

CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET

(Attach, in the following order, applicable CRFA Memo, Responsibility Determination Form, approved CPSR Cover Sheet and, if the selection procedure was not CSB, the CPSR Memo and CCPO Memo (if applicable))

AGENCY: DORIS	RECOMMENDED CONCESSIONAIRE Name: <u>_Ancestry.com Operations, Inc._</u> Address: <u>1300 West Traverse Parkway Lehi, UT 84043</u> Telephone # <u>(801) 705-7135</u> <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # <u>87-0392473</u> Not-for-Profit Organization <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Certified by DSBS as M/WBE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	CONCESSION TITLE/ DESCRIPTION: Agreement for the Digitization, Indexing and Internet Publication and Hosting of Selected Historical Records CONCESSION I.D.# 8602021001
# VOTES required for proposed action = <u>_4_</u> <input type="checkbox"/> N/A		

LOCATION OF CONCESSION SITE(S*) Address _____ N/A
 *Attach additional sheet Borough _____ C.B. _____ Block # _____ Lot # _____

SELECTION PROCEDURE
 (*CCPO approval of CRFA required)

Competitive Sealed Bids
 Competitive Sealed Proposals* (FCRC approved Agency request to deviate from final recommendation of the Selection Committee on ___/___/___)
 Different Selection Procedure: * (Sole Source Agreement Other _____)
 > FCRC approved different selection procedure on 6/08/2022.
 Negotiated Concession*

<p align="center">CONCESSION AGREEMENT TERM</p> Initial Term: <u>9</u> years From Date of Registration by the NYC Comptroller To end of 9th year. Renewal Option(s) Term: <u>N/A</u> Total Potential Term: <u>9</u> Years * <input type="checkbox"/> * >20 years – FCRC unanimously approved term on ___/___/___	<p align="center">ANNUAL REVENUE (Check all that apply) (<input type="checkbox"/> Additional sheet (<input type="checkbox"/> s) attached)</p> <input type="checkbox"/> Annual Fee(s) \$ _____ <input type="checkbox"/> % Gross Receipts _____% <input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$ _____ v. _____% of Gross Receipts <input checked="" type="checkbox"/> Other \$25,000 including \$5,000 paid in year 1 and \$2500 paid annually each year thereafter for the term
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NOTIFICATION REQUIREMENTS

Subject concession was awarded by CSB or CSP. YES NO

If YES, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by ___/___/___, which was at least 30 days prior to its issuance.

 The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.

 The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by 6/05/20, which was at least 40 days prior to issuance of the solicitation.

If NO, check the applicable box below:

The Agency certifies that each affected CB/BP received written notice by 4/29/2022, which was at least 40 days in advance of the FCRC meeting on 6/8/2022 at which the agency sought and received approval to use a different selection procedure.

 The Agency certifies that each affected CB/BP received written notice on ___/___/___, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on ___/___/___.

 The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on ___/___/___

Law Department approved concession agreement on 6/24/2022

Award is a major concession.

YES NO

If YES, award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:

CPC approved on ___/___/___

City Council approved on ___/___/___ or N/A

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement.

If the concession was awarded by other than CSB or CSP, additionally check the applicable box below:

The concession was approved by the FCRC on ___/___/___.

The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

Name _____ Title _____

Signature _____ Date ___/___/___

CERTIFICATE OF PROCEDURAL REQUISITES

This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement.

Signature _____ Date ___/___/___

City Chief Procurement Officer

**RECOMMENDATION FOR AWARD OF CONCESSION AGREEMENT MEMORANDUM:
CONCESSION AGREEMENT AWARDED BY OTHER THAN CSB OR CSP**

SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)

Digitization, indexing and internet publication of selected historical records from the collections of the New York City Municipal Archives.

***Instructions:** Provide all information requested below; check all applicable boxes.*

A. SELECTION PROCEDURE

Sole Source

Other *Describe:*

B. NEGOTIATIONS

***Instructions:** Describe the nature of negotiations conducted, including negotiations with respect to the amount of revenue offered.*

Negotiations for the sole source agreement were minimal because the parties completed most of the negotiation in 2020 and 2021 after Ancestry's proposal (responsive to the original concession RFP) was selected for award. However, the agency later withdrew its concession package from Comptroller review and documented justification for a sole source concession award. After the FCRC approved the agency's use of a different procedure on June 8, 2022, the parties revisited the concession agreement to negotiate very minimal changes.

Negotiated Revisions

The parties agreed to:

- replace the outdated whereas clauses and update them to reflect the FCRC's approval of a sole source concession rather than describe the previous CSP process.;
- change the concession agreement effective date to the date of registration with the Comptroller, and the first payment due date to 60 days after comptroller registration/effective date rather than after contract execution; and
- delete the previous RFP and Ancestry's proposal from the list of appendices/documents incorporated by reference.

