**THE NEW YORK CITY WATER BOARD**

**REQUEST FOR PROPOSALS**
**FOR**
**LOCKBOX AND OTHER PAYMENT PROCESSING SERVICES**

**DATE OF ISSUE: June 5, 2012**

**AUTHORIZED WATER BOARD CONTACT**

Proposers are advised that the Water Board's designated contact person for all matters concerning this RFP is:

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**RFP TIMETABLE**

Release Date of the RFP ..... June 5, 2012

Deadline for Question Submission ..... 4:00 p.m., Thursday, June 28, 2012

Letter of Intent ..... Thursday, July 12, 2012

Proposal Due Date ..... 4:00 p.m., Wednesday, July 25, 2012

Proposals are to be delivered to:

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Oral Presentations (as needed) ..... early August

Completion of Evaluation ..... late August

Commencement of Work ..... late 2012

## SECTION I. BACKGROUND

Created by the New York State Legislature in 1984, the New York City Water Board (the "Board") is a public benefit corporation charged with establishing and collecting water and wastewater rates and charges in an amount sufficient to place the water supply and wastewater systems (the "System") of the City of New York (the "City") on a self-sustaining basis. The System is operated and maintained by the City's Department of Environmental Protection ("DEP").

Under the terms of a Lease Agreement between the City and the Board, the City has leased to the Board all of its rights, title and interest in the System. The lease of the System provides that DEP will administer, operate, maintain and repair the System, and the Board will reimburse the City for this service.

The System has approximately 836,000 accounts within the five boroughs of the City, nearly all of which receive both water and wastewater service. The Board's customer accounts comprise two categories: flat-rate accounts and metered accounts. There are approximately 47,000 flat-rate accounts, which are billed annually prior to the start of the fiscal year with payments due by the end of the first month of the Board's fiscal year, which is July. There are approximately 789,000 meter accounts, most of which are billed quarterly on a rolling basis, which results in relatively steady billing volumes throughout the year. Additionally, the City is required to sell water in counties where its water supply facilities are located. The Board has approximately 60 wholesale customers located in counties north of the City that are billed monthly for consumption.

Currently, DEP's Bureau of Customer Services ("BCS") provides billing services to the Board and collects all revenues of the System. BCS collects the data used to generate bills to customers. It is responsible for the reading of meters and checking of meter accuracy, as well as the maintenance of current customer information. BCS also operates walk-in customer service offices in all five boroughs of the City, which accept payments for water and wastewater service, as well as permits and fees.

## SECTION II. PURPOSE OF THE RFP

In issuing this Request for Proposals ("RFP"), the Board is soliciting competitive sealed proposals from qualified firms to provide lockbox and other payment processing services in connection with the payment of water and wastewater charges and other related charges. Based on the criteria set forth herein, the Board may award all services to a single contractor or it may award services to multiple contractors (collectively referred to herein as the "Contractor"). The contract(s) that results from this RFP will be a direct fee contract (the "Contract"). The term of the Contract will be five (5) years, with the Board's option to renew the Contract for two three (3)-year extensions.

The major objectives of the Board in seeking lockbox payment processing services are to:

1. Provide the Board with accelerated and enhanced cash flows, through the timely preparation and processing of payments for deposit into the Board's bank accounts;
2. Provide the Board's customers with timely, accurate, convenient, and secure processing of remittances; and,
3. Provide BCS's customer account database ("Customer Information System" or "CIS") with current and regular transmissions of information on account remittances.

Below is the volume of remittances processed in each month of fiscal year 2011 ("FY 2011") and year-to-date fiscal year 2012 ("FY 2012"):

| Remittance Volume (Items Processed) | | |
|---|---|---|
| **Month** | **FY 2011** | **FY 2012** |
| July | 241,920 | 239,480 |
| August | 248,547 | 253,583 |
| September | 233,029 | 236,124 |
| October | 235,825 | 233,228 |
| November | 235,000 | 236,520 |
| December | 230,151 | 225,445 |
| January | 245,105 | 252,469 |
| February | 228,828 | 247,742 |
| March | 260,557 | 252,346 |
| April | 232,039 | 254,521 |
| May | 245,643 | 256,903 |
| **Subtotal** | **2,636,644** | **2,688,361** |
| June | 243,110 | |
| **Total** | **2,879,754** | |

The Board expects the number of invoices processed annually to be relatively consistent with the above numbers for the next several years; however, volume may increase as annual-paying flat-rate accounts gradually convert to quarterly meter-based billing. Additionally, BCS is considering converting all accounts to monthly billing within the Contract term.

