgments, awards, losses, debts, violations including attorneys' fees, costs, court costs, expenses and disbursements related to death, bodily injuries or property damage (including loss of use thereof) brought or asserted against any of the Indemnitees by any person or entity, arising in any way out of or in connection with, relating to or as a result or consequence of the performance of the Work of the Contractor, as well as any additional work, extra work or add-on work, whether or not caused in whole or in part by the Contractor or any person or entity employed or working on behalf of or at the direction of, either directly or indirectly by the Contractor including any Subcontractors, vendors, suppliers and/or invitees thereof and their employees ("Claims").

10.1.1 Contractor shall and does hereby assume and agrees to pay for the defense of all Claims with counsel approved by the Owner with such approval not to be unreasonable withheld or conditioned. If a Claim is brought against any of the Indemnitees, Contractor shall, immediately upon notice, resist or defend such suit, action, or proceeding with independent counsel acceptable to the Indemnitee(s) at Contractor's sole cost and expense. Contractor's obligation to defend under this Agreement is immediately triggered upon notice of any Claim and shall not be held in abeyance pending a determination of Contractor's potential liability for the Claim; provided, however, that Contractor shall be responsible to promptly reimburse any Indemnitee(s) for all attorneys' fees, costs and expenses of any kind borne by Indemnitee(s) if any of them should have to take any legal action to defend any Claim.

10.1.2 Contractor shall: (1) advise any Indemnitee promptly, in writing of the service upon Contractor of any summons, notices, letters or other communications alleging any Claim; and (2) cause all insurance carriers to be placed on notice promptly of any and all occurrences, claims, suits that may be covered under any insurance policies connected with the Work.

10.1.3 Attorneys' fees, court costs, expenses and disbursements owed by Contractor under this Agreement shall be defined without limit to include all sums incurred in defending the underlying claim and all sums incurred in connection with the enforcement of this Agreement. Indemnification under this Agreement shall operate whether or not

Contractor has placed and maintained the insurance required under this Agreement. The indemnification obligation under this Agreement shall also not be restricted by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or any of its subcontractors working on site under workers' or workmen's compensation acts, disability benefits acts or other employee acts. The Contractor shall cause all subcontract agreements and/or any purchase orders it enters into to include this indemnification clause so as to ensure that Owner and all Indemnitees hereunder shall have the same protection from subcontractors as is afforded by the Contractor.

10.1.4 Indemnitees shall have, among their other rights, the right to withhold from any payments due or to become due to Contractor under the Agreement an amount sufficient in Indemnitee(s)' judgment necessary to protect and indemnify the Indemnitees from and against any and all Claim . The aforesaid indemnity obligations apply whether arising before *or* after completion of the Contractor's Work, services and/or operations under this Agreement and any extensions or modifications thereto.

10.1.5 The Parties expressly agree that this indemnification Agreement contemplates, among other obligations, full indemnity in the event liability is imposed against any of the Indemnitees without negligence and solely by reason of statute, operation of law or otherwise.

10.2 The Contractor expressly understands and agrees that this Agreement is strictly subject to the satisfactory procurement. and subsequent maintenance by the Contractor, and any Subcontractor(s) of Contractor of the following insurance coverage during and after the termination or expiration of this Agreement.

10.2.1 Before commencing the Work, as defined in this Agreement, and unless higher limits or additional coverages are required by the Owner, Contractor shall secure and maintain from the earlier of commencement of Work or the effective date of the Contract, at least the insurance coverages and limits required by this Exhibit. Failure of the Owner to identify deficiencies In any insurance provided by Contractor, shall not relieve Contractor from any insurance obligations. Required coverages are as follows:

- (A) Workers' Compensation/Employer's Liability Insurance. The Contractor and/or subcontractor(s), as applicable, shall obtain Workers' Compensation Insurance for all of the Work including occupational disease for all employees as per statutory limits, and such coverage shall include Employer's Liability Insurance with limits of One Million Dollars (\$1,000,000) per accident, disease and employee or unlimited coverage where required by applicable law;

(B) Commercial General Liability Insurance in accordance with the following:

