

Supplement to New York City Water Board Request for Proposals in Connection with Design Build Implementation, Advisory, and Project Management Services, dated June 4, 2021

June 11, 2021

After reviewing the RFP, several questions were submitted by prospective respondents. The following numbered list seeks to address these questions.

1. Would the Board consider extending the submission deadline?

Yes, the deadline for submitting proposals has been extended to 4:00pm Eastern time on **Monday July 12, 2021**.

2. Will the selected respondent in response to this RFP be prohibited from submitting a proposal in response to the Departmental of Environmental Protection's Architect-Engineer (AE1) RFP?

No, the DEP's AE1 RFP currently being reviewed does not fall under the exclusion described in the RFP materials. Neither submitting a proposal, nor being selected as the firm to contract to perform the work under this RFP, would exclude that same firm from submitting a proposal or performing the work described under DEP's AE1 RFP.

3. Will subconsultants below the 20% threshold level who participate in the WB design build project be permitted to bid on DEP design build initiatives?

Yes, as described under the response to Question #2, DEP's AE1 RFP is not one of the excluded procurement described in the Water Board design build RFP, and subconsultants below the 20% would be allowed to submit proposals on, or perform work under, DEP's AE1 RFP.

4. Is there a formal Q&A period, or a specific date by which DEP and the Board will provide responses?

Only questions submitted to nycwaterboard@dep.nyc.gov by Friday June 24 at 4:00pm Eastern time are assured a response.

5. Will DEP or the Board make available a copy of the Design Build Project Delivery Implementation Plan completed last year?

No, the report from the previous Design Build Project Delivery Implementation Plan will not be shared with prospective respondents.

6. Are there specific personnel seniorities or titles that should be used in completing the Cost Schedule in Appendix D?

No, respondents are free to categorize the titles, seniorities, and rates of their organization as they see fit.

7. Was a form of outline of Appendix B intended to be a part of the RFP materials?

No, the content of Appendix B will be added to the agreement that is signed with the selected respondent and will include a copy of any proposal materials and scope of work that the selected respondent includes with their submission. The RFP materials do not include a template or guidance as to how respondents should design their response to the RFP, beyond the Cost Schedule in Appendix D.

NEW YORK CITY WATER BOARD
59-17 Junction Blvd., 8th Floor
Corona, New York 11373
(718) 595-3591 nycwaterboard@dep.nyc.gov

June 4, 2021

Dear Prospective Bidder,

The New York City Water Board (the Board) is issuing this Request for Proposal for a firm to provide consulting advisory services, training, project management tools, model documents, and project management administrative support to the New York City Department of Environmental Protection (DEP), acting as the Board's agent, in connection with implementing a design build program and issuing up to five initial requests for qualifications under the program. One firm will be retained for this project.

Pursuant to Sections 1045-b and 1045-g of the New York City Municipal Water Finance Authority Act, the Board is authorized to enter into contracts and to retain private consultants on a contract basis for the purpose of obtaining professional or technical services to assist the Board in placing the water and wastewater system of the City of New York on a financially self-sustaining basis and to assist the Board in tasks related to the planning, development, financing, or construction of any portion of the system. The Board recognizes a need to obtain the services of a firm capable of providing the specialized services noted above to DEP. Therefore, the Board is extending this Request, and you are invited to respond. A description of the proposed scope of work, along with a draft Agreement of the proposed engagement and other supporting documents, is attached.

Should you decide to respond to this request, please provide your response in writing and include a description of the fees you would expect to charge in connection with performing the tasks described in the scope of work, as well as an enclosure describing your firm's background and the professional experiences of the personnel it would expect to perform the work. If your firm has previous involvement with the design or planning of design build construction projects, please include a description of that experience with your materials. The Board contemplates expenditures for this project not to exceed \$1,000,000. The contract resulting from this Request will be awarded to the firm offering the best combination of merit and price, as determined by an Evaluation Committee drawn from the Board and DEP.

Please submit your letter response to the New York City Water Board via email at nycwaterboard@dep.nyc.gov no later than July 2, 2021 at 4:00 p.m. Eastern time. Any correspondence should be directed to that same email address or, if by ground mail, to New York City Water Board, 59-17 Junction Boulevard, 8th Floor, Flushing, NY 11373. The phone number to reach the Water Board is 718-595-3591.

Potential proposers are advised that the firm awarded the contract from this Water Board design-build RFP will be ineligible to be awarded any contract or to participate as a subconsultant in the subsequent design-build project RFPs resulting from DEPs design-build pilot initiative. Proposals submitted on those projects by a firm with a contract awarded under this Water Board design-build procurement will not be considered. This exclusion applies to the consultant's subsidiaries and affiliates, and its subconsultants that perform 20% percent or more of the total work based upon cost awarded from this RFP.

Your response should also include signed copies of the attached Certificate of Non-Collusion, Affidavit of Payment of Taxes, and Doing Business Data Forms.

The Board looks forward to receiving your response.

Sincerely,

// [Signed] NYC Water Board //

AGREEMENT FOR SERVICES OF CONSULTANT

AGREEMENT, made and entered into as of this ___ day of _____, 2021, by and between the New York City Water Board (the “Board”), a corporate municipal instrumentality of the State of New York, and _____ (hereinafter referred to as the “Consultant”), a corporation located at _____, EIN _____.

WHEREAS, pursuant to Sections 1045-d 1045-g of the New York City Municipal Water Finance Authority Act, the Board is authorized to enter into contracts and to retain consultants on a contract basis for the purpose of obtaining professional or technical services to assist the Board in carrying out its responsibilities, to ensure the Board is placed on a financially self-sustaining basis, and to assist the Board in tasks relating to the planning, development, financing, or construction of the water and wastewater system of the City of New York; and

WHEREAS, the Board has identified a need for the services of a consultant to provide advisory services, training, develop project management tools and model documents, provide project management administrative support, and provide other related tasks as required to the Board and the New York City Department of Environmental Protection (“DEP”) in connection with the implementation of a Design Build program for DEP capital projects; and

WHEREAS, in accordance with Section II of the Board’s procurement of goods and services policy dated September 15, 2006, the Executive Director has determined after a competitive solicitation that the Consultant is qualified to provide such services and provides the best combination of technical merit and price; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein, the Board and the Consultant hereby agree as follows:

A. General Provisions – Appendix A

The Consultant shall comply with the covenants and agreements set forth in Appendix A, attached hereto, which is hereby incorporated and made a part hereof.

B. Scope of Work – Appendices B and C

The Consultant shall provide the services to DEP as described in each of (i) the Consultant’s Proposal and (ii) the Scope of Work dated _____, 2021, attached hereto as, respectively, Appendix B and Appendix C, and incorporated and made a part hereof.

C. Term

This agreement shall be effective as of _____, 2021 and continue for one year to the date of expiration, _____, 2022, with two additional extensions to the initial term of

one-year each, available at the discretion of the Board, and subject to the Consultant's acceptance.

D. Compensation; Expenses

1. The Board shall compensate the Consultant for its actual services provided hereunder based on the following hourly rates and the schedule of project tasks and hours of Consultant personnel time required to complete each task, as further described in the Cost Proposal attached hereto as Appendix D and incorporated and made a part hereof:

	Total Hours to Complete All Tasks in Each Section for D/B Project No. 1	Per Project Hours* to Complete Each Task for D/B Projects 2 – 5
Tasks Described in Section A		
Tasks Described in Section B		
Tasks Described in Section C		
Tasks Described in Section D		

Note: the hours in the preceding table do not sum up to the estimated total project hours, since the third column is an estimate of the number of hours per project after completing work on an initial project. A schedule explaining the supporting data required to complete the preceding table can be found in the Cost Proposal, attached as Appendix D.

* The time budget contemplates that the time investment to complete D/B Project No. 1 will be greater than the time investment required for subsequent projects. The time budget further assumes that, after completing a more time intensive D/B Project No. 1, that D/B Projects No. 2 through No. 5 will require similar amounts of time from project to project, but individually fewer hours than D/B Project No. 1 will require.

	Hourly Rate
Seniority 1	\$ ____
Seniority 2	\$ ____

Seniority 3	\$ _____
Seniority []	\$ _____

2. The hourly rates stated above are inclusive of the Consultant's overhead and expected profit, and are the actual dollar amounts that will be used to calculate the amounts invoiced to the Board.
3. The total compensation payable under Section (D)(1) to the Consultant by the Board for services provided hereunder shall not exceed \$_____.
4. There will be no reimbursement for expenses of any kind incurred by the Consultant in the performance of services hereunder.
5. The Board shall make payment to the Consultant based upon the Consultant's submission of invoices on a _____ basis, which shall be in a form acceptable to the Board and which shall include a calculation detailing the work performed, mix of personnel seniorities, hourly rates used, and other information sufficient to allow the Board to make a reasoned determination of the correctness of the invoiced amount. The Board will make reasonable efforts to secure internal review and approval of invoices, and to make payments to the Consultant within 45 days of receipt of an invoice. Invoices should be submitted electronically by email to: waterboarddistributionlist@dep.nyc.gov .

E. Relationship of Parties

The relationship of the Consultant to the Board shall be that of an independent contractor and not as an agent or employee of the Board.

G. Addresses for Notices

To the Board:

New York City Water Board
Attention: Treasurer's Office
59-17 Junction Boulevard
8th Floor
Flushing, NY 11373

Phone: (718) 595-3591

Fax: (718) 595-3595

Email: waterboarddistributionlist@dep.nyc.gov

To the Consultant:

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year below written,

THE NEW YORK CITY WATER BOARD

By: _____ Dated:
// Authorized Signatory //
Executive Director

State of New York) ss.:
County of Queens)

Sworn before me this ____ day of _____, 2021 _____ appeared before me and duly acknowledged execution of the foregoing instrument.

NOTARY PUBLIC

By: _____ Dated:
// Authorized Signatory //

EIN # _____

State of _____) ss.:
County of _____)

Sworn before me this ____ day of _____, 2021, before me personally came _____, to me known to be the _____ of _____, described in the foregoing instrument, and acknowledged that she is authorized by all necessary action to execute this instrument on its behalf and that she subscribed the name of said firm thereto on behalf of said firm for the purpose therein mentioned.

NOTARY PUBLIC

APPENDIX A

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

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

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

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

B. “Board” shall mean the New York City Water Board.

C. “City” shall mean The City of New York.

D. “Commissioner” or “Agency Head” shall mean the head of the agency that is a party of interest in the Agreement or his or her duly authorized representative. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.

E. “Comptroller” shall mean the Comptroller of the City of New York.

F. “Contractor” shall mean the entity entering into this Agreement with the Board.

G. “Days” shall mean calendar days unless otherwise specifically noted to mean business days.

H. “DEP” shall mean the New York City Department of Environmental Protection.

I. “Executive Director” shall mean the Executive Director of the Board or his or her duly authorized representative. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.

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

K. “State” shall mean the State of New York.

**ARTICLE 2 - REPRESENTATIONS
AND WARRANTIES**

Section 2.01 Procurement of Agreement

A. The Contractor represents and warrants that no person or entity (other than an officer, partner, or employee working solely for the Contractor) has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other direct or indirect compensation. Notwithstanding the preceding sentence, the Contractor may retain consultants to draft proposals, negotiate contracts, and perform other similar services. The Contractor further represents and warrants that no payment, gift, or thing of value has been made, given, or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the Board to enter into this Agreement and the Board relies upon such representations and warranties in the execution of this Agreement.

B. For any breach or violation of the representations and warranties set forth in Paragraph A above, the Executive Director shall have the right to annul this Agreement without liability, entitling the Board to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the Board provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

Section 2.02 Conflicts of Interest

A. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Paragraph B shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

C. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

Section 2.03 Fair Practices

A. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:

1. The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;

2. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy or directive, the prices and other material terms set forth in this Agreement which have been quoted in this Agreement and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and

3. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section.

Section 2.04 VENDEX

The Contractor represents and warrants that it and its principals have duly executed and filed all required VENDEX Questionnaires and, if applicable, Certificates of No Change, in accordance with the policies and procedures of the Mayor's Office of Contract Services. The Contractor understands that the Board's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 Political Activity

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 2.06 Religious Activity

There shall be no religious worship, instruction or proselytizing as part of or in connection with the Contractor's provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 2.07 Unlawful Discriminatory Practices: Admin. Code § 6-123

As required by Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City Administrative Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of Fifty Thousand Dollars (\$50,000) that such subcontractor shall not engage in any such unlawful discriminatory practice.

Section 2.08 Bankruptcy and Reorganization

In the event that the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Board within seven (7) days of filing.

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, or the right to execute it, or the right, title or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Executive Director. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance or other disposition without such written consent shall be void.

B. Before entering into any such assignment, transfer, conveyance or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Board giving the name and address of the proposed assignee. The proposed assignee's VENDEX questionnaire must be submitted within thirty (30) Days after the Executive Director has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Board, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Board shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

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C. Failure to obtain the prior written consent to such an assignment, transfer, conveyance, or other disposition may result in the revocation and annulment of this Agreement, at the option of the Executive Director. The Board shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees, or transferees, who shall forfeit all monies earned under this Agreement, except so much as may be necessary to pay the Contractor's employees.

D. The provisions of this Section shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.

E. This Agreement may be assigned, in whole or in part, by the Board to any corporation, agency, or instrumentality having authority to accept such assignment. The Board shall provide the Contractor with written notice of any such assignment.

Section 3.02 Subcontracting

A. The Contractor shall not enter into any subcontract for an amount greater than Five Thousand Dollars (\$5,000) for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Board of the subcontractor. The Board hereby grants approval for all subcontracts for an amount that does not exceed Five Thousand Dollars (\$5,000). The Contractor must submit monthly reports to the Board indicating all such subcontractors. All subcontracts must be in writing.

B. Prior to entering into any subcontract for an amount greater than Five Thousand Dollars (\$5,000), the Contractor shall submit a written request for the approval of the proposed subcontractor to the Board giving the name and address of the proposed subcontractor and the portion of the services that it is to perform and furnish. At the request of the Board, a copy of the proposed subcontract shall be submitted to the Board. The proposed subcontractor's VENDEX Questionnaire must be submitted, if required, within thirty (30) Days after the Executive Director has granted preliminary approval of the proposed subcontractor. Upon the request of the Board, the Contractor shall provide any other information demonstrating that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Board shall make a final determination in writing approving or disapproving the subcontractor after receiving all requested information. For proposed subcontracts that do not exceed Twenty-five Thousand Dollars (\$25,000), the Board's approval shall be deemed granted if the Board does not issue a written approval or disapproval within forty-five (45) Days of the Board's receipt of the written request for approval or, if applicable, within forty-five (45) Days of the Board's acknowledged receipt of fully completed VENDEX Questionnaires for the subcontractor.

C. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the agreement between the Board and the Contractor;

2. Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the Board;

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3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the agreement between the Board and the Contractor, shall create any contractual relation between the subcontractor and the Board; and

4. The subcontractor specifically agrees to be bound by Section 4.07 and Article 5 of this Appendix A and specifically agrees that the Board may enforce such provisions directly against the subcontractor as if the Board were a party to the subcontract.

D. The Contractor agrees that it is as fully responsible to the Board for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.

E. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

F. The Board may revoke the approval of a subcontractor granted or deemed granted pursuant to Paragraphs (A) and (B) of this section if revocation is deemed to be in the interest of the Board in writing on no less than ten (10) Days notice unless a shorter period is warranted by considerations of health, safety, integrity issues or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The Board shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The Board shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

G. The Board approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under this Agreement. At the request of the Board, the Contractor shall provide the Board a copy of any subcontract.

H. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section.

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the Board agree that the Contractor is an independent contractor and not an employee of the Board or the City. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the Board or the City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the Board or the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

Section 4.02 Employees

All persons who are employed by the Contractor and all consultants or independent contractors who are retained by the Contractor to perform services under this Agreement are neither employees of the Board or City nor under contract with the Board or City. The Contractor, and not the Board, is responsible for their work, direction, compensation, and personal conduct while engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the Board or City for the acts, omissions, liabilities or obligations of the Contractor, or any officer, employee, or agent of the Contractor, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the Board or City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the Board or City to any person or entity.

Section 4.03 Removal of Individuals Performing Work

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful and skilled in the work for which he or she shall be employed. Whenever the Executive Director shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Executive Director shall provide the Contractor an opportunity to be heard on no less than five (5) Days' written notice. The Executive Director may direct the Contractor not to allow the individual from performing work under the Agreement pending the opportunity to be heard and the Executive Director's determination.

Section 4.04 Minimum Wage

Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section shall be deemed a material breach of this Agreement.

Section 4.05 Non-Discrimination: New York State Labor Law § 220-e

A. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by New York State Labor Law § 220-e, that:

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1. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;

3. There may be deducted from the amount payable to the Contractor by the Board under this Agreement a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be terminated by the Board, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section.

B. The provisions of this Section shall be limited to operations performed within the territorial limits of the State of New York.

Section 4.06 Non-Discrimination: Admin. Code § 6-108

If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by New York City Administrative Code § 6-108, that:

A. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the Board or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the Board to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

B. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph A above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

C. Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.

D. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section shall, upon conviction thereof,

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be punished by a fine of not more than One Hundred Dollars (\$100) or by imprisonment for not more than thirty (30) Days, or both.

Section 4.07 Non-Discrimination: E.O. 50 -- Equal Employment Opportunity

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

1. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

2. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;

3. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;

4. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;

5. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the City Department of Small Business Services, Division of Labor Services ("DLS"); and

6. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

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1. Disapproval of the Contractor; and/or
2. Suspension or termination of the Agreement; and/or
3. Declaring the Contractor in default; and/or
4. In lieu of any of the foregoing sanctions, imposition of an employment program.

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

D. The Contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars (\$100,000) to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.

E. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Paragraph.

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

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

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

Section 5.02 Retention of Records

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

Section 5.03 Inspection

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

B. The Board shall have the right to have representatives of the Board or of the City, State or federal government present to observe the services being performed.

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

Section 5.04 Audit

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are

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subject to audit by (i) the Board and the City, including the Comptroller, DEP, and DEP's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources or otherwise.

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

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

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

Section 5.05 No Removal of Records from Premises

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

Section 5.06 Electronic Records

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

Section 5.07 Investigations Clause

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B. 1. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent

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criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, or State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State, or;

2. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

C. 1. The Executive Director, Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

2. If any non-governmental party to the hearing requests an adjournment, the Executive Director, Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph E below without the Board or City incurring any penalty or damages for delay or otherwise.

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

1. The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the Board or the City; and/or

2. The cancellation or termination of any and all such existing Board or City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the Board or the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the Board or the City.

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E. The Executive Director, Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

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

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph D above, provided that the party or entity has given actual notice to the Executive Director, Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (C)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definitions

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

2. The term "person" as used in this Section shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

3. The term "entity" as used in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the Board or the City, or otherwise transacts business with the Board or the City.

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

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G. In addition to and notwithstanding any other provision of this Agreement, the Executive Director, Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

Section 5.08 Confidentiality

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Board. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section to hold reports, information or data confidential shall not apply where the Board would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law (“FOIL”), provided that the Contractor provides advance notice to the Board, in writing or by e-mail, that it intends to disclose such reports, information or data and the Board does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

B. The Contractor shall provide notice to the Board within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Board of such steps. In the event of such breach of security, without limiting any other right of the Board, the Board shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The Board shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Board shall provide the Contractor with written notice and an opportunity to comment on such

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measures prior to implementation. Alternatively, at the Board's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

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

D. The Contractor, and its officers, employees, and agents shall notify the Board, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least twenty-four (24) hours prior to any statement to the press or at least five (5) business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

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

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

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights

A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the Board.

B. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement ("Copyrightable Materials") shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright

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Act, 17 U.S.C. § 101, and the Board 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 Copyrightable Materials do not qualify as “work-made-for-hire,” the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the Board, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the Board. The Board may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Board and set forth in the license.

C. The Contractor acknowledges that the Board may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

D. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

E. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the Board shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for Board governmental purposes.

Section 6.02 Patents and Inventions

The Contractor shall promptly and fully report to the Board any discovery or invention arising out of or developed in the course of performance of this Agreement. If the services under this Agreement are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

Section 6.03 Pre-existing Rights

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

Section 6.04 Antitrust

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

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

The Contractor shall not commence performing services under this Agreement unless and until all insurance required by this Article is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.

Section 7.02 Commercial General Liability Insurance

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the Board as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the Board and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, and shall be "occurrence" based rather than “claims-made.”

B. Such Commercial General Liability Insurance shall name the Board, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10.

Section 7.03 Professional Liability Insurance

A. At the Board direction, if professional services are provided pursuant to this Agreement, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall

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include an endorsement to cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

B. All subcontractors of the Contractor providing professional services under this Agreement for which Professional Liability Insurance is reasonably commercially available shall also maintain such insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to the Board, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Board.

C. Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

Section 7.04 Workers' Compensation, Disability Benefits, and Employer's Liability Insurance

The Contractor shall maintain, and ensure that each subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

Section 7.05 Unemployment Insurance

To the extent required by Law, the Contractor shall provide Unemployment Insurance for its employees.

Section 7.06 Business Automobile Liability Insurance

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA0001.

B. If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

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Section 7.07 General Requirements for Insurance Coverage and Policies

A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / “VII” or a Standard and Poor’s rating of at least A, unless prior written approval is obtained from the City Law Department.

B. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City and Board.

C. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the Board is an insured under the policy.

D. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Executive Director. Any such self-insurance program shall provide the Board with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

E. The Board’s limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

Section 7.08 Proof of Insurance

A. For Workers’ Compensation Insurance, Disability Benefits Insurance, and Employer’s Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers’ compensation coverage.

1. C-105.2 Certificate of Workers’ Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers’ Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers’ Compensation Board; or
5. Other proof of insurance in a form acceptable to the City.

B. For each policy required under this Agreement, except for Workers’ Compensation Insurance, Disability Benefits Insurance, Employer’s Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Board

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within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the Board and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor's general liability policy by which the Board has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached to this Appendix A or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Executive Director prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

D. The Contractor shall provide the Board with a copy of any policy required under this Article upon the demand for such policy by the Executive Director or the New York City Law Department.

E. Acceptance by the Executive Director of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to the Executive Director, New York City Water Board, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.

Section 7.09 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Article, the Contractor shall provide the insurer with timely notice thereof on behalf of the Board. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the New York City Water Board as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the Board for all losses, judgments, settlements and

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expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the Board.

B. The Contractor's failure to maintain any of the insurance required by this Article shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the Board at any time.

C. Insurance coverage in the minimum amounts required in this Article shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the Board from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. The Contractor waives all rights against the Board and the City, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also name the Board, including its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO form CG 20 26.

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

The Contractor shall take all reasonable precautions to protect all persons and the property of the Board, the City and of others from damage, loss or injury resulting from the Contractor's and/or its subcontractors' operations under this Agreement.

Section 8.02 Protection of Board and City Property

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to Board and City property, including property and equipment leased by the Board and City, used in the performance of this Agreement, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

Section 8.03 Indemnification

The Contractor shall defend, indemnify and hold the Board and the City, its officers and employees harmless from any and all claims (even if the allegations of the lawsuit are without

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merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the Board and the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Agreement or of the Laws. Insofar as the facts or Law relating to any claim would preclude the Board and the City from being completely indemnified by the Contractor, the Board and the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.04 Infringement Indemnification

The Contractor shall defend, indemnify and hold the Board and City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Contractor and/or its subcontractors in the performance of this Agreement. The Contractor shall defend, indemnify, and hold the Board and the City harmless regardless of whether or not the alleged infringement arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any claim would preclude the Board and the City from being completely indemnified by the Contractor, the Board and the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The indemnification provisions set forth in this Article shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

Section 8.06 Actions By or Against Third Parties

A. In the event any claim is made or any action brought in any way relating to Agreement, other than an action between the Board and the Contractor, the Contractor shall diligently render to the Board without additional compensation all assistance which the Board may reasonably require of the Contractor.

B. The Contractor shall report to the Board in writing within five (5) business Days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

Section 8.07 Withholding of Payments

A. In the event that any claim is made or any action is brought against the Board or the City for which the Contractor may be required to indemnify the Board and the City pursuant

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to this Agreement, the Board shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

B. In the event that any Board or City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the Board shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The Board shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Article 7 above has accepted the Board's tender of the claim or action without a reservation of rights.

D. The Board may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.

E. The rights and remedies of the Board provided for in this Section shall not be exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

Section 8.08 No Third Party Rights

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the Board or City or their respective officers and employees.

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

Changes to this Agreement may be made only as duly authorized by the Executive Director. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. Contractors deviating from the requirements of this Agreement without a duly approved and executed change order document, or written contract modification or amendment, do so at their own risk.

Section 9.02 Changes Through Fault of Contractor

In the event that any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the Board Without Cause

A. The Board shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. If the Board terminates this Agreement pursuant to this Section, the following provisions apply. The Board shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the Board pursuant to Section 10.05. The Board shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the Board in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.02 Reductions in Federal, State and/or City Funding

A. If, this Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments and should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the Board shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Paragraph A, above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than thirty (30) Days from the date of such notice. Prior to sending such notice of reduction, the Board shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Board shall not be bound to utilize any of the Contractor's suggestions and that the Board shall have sole discretion as to how to effectuate the reductions.

C. If the Board reduces funding pursuant to this Section, the following provisions apply. The Board shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the Board in accordance with the terms of this Agreement. In no event shall

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such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this section shall not apply, and the Board may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this agreement as appropriate.

Section 10.03 Contractor Default

A. The Board shall have the right to declare the Contractor in default:

1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Executive Director;

4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

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f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Executive Director, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Executive Director may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Executive Director may declare the Contractor in default pursuant to this Section. Before the Executive Director may exercise his or her right to declare the Contractor in default, the Executive Director shall give the Contractor an opportunity to be heard upon not less than five (5) business days notice. The Executive Director may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Executive Director may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section, in accordance with the provisions of Section 10.05.

E. The Executive Director, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable. After such completion, the Executive Director shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Executive Director, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the Board. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Executive Director, and any liquidated damages assessed

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against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

Section 10.04 Force Majeure

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor (“Force Majeure Event”). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Executive Director to excuse the nonperformance and/or terminate the Agreement. If the Executive Director, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Executive Director shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

C. If the Board terminates the Agreement pursuant to this Section, the following provisions apply. The Board shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The Board shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the Board in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.05 Procedures for Termination

A. The Board shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Executive Director may determine. If the Board terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

B. Upon termination or expiration of this Agreement, the Contractor shall comply with the Board close-out procedures, including but not limited to:

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1. Accounting for and refunding to the Board, within forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
2. Furnishing within forty-five (45) Days an inventory to the Board of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Board directive concerning the disposition of such equipment, appurtenances and property;
3. Turning over to the Board or its designees all books, records, documents and material specifically relating to this Agreement that the Board has requested be turned over;
4. Submitting to the Board, within ninety (90) Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant; and
5. Providing reasonable assistance to the Board in the transition, if any, to a new contractor.

Section 10.06 Miscellaneous Provisions

A. The Executive Director, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the Board. If the Executive Director suspends this Agreement pursuant to this Section, the Board shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The Board shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the Board for damages sustained by the Board by virtue of the Contractor's breach of the Agreement, and the Board may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the Board from the Contractor.

C. The rights and remedies of the Board provided in this Article shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

ARTICLE 11 - CLAIMS

Section 11.01 Choice of Law

This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

Section 11.02 Jurisdiction and Venue

The parties agree that any and all claims asserted by or against the Board or City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section, the Contractor shall be responsible for and shall promptly reimburse the Board or City for any attorneys' fees incurred by the Board or City in removing the action to a proper court consistent with this Section.

Section 11.03 Claims and Actions

A. Any claim against the Board based on this Agreement or arising out of this Agreement shall not be made or asserted in any legal proceeding, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the date of filing of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

Section 11.04 No Claim Against Officers, Agents or Employees

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

Section 11.05 General Release

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City and Board from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City or Board prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

Section 11.06 No Waiver

Waiver by either the Board or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

ARTICLE 12 - APPLICABLE LAWS

Section 12.01 All Legal Provisions Deemed Included

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

Section 12.02 Severability / Unlawful Provisions Deemed Stricken

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

Section 12.03 Compliance With Laws

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

Section 12.04 Americans with Disabilities Act (ADA)

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. (“ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against

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an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Board to ensure the Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). In the event that the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the Executive Director for review within ten (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

B. The Contractor's failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the Board terminating this Agreement.

Section 12.05 Participation in an International Boycott

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 et seq., or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Agreement.

C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

Section 12.06 MacBride Principles

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

Appendix A

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

Section 13.01 Merger

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

Section 13.02 Headings

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

Section 13.03 Notice

A. The Contractor and the Board hereby designate the business addresses specified at the beginning of this Agreement as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

**New York City Water Board – Letter Solicitation for Design Build Implementation,
Advisory, and Project Management Services**

APPENDIX C

SCOPE OF WORK

The New York City Department of Environmental Protection (“DEP”) will be acting as the agent for the New York City Water Board (the “Board”) with regard to this solicitation.

Design Build Program Development

The City of New York has obtained legislative authority to utilize design build procurement methodology for the construction of water and wastewater capital projects. DEP is seeking a Consultant to identify a workable approach to incorporating design build standards into its capital project work, codify that approach into a formal design build program, create the form documents and training materials codifying that program, and assist DEP with obtaining the internal authorizations required to proceed with at least one, and as many as five, projects demonstrating the efficiency and economical nature of a design build approach to capital projects.

Scope of Work and Deliverables

DEP worked with an outside advisor during calendar years 2020 and 2021 to develop and write a Design Build Project Delivery Implementation Plan. The purpose of this RFP is to move DEP’s design build program forward, with the goal of issuing between one and five design build project requests for qualifications (RFQs) before the end of calendar year 2022. At least one RFQ must be issued before June 30, 2022, with the remaining RFQs to be issued before December 31, 2022.

The Consultant shall work under the direction of, and in coordination with, DEP’s Design Build (D/B) Team to provide owner-oriented design build advisory services. The Consultant shall assist DEP in establishing a D/B Program, and facilitate the procurement of pilot projects by issuing RFQs, and will provide quality work-product in a timely manner in accordance with applicable professional and industry standards.

It is contemplated that the tasks described below in Sections A through D will all need to be completed, in connection with each of the individual D/B projects. It is further contemplated that the templates, forms, and other work-product created in connection with issuing an initial RFQ would be general enough in design that most of the materials would be suitable for use as the basis for issuing subsequent second, third, fourth, and fifth RFQs covering other D/B projects, and that the number of personnel-hours required to issue an initial RFQ will be greater

than the personnel-hours required to issue subsequent RFQs.

A. Design Build Program and Managerial Consulting: Program Setup and Pre-Procurement Support

The Consultant shall provide technical support for DEP in preparing and establishing D/B procedures and protocols, drafting D/B procurement and contract documents, and facilitating D/B orientation including but not limited to:

- Develop a work plan and schedule that describes all items required to issue at least one RFQ by June 30, 2022, and up to four additional RFQs before December 31, 2022
- Develop strategies to streamline existing contract management and procurement processes to meet D/B project delivery best practices, potentially including such topics as the delegation of authority, and address overlapping or duplicative multi-bureau oversight roles, and similar topics
- Provide education, orientation, training and materials to DEP personnel for effective development and management of D/B procurement processes
- Develop procurement-related forms, templates and procedural documents
- Develop analytical tools for identifying and documenting stakeholder priorities
- Develop communication materials for both internal and external stakeholders, including prospective consulting vendors, and including materials suitable for use across digital and traditional communication channels
- Provide guidance on D/B project delivery evaluation and selection options and procedures
- Guide and facilitate project risk allocation strategy sessions with DEP stakeholders
- Create and maintain a document control system, and prepare the administrative record for the procurement process, including evaluation and selection
- Provide guidance on decisions regarding D/B best practices, as well as assist with establishing decision making criteria

B. Pre-Award Support: Initiation through RFQ

- Review and advise on contract forms, terms and conditions, and other business or contractual items
- Support vendor community outreach
- Support and advise DEP in the evaluation and administration best suited to issuing project RFQs, and advise on establishing criteria for developing short lists of capital projects suitable for the design build program
- Guide the establishment of value-based selection criteria and methodology
- Advise on the use of stipends in the context of D/B procurements
- Prepare Requests of Letters of Interest and/or advertising material for use by DEP
- Prepare RFQs to solicit Statements of Qualifications (SOQs) from prospective D/B proposal teams
- Assist with developing the competition process, meeting schedules, responding to

- inquiries, and with the preparation of addenda
- Upon receipt of the SOQs, provide assistance in the evaluation and short-listing process

C. Pre-Award Support: RFP through Contract Award

- Provide management, support, and guidance of RFP development, solicitation, negotiation and contract award phases
- Support DEP and Architect-Engineer (AE1) as required in development of the draft and final RFPs
- Facilitate proprietary one-on-one meetings with shortlisted proposers
- Facilitate the RFP process, meetings, response to inquiries and preparation of addenda
- Advise on incentive/award fee development
- Provide guidance/expertise in negotiating the final contract terms, including price
- Provide contract negotiation guidance and support to optimize opportunity for DEP to select the best D/B teams with the best value proposal, within a pre-established budget

D. Post-Award Support

- Participate in project meetings as needed to advise on project management actions that require oversight review and approval by DEP's Agency Chief Contracting Officer, Office of Engineering Audits, and external stakeholders
- Advise on resolution of project disputes that are escalated for executive review
- Support DEP in actions required to implement incentive/award fee program

E. Other

- The work that will be performed by the vendor selected following this RFP does not include engineering work to prepare or review project specific requirements, specifications, schedules, or estimates

**New York City Water Board – Letter Solicitation for Design Build Implementation,
Advisory, and Project Management Services**

APPENDIX D

COST PROPOSAL

This solicitation contemplates that a minimum of one, and a maximum of five, RFQs will be issued under this Scope of Work. Since the exact number of RFQs will not be determined until after the project has started, the structure of the Cost Proposal is to use an hourly fee approach, and to provide a schedule showing the hourly fee associated with each of the staff seniorities the Consultant anticipates would be involved with the project, along with a breakdown of the hours per task by seniority level. The hourly fees should reflect the full, actual dollar rates that will be used to calculate invoiced amounts, meaning that the dollar amounts should include overhead costs and the firm's expected profit.

DEP and the Board will work with the Consultant to establish an appropriate invoicing method and frequency.

It is anticipated that the documents, forms, and templates created in connection with issuing an initial RFQ will be suitable for reuse on subsequent RFQs, and that the personnel-hours required to complete the work on a first D/B project will be greater than the per project personnel-hours required to complete subsequent projects.

The template below contemplates that, in addition to the stated tasks, there may be a wrap-up phase near the end of the project, should DEP and the Board wish for the Consultant to provide transition support, knowledge transfer, training, or other related activities, in connection with the tasks and deliverables described in Sections A through D.

EVALUATION PROCEDURES FOR SUBMITTED PROPOSALS

All proposals received by DEP will be reviewed to determine whether they are responsive to the requisites of this RFP. Proposals which are determined to be non-responsive will not be considered.

Potential proposers are advised that the firm awarded the contract from this Water Board design-build RFP will be ineligible to be awarded any contract or to participate as a subconsultant in the subsequent design-build project RFPs resulting from DEP's design-build pilot initiative. Proposals submitted on those projects by a firm with a contract awarded under this Water Board design-build procurement will not be considered. This exclusion applies to the consultant's subsidiaries and affiliates, and its subconsultants that perform 20% percent or more of the total work based upon cost awarded from this RFP.

An Evaluation Committee comprised of personnel from DEP and the Water Board will evaluate and rate all eligible proposals on a 90-point technical score scale, based on evaluation criteria relating to the proposer's capabilities and experience as required to perform the Scope of Work. DEP may, at its discretion, require any or all proposers to give oral presentations regarding their proposals. DEP may also request proposers to submit Best and Final Offers.

Proposals from City or State certified M/WBEs shall receive a point preference of 10 additional points added to the technical points earned in the evaluation of the proposal. Firms awarded the additional 10 points have the potential for a total technical score of 100.

DEP will open the price proposals of only those firms with technical scores sufficiently high to indicate an ability to perform the Scope of Work. Of the proposers identified as meeting that standard, price points will be added to the technical scores, with technical scores adjusted to include any M/WBE points, as follows:

- The least expensive proposer from among the pool of firms selected based on technical scores will receive additional points equal to 8% of its technical score, including the M/WBE 10-point score adjustment, if applicable.
- The next least expensive technically qualified proposer will receive additional points equal to 6% of its technical score.
- The third least expensive technically qualified proposer will receive additional points equal to 4% of its technical score.
- No further proposers will receive additional points based on price beyond the proposers presenting the three least expensive prices available from all of the opened proposals.
- If there is a tie between firms presenting offers with identical cost proposals, then all firms tied for price will receive the percentage score boost they would be eligible to receive were there no tie for price at the price point in question. In the event of tied price

proposals, more than three firms may be awarded additional points based on price. The Board and DEP will calculate total cost for each of the opened proposals, and will have the final discretion to determine the allocation of score adjustments based on price, the ordering of the price proposals, and how price adjustments in the event of tied price proposals will be calculated.

- The maximum score available is 108, which would be the score awarded to a firm achieving a top technical score of 90, receiving an M/WBE 10-point score adjustment, and also submitting the lowest cost proposal from among the pool of firms deemed technically capable of performing the Scope of Work, resulting in an 8% point price score adjustment to its adjusted technical score of 100, for a total of 108.

DEP and the Board will begin contract negotiations with the proposer with the highest total combined points reflecting all three sources of points – raw technical score plus any score adjustments for M/WBE status and adjustments based on price.

The following example is for the purposes of illustration only: Three proposers deemed to be of sufficient technical merit have proposed the following prices and received the following technical points from the Evaluation Committee:

Proposer A (an M/WBE): 78 technical points, price \$850,000;
Proposer B: 81 technical points, price \$1,000,000;
Proposer C (an M/WBE): 71 technical points, price \$800,000; and
Proposer D: 80 technical points, price \$925,000.

Based on the figures described above, the calculation of score adjustments would proceed as follows:

- Proposer A and Proposer C's raw technical scores are each adjusted upward by 10 points to adjusted technical scores of 88 and 81, respectively.
- Proposer C's raw technical score of 71 is determined to be below the allowable threshold, based on which Proposer C's price proposal is not opened.
- Following awarding of the M/WBE score adjustments and removing those proposals with raw technical scores determined to be too low, a rank order of the proposals based on cost is established indicating, from least to most expensive, Proposer A, Proposer D, and Proposer B.
- The scores of Proposers A, D, and B would be adjusted upward by 8%, 6%, and 4%, respectively, to reflect the relative affordability of their prices.
- The final adjusted scores, with M/WBE and price points included, would be: Proposer A 95.0; Proposer B 84.2, and Proposer D 84.8.
- Contract negotiations would commence with Proposer A.

Basis for Contract Award:

A contract will be awarded to the responsible proposer that is determined to be the most advantageous to the City and the Board, taking into consideration the price and such other factors or criteria that are set forth in this RFP, including the quantitative preference to be provided to proposals submitted by vendors that are City or State certified M/WBEs. Contract award shall be subject to the timely completion of contract negotiations between the NYC Water Board and the selected proposer.

CERTIFICATE OF NON-COLLUSION

Pursuant to New York State Public Authorities Law, Article 9, Title 4, Section 2878, the undersigned proposer hereby subscribes and affirms as true, under the penalties of perjury, the following statement of non-collusion:

“By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

- (1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and,
- (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.”

DATE: _____/_____/_____

PROPOSER NAME: _____

PROPOSER SIGNATURE: _____

PROPOSER FIRM: _____

AFFIDAVIT OF PAYMENT OF TAXES

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

Full name of Proposer or Bidder _____

Address _____

City _____ State _____ Zip Code _____

CHECK ONE AND INCLUDE APPROPRIATE NUMBER:

_____ A. Individual or Sole Proprietorship*
SOCIAL SECURITY NUMBER

_____ B. Partnership, Joint Venture or other
unincorporated organization
EMPLOYER IDENTIFICATION NUMBER

_____ C. Corporation
EMPLOYER IDENTIFICATION NUMBER

By: _____
Signature

Title

Must be signed by officer or duly authorized representative.
If a corporation, place seal here.

* Under the Federal Privacy Act the furnishing of Social Security Numbers by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a bidder's disqualification. Social Security Numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws as well as to provide the City a means of identifying of businesses which seek City contracts.



Doing Business Data Form

To be completed by the City agency prior to distribution			
Agency: _____		Transaction ID: _____	
Check One:	Transaction Type (check one):		
<input type="checkbox"/> Proposal	<input type="checkbox"/> Concession	<input type="checkbox"/> Contract	<input type="checkbox"/> Economic Development Agreement
<input type="checkbox"/> Award	<input type="checkbox"/> Franchise	<input type="checkbox"/> Grant	<input type="checkbox"/> Pension Investment Contract

Any entity receiving, applying for or proposing on an award or agreement must complete a Doing Business Data Form (see Q&A sheet for more information). Please either type responses directly into this fillable form or print answers by hand in black ink, and be sure to fill out the certification box on the last page. **Submission of a complete and accurate form is required for a proposal to be considered responsive or for any entity to receive an award or enter into an agreement.**

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York; no other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's VENDEX requirements.**

Please return the completed Data Form to the City office that supplied it. Please contact the Doing Business Accountability Project at DoingBusiness@cityhall.nyc.gov or 212-788-8104 with any questions regarding this Data Form. Thank you for your cooperation.

Section 1: Entity Information

Entity Name: _____

Entity EIN/TIN: _____

Entity Filing Status (select one):

- Entity has never completed a Doing Business Data Form. *Fill out the entire form.*
- Change from previous Data Form dated _____. *Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.*
- No Change from previous Data Form dated _____. *Skip to the bottom of the last page.*

Entity is a Non-Profit: Yes No

Entity Type: Corporation (any type) Joint Venture LLC Partnership (any type)
 Sole Proprietor Other (specify): _____

Address: _____

City: _____ State: _____ Zip: _____

Phone : _____ Fax : _____

E-mail: _____

Provide your e-mail address and/or fax number in order to receive notices regarding this form by e-mail or fax.

Section 2: Principal Officers

Please fill in the required identification information for each officer listed below. If the entity has no such officer or its equivalent, please check "This position does not exist." If the entity is filing a Change Form and the person listed is replacing someone who was previously disclosed, please check "This person replaced..." and fill in the name of the person being replaced so his/her name can be removed from the *Doing Business Database*, and indicate the date that the change became effective.

Chief Executive Officer (CEO) or equivalent officer

This position does not exist

The highest ranking officer or manager, such as the President, Executive Director, Sole Proprietor or Chairperson of the Board.

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

This person replaced former CEO: _____ on date: _____

Chief Financial Officer (CFO) or equivalent officer

This position does not exist

The highest ranking financial officer, such as the Treasurer, Comptroller, Financial Director or VP for Finance.

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

This person replaced former CFO: _____ on date: _____

Chief Operating Officer (COO) or equivalent officer

This position does not exist

The highest ranking operational officer, such as the Chief Planning Officer, Director of Operations or VP for Operations.

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

This person replaced former COO: _____ on date: _____

Section 3: Principal Owners

Please fill in the required identification information for all individuals who, through stock shares, partnership agreements or other means, **own or control 10% or more of the entity**. If no individual owners exist, please check the appropriate box to indicate why and skip to the next page. If the entity is owned by other companies, those companies do **not** need to be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals who are no longer owners at the bottom of this page. If more space is needed, attach additional pages labeled "Additional Owners."

There are no owners listed because (select one):

- The entity is not-for-profit
- There are no individual owners
- No individual owner holds 10% or more shares in the entity
- Other (explain): _____

Principal Owners (who own or control 10% or more of the entity):

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

Remove the following previously-reported Principal Owners:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Section 4: Senior Managers

Please fill in the required identification information for all senior managers who oversee any of the entity's relevant transactions with the City (e.g., contract managers if this form is for a contract award/proposal, grant managers if for a grant, etc.). Senior managers include anyone who, either by title or duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any transaction with the City. **At least one senior manager must be listed, or the Data Form will be considered incomplete.** If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

Senior Managers:

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

Remove the following previously-reported Senior Managers:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Certification

I certify that the information submitted on these four pages and _____ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the entity being found non-responsible and therefore denied future City awards.

Name: _____

Signature: _____ Date: _____

Entity Name: _____

Title: _____ Work Phone #: _____

Please return this form to the City agency that supplied it to you, not to the Doing Business Accountability Project.

For information or assistance, call the Doing Business Accountability Project at 212-788-8104.



DOING BUSINESS ACCOUNTABILITY PROJECT
QUESTIONS AND ANSWERS ABOUT THE DOING BUSINESS DATA FORM

What is the purpose of this *Data Form*?

To collect accurate, up-to-date identification information about organizations that have business dealings with the City of New York in order to comply with Local Law 34 of 2007 (LL 34), the recently passed campaign finance reform law. LL 34 limits municipal campaign contributions from principal officers, owners and senior managers of entities doing business with the City and mandates the creation of a *Doing Business Database* to allow the City to enforce the law. The information requested in this *Data Form* must be provided, regardless of whether the organization or the people associated with it make or intend to make campaign contributions. No sensitive personal information collected will be disclosed to the public.

Why have I received this *Data Form*?

The contract, franchise, concession, grant or economic development agreement you are proposing on, applying for or have already been awarded is considered a business dealing with the City under LL 34. No proposal or application will be considered and no award will be made unless this *Data Form* is completed. Most transactions valued at more than \$5,000 are considered business dealings and require completion of the *Data Form*. Exceptions include transactions awarded on an emergency basis or by publicly advertised, non-pre-qualified, competitive sealed bid. Other types of transactions that are considered business dealings include real property and land use actions with the City.

What individuals will be included in the *Doing Business Database*?

The principal officers, owners and certain senior managers of organizations listed in the *Doing Business Database* are themselves considered to be doing business with the City and will also be included in the *Database*.

- **Principal Officers** are the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and Chief Operating Officer (COO), or their functional equivalents. See the *Data Form* for examples of titles that apply.
- **Principal Owners** are individuals who own or control 10% or more of the organization. This includes stockholders, partners and anyone else with an ownership or controlling interest in the entity.
- **Senior Managers** include anyone who, either by job title or actual duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any contract, concession, franchise, grant or economic development agreement with the City. At least one Senior Manager must be listed or the *Data Form* will be considered incomplete.

I have already completed a *Doing Business Data Form*; do I have to submit another one?

Yes. An organization is required to submit a *Doing Business Data Form* each time it enters into a transaction considered a business dealing with the City, including contract, concession and franchise proposals. However, the *Data Form* has both a Change option, which requires only information that has changed since the last *Data Form* was filed, and a No Change option. No organization should have to fill out the entire *Data Form* more than once.

If you have already submitted a *Data Form* for one transaction type (such as a contract), and this is the first time you are completing a *Data Form* for a different transaction type (such as a grant), please select the Change option and complete Section 4 (Senior Managers) for the new transaction type.

Will the personal information on this *Data Form* be available to the public?

No. The names and titles of the officers, owners and senior managers reported on the *Data Form* will be made available to the public, as will information about the organization itself. However, personal identifying information, such as home address, home phone and date of birth, will not be disclosed to the public, and home address and phone number information will not be used for communication purposes.



I provided some of this information on the VENDEX Questionnaire; do I have to provide it again?

Yes. Although the *Doing Business Data Form* and the VENDEX Questionnaire request some of the same information, they serve entirely different purposes. In addition, the *Data Form* requests information concerning senior managers, which is not part of the VENDEX Questionnaire.

What organizations will be included in the *Doing Business Database*?

Organizations that hold \$100,000 or more in grants, contracts for goods or services, franchises or concessions (\$500,000 for construction contracts), or that hold any economic development agreement or pension fund investment contract, are considered to be doing business with the City for the purposes of LL 34. Because all of the business that an organization does or proposes to do with the City will be added together, the *Data Form* must be completed for all transactions valued at more than \$5,000 even if the organization doesn't currently do enough business with the City to be listed in the *Database*.

No one in my organization plans to contribute to a candidate; do I have to fill out this *Data Form*?

Yes. All organizations are required to return this *Data Form* with complete and accurate information, regardless of the history or intention of the entity or its officers, owners or senior managers to make campaign contributions. The *Doing Business Database* must be complete so that the Campaign Finance Board can verify whether future contributions are in compliance with the law.

My organization is proposing on a contract with another firm as a Joint Venture that does not exist yet; how should the *Data Form* be completed?

A joint venture that does not yet exist must submit a *Data Form* for each of its component firms. If the joint venture receives the award, it must then complete a form in the name of the joint venture.

How long will an organization and its officers, owners and senior managers remain listed on the *Doing Business Database*?

- **Contract, Concession and Economic Development Agreement holders:** generally for the term of the transaction, plus one year.
 - **Franchise and Grant holders:** from the commencement or renewal of the transaction, plus one year.
 - **Pension investment contracts:** from the time of presentation on an investment opportunity or the submission of a proposal, whichever is earlier, until the end of the contract, plus one year.
 - **Line item and discretionary appropriations:** from the date of budget adoption until the end of the contract, plus one year.
 - **Contract proposers:** for one year from the proposal date or date of public advertisement of the solicitation, whichever is later.
 - **Franchise and Concession proposers:** for one year from the proposal submission date.
- For information on other transaction types, contact the Doing Business Accountability Project.

How does a person remove him/herself from the *Doing Business Database*?

When an organization stops doing business with the City, the people associated with it are removed from the *Database* automatically. However, any person who believes that s/he should not be listed may apply for removal. Reasons that a person would be removed include his/her no longer being the principal officer, owner or senior manager of the organization. Organizations may also update their database information by submitting an update form. Removal Request and Update forms are available online at www.nyc.gov/mocs (once there, click MOCS Programs) or by calling 212-788-8104.

What are the new campaign contribution limits for people doing business with the City?

Contributions to City Council candidates are limited to \$250 per election cycle; \$320 to Borough President candidates; and \$400 to candidates for citywide office. Please contact the NYC Campaign Finance Board for more information at www.nycffb.info, or 212-306-7100.

The *Data Form* is to be returned to the City office that issued it.

If you have any questions about the *Data Form* please contact the Doing Business Accountability Project at 212-788-8104 or DoingBusiness@cityhall.nyc.gov.