The Contractor will provide the following services, as requested.

1. Remittance via:
    a. General Lockbox
    b. Remote Lockbox
    c. DEP-Contractor Online Application
    d. Mobile Device Payment Application
    e. Telephone (IVR/VRU) System
    f. Over-the-Counter Local Payment Venue
    g. Wire Transfer
    h. Online Banking Payment Consolidation
2. Data Batching and Transmission Services
3. Depository and Banking Services
4. Reporting Services
5. Electronic Document Image Processing and Archiving Services
6. Correspondence Delivery
7. Security
8. Quality Control Services
9. Disaster Recovery
10. Implementation
11. Future Enhancements

## SECTION III. AGENT FOR NYC WATER BOARD

DEP will act as agent for the Board with regards to the Contract by soliciting and evaluating proposals, recommending a Contractor for selection, negotiating the Contract with the successful Proposer, administering the Contract, and any other function the Board assigns to DEP during the course of the Contract. Additionally, as DEP collects and processes all payments for the Board, "DEP", "BCS" and the "Board" may be used interchangeably in this RFP.

## SECTION IV. SCOPE OF SERVICES

This section describes current payment methods and outlines the scope of services to be performed. Each firm responding to the RFP (the "Proposer") must specifically respond to all tasks noted herein in its technical proposal and separately delineate all related costs in its Price Proposal. If a Proposer does not offer a specific service listed in Section II and detailed below, the Proposer should note its non-provision of such service. For award of all services, the required tasks are considered the minimum requirements for BCS's payment processing services. A Proposer may suggest additional tasks beyond the services listed in Section II that it believes are essential to fulfilling the Board's objectives.

### A. CURRENT PAYMENT METHODS

The Board accepts several payment methods for water and wastewater charges. For all payment methods, a single daily data file of payment credits is transmitted to DEP using Secure File Transfer Protocol (the "Data File"). Then the funds generated by presentment and clearing of these payments are deposited in a Board account. The levels of involvement by the selected financial institution in remittance processing are:

Direct Processing: the Contractor handles all aspects of the remittance processing from preparing the daily Data File to presentment of payments for deposit into the Board's account. This includes paper checks sent to the remittance P.O. box, checks deposited via remote deposit, ACH and credit card payments, and over-the-counter payments made by cash and check at local sites.

Pass-Through: the Contractor accepts an electronic data file from certain providers, appends the file to the daily Data File and transmits the complete file to DEP once a day at the designated time. The Contractor also deposits the accompanying funds transfer in the Board's account. This currently includes consolidated banking payment services, but it could also include additional services if such services are awarded to a Proposer other than the primary Contractor, which will be the Contractor handling paper remittances.

By-Pass: No involvement by the Contractor at all, other than receipt of funds via EFT into the Board's account. This includes payments made through NYCServ.

Unless otherwise determined, the Board will require the Contractor to offer all current payment methods and perform all current functions as described herein.

The following table summarizes the volumes received through the payment mediums accepted by BCS in FY 2011 and FY 2012 year-to-date. During this period, 48% of ACH payments and 58% of credit card payments were received via the internet; 38% of ACH payments and 34% of credit card payments were received via the telephone IVR system; and 14% of ACH payments and 8% of credit card payments were received through direct debit.