- (1) the policy procured shall have a "Combined Single Limit" for bodily injury and property damage with minimum limits of (I) One Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate; (II) Two Million Dollars (\$2,000,000) for Products Completed Operations; (III) One Million Dollars (\$1,000,000) for Personal and Advertising Injury.
- (2) Indemnitees as defined in Section 10.1, shall be named as Additional Insureds ON A PRIMARY AND NON-CONTRIBUTORY basis and listed in Exhibit I.
- (3) The policy shall be written on an occurrence basis with "per project" limits.
- (4) The policy shall contain the policy terms and conditions contained in the Insurance Service Organization's standard form CG0001 (ed. 12/04); WITH NO EXCLUSION FOR X,C,U.
- (5) The policy shall allow severability of interests (separation of insureds) and contain no cross claim exclusions, work-height exclusions, insured vs. insured exclusions ("named insured v. named insured" exclusions are permitted), residential/commercial construction exclusions or definitions of "insured contract" that exclude Contractor's indemnity obligations owed under, this Agreement. Commercial General Liability Insurance shall also cover the use of all equipment, hoists and other vehicles at the Work Area not covered by automobile liability insurance, as set forth in subparagraph (C) immediately below.
- (6) This insurance shall be maintained from commencement of the Work until not less than 10 years after substantial completion and acceptance of the Project, or to the applicable Statute of Repose in the jurisdiction where the Project is located, whichever is longer.
- (7) If the Contractor's CGL insurance excludes any of the required coverages, a separate policy acceptable to the Owner must be obtained.

(C) Automobile Liability Insurance in the amount of at least One Million Dollars (\$1,000,000) Combined Single Limit for bodily injury and property damage per accident each covering all owned, non-owned, and hired motor vehicles used in connection with the Work.

(1) Indemnitees shall be named as Additional Insureds ON A PRIMARY AND NON-CONTRIBUTORY basis.

(D) Umbrella or Excess Liability insurance with limits of \$5 million per occurrence and \$5 million in the aggregate (applicable on a "per project" basis). This insurance shall follow form to the Commercial General Liability, Automobile Liability and Employers Liability Insurance policies listed above, and shall "drop down" for defense and indemnity in the event of exhaustion of the underlying insurance. The Umbrella or Excess Liability insurance shall be no more restrictive than terms and conditions of the underlying policies.

(E) Professional Liability/Errors and Omissions To the extent that any aspects or portions of the Work requires Contractor to retain the services of a design professional, each of the design professionals retained by Contractor must provide Professional Liability Insurance coverage on a claims made basis with limits for each claim not less than \$1,000,000 per claim/\$2,000,000 aggregate, which insurance shall be maintained for a period of not less than 4 years after the Final Completion of the Project. This insurance must also comply with the following requirements:

1. Contractual Liability coverage included for liability that would have attached In the absence of the contract or agreement. No provision that would limit, restrict or exclude coverage for the reimbursement of reasonable defense costs incurred by any indemnities for a claim otherwise covered under the policy.
2. No exclusions for delays in project completion and cost overruns.
3. Insurance is primary and non-contributory.
4. Insuring agreement to read: "to pay on behalf of" in lieu of "to indemnify".

5. Policy shall include a provision that written notice to the carrier during the policy period of a circumstance that could result in a claim preserves coverage for a claim subsequently arising from the circumstance.
6. No exclusion for pollution conditions arising from environmental work including mold, fungus, lead and asbestos.

(F) At Owner's election to the extent any Work involves potential handling, use, abatement, release or removal of any hazardous substances, Contractors Pollution Liability with limits of not less than \$2,000,000 per occurrence and \$5,000,000 in the aggregate. If the policy is written on an occurrence form, it must remain in effect until Acceptance of the Work, and must remain in place to the earlier of a period of no less than three (3) years following completion of the Work. If the policy is written on a claims-made basis, it must include an Extended Reporting provision providing that coverage is maintained for a period of no less than six (6) years after completion of the Work.

This insurance must also comply with the following requirements:

1. Coverage for bodily injury and property damage to third parties.
2. Coverage for natural resource damages.
3. Coverage for environmental cleanup including restoration or replacement costs.
4. Coverage for defense of suits or claims.
5. Coverage for transportation of waste material away from the Project site.
6. Coverage for disposal liability for pollution conditions on, at, under, or emanating from any disposal site, location or facility used for disposal of waste.
7. Waiver of Subrogation for all claims and suits.

8. Severability of Interest/Separation of Insureds.
9. Indemnitees shall be named as an Additional Insured ON A PRIMARY AND NON-CONTRIBUTORY basis.
10. No exclusions for (i) liabilities assumed under an insured contract; (ii) Lead, silica, or asbestos; (iii) underground storage tanks; and (iv) insured versus insured exclusion that restricts coverage to any indemnified party.
11. Coverage as required in shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants.

(G) Employment Practices Liability Insurance. The minimum limit for this coverage shall be \$2,000,000 in the aggregate and the policy must include a third-party endorsement that provides coverage for claims brought by non-employees.

(I) Commercial Crime and/or Employee Dishonesty Insurance covering the activities of Contractor's employees with limits of not less than \$2,000,000. Owner requests that Contractor also endeavor and use best efforts to secure similar coverage from its subcontractors.

A. With respect to the insurance described in this Section 10.2.1, above:

- (i) All policies will include a waiver of subrogation for the benefit of Owner and the City.
- (ii) Owner and the City will be included as Additional Insureds using the following endorsement: "The Wildlife Conservation Society and the City of New York including their officials and employees are included as Additional Insureds with respect to the Commercial General Liability, Excess/Umbrella Liability and Auto Liability policies as required by contract. The Additional Insured Endorsement must be issued on ISO Forms CG 00 01 04 13, CG 20 15 04 13, CA 20 48 02 99, CG 20 10 04 13 and CG 20 37 04 13, or any equivalents to such forms. The General Liability, Excess/Umbrella Liability and Auto Liability policies are primary and non-contributing to any insurance or self-insurance maintained by the Additional Insureds as required by contract. A Waiver of Subrogation is confirmed in favor of the Wildlife Conservation Society and the City of New York as required by contract."

- (iii) Insurer(s) must be authorized to do business in New York.
  - (iv) Insurer(s) must have an A.M. Best rating of A-, VII or better and/or an equivalent rating from a recognized insurance company rating agency.
  - (v) Contractor's policies shall be primary, and any insurance maintained by Owner is excess and noncontributory.
  - (vi) Contractor specifically agrees to provide Owner at least 30 days' notice of any termination, cancellation or material modification of any of the above insurance policies.
  - (vii) If this Agreement or any other agreement between Contractor and Owner requires higher insurance limits, such higher limits shall apply.
- B. With respect to the insurance described in subsection (A) above: An original Certificate (or Certificates) of Insurance evidencing coverage not less than that specified above shall be provided to Owner in advance of the Term of this Agreement and sent to: Director of Purchasing, Wildlife Conservation Society, 2300 Southern Boulevard, Bronx, NY 10460 (with a copy to the Wildlife Conservation Society Insurance and Risk Manager at the same address).

## ARTICLE XI

11.1 This Agreement shall be governed by and construed under the laws of the State of New York without regard to the application of the principles of conflict of laws.

11.2 Any and all disputes arising out of or from this Agreement of the termination thereof shall be resolved in the New York County, New York. To the fullest extent allowed by law Owner and Contractor each waive all rights to a trial by jury.

11.3 This Agreement shall not be amended unless done in writing and signed by the Owner and Contractor.

11.4 In the event the Owner terminates this Agreement for cause and it is finally determined that there was no such cause, then such termination shall automatically be converted to a termination for Owner's convenience (i.e, without cause) and Contractor shall be entitled to the recovery set forth in the AIA A201 except that Contractor shall not be entitled to any profit or overhead on unperformed Work.

11.5 The Owner and Contractor have each had a full opportunity to have this Agreement reviewed by counsel of their own choosing.

11.6 This Agreement is the result of arms-length negotiation between sophisticated commercial entities.

11.7 In any interpretation of this Agreement there shall be an irrevocable presumption that this Agreement was jointly prepared by the Parties and hence the rule of *contra preferendum* shall not apply.

In Witness Whereof, the Parties have executed this Agreement as of the date and year first above written.

**WILDLIFE CONSERVATION SOCIETY**

By \_\_\_\_\_

**Name:**

**Title:**

**[Contractor]**

By \_\_\_\_\_

**Name:**

**Title**

## NYC AGREEMENT TERMS AND CONDITIONS

**1. Compliance with Applicable Law Generally.** Contractor shall obtain all necessary permits, consents, certificates and licenses necessary for the purposes of performing the Work. Contractor shall comply with all applicable laws and New York City Mayoral Executive Orders now in force or which may later be adopted (“Legal Requirements”), as such Legal Requirements may be applicable to the Work. As part of such compliance, Contractor shall, and shall cause all Authorized Subcontractors to:

- (a) Obtain, at its own expense, all required approvals and permits;
- (b) Ensure that any architect or engineer hired to perform Work is registered in the State of New York;
- (c) Pay prevailing wages as such rates are established pursuant to Section 220(3) of the New York Labor Law (“Labor Law”), and comply with all applicable provisions of the Labor Law and regulations promulgated thereunder, including, but not limited to, Section 220-e of the Labor Law.
- (d) Comply with the requirements of Local Laws 77 of 2003 (Ultra Low Sulfur Diesel Fuel), 38 of 2002 (Living Wage) and 86 of 2005 (Green Building Standards Law), as such laws may be applicable to the Work;
- (e) Comply with the applicable provisions of the New York City Noise Control Code (Administrative Code §24-216 et seq., as amended), and related rules and regulations; and
- (f) Comply with the equal employment and non-discrimination requirements applicable to this Agreement including, but not limited to, those of Executive Order No. 50 (“E.O.50”) and any rules and regulations promulgated thereunder, including the submission of Employment Reports as may be required by E.O.50; and
- (g) Comply with the requirements of the MacBride principles pursuant to Section 6-115.1 of the Administrative Code and the prohibition on the purchase and use of tropical hardwoods pursuant to Section 165, Article XL of the New York State Finance Law.

**2. Assignment of Contract to City.** In the event that WCS defaults under the City Agreement, the City may require that this Agreement be assigned by WCS to the City.

**3. Independent Entity.** Contractor agrees that it is an independent entity, and shall not be deemed to be an agent, employee, servant or representative of WCS or the City for any purpose whatsoever. Contractor further agrees that all personnel provided by Contractor to perform any Work shall be considered as employed by Contractor, and not by WCS or the City, and Contractor alone is responsible for their work and personal conduct, as well as for their direction and compensation. Nothing included in this Agreement shall impose any liability or duty upon WCS or the City to persons, firms or corporations employed in any capacity by Contractor, or to make WCS or the City liable to any person or entity (including governmental agencies) for any act, omission, liability, obligation or taxes (including unemployment insurance and social security) of Contractor or any individual, firm or corporation employed by Contractor.

**4. Quiet Site.** Contractor shall not employ anyone who is not competent, faithful and skilled in the Work for which such person shall be employed nor any labor, material or

means whose use during the course of this Agreement will in any way result in strikes, work stoppages, delays, suspension of Work or similar troubles by workers employed by WCS, Contractor or WCS's other contractors, or by any of the trades working in or about any project site where work is being performed under any other City or WCS contract, or by other contractors or their subcontractors pursuant to other contracts, or on any other building or premises owned or operated by the City, its agencies, departments, boards or authorities.

**5. City Approvals.** Contractor shall maintain for the Term of this Agreement current PASSport and, if required, Division of Labor Services approvals. Failure to so maintain such approvals may result in a cessation of payments under this Agreement until such approvals are restored.

**6. Tax Exemption.** WCS and the City are exempt from payment of sales and compensation use taxes incorporated into the Work and are not to be included in requests for payment. This exemption does not apply to tools, machinery, equipment or other property leased by or to Contractor or to supplies or materials which even though they are consumed are not incorporated into the final Work.

**7. No Claims against the City or City Employees.** Contractor shall make no claim against the City nor against any officer, agent, employee or representative of the City for, or on account of, anything done or omitted to be done in connection with this Agreement, and no officer, agent, employee or representative of the City shall be personally liable to the Contractor or its employees or agents.

**8. Acceptance of Final Payment.** Acceptance of final payment under this Agreement shall constitute and operate as a release of WCS and the City from any and all claims of and liability for anything heretofore done or furnished under, relating to or arising out of this Agreement and the Work, excepting only a claim for the amounts deducted or retained in accordance with the terms and provisions of this Agreement or by law.

**9. Termination by the City.** In the event that the City terminates its funding for the Work, then WCS may notify Contractor of such termination. Upon receipt of a notice of termination of funding, Contractor shall, unless otherwise directed by WCS:

- (a) Stop work on the date specified in the notice;
- (b) Take such action as may be necessary for the protection and preservation of materials and property involved with the Work;
- (c) Cancel all cancelable orders for material and equipment;
- (d) Assign and deliver to a location designated by WCS any non-cancelable orders for material and equipment; and
- (e) Take no action which will increase the amounts payable under this Agreement.

**10. 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 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.

**CONTRACTOR:** \_\_\_\_\_

*(print exact legal name)*

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

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

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

Date signed: \_\_\_\_\_

**WILDLIFE CONSERVATION SOCIETY**  
**Rules and Regulations for Contractors**

**A. General Rules:**

- 1) The facilities operated by the Wildlife Conservation Society, the Bronx Zoo, The Central Park Zoo, the Queens Zoo, the Prospect Park Zoo and the New York Aquarium, contain many rare, endangered and unobtainable species of animals in its collection. Accordingly, in undertaking work at one of our facilities, the Wildlife Conservation Society requires that all contractors, including their employees, subcontractors and suppliers (hereafter collectively referred to as the “Contractor”) give the highest consideration to protecting the health and welfare of these animals.
- 2) The Contractor must use extreme care to protect from damage all roads, paths, fences, buildings, trees, shrubs, benches, lawns, and other on-site park equipment and facilities. Any damage caused by the Contractor to the foregoing must be repaired, replaced or restored immediately and at the Contractor's expense.
- 3) The construction site is located in a public park and the Contractor must extend every courtesy if contact is made with the visiting public.
- 4) Construction fences are to be constructed of new, solid type wood material and painted a color to be selected by WCS. No used material is permitted unless approved in advance by WCS.
- 5) Location of construction trailers, materials storage, and supplies, etc. will be designated by WCS.
- 6) No construction signs are permitted unless written consent is obtained from WCS.
- 7) Deliveries of materials to the site must follow WCS's prescribed traffic routes and be scheduled whenever possible between the hours of 6:00 AM and 10:00 AM. Normal hours of work can be scheduled between 6:00 AM and 5:00 PM Monday through Friday.
- 8) Permission must be granted by WCS to work at any other time.
- 9) No blasting will be permitted unless written consent is obtained from WCS in advance.
- 10) Use by the Contractor's employees of designated Park public comfort station facilities and eating facilities is permitted. The use of temporary sanitary facilities (e.g. Port-O-San or other chemical toilets) is specifically prohibited.
- 11) The Contractor is responsible for keeping the construction site clear and free from litter and is responsible for cleaning up litter that is blown from or generated by the Contractor.
- 12) The Contractor's employees must park their personal vehicles in parking areas designated by WCS.

13) No private vehicles are allowed on the site unless the prior written consent of WCS has been obtained.

14) The Contractor must visit the site of the Project before work commences to become familiar with all aspects of the job and its location. Such visits should be coordinated through WCS's Operations Department.

15) The security of all construction trailers, material supplies, and tools is strictly the responsibility of the Contractor.

16) The use of any site utilities is strictly prohibited unless its use is provided for in the contract or prior written permission from WCS has been obtained. All temporary construction utilities remain under the jurisdiction and control of WCS.

17) WCS facilities are non-smoking areas. Smoking is permitted only in designated areas. The Contractor, with the approval of WCS, may designate a portion of the construction site as a smoking area and will be responsible for informing all construction personnel of WCS's no-smoking policy and the location of the designated smoking area.

18) The Contractor must submit Safety Data Sheets (SDS's) on all hazardous chemicals that brought on to the Zoo and Aquarium premises to the designated WCS representatives in conformance to the WCS Hazard Communication Program (as required by the Federal OSHA Hazard Communication Standard: 1910.1200). The SDS's must be submitted prior to performing onsite work. Chemical container labeling must conform to OSHA standards. SDS's shall be sent to Brenda Burbach ([bburbach@wcs.org](mailto:bburbach@wcs.org)).

## **B. Special Rules Regarding Hazardous Materials**

### **SPILL PREVENTION AND CONTROL REQUIREMENTS FOR PETROLEUM PRODUCTS AND OTHER HAZARDOUS MATERIALS**

As previously noted, WCS cares for many species of wildlife on its premises. In addition, WCS is subject to federal, state and local laws and regulations regarding petroleum products and other hazardous materials.

In order to protect that wildlife and the environment, and to assure its compliance with applicable laws and regulations, WCS has adopted the following Best Management Practices to prevent releases of hazardous chemicals and petroleum products.

All Contractors, regardless of the nature of the work being performed, are required to follow the Best Management Practices set out below to prevent releases of petroleum products and hazardous chemicals. Contractors are responsible for all costs associated with the clean-up of any discharges, including any costs incurred by WCS.

#### **1) Requirements for Contractor Storage On-Site of Petroleum Products and Other Hazardous Materials:**

- a) In all cases, the manufacturer's written instructions for storage are to be followed.
- b) Wherever possible, containers are to be stored indoors.
- c) Where indoor storage is not an available option, containers stored outside must be covered and must be provided with secondary containment (i.e., a structure or container designed to contain spills).
- d) Container storage near drains or water courses is strictly forbidden.
- e) Containers must be stored away from direct traffic routes. The method of storage must provide adequate aisle space to facilitate the transfer of petroleum products and hazardous chemicals, and for the inspection of storage containers and equipment.
- f) All containers must be stored on pallets or similar corrosion prevention devices.

**2) On-Site Use of Petroleum Products and Other Hazardous Materials:**

- a) Contractors are responsible for maintaining and promptly updating an inventory of petroleum products and other hazardous materials stored on-site. It must be provided to the WCS project manager or other WCS representative upon request.
- b) Manufacturer supplied Safety Data Sheets ("SDS"s) must be maintained on-site for all hazardous materials. These SDSs must be provided to WCS for inspection and copying upon request.
- c) Spill clean-up materials must be kept on-site in ample quantities and be readily available for use.
- d) Minor leaks and spills of petroleum products and other hazardous materials must be immediately cleaned up with absorbent materials. Spill clean-up materials must be promptly and completely collected and disposed of following all State, Federal and City requirements. Disposal guidelines can generally be found on the SDS. Most chemicals should not be disposed of in the regular trash.
- e) When not in use, petroleum products and other hazardous materials must be kept properly secured and stored. Containers must be kept closed when not in use.
- f) All containers must be properly labeled. The number of containers should be minimized and all empty containers must be disposed promptly and properly. Generally, this means that containers may not be disposed of as ordinary trash.

- g) When changing fluids, drip pans must be used. When transferring fluids to temporary or permanent storage containers, spigots and funnels should be used to minimize drips or leaks.
- h) Used clean up materials must be stored in a covered container and disposed of properly when no longer useful. Generally, this means that they may not be disposed of as ordinary trash.

### **3) Proper Disposal of Petroleum Products, Hazardous Materials, Containers Used to Store Them and Clean-up Materials:**

Waste generated as a result of the use of petroleum products and hazardous materials must be properly disposed in accordance with all State, Federal and City requirements. Disposal guidelines can be found on the SDS. Such waste may include, but is not limited to, waste oil, materials used in cleaning up spills, and used containers. Generally, these materials may not be disposed of as ordinary trash. If you have any questions concerning proper disposal of an item, the WCS Environmental Compliance Specialist is available to assist you.

### **4) Equipment Used on WCS Property: Routine Inspections and Preventive Maintenance Required**

Contractors are required to undertake inspection and preventive maintenance procedures on a regular basis to keep vehicles, equipment, machinery, containers and tanks in sound working condition and to minimize the likelihood of any leaks, spills, or other unplanned releases of petroleum or other hazardous chemicals.

### **5) Delivery of Petroleum Products or Other Hazardous Materials**

- a) Loading/unloading activities that involve the transfer of petroleum products and other hazardous materials are to be conducted in such a way as to minimize the potential of a leak or spill. The following requirements apply to such site activities:
  - b) Unloading/loading of containers of petroleum products and other hazardous materials can be performed only within designated transfer areas.
  - c) All deliveries of fuels and chemicals must be supervised by the Contractor. (The Contractor, not just the driver is responsible for all deliveries.)
  - d) Contractors must be present for and direct the loading and unloading of drums.
  - e) Lift truck operators who transport the drums are responsible for the proper and safe transfer of drums and for damage or leaks.
  - f) Damaged or leaking drums are first to be turned or repositioned to minimize the release of the material, and then formal spill-response procedures are to be initiated.

### **6) Reporting Spills:**

Spills that cannot be immediately contained or are greater than five gallons must be immediately reported to the WCS Project Manager. During non-business hours or if the

WCS Project Manager is not available, spills must be reported to Security. The WCS Project Manager or Security are responsible for immediately notifying the Environmental Compliance Specialist.

In addition, the Contractor must provide a written Spill Notification Report to Brenda Burbach, Environmental Compliance Specialist (phone number 718-220-7153, e-mail [bburbach@wcs.org](mailto:bburbach@wcs.org)) within one hour of the time of the occurrence of the spill. The report may, but is not required to be, in the form attached to this notice. In all events, the following information must be provided:

Facility Information:

- Facility:
- Location within the facility of the spill
- Boundaries of all affected areas

Spill Information: Date and time of spill

- Substance discharged
- Total quantity discharged
- Cause
- Description of nature and effects of discharge (e.g., on ground, air, water, etc.)
- Corrective action undertaken at the time of the report.
- Weather conditions at the time of the spill

Reporting Information:

- Name and contact information for the person providing the report.
- Name and contact information of the Contractor.
- Date and time of report.
- WCS representative to whom the spill was originally reported and date and time of such report.

Note: Where required, notification of the spill to local, State, and Federal officials will be made by WCS, based upon information provided by the Contractor.

I have read and understand the above Spill Prevention and Control Requirements for Petroleum products and Other Hazardous Materials:

Name of Contractor:

\_\_\_\_\_

Signature of Contractor's Authorized

Representative: \_\_\_\_\_

Name of Contractor's Authorized Representative  
(print) \_\_\_\_\_

Name of Contractor's Emergency Contact and Phone Number Where That Person Can Be Reached in Non-Business Hours: \_\_\_\_\_

\_\_\_\_\_

**WILDLIFE CONSERVATION SOCIETY  
SPILL NOTIFICATION REPORT**

**WCS Facility Information:**

**Facility:** \_\_\_\_\_

**Spill Location:**

\_\_\_\_\_

**Boundaries of all affected  
areas:** \_\_\_\_\_

**Spill Information:**

**Time & Date of Spill:**

\_\_\_\_\_

**Substance Discharged:**

\_\_\_\_\_

**Total Quantity  
Discharged:** \_\_\_\_\_

**Cause of  
Spill:** \_\_\_\_\_

**Brief Description of the Nature of the Spill Release (e.g., Was it to Ground? Air?  
Water?):** \_\_\_\_\_

—

\_\_\_\_\_

**Effects of Spill Release (injuries, discharge to water bodies or sewers, etc.):**

\_\_\_\_\_

\_\_\_\_\_

**Weather Conditions at the Time of the  
Spill:** \_\_\_\_\_

\_\_\_\_\_

**Corrective Actions Taken As of the Date of This Report:**

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**Additional Corrective Actions Planned and Projected Date of Such Action(s):** \_\_\_\_\_

**Reporting Information:**

**Name of Contractor:** \_\_\_\_\_

**Contractor's Address:** \_\_\_\_\_

**Contractor's Telephone Number:** \_\_\_\_\_

**Name of Reporting Person:** \_\_\_\_\_

**Telephone # of Reporting Person:** \_\_\_\_\_

**Date and time of this Report:** \_\_\_\_\_

**Date, time and identity of the WCS Representative to whom the spill was first reported:**  
\_\_\_\_\_

**APPENDIX C**

**Solicitation Acknowledgement**

Proposers must complete and sign the following acknowledgement:

**Wildlife Conservation Society  
Acknowledgement of Solicitation Terms and Conditions**

**Date (Required):** \_\_\_\_\_

By responding to this WCS ITB, RFP, or RFQ, as the case may be, the undersigned certifies that I have reviewed the contents of this solicitation, including all appendices, graphic charts/drawings, and addenda, and determined that they are acceptable, except for those provisions specifically set forth below: (Use space below and an attachment if needed to list any provisions which require further clarification or negotiation.)

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

I certify and declare that the foregoing is true and correct.

Signed on \_\_\_\_\_ at \_\_\_\_\_  
Date City,

State of \_\_\_\_\_  
State

Signature \_\_\_\_\_

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

Note: WCS at its sole discretion may accept or reject any proposal response or cancel this solicitation in its entirety at any time without further obligation to Supplier.