The parties did not make any changes to the previously negotiated Concession fee.

Original Revenue Amount Negotiation

Ancestry's original proposal included a royalty fee based on Ancestry's standard royalty schedule. Ancestry originally told DORIS that they pay \$20-\$40k per quarter to some other government accounts. However, Ancestry thought that DORIS would be paid less because DORIS' total collections selected for digitization include fewer vital records than other government accounts. When pressed for more precise royalty figures, Ancestry revised the previously projected royalty figure down significantly to \$10k per quarter. It became clear that DORIS would not make much money from the royalty schedule. DORIS began negotiating a flat fee instead and pressed Ancestry to pay to house the ledgers for the duration of the project so that DORIS could stop paying to house them, saving the City a significant amount of money.

To arrive at a fair flat-fee, DORIS asked Ancestry to project with close precision how much money it would likely generate from the royalty fee schedule. Ancestry replied that DORIS might generate \$10-20k over the life of the term, with \$10k being most likely and \$20 being possible but unlikely. DORIS then pushed for more than \$10k and \$25k was the number both parties found reasonable. Neither party loved this number, but both agreed it was the fairest number they could live with. DORIS accepted the \$25,000 royalty amount and the parties later agreed to divide that amount over the course of the nine-year term.

DORIS is satisfied with this fee amount when combined with the larger value and benefits to the City that result from the agreement: The City will save upwards of \$60,000 per year by no longer having to pay to house the voter books; Ancestry will be performing hundreds of thousands of dollars-worth of digitization work at no cost to the city; paying to move the ledgers out of the City's facilities at no cost to the City; and indexing the names and other information contained in the ledger and granting DORIS a license to access those indexes providing substantial research value to the DORIS staff at the Municipal Archives.

C. BASIS FOR AWARD (If sole source award, attach the offer; if other than a sole source award, attach the three highest rated offers, if applicable.)

The agency determined that award of the concession is in the best interest of the City because:

Ancestry's proposal and the concession agreement for the Digitization, Indexing, and Internet Publication of Selected Historical Records from the Collections of the New York City Municipal Archives (the "Concession") were previously determined to be fully responsive to an RFP DORIS wrote for the purpose of furthering its agency mission. Subsequent negotiations with Ancestry insured that the vendor will comply with all terms and conditions of the agreement.

Further, Appropriate disposition of the voter books after digitization will save the Municipal Archives from having to reserve valuable storage space for the materials in perpetuity. Although the financial compensation that will accrue from the agreement is modest, the benefit to the City is substantial because the City will save upwards of \$60,000 per year by no longer having to pay to house the voter books. Digitization and indexing of the hundreds of thousands of names that appear in the voter books and vital records will provide unprecedented access to important documentation essential for family history research. The resources necessary to complete this work in-house are not currently existing and unlikely to be available in the future. And if DORIS were to pay a vendor to complete the digitization and indexing work, the cost would likely total several hundred thousand dollars to half a million dollars, or more.

D. PUBLIC HEARING

N/A – Subject award **NOT** a significant concession]

1. Publication & Distribution of Public Hearing Notice

Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on ___/___/___, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on ___/___/___, which was not less than 15 days prior to the hearing date. Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by ___/___/___.

- _____, a NYC citywide newspaper on ___/___/___ and ___/___/___
- _____, a NYC citywide newspaper on ___/___/___ and ___/___/___

OR

Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on ___/___/___, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on ___/___/___, which was not less than 15 days prior to the hearing date. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in two newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by ___/___/___.

- _____, a NYC local newspaper published in the affected borough(s) on ___/___/___ and ___/___/___.
- _____, a NYC local newspaper published in the affected borough(s) on ___/___/___ and ___/___/___.

2. Public Hearing Date, Exception to Public Hearing Requirement

A Public Hearing was conducted on ___/___/___.

OR

The Agency certifies that the total annual revenue to the City from the subject concession does not exceed one million dollars and a Public Hearing was not conducted because, pursuant to §1-13(q)(2) of the Concession Rules, the Agency gave notice of the hearing and did not receive any written requests to speak at such hearing or requests from the Committee that the Agency appear at the hearing. Furthermore, the Agency certifies that it published a notice in the City Record canceling such hearing on ___/___/___ and sent a copy of that notice to all Committee Members.

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No.)

RESOLVED, that the Franchise and Concession Review Committee authorizes the New York City Department of Records and Information Services (“DORIS”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules, to enter into a Sole Source Concession Agreement (“Agreement”) with Ancestry.com Operations, Inc. (“Concessionaire”) for the Digitization, Indexing and Internet Publication and Hosting of Selected Historical Records.

Concessionaire Ancestry shall pay to DORIS a fee of \$25,000 (the “Fee”) to be distributed in accordance with Table 1 below for a period of nine (9) years, paid annually. The term of the agreement shall commence on the date in a written Notice to Proceed issued to Concessionaire Ancestry.com Operations, Inc.

Table 1.

YEAR	PAYMENT AMOUNT	PAYMENT DATE
1	\$5,000	60 days of Effective Date
2	\$2,500	30 days of Effective Date Anniversary
3	\$2,500	30 days of Effective Date Anniversary
4	\$2500	30 days of Effective Date Anniversary
5	\$2,500	30 days of Effective Date Anniversary
6	\$2,500	30 days of Effective Date Anniversary
7	\$2,500	30 days of Effective Date Anniversary
8	\$2,500	30 days of Effective Date Anniversary
9	\$2,500	30 days of Effective Date Anniversary

**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

July 13 2022

Date: _____

Signed: _____

Title: Director of the Mayor's Office of Contract Services

RECORDS DIGITIZATION AND PUBLICATION AGREEMENT

This Records Digitization and Publication Agreement (“**Agreement**”) is entered into as of the date last signed below, between Ancestry.com Operations Inc., a Virginia corporation with offices at 1300 West Traverse Parkway, Lehi, Utah 84043 (“**Ancestry**”), and the New York City Department of Records & Information Services, with offices at 31 Chambers Street, New York, NY 10007 (“**DORIS**” or “**Provider**” or “**City**”). Ancestry and Provider are sometimes referred to herein individually as a “party” and collectively as the “parties.”

WITNESSETH:

WHEREAS, DORIS continually endeavors to improve services to the researcher community and recognizes the tremendous advantages of digital technology to expand public access to the historical records in its care; and

WHEREAS, DORIS does not have the resources to index and digitize large historical record collections of significant research value; and

WHEREAS, DORIS has determined that it would be in the best interest of the City to engage the services of a qualified content provider to digitize, index and host selected historical records at no cost to the City; and

WHEREAS, DORIS also determined that Ancestry was the sole vendor capable of fulfilling all of DORIS’ requirements of providing digitization, indexing and publication services for its selected historical records, at no cost to the City and paying a concession fee and housing and storing all of the records as needed for the duration of the project; and

WHEREAS, on June 8, 2022, DORIS sought Franchise and Concession Review Committee approval, pursuant to Section 1-16 of the Concession Rules of the City of New York, to utilize a different procedure to negotiate a sole source concession agreement with Ancestry for the digitization, indexing, and internet publication and hosting of selected historical records; and

WHEREAS, the Franchise and Concession Review Committee adopted a resolution on June 8, 2022 granting DORIS approval to utilize a different procedure to negotiate a sole source concession with Ancestry; and

WHEREAS, the parties have negotiated and agreed to enter into this Agreement which describes the terms and conditions under which DORIS will provide certain historical records, including the records described in any attached Appendices, to Ancestry to be digitized and published.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, the City and Ancestry agree as follows:

1. Delivery of Records; Digital Conversion.

1. Delivery of Records. Provider will deliver or make available to Ancestry the best available, highest quality copy in Provider's possession at the time of the Effective Date of this Agreement of the historical records listed in **Appendix 1** (and any subsequent appendices) attached to this Agreement and incorporated herein by reference, in the format and by the deadline set forth in the applicable appendix (the "**Records**"). If Ancestry receives any historical records that are not described in Appendix 1, Ancestry will promptly give the Provider a description of such records and request written instructions from the Provider with regard to whether to proceed with digital conversion as set forth below or return such historical records to Provider. Additional appendices for additional historical records may be added to this Agreement from time-to-time by the mutual written agreement of the parties. Ancestry's use of the Records will be subject to the licenses, rights and restrictions set forth in this Agreement.
2. Digital Conversion. Pursuant to any instructions in the relevant appendix to this Agreement, Ancestry will create (i) digital images ("**Images**") from the Records and/or (ii) digital indices (referred to herein individually as an "**Index**" or collectively as "**Indices**") from the Images of the Records. The Images and Indices are collectively referred to as the "**Materials**." Ancestry will use reasonable commercial efforts to create Images of the Records included in Appendix 1. If there are Records for which Images cannot be created, Ancestry will consult with Provider regarding whether such records should be destroyed (as in the case of items too damaged to be scanned) or returned to Provider. **Appendix 2** outlines the metadata and indexing plan relating to fields to be captured and transferred for each series/collection.
3. Destruction. Provider requests that Ancestry destroy certain Records after creating the Materials, as specifically identified, and in the manner described in Appendix 1.

2. Licenses; Ownership

1. Licenses Granted By Provider. Provider hereby grants to Ancestry a non-exclusive license to create Materials from the Records. For the Term of this Agreement, this license gives the right to copy, publish, republish, market, distribute and modify the Materials for the sole purpose of effectuating the purposes of this Agreement as well as permit Ancestry to sub-license the Materials to free or paid subscribers of the network of genealogy and family history related services and websites owned and/or operated by Ancestry, its subsidiaries, and their affiliated companies, such as Ancestry.com or Ancestry.co.uk (hereafter collectively referred to as the "**Ancestry Network**") with the understanding that such sub-license is subject to the same terms as those granted herein. This Agreement is only assignable or transferable as delineated in Article 7.2. In addition, Provider agrees and acknowledges that Ancestry may edit, re-scan and/or reformat any or all of the Images as it deems necessary to effectuate the display of the Images on the Ancestry Network and may incorporate the Images into any format or media to be published and distributed by Ancestry for the Term of this Agreement.

2. Delivery of Images and Materials. Ancestry shall deliver all Images according to the guidelines and requirements set forth in Appendix 1 under “Handling Requirements” and “Quality Control and Digital file Delivery.” Specifically, Ancestry will deliver Images to Provider by giving Provider access to a cloud-based solution through which Ancestry will transfer and make image files available as necessary. The Images will be delivered in batches as mutually agreed upon by the parties. Provider will have 30 days to transfer each batch once the batch has been made available to Provider. Ancestry will also return an updated Provider (DORIS) inventory control spreadsheet at the item level to include the eleven data points detailed in Appendix 1.
3. Ownership of Images. Provider maintains all ownership rights in and to the Records licensed to Ancestry. The Images shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and Provider shall be the copyright owner thereof and of all aspects, elements, and components thereof in which copyright protection might exist. To the extent that the Images do not qualify as “work-made-for-hire,” Ancestry hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Images to Provider upon their creation, free and clear of any liens, claims, or other encumbrances. Ancestry shall retain no copyright or intellectual property interest in the Images, except as to those rights Provider has granted to Ancestry under this Agreement. To the extent that Records or Images are not protected by such rights, Ancestry hereby agrees that ownership of the Images shall be exclusive to Provider and Ancestry shall take no actions or make any use of such without the prior written permission of Provider. The Images shall be used by Ancestry for no purpose other than as authorized in this Agreement without the prior written permission of Provider. Provider retains all other rights not granted Ancestry hereunder.
4. Access to and Ownership of Indices. Ancestry will use commercially reasonable efforts to create an API or similar mechanism through which Provider may access the Indices during the Term. Ancestry will use commercially reasonable efforts to provide Provider with access to such API as soon as practicable but in no event more than three (3) years from the Effective Date. A limited, non-exclusive license to use the Indices for internal purposes during the Term will be granted to Provider only if Ancestry does not provide the API within the timeframe stated. This limited license, if granted, does not allow Provider at any time to (i) distribute or enable users to download a complete copy, or any substantial portion, of the Indices; (ii) distribute or resell any Indices to any third-party company, entity, agency, or institution for any purpose; (iii) permit partnering, or co-publishing relationships, by Provider, whereby any third party becomes a publisher of the Indices or shares in the profit from the publication of the Indices; (iv) allow any third party to access the Indices through any application protocol interface that links from a third party website to Provider’s website; or (v) allow any third party to crawl the Indices on the Provider’s website (this section (v) does not prohibit the use of search engines to index the Indices). Provider will not possess or maintain a copy of the Indices except as outlined in this Section 2.4. If the limited license is granted to Provider on the conditions set forth herein and a Freedom of Information Law (FOIL or FOIA) request is made for the Indices, Provider shall notify Ancestry and allow Ancestry to make an objection to such FOIL (in accordance with the procedures set forth in

applicable state law) on the basis that the Indices are owned by Ancestry and licensed to Provider only for the specific uses herein. With respect to the Indices the Provider has only such rights as Ancestry has granted to Provider under this Agreement.

5. Ancestry Institution Subscription. Ancestry agrees to issue Provider a subscription to Ancestry Institution, which will allow up to 40 users to access the Materials, including the Indices, concurrently for as long as the Materials are published anywhere on the Ancestry Network. If at any time, Ancestry ceases to publish the Indices to the Ancestry Network, then Ancestry will provide Provider with a copy of the Indices within thirty (30) days in a CSV file format.
6. Online Access. The Materials will be made available to users on the Ancestry Network, and Ancestry will provide Provider with a copy of the Images within thirty (30) days of publishing the Materials to the Ancestry Network, subject to the use restrictions described herein.
7. Sourcing Credit and Use of Provider Marks.
 - (a) All Materials published on the Ancestry Network will be accompanied by a credit line and the Provider's logo (the "**Provider Marks**"), in the exact format set forth on **Appendix 3**. In addition, a live link to the Department of Records & Information Services website as specified from time to time by Provider will also be included with any use of the Materials on the Ancestry Network. Any other use of the Provider Marks by Ancestry is subject to prior review and written approval of the Commissioner of the DORIS.
 - (b) The Provider Marks are and shall remain exclusively the property of the City of New York acting as Provider. Ancestry agrees that it shall neither directly or indirectly obtain, nor attempt to obtain, during the Term or at any time thereafter, any right, title or interest in or to the Provider Marks, and shall not challenge the ownership or validity of the Provider Marks, and hereby expressly waives any right which it may have to do so. Ancestry understands and agrees that the use of the Provider Marks will not create any right, title or interest in or to the Provider Marks and that all such use and goodwill associated therewith will inure to the benefit of the City of New York acting as Provider.
 - (c) Ancestry agrees: (A) not to make any disparaging use of the Provider Marks, or use the Provider Marks outside the purposes of this Agreement, or to in any way tarnish or blur the distinctive nature of the Provider Marks, and (B) not to register or attempt to register the Provider Marks (or any potentially similar name or trademark) as or part of a trademark, service mark, logo, slogan or Internet domain name. The Provider Marks may be used only in the exact form, style and type as approved in writing by Provider. Ancestry further agrees to include legal and proper ownership and/or registration notices in connection with any and all uses of the Provider Marks in accordance with the reasonable requests of Provider.

- (d) Ancestry recognizes that the Provider Marks communicate to the public, world-wide, a reputation for high standards, which reputation and goodwill have been and continue to be unique to Provider. Therefore, the Provider Marks shall not be used in connection with any illegal or immoral purpose or activity, or in any manner which would be inconsistent or damaging to Provider's name and reputation.
- (e) Ancestry acknowledges that the unauthorized use of the Provider Marks will cause irreparable harm to the other Party for which there is no adequate remedy at law, and that Provider shall be entitled to injunctive or other equitable relief restraining such unauthorized use in addition to any other remedies available at law or in equity.

3. Compensation

1. Ancestry shall pay to Provider a fee of \$25,000 (the “Fee”) to be distributed as follows: the amount of \$5,000 the first year, and \$2,500 annually thereafter (see Table 1). All payments will be made by electronic funds transfer or check according to Table 1 below. All sums payable to Provider under this Agreement are inclusive of any value added tax, sales tax or other taxes or duties, if applicable. Fee payments will continue for a period of nine (9) years, paid annually. However, should the agreement terminate for any reason prior to payment due within 30 days of the ninth year anniversary, all remaining payments will accelerate and become due within 30 days of termination of the agreement.

Table 1.

YEAR	PAYMENT AMOUNT	PAYMENT DATE
1	\$5,000	60 days of Effective Date
2	\$2,500	30 days of Effective Date Anniversary
3	\$2,500	30 days of Effective Date Anniversary
4	\$2,500	30 days of Effective Date Anniversary
5	\$2,500	30 days of Effective Date Anniversary
6	\$2,500	30 days of Effective Date Anniversary
7	\$2,500	30 days of Effective Date Anniversary
8	\$2,500	30 days of Effective Date Anniversary
9	\$2,500	30 days of Effective Date Anniversary

4. Term and Termination

1. Term. This Agreement will be effective upon the date of registration with the New York City Comptroller (the “**Effective Date**”) and shall commence upon the date written in a “Notice to Proceed” issued by Provider to Ancestry. This Agreement will continue for a period of nine (9) years (the “**Term**”), unless either party terminates this Agreement pursuant to this Section 4.
2. Termination. Either party may terminate this Agreement at any time if the other party is in material breach of its obligations hereunder, which breach is not cured within fifteen (15) days after receipt of written notice thereof from the non-breaching party.
3. Return of Materials. Upon termination or expiration of this Agreement, the parties agree to either return the Materials to the owning party, or to certify in writing that such Materials have been destroyed.
4. Consequences of Termination or Expiration. Upon termination or expiration of this Agreement, the parties agree that the provisions of this Agreement will terminate and be of no further force and effect, provided that the rights and obligations granted and set forth in Sections 6 and 7 will survive in perpetuity, as well as any other provisions that by their nature should survive termination.

5. Compliance with Laws

1. Compliance with Laws. Each party will comply with all relevant laws, rules, regulations and ordinances in the performance of this Agreement. DORIS has determined that the Records are permitted to be made available to the public in the manner contemplated by the parties and memorialized in this Agreement.
2. Representations and Warranties. Ancestry warrants and represents that it has the right to enter into this Agreement. Provider warrants and represents that it has the right to enter into this Agreement and to grant the license in Section 2.1
3. Notification. Each party will promptly notify the other party if such party is informed or accused of any violation of any applicable law or rights of any third parties

6. Indemnity

Each party hereto hereby indemnifies and agrees to hold harmless the other party, including the other party’s officers, directors, sponsors, agents and employees, from and against any and all liabilities, losses, damages and expenses, including court costs and reasonable attorneys’ fees, arising out of or in connection with any third party claims, actions or proceedings brought against a party hereto, based upon (i) any action or actions of the other party hereto that were not authorized under this Agreement or (ii) any breach of the warranties or representations by the other party hereto, which action or breach gives rise to the such claims, actions or proceedings. Further, Provider hereby indemnifies and agrees to hold harmless Ancestry, including Ancestry’s officers, directors, sponsors, agents and employees, from and against any and all liabilities, losses, damages and expenses, including court costs and reasonable attorneys’ fees, arising out of or in connection

with any third party claims, actions or proceedings brought against Ancestry, alleging that any of the Materials infringe any patent, copyright, trade secret, or other intellectual property or privacy right of any third party, provided that Provider shall not be liable for infringement claims arising from modifications made by Ancestry to the Materials that were not contemplated by this Agreement. Such indemnification shall include damages and costs, including reasonable attorneys' fees and other reasonable costs of defense, finally awarded by a court to the claimant third party; provided, however, that the party being first notified of a claim, action or proceeding promptly (a) notifies the other (indemnifying) party of same, (b) permits the other (indemnifying) party to defend the matter (including the right to settle the matter in its sole discretion) at its' own cost and through legal counsel of its own choosing and (c) provides the other (indemnifying) party with reasonable assistance and access to relevant documents and information to utilize in the defense of any such claim or action. The party handling the matter shall keep the other party informed on the progress of the matter and shall not admit liability or make any admission of liability with respect to an indemnified claim without the prior written consent of the other party, such consent not to be unreasonably withheld. Neither party shall be liable in tort, contract, negligence or other form of liability for any loss of revenue or profits, loss of opportunity, damage to goodwill, special or punitive damages or any other indirect or consequential loss, whether advised of the possibility of the same. Nothing in this Agreement limits any liability arising from: fraud or fraudulent misrepresentation, wilful misconduct or any liability which cannot be excluded by applicable law or regulation.

7. Miscellaneous.

1. Independent Contractors. The parties are independent contractors. Neither party will be deemed to be an employee, agent, partner or legal representative of the other for any purpose and neither has any right, power or authority to create any obligation or responsibility on behalf of the other.
2. Assignment. Neither party may assign this Agreement without the prior written consent of the other party, except that each party may assign this Agreement to any existing or newly formed affiliate of either party or the acquirer of all or substantially all of its business or assets relating to this Agreement in connection with a merger or acquisition. For the purposes of this section, "affiliates" shall include Ancestry's multi-language websites Ancestry.com, Ancestry.co.uk, Ancestry.de, Ancestry.it, Ancestry.fr, Ancestry.ca, Ancestry.com.au, Ancestry.se, Ancestry.mx and any website hereafter established for use in a country outside the United States, or in a language other than English, that is substantially identical to Ancestry.com in content and function. Ancestry will use commercially reasonable efforts to notify Provider of any assignment in connection with a merger or acquisition. Any assignment in violation of the foregoing will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
3. Governing Law; Disputes. This contract will be governed by the law of the State of New York where federal law does not otherwise govern. Both parties agree that all disputes arising, directly or indirectly, out of or relating to this Agreement, and all actions to enforce this Agreement, will be dealt with and adjudicated in the state courts or, where applicable, the federal courts located in the State of New York,

and for such purpose, each party hereby expressly and irrevocably submits itself to the jurisdiction of such courts. If a dispute develops between the parties, both parties agree to meet either in person or by video conference to address any controversy or claim arising out of, or relating to, this Agreement before pursuing legal action.

4. Severability; Effect of Ruling. If any provision of this Agreement is found to be illegal or unenforceable either by a court of competent jurisdiction or by operation of law, such provision will be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement will remain in full force and effect.
5. Remedies. The parties agree and acknowledge that any breach of the license granted hereby (or the limitations and conditions thereon) may cause irreparable harm for which monetary damages would be inadequate compensation. The parties agree that the applicable licensor will be entitled to seek an injunction restraining any actual or threatened breach of a license granted herein (including the limitations and conditions thereon), or specific performance, if applicable. The foregoing remedies will be in addition to any other rights and remedies that a party may have at law or in equity.
6. Complete Agreement. This Agreement, together with any appendices and exhibits attached hereto, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior written and oral agreements between the parties regarding the subject matter of this Agreement. No waiver, alteration or modification of any provision of this Agreement will be binding unless in writing and signed by both parties.
7. Signatures. This Agreement may be executed in multiple counterparts or duplicate originals, all of which will be regarded as one and the same instrument, and which will be the official and governing version in the interpretation of this Agreement. The signatures of the parties below indicate their respective acknowledgment of the terms outlined in this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Ancestry.com Operations Inc.

**New York City Department of Records &
Information Services**

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix 1

Records List

Collections considered the Records for purposes of this Agreement:

Vital Records Ledgers:

Borough	Vital Type(s)	Years	# of Registers	Format
Bronx	Births, Marriages, Deaths	1847-1895	3	Ledger
Brooklyn	Births	1880-1895	6	Ledger
Brooklyn	Births/Deaths Marriages	1847-1851	1	Ledger
Brooklyn	Deaths	1847-1895	24	Ledger
Brooklyn	Marriages	1880-1895	6	Ledger
Manhattan	Births	1847-1865	13	Ledger
Manhattan	Deaths	1798-1866	44	Ledger
Manhattan	Marriages	1847-1865	7	Ledger
Queens	Births	1847-1898	5	Ledger
Queens	Births/Deaths/Marriages	1847-1897	5	Ledger
Queens	Deaths	1881-1898	4	Ledger
Richmond	Births	1888-1897	1	Ledger
Richmond	Births/Deaths/Marriages	1847-1897	9	Ledger
Richmond	Deaths	1881-1897	3	Ledger
Richmond	Marriages	1888-1897	1	Ledger
Unknown	Deaths, US Soldiers, Cuba and Puerto Rico	1898-1900	3	Ledger
Unknown	Special Marriages	1866-1903	1	Loose paper in enclosure

Voter Books:

Name	Years	Approx. No. of Books	Approx. Page Count	Approx. Entries	Format
Voter Registrations - Manhattan	1915-1957	34,914	2,200,000	20,000,000	Paper

Special Instructions for Records:

Unless the parties otherwise agree, all digitization work will take place at Ancestry's main office in Lehi, Utah. Shipping and packaging costs will be paid for by Ancestry.

Packing and Shipping

- Palletized Vital Records Ledgers must not be stacked *unless materials are crated*.
- *Provider has documented the current conditions of all Vital Records Ledgers including mold, fragile, broken and torn spines and bindings, loose, torn, brittle, or taped pages, and in some instances, missing pages and light, faded, and missing text. Provider will ensure current conditions for the Vital Records Ledgers are maintained throughout the initial packing and shipping phases of the project. Ancestry will ensure current conditions for the Vital Records Ledgers are maintained throughout the digitization, return packing and shipping phases of the project. See Handling Guidelines, Exhibit A to Appendix 1.*
- Shipping insurance will be paid for by Ancestry and any relevant certificates of insurance will be provided to Provider once agreed-upon values are established by both parties.
- Custom box enclosures for Vital Records Ledgers will be paid for by Ancestry in an amount not to exceed \$2500.00.
- DORIS staff will measure, box and palletize the Vital Records Ledgers in preparation for transfer, meaning that such pallets will be fully ready to be loaded onto a truck for transport.
- DORIS staff will palletize Voter Books in preparation for transfer, meaning that such pallets will be fully ready to be loaded onto a truck for transport.
- Transfers will occur on a schedule to be mutually agreed upon in writing by the parties, which schedule shall detail how many pallets per shipment.
- Return shipment:
 - Vital Records Ledgers: will be shipped back to DORIS after QC has been completed by DORIS
 - Sample of 42 Voter Books as selected and identified by DORIS prior to the start of scanning: return at end of scanning project or when sample is available to be sent back

Digitization Specifications

- Vital Records Ledgers
 - Scanned at 400 ppi at 24-bit RGB
 - Shot as individual pages and stitched together as 2-page spread
 - Send files as one PDF per ledger item
 - File name structure: REC0051_Series#_Item####
 - Example: REC0051_2_100
 - Series is single digit, book is triple digit
 - Collection 0051, Series 2, Item 100

- Voter Books
 - Scanned at 3,000 pixels across the long edge, 300 ppi at 24-bit RGB
 - Saved as one PDF per ledger item
 - File name structure: REC0091_Item#####
 - DORIS will not provide item numbers, these should be created by Ancestry, assigning one number per individual ledger
 - Item number should be 5 digits i.e. 00001, 00002

As part of preparing the image files for use by DORIS and Ancestry, Ancestry may rotate, sharpen, crop, mirror, make contrast adjustments, and compress the image files. Also, Ancestry may add a watermark to the copy of the Images to be used on the Ancestry Network.

Handling Requirements:

- Vital Records Ledgers:
 - Bindings will not be cut
 - The special handling requirements from DORIS as detailed in Exhibit A to this Appendix 1 will be followed.
 - If ledger pages are not identified, pages should be marked in pencil numerically to ensure accurate quality control of digitization

- Voter Books:
 - Bindings may be cut and/or removed

Quality Control and Digital file Delivery:

- All digitized records will include the following QC standards:
 - Scan to compliance, two automated checks during scanning
 - QC of book by scanner prior to submission to supervisor
 - Validation 1: all files compared to inventory, no corrupt files, naming compliance
 - Validation 2: is in a pipeline tool with thumbnail images 100% off the images are reviewed for focus and corruption
 - Validation 3: 33% of the images are randomly QC'd. If more then 20 files are poor, the entire book gets reshot.