| Month | Total Item Count | Lockbox and Remote Deposit | ACH | Credit Card | Over-the-Counter | Consolidated Online Banking | NYCServ |
|---|---|---|---|---|---|---|---|
| **FY 2011 Collections by Month** | | | | | | | |
| Jul-10 | 241,920 | 181,853 | 21,393 | 2,244 | 267 | 26,347 | 9,816 |
| Aug-10 | 248,547 | 187,723 | 22,813 | 2,307 | 294 | 27,508 | 7,902 |
| Sep-10 | 233,029 | 174,208 | 21,988 | 2,206 | 256 | 26,374 | 7,997 |
| Oct-10 | 235,825 | 173,870 | 23,114 | 2,248 | 256 | 27,205 | 9,132 |
| Nov-10 | 235,000 | 171,795 | 24,747 | 2,352 | 257 | 28,282 | 7,567 |
| Dec-10 | 230,151 | 166,506 | 24,614 | 2,397 | 285 | 28,841 | 7,508 |
| Jan-11 | 245,105 | 180,517 | 25,533 | 2,436 | 247 | 27,790 | 8,582 |
| Feb-11 | 228,828 | 166,260 | 24,715 | 2,301 | 256 | 28,302 | 6,994 |
| Mar-11 | 260,557 | 185,957 | 30,666 | 2,747 | 300 | 32,625 | 8,262 |
| Apr-11 | 232,039 | 165,087 | 27,205 | 2,324 | 238 | 29,384 | 7,801 |
| May-11 | 245,643 | 175,962 | 29,070 | 2,612 | 284 | 30,208 | 7,507 |
| Jun-11 | 243,110 | 173,241 | 28,015 | 2,512 | 260 | 31,121 | 7,961 |
| **FY Total** | **2,879,754** | **2,102,979** | **303,873** | **28,686** | **3,200** | **343,987** | **97,029** |
| | 100.00% | 73.0% | 10.6% | 1.0% | 0.1% | 11.9% | 3.4% |
| **FY 2012 Collections by Month** | | | | | | | |
| Jul-11 | 239,480 | 169,462 | 28,549 | 2,366 | 268 | 29,425 | 9,410 |
| Aug-11 | 253,583 | 177,622 | 32,028 | 2,501 | 308 | 32,973 | 8,151 |
| Sep-11 | 236,124 | 165,513 | 29,192 | 2,324 | 283 | 31,110 | 7,702 |
| Oct-11 | 233,228 | 160,477 | 30,937 | 2,436 | 236 | 30,830 | 8,312 |
| Nov-11 | 236,520 | 161,978 | 31,924 | 2,308 | 309 | 32,442 | 7,559 |
| Dec-11 | 225,445 | 147,417 | 31,036 | 2,354 | 248 | 36,420 | 7,970 |
| Jan-12 | 252,469 | 165,220 | 34,459 | 2,584 | 264 | 41,164 | 8,778 |
| Feb-12 | 247,742 | 162,627 | 34,667 | 2,563 | 304 | 39,595 | 7,986 |
| Mar-12 | 252,346 | 162,542 | 36,548 | 2,507 | 296 | 41,691 | 8,762 |
| Apr-12 | 254,521 | 167,155 | 36,016 | 2,369 | 294 | 39,879 | 8,808 |
| May-12 | 256,903 | 164,955 | 38,234 | 2,511 | 325 | 42,737 | 8,141 |
| **FY YTD Total** | **2,688,361** | **1,804,968** | **363,590** | **26,823** | **3,135** | **398,266** | **91,579** |
| | 100.00% | 67.1% | 13.5% | 1.0% | 0.1% | 14.8% | 3.4% |

## B. REQUIRED REMITTANCE METHODS AND SPECIFICATIONS

### 1. General Lockbox

The Contractor shall provide rental of a U.S. Post Office box ("P.O. box") for the remittance of customer payments and a physical address for the remittance of payments delivered by express mail or courier. The Contractor shall provide pick-up and transport from both locations to its processing facility. The Contractor shall process all remittances received on a timely and regular basis.

As the Board is a public authority located in the City, the Board requests that each Proposer submit a proposal in which the P.O. box will have a New York City address. From this P.O. box, the Contractor will be responsible for collecting remittances and transporting them to the Contractor's processing location. The Proposer's technical proposal should include projections of the total time for remittance, including the average mailing time within New York City, the retrieval schedule for P.O. box collections, the transport time to the processing facility, and the processing time for such remittances. The proposal shall note the location of the processing facility and the cut-off time when items received at the processing facility will no longer be processed for the current day's transmission. All costs related to transport from the P.O. box to the processing facility should be included in the Price Proposal.

Additionally, if the Proposer's central processing facility is located outside of the City and would be best served by a P.O. box near such facility, the Proposer is asked to include an alternative proposal for which the remittance address may be a P.O. box located outside of the City. For this scenario, the Proposer's technical proposal should include average mailing times from New York City to such P.O. box location, the retrieval schedule for P.O. box collections, the transport time to the processing facility and the processing time for such remittances. The proposal shall note the location of the processing facility and the cut-off time when items received at the processing facility will no longer be processed for the current day's transmission. If the Proposer selects to submