

**ATLANTIC AVENUE BUSINESS IMPROVEMENT DISTRICT**

**REQUEST FOR PROPOSALS**

**EMERGENCY REPAIRS AND STANDARDIZATION  
ESTIMATE WITHIN THE ATLANTIC AVENUE  
BUSINESS IMPROVEMENT DISTRICT**

## **I. INTRODUCTION**

The Atlantic Avenue District Management Association, Inc., ("AADMA") a not-for-profit corporation organized under the laws of the State of New York which manages the Atlantic Avenue Business Improvement District ("BID" or "District"), is inviting responses by this request ("Request") to provide **emergency repairs** of historic pedestrian lighting, including an **estimate** to convert all existing pedestrian lighting poles and luminaires to uniform "Type-B" poles and "Battery Park" luminaires within the Atlantic Avenue District, more particularly hereinafter described. Proposers are invited to submit proposals (each, a "Proposal") to perform the services (the "Work") more particularly described in the "Scope of Work" set forth in the form of contract (the "Contract Form") attached hereto as **Appendix A** and by this reference incorporated herein. If a satisfactory Proposal is received, it is anticipated that the AADMA will enter into a contract (the "Contract") with the successful Proposer for a one (1) year period.

## **II. PERTINENT DATE**

All Proposals are due by 5:00 p.m. on June 3rd, 2013 (the "Closing Date").

## **III. PROPOSAL SUBMISSION PROCESS**

A. Three (3) copies of a written Proposal must be received by the AADMA by the Closing Date. Proposals received after the Closing Date may not be accepted by the AADMA and, if accepted, may not be considered in response to this solicitation.

Proposals shall be addressed as follows:

**Atlantic Avenue District Management Association, Inc.  
c/o Pacheco and Lugo, LLC  
340 Atlantic Avenue  
Brooklyn, NY 11201  
Attention: Josef Szende, Executive Director**

The AADMA will not accept oral Proposals or Proposals by facsimile or electronic mail.

All questions regarding the Request must be in writing and should be directed to Josef Szende, via electronic mail ([jszende@atlanticavebid.org](mailto:jszende@atlanticavebid.org)). Questions and responses from the AADMA may be shared with other Proposers at <http://bit.ly/ZwgBMN>

B. Proposals are to contain the following:

- 1) Any assumptions regarding the Work to be performed by the Proposer;
- 2) Price (using the Proposal Form as provided in **Appendix B** attached hereto and incorporated herein);

- 3) A statement of the exceptions, if any, which the Proposer takes to any terms and conditions contained in the "Scope of Work" or the Contract Form (including a specific reference to any provision to which it is taking exception); and
- 4) Statement of Qualifications/Detailed Description of Work, including References.

#### **IV. TERMS GOVERNING REQUEST AND SELECTION**

##### **A. Review of Proposals**

The AADMA will review all Proposals for completeness and compliance with the terms and conditions hereof. The AADMA reserves the right to request additional materials, including those it may deem useful or appropriate to evaluate each Proposer's qualifications and past experience, or clarification or modification of any submitted Proposal. Such requests will be responded to in a timely manner, as determined by the AADMA. Submission of a Proposal shall constitute the Proposer's permission to the AADMA to make such inquiries concerning the Proposer as the AADMA in its discretion deems useful or appropriate. The AADMA is not obligated to make any such request or to accept any unsolicited additional materials, clarification, modification or background information.

The AADMA reserves the right, in its sole discretion, to reject at any time any or all Proposals, to withdraw this Request without notice and to negotiate with one or more Proposers submitting Proposals or entities not submitting Proposals on terms other than those set forth herein. The AADMA reserves the right to waive compliance with and/or change any of the terms of this Request.

The AADMA will select the Proposer which, in the sole judgment of the AADMA, most successfully demonstrates the necessary qualities to undertake the project, offers the most favorable financial terms, and best meets the other needs and goals of the District and the AADMA. The AADMA reserves full right to reject all proposals if it so chooses.

Under no circumstances will the AADMA pay any costs incurred by a Proposer in responding to this Request.

The review or selection of a Proposal submitted by a Proposer will create no legal submission or equitable rights in favor of the Proposer, including without limitation, rights of enforcement or reimbursement.

Failure by the AADMA for any reason to select a Proposer or to enter into the Contract with a Proposer once selected as a result of this Request will not create any liability on the part of the AADMA or any of its members, officers, employees, agents, consultants or other Proposers. Submission of a Proposal by a Proposer in response to this Request will constitute a waiver by such Proposer of any claim against any of the foregoing for any costs incurred or for any matters arising thereunder or in connection with the review of such Proposal by the AADMA

All Proposers will be subject to the New York City Vendex Review Process to determine Proposers' previous track record and contractual experience with New York City.

## B. Execution of the Contract

The submission of a Proposal with respect to the District shall constitute an agreement by the Proposer to execute the Contract with the AADMA as written, except for the exceptions raised in the Proposal and agreed to by the AADMA. If the AADMA notifies the Proposer that it has been selected, then Proposer shall execute the Contract with the AADMA promptly within such notification and receipt of an execution copy. In the event that the Proposer fails to execute the Contract expeditiously for any reason within such period, the AADMA may void the selection of the Proposer and negotiate and execute a Contract with another party (or no party, if it so chooses). Work will begin immediately upon execution of the Contract.

**APPENDIX A**

**CONTRACT FORM**

**ATLANTIC AVENUE DISTRICT MANAGEMENT  
ASSOCIATION, INC.**

**AND**

---

**CONTRACT**

**FOR**

**EMERGENCY REPAIRS AND STANDARDIZATION  
ESTIMATE WITHIN THE ATLANTIC AVENUE  
BUSINESS IMPROVEMENT DISTRICT**

Be it known that as of this \_\_\_\_\_, 2013, the Atlantic Avenue District Management Association, Inc. ("AADMA") a New York not-for-profit corporation having its office at 340 Atlantic Avenue, Brooklyn, NY 11201, and \_\_\_\_\_ (hereafter known as the "Contractor") are hereby entering into this contract ("Contract") to provide emergency repairs for eighty-nine (89) pedestrian lights on Atlantic Avenue, all in the Atlantic Avenue Business Improvement District delineated as the Project Area on the spreadsheet attached hereto as Exhibit A ("Atlantic Avenue Business Improvement District"). The Contract will cover emergency repairs of pedestrian lighting components, as may be directed with short notice by the AADMA.

## **I. SERVICES AND RESPONSIBILITIES**

### General Services:

The Contractor shall meet all the requirements of the AADMA and the New York City Department of Transportation ("DOT") in a timely manner. This requirement shall include meeting all standards and contracting requirements, as well as obtaining all permits and approvals.

## **II. SCOPE AND INTENT**

### A. Scope

Contractor shall furnish all labor ("Time"), supplies and materials (collectively, "Materials") and bucket truck vehicles and associated equipment (collectively, "Equipment") required for the emergency repairs of the pedestrian lighting system on Atlantic Avenue in the Atlantic Avenue Business Improvement District.

The Contract is for the emergency repairs of eighty-nine (89) Type-B pedestrian lights all of which are located on the north and south side of Atlantic Avenue from the Brooklyn-Queens Expressway to 4<sup>th</sup> Avenue.

Additionally, thirty-six (36) of the luminaires are currently not of the "Battery Park" type luminaire. The Contractor should provide an estimate to make all poles and luminaires uniform across the District within a five (5) year time period.

Exhibit A sets forth the location and number of light fixtures to be supported. The Contractor shall trouble-shoot all lighting performance issues as may be directed by the AADMA.

All work performed under this Contract shall be at the direction and under the supervision of Josef Szende, Executive Director of the Atlantic Avenue Business Improvement District.

### B. Intent

The intent of the Contract is to provide emergency repair support to correct lighting performance issues so as to keep in good working order and condition,

the lighting as defined above in the Atlantic Avenue Business Improvement District.

### **III. ITEMS OF REPAIRS; WORK ORDERS AND REPAIRS; RESTORATION OF PAVEMENT OR SIDEWALK**

1. Items of Repairs. Repairs shall include the replacement or correction of defects listed below as reported to the Contractor and directed by a designated representative of the AADMA. The Contractor shall be responsible for furnishing all materials and equipment necessary for the emergency repair of the lighting fixtures, including but not limited to, poles, lamp and ballast systems, luminaires, and all controls, fuses, wiring, etc.

- A. Defective or missing lampposts and lamppost foundations.
- B. Defective or missing pedestrian "Battery Park" luminaires throughout the Atlantic Avenue Business Improvement District.
- C. All lamp outages due to such causes as, but not limited to, missing or broken lamps, burned out or cycling lamps, blown or missing fuses and lamps not yielding the proper illumination.
- D. Broken or missing glassware.
- E. Missing or malfunctioning controls.
- F. Dangerous conditions, including, but not limited to, open luminaires, hanging luminaires and knocked down lampposts.
- G. Removal of foreign equipment and objects.
- H. Defective wiring.
- I. Missing hand hole covers and doors.
- J. Removing illegal taps to lampposts.
- K. Inoperative ballasts.
- L. Painting lampposts.

2. Work Orders and Repairs.

A. AADMA-GENERATED WORK ORDERS – The AADMA has developed street light pole mapping of the District that employs a light pole/luminaire numbering system. A marked up copy of these maps will be provided to the Contractor as part of the work order. The image in Exhibit A represents the mapping to be utilized.

B. EMERGENCIES – The Contractor shall, within four (4) hours, correct any situation falling under its jurisdiction that is deemed by the AADMA to be an emergency. This is to include, but not be limited to, knocked-down lampposts, severely leaning lampposts, hanging glassware, hanging luminaires, adjacent outages, dangerously exposed wires or situations that pose an immediate threat to public safety.

C. UTILITY NO-CURRENT OR NO SERVICE: CON EDISON – At locations determined to be "no-current" (interrupted service) or "no service" (new installation), a one foot length of black and yellow tape (PVC) shall be affixed to the post at a location at least 10 feet above the sidewalk. The tape should be placed horizontally for "no-current" and vertically for "no-service". In the case of

a “no-current” a stop-tag will be affixed in the base of a lamppost, or at the facility point, in the case of a New York City (“City”) distribution system. In addition, all “no-currents” must be identified by their “register numbers”. The Contractor is responsible for wiring up to, but not including, connectors to the Con Edison line.

D. ELECTRICAL FACILITIES FROM TRAFFIC POST – When a pedestrian light energized from DOT traffic facilities (usually at an intersection) is reported as an outage, the Contractor is required to trouble-shoot the pair of conductors (feeding pedestrian lights) through the intersection to the point where the traffic cable is spliced to the utility service conductor. This work is limited to checking fuses, splices, pigtail sockets or fuse holders and their replacement when necessary at no additional compensation. If there is still no energy to the lamppost after investigation, then the location should be reported as a traffic “no-current”, giving specific location and nature of defect.

E. VOLTAGE/GROUNDING CHECK – Contractor and the AADMA acknowledge that pursuant to Section 19-153 of Chapter 1, Title 19 of the Administrative Code of the City of New York, local electric corporations (as such term is defined therein) are required to establish and implement written guidelines and procedures for the annual inspection or testing of, inter alia, stray voltage emanating from street poles (such guidelines and procedures, collectively, “Stray Voltage Testing Procedures”). Contractor shall keep the AADMA apprised of its knowledge of the status of Stray Voltage Testing Procedures, and at such time as the same shall be implemented by such local electric corporations, Contractor and the AADMA agree to promptly enter into an amendment to this Contract in order to incorporate such Stray Voltage Testing Procedures into this Contract, pursuant to which Contractor shall test on a monthly basis all lighting fixtures maintained by Contractor under this Contract for the purpose of detecting stray voltage.

F. RESTORATION OF PAVEMENT OR SIDEWALK. Where work ordered under this Contract involves the disturbance of paved sidewalk or roadway, the sidewalk or roadway shall be restored at the Contractor’s expense in a manner to resemble the immediately surrounding surfaces, leaving no surface obstruction above grade, to the satisfaction of the AADMA representative. Further, should the sidewalk to be restored be of cement, concrete composition, or other type, made up in flag or slab fashion, the Contractor shall be required to restore said flag or slab, in its entirety. For the information of the Contractor, such flag or slab to be restored usually covers an area under 25 square feet total. All sidewalk repair shall conform to DOT specifications.

#### **IV. OPERATIONAL REQUIREMENTS AND ADMINISTRATION**

##### **A. Operational Requirements**

1. The Contractor shall comply with all DOT and AADMA requirements.
2. Contractor is responsible for any missing or damaged equipment removed, and for restoring or replacing any damaged lamppost foundations, in accordance with the Division of Street Lighting standards.
3. The Contractor is required to obtain DOT Street Light Division approval of

all installations when necessary.

4. Where working during daytime hours is curtailed and/or prohibited, the Contractor, when so directed by the AADMA, will be required to perform work at selected hours between dusk and dawn.

5. The Contractor will receive approval from DOT on all materials before they will be accepted by the AADMA.

6. All work must be done by a Licensed New York City Electrician, qualified by DOT Street Lighting and Traffic Signal divisions.

**B. Administration**

1. Following an emergency work order, the Contractor shall submit a detailed report within five (5) calendar days that includes the location and description of the completed work, the amounts of Time and Equipment incurred on an hourly (or partial hour) basis and the type, quantity and cost of Materials used.

2. The Contractor shall respond in writing to the AADMA to any complaints regarding the services being provided and shall make its best efforts to alleviate such complaints, at no additional cost to the AADMA.

**V. TERM**

The term of the Contract shall be from July 1, 2013 through July 1, 2014 unless sooner terminated in accordance with the provisions of this Contract (the "Term"). At the option of the AADMA, in its sole discretion, the Term may be extended for one additional year terminating on July 1, 2015. In such event, the parties shall execute an amendment to this Contract and the Term shall refer to both years.

**VI. FIXED HOURLY PLUS COMPENSATION FOR TIME**

For all Time under this Contract, the Contractor shall be paid at the rate of \$\_\_\_\_ per man hour, pro-rated for partial hours, up to a maximum aggregate amount, including the cost of Materials, Equipment and Storage as provided for in Section VII below, payable under this Contract of \_\_\_\_\_Dollars (\$\_\_\_\_\_).

Time estimates per replacement shall not exceed the following (please fill in):

- Per 1 new lamppost: \_\_\_\_\_ Hours
- Per 1 new "Battery Park City" luminaire: \_\_\_\_\_ Hours
- Per 1 new complete set of wiring in 1 pole: \_\_\_\_\_ Hours
- Per 1 new set of glassware for 1 pole: \_\_\_\_\_ Hours
- Per 1 new set of covers and doors for 1 pole: \_\_\_\_\_ Hours
- Per 1 new ballast for 1 pole: \_\_\_\_\_ Hours
- Per black shiny paint for 1 pole: \_\_\_\_\_ Hours

**VII. MATERIALS AT COST PLUS; FIXED HOURLY PLUS COMPENSATION FOR EQUIPMENT**

A. Materials

All Materials required in connection with the work orders issued and repairs made in accordance with this Contract shall be purchased by the Contractor as directed by the AADMA and stored by the Contractor until such time as needed. The AADMA shall reimburse the Contractor for Materials on an "at cost" basis, meaning for the actual cost to the Contractor of such Materials without premiums, overhead fees, commissions or any mark-up, but including any discount or special pricing obtainable by the Contractor, the Contractor agreeing to use reasonable efforts to obtain Materials at the lowest cost available to the Contractor. The per item cost of such Materials purchased by Contractor shall not exceed the following amounts -

- Per 1 new lamppost: \_\_\_\_\_ Dollars (\$\_\_\_\_\_)
- Per 1 new "Battery Park City" luminaire: \_\_\_\_\_ Dollars (\$\_\_\_\_\_)
- Per 1 new complete set of wiring in 1 pole: \_\_\_\_\_ Dollars (\$\_\_\_\_\_)
- Per 1 new set of glassware for 1 pole: \_\_\_\_\_ Dollars (\$\_\_\_\_\_)
- Per 1 new set of covers and doors for 1 pole: \_\_\_\_\_ Dollars (\$\_\_\_\_\_)
- Per 1 new ballast for 1 pole: \_\_\_\_\_ Dollars (\$\_\_\_\_\_)
- Per black shiny paint for 1 pole: \_\_\_\_\_ Dollars (\$\_\_\_\_\_)

payable under this Contract.

The Contractor will provide a record to the AADMA as Materials and Equipment are used and Time incurred; in the monthly invoices for all Materials the Contractor must obtain the approval of the AADMA.

B. Equipment

Contractor shall furnish all Equipment as may be necessary or desirable in connection with the performance of Contractor's services and the work under this Contract, and shall be compensated for the use thereof at the flat rate of \$\_\_\_\_\_ per hour of use of Equipment, pro-rated for partial hours, up to a maximum aggregate amount, including the cost of Time incurred to date and Materials under this Contract, of \_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) payable under this Contract.

C. Storage Fee

Contractor shall provide storage for the Atlantic Avenue lighting fixtures and associated components as may be requested by the AADMA from time to time, or as may be otherwise necessary or desirable, in connection with the performance of Contractor's services and the work under this Contract, and shall be compensated for the use thereof at the flat rate of \$\_\_\_\_\_ per calendar month of storage, prorated for partial months, up to a maximum aggregate amount, including the cost of all Time incurred and all Equipment and Materials, of \_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) payable under this Contract. Contractor acknowledges that as of the date hereof the lighting fixtures and associated components inventoried on Exhibit B attached hereto and by this reference made a part hereof are located in Contractor's storage yard in \_\_\_\_\_; Contractor shall keep such inventory updated as the same may change from time to time, and shall

provide an accurate inventory to the AADMA promptly upon request, it being understood and agreed that Contractor shall bear all risks of loss or damage to all lighting fixtures and associated components by Contractor.

### **VIII. TAXES**

- A. Any purchases by the Contractor of Materials constituting tangible personal property are not exempt from sales and use taxes, to the extent that such property is used to alter, maintain or improve, and becomes an integral component part of City-owned real property. This does apply to tools, machinery, equipment or other property leased by the Contractor or to supplies materials or other property which are consumed in the course of construction or for any other reason not incorporated into City-owned real property.
- B. The Contractor assumes exclusive liability for and shall pay all contributions or taxes imposed or required by the unemployment insurance laws of New York, the Federal Social Security Act, or any other act, now or hereafter in effect, upon or in respect of wages, salaries or other compensation paid to employees engaged upon or in connection with the work to be performed.

### **IX. PAYMENTS AND INVOICES**

- A. For work completed to the satisfaction of the AADMA and for Materials requested to be obtained by the AADMA, Contractor will be paid within thirty (30) days of receipt by the AADMA of an itemized invoice detailing the hourly amount of Time and services performed, the hourly amount of Equipment used and the type, quantity and cost of Materials used, together with such supporting documentation as may be requested by the AADMA.

### **X. CHANGES IN THE SCOPE OF WORK**

The AADMA reserves the right to make reasonable changes in the general scope of the work.

### **XI. SUBCONTRACTING**

Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express prior written approval of the AADMA as to the work to be subcontracted and as to the subcontractor, provided that the Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

### **XII. INDEMNIFICATION**

Contractor shall indemnify, protect, defend, save and keep harmless the City, the New York City Department of Small Business Services ("SBS"), DOT and the AADMA, and their respective officers, directors, employees, agents and partners (collectively, the

“Indemnified Parties”), from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions suits, costs, expenses and disbursements, including, without limitation, reasonable legal and investigative fees and expenses, of whatsoever kind and nature (collectively, “Liabilities”), which may be incurred by or imposed on the Indemnified Parties, or any of them, and in any way relating to or arising out of Contractor’s services provided under this Contract, except to the extent that any of such Liabilities are directly due to the negligent acts or omissions of such Indemnified Party(ies). Contractor will be solely responsible for the safety and protection of all its employees and will assume all liability for injuries, including death that may occur to said employees due to negligence, fault or default of Contractor. Contractor will also require such indemnification from its contractors, subcontractors, and permittees.

### **XIII. WARRANTIES**

- A. The Contractor warrants that services of any nature furnished hereunder shall be rendered competently by qualified personnel in accordance with the best accepted practice.
- B. The Contractor further warrants that such services comply with all requirements of federal, state, and local laws and regulations, including, without limitation, the Occupational Safety and Health Act of 1970.
- C. All Materials are guaranteed to be as specified. All work shall be completed in a professional manner according to standard practices. An alteration or deviation from above specifications will be executed only upon written approval from the AADMA.

### **XIV. PERMITS AND APPROVAL**

- A. The Contractor shall be responsible for obtaining all permits and approvals, if required by the City, for any work to be performed.
- B. The AADMA shall be provided with a copy of any aforementioned permits and/or approval.

### **XV. INSURANCE**

Throughout the term of this Contract, the Contractor shall maintain, and shall cause all of its subcontractors and permittees to maintain, the following insurance:

- A. Commercial General Liability Insurance written on an ISO Occurrence Form or equivalent relating to the work performed under this Contract providing a limit of not less than \$2,000,000 in the aggregate and not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage and \$1,000,000 products/completed operations and contractual coverage which shall remain in effect for a period of not less than five (5) years beyond the completion of work under this Contract.
- B. Comprehensive automobile liability insurance covering all owned, non-owned, and hired vehicles with a combined single limit of not less than

\$2,000,000.

- C. The AADMA, the City, DOT and SBS shall be additional named insureds on all such policies listed above and the Contractor shall be named as an additional insured on all such policies obtained by its subcontractors and permittees. Evidence of this insurance must be supplied to the AADMA for review and approval prior to the commencement of any work under this Contract.
- D. Contractors and all subcontractors shall also maintain Statutory Workers' Compensation and Employer's Liability Insurance covering all contractors' and subcontractors' employees engaged in the work performed under this Contract.
- E. Certificates of insurance (and such other evidence of the insurance required to be maintained under this Section entitled "Insurance" as may be acceptable to the AADMA, including, without limitation, complete copies of all such insurance policies and endorsements) in form and substance reasonably acceptable to the AADMA, must be supplied for review and approval prior to the commencement of the work described herein. Contractor shall release and waive all rights of subrogation against the AADMA possessed by Contractor's insurers with respect to the assumption and discharge of the obligations of Contractor pursuant to this Section, and Contractor represents and warrants that it is authorized to make such release and waiver under its policies of insurance. Each issuer of each insurance policy required to be maintained under this Contract shall evidence its agreement that each such policy shall not be cancelled or materially amended without 30 days prior notice to the AADMA. All insurance provided by Contractor as required in this Section shall be primary and non-contributory with respect to any other coverage which may be obtained by any of the Indemnified Parties.

## **XVI. ASSIGNMENT**

- A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract or any part thereof, or of its interest herein or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract, without the written consent of the Executive Director of the Atlantic Avenue Business Improvement District.
- B. The AADMA reserves the right to unilaterally assign this Contract to the City or to its agent.

## **XVII. INDEPENDENT CONTRACTOR AND LICENSEE**

Notwithstanding anything contained herein to the contrary, it is specifically understood and agreed that in the performance of the terms, covenants, and conditions of this Contract, neither the Contractor nor any of its employees, agents, independent contractors, subcontractors, or permittees shall be deemed to be acting as agents,

servants, or employees of the AADMA or the City by virtue of this Contract or by virtue of any approval, permit, license, grant, right, or other authorization given by the AADMA or the City or any of its officers, agents, or employees pursuant to this Contract, but shall be deemed to be independent contractors performing services for the AADMA or the City or the Contractor, as the case may be, without power or authority to bind the City or the AADMA, and shall be deemed solely responsible for all acts taken or omitted by them in the performance of or otherwise pursuant to this Contract.

## **XVIII. CLAIMS OR ACTIONS**

- A. The Contractor shall look solely to the funds appropriated by the AADMA for this Contract for the satisfaction of any claim or cause of action the Contractor may have against the AADMA in connection with this Contract or the failures of the AADMA to perform any of its obligations hereunder. No officer, employee, agent or other person authorized to act on behalf of the AADMA or the Contractor shall have any personal liability in connection with this Contract or any failure of the AADMA or the Contractor to perform its obligations hereunder. The Contractor agrees that no action against the AADMA in connection with this Contract shall lie or be maintained unless such action is commenced within six months after (i) the termination of this Contract, or (ii) the cause for said action takes place, whichever is earliest.
- B. The parties agree that any claims by or against the City arising under this Contract or related hereto shall be governed by the following:
  - 1. This Contract shall be governed by and construed in accordance with the laws of the State of New York.
  - 2. The parties agree that any and all claims asserted by or against the City arising under this Contract or related hereto shall be heard and determined either in the courts of the United States ("Federal Court(s)") or in the courts of the State of New York ("New York State Court(s)") located in the City and County of New York. To effect this agreement and intent, the Contractor agrees, and shall require each subcontractor, contractor or permittee of the Contractor to agree as follows:
    - (a) If the City initiates any action against the AADMA and/or any subcontractor, contractor or permittee of the AADMA in Federal Court or in New York State Court, service of process may be made on such party either in person, wherever such party may be found, or by registered mail addressed to the party at its address as set forth in this Contract, or to such other address as the party may have provided in writing to the City or the AADMA, as the case may be.
    - (b) With respect to any action between the City and the AADMA and/or any subcontractor, contractor or permittee of the AADMA in New York State Court, the AADMA has expressly waived and the Contractor hereby expressly waives and relinquishes and shall cause each subcontractor, contractor or permittee of the Contractor to waive and relinquish any rights it might otherwise have (A) to move to dismiss on grounds of forum

non conveniens, (B) to remove to Federal Court, and (C) to move for a change of venue to a New York State Court outside New York County.

- (c) With respect to any action between the City and the AADMA and/or any subcontractor, contractor or permittee of the AADMA in Federal Court located in New York City, the AADMA has expressly waived and the Contractor hereby expressly waives and relinquishes and shall cause each subcontractor, contractor or permittee of the Contractor to expressly waive and relinquish any right it might otherwise have to move to transfer the action to a Federal Court outside the City.
- (d) If the Contractor and/or any subcontractor, contractor or permittee of the Contractor commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Contractor shall and shall cause each subcontractor, contractor or permittee of the Contractor to either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall and shall cause each subcontractor, contractor or permittee of the Contractor to consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City.
- (e) If any provision(s) of this section is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

## **XIX. TERMINATION AND CANCELLATION**

- A. The AADMA may terminate this Contract upon five (5) days' written notice with cause, i.e., upon a determination by the AADMA that Contractor has materially failed to perform under this Contract, or upon ten (10) days' written notice without cause
- B. In the event of such termination, payment to the Contractor shall be adjusted on a pro-rata basis or refunded to the AADMA on a pro-rata basis.

## **XX. NO WAIVER**

- A. The failure of either party to enforce or otherwise require strict performance of any of the terms or conditions of this Contract or of the party's right in any one or more instances shall not constitute a waiver by the party of such performance, terms, conditions, or rights either then or for the future.
- B. Any waiver shall be effective only in writing and signed by the party's authorized representative, and only with respect to the particular case expressly covered therein.

## **XXI. COMPLIANCE WITH LAWS**

- A. The Contractor shall comply with all applicable federal, state, and local laws, executive orders, regulations and rules.
- B. The Contractor shall hold harmless and indemnify the AADMA from any fines, penalties, and expenses that the AADMA may suffer by reason of the breach or non-observance by the Contractor of its obligations under this provision.

## **XXII. BOOKS, RECORDS, AUDITS AND INSPECTIONS**

- A. Contractor shall keep accurate records and books in accordance with generally accepted accounting practices. Such books shall meet all requirements of the AADMA.
- B. Such books and records shall include, but not be limited to, employee time and payment; accounts receivable and payable; purchase orders and sales receipts; liabilities and payments rendered for the purposes of this Contract.
- C. All books and records of Contractor shall be available upon three business days' notice for the purposes of auditing or inspection for purposes of verifying compliance with the terms of this Contract and applicable process of law.

## **XXIII. VENDEX REVIEW**

This Contract shall be effective subject to, and no payments shall be made prior to the Contractor's successful completion of a VENDEX review by the City of New York, and neither the AADMA nor the City shall be liable to the Contractor if the contract is terminated because of a determination by the City that Contractor has failed such review.

## **XXIV. CONFIDENTIALITY**

Any non-public information related to the work herein, including, but not limited to, any materials, data, files, documents and correspondence, shall be considered confidential (the "Confidential Information"). Contractor shall not divulge, disclose or communicate in any manner the Confidential Information to any third party without the prior written consent of the AADMA. Contractor will protect the Confidential Information and treat it as such.

IN WITNESS WHEREOF, THE PARTIES HAVE DULY EXECUTED AND DELIVERED THIS CONTRACT, EFFECTIVE AS OF THE DATE FIRST SET FORTH ABOVE.

**ATLANTIC AVENUE DISTRICT MANAGEMENT ASSOCIATION, INC.**

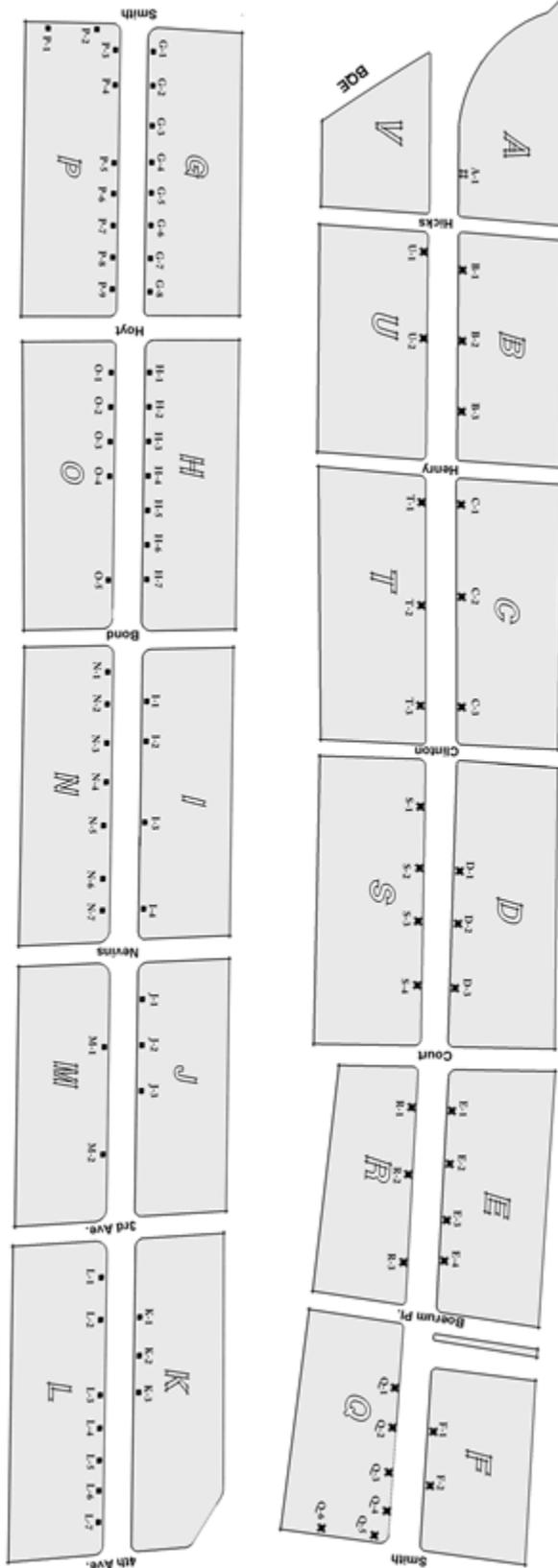
By: \_\_\_\_\_  
Name: Josef Szende  
Title: Executive Director

**CONTRACTOR NAME**

By: \_\_\_\_\_  
Name:  
Title:

EIN: \_\_\_\_\_

## Atlantic Avenue Business Improvement District Lighting Maintenance Chart



### EXHIBIT A

Observations:

All lamp posts are labeled by block letter followed by the number from left to right (west to east)

Block	Number of Lights	North or South Side	New Luminaires Needed
BQE to Hicks	1	North	1
Hicks to Henry	3	North	3
Hicks to Henry	2	South	2
Henry to Clinton	3	North	3
Henry to Clinton	3	South	3
Clinton to Court	3	North	3
Clinton to Court	4	South	4
Court to Boerum	4	North	4
Court to Boerum	3	South	0
Boerum to Smith	2	North	2
Boerum to Smith	4	South	1
Smith St., Pacific to Atlantic	4		1
Smith to Hoyt	8	North	3
Smith to Hoyt	7	South	0
Hoyt to Bond	7	North	0
Hoyt to Bond	5	South	2
Bond to Nevins	4	North	0
Bond to Nevins	7	South	1
Nevins to 3rd	3	North	0
Nevins to 3rd	2	South	1
3rd to 4th	3	North	1
3rd to 4th	7	South	1
<b>Total</b>	<b>89</b>		<b>36</b>