- DORIS will QC records according to the following standards:

- 50% random sample review for focus, filename, size, resolution of first digital file delivery.
- Reduce QC to thumbnail view after initial 50% random sample of first digital file delivery.
- Cadence of delivery of QC'd images will be mutually agreed upon once digitizing has been started. After the first month of digitizing productivity, the parties will evaluate: the extent of files scanned/digitized; how many files will need to be transferred; and how many days it will take to complete a transfer.
- Images will be delivered via a cloud-based solution where DORIS will be provided access to transfer files as necessary. DORIS will have 30 days to transfer each batch once the batch has been made available to DORIS.
- Ancestry will return an updated DORIS spreadsheet inventory control sheet at the item level to include:
 - Pallet #
 - Accn#
 - Collection#
 - Series#
 - Item#
 - Title
 - Date
 - Filename
 - Notes (include sequence of blank pages, cover not scanned due to mold or illegibility, etc.)
 - Equipment
 - Date of Reformatting

Return Shipping and Destruction of Records:

- Vital Records Ledgers:
 - Once digitized and QCed, Vital Records Ledgers will be replaced in the existing custom boxes (that were used to ship to Ancestry) and returned to DORIS.
 - Ancestry shall not destroy the Vital Records ledgers and will coordinate secure re-packing and shipping of the ledgers to DORIS on a regular schedule as items are digitized and QCed.
- Voter Books:
 - Once DORIS provides Ancestry with a notice of secure transfer and quality assurance, Provider has directed Ancestry to destroy the original historical records in the Voter Registrations – Manhattan 1915-1957 collection, *except for* a small subset of 42 of the Voter Books which will be returned to DORIS, such specific Voter Books to be identified in writing by DORIS prior to the start of scanning any Voter Books.
 - Ancestry will hold the Voter Books at the scanning location and from time to time, a third-party destruction service will come to that location and destroy the Voter Books on location.

Ancestry will not retain any Records after the scanning process is complete. Any remaining Records will be destroyed or returned to Provider, as described herein.

While scanning is ongoing, the parties agree to conduct a conference call or video conference bi-weekly, or as otherwise agreed upon, to discuss progress, quality control and any other relevant matters.

Exhibit A to Appendix 1 – DORIS Special Handling Requirements



NEW YORK CITY
MUNICIPAL ARCHIVES

31 Chambers Street | New York, NY 10007

Ledgers and Handwritten Volumes

Handwritten volumes should be approached differently from printed books. High resolution is much more important in digitizing handwritten books, as it helps eliminate ambiguity in reading. This is especially important because most Optical Character Recognition (OCR) software has problems deciphering handwriting.

Digitization via DT Rcam or book scanner is recommended. When using the book scanner, the plate must be kept clean for maximum sharpness. When using the Rcam, volumes that do not open to 180° may be supported with book wedges and Mylar straps. For pages that will not stay open, snake weights and micro-spatulas may be used, if they do not obscure any information.

Regardless of the method chosen (camera, book scanner, flatbed, etc.) digitization technicians must observe professional standards in the digital lab and while handling originals.

The scanning area (and the lab more generally) should be cleaned on a regular basis. Keep the scanning area free of dust and debris. Do not allow any food or drink in the digitization area.

Store and prep original archival items on appropriate carts and tables, never on the floor. Keep originals away from radiators, computer fan vents, and other sources of heat. Do not place supplies or other objects on top of archival items.

Always handle archival objects with care. Make sure hands are clean and dry, and do not handle originals for several minutes after applying lotion or other skincare products. Gloves may be necessary in some cases.

When digitizing reflective items with an overhead camera, wear neutral or muted colors. Bright colors may cause a color cast.

Make sure the area is properly ventilated if items give off fumes. Wear protective clothing if there are HAZMAT concerns.

Appendix 2

Captured Fields for Vital Records Ledgers

At a minimum, Ancestry will create the Index with administrative fields including item number, book title, page number, and filename as proscribed by Provider naming conventions, and descriptive fields for certificate type (birth, death, marriage), name(s); date of the birth, death or marriage event (month, day and year); place (County), certificate number, and image ID.

Captured Fields for Voter Books

At a minimum, Ancestry will create the Index with administrative fields for item number, page number, and filename as proscribed by Provider naming conventions, and descriptive fields for name(s), address, year, assembly, election district numbers, and image ID.

Appendix 3

For the Vital Records Ledgers:



Department of Records
& Information Services

New York City vital records, Courtesy of the Municipal Archives, City of New York
New York City Department of Records and Information Services

For the Voter Books:



Department of Records
& Information Services

Manhattan voter register volumes, Courtesy of the Municipal Archives, City of New York
New York City Department of Records and Information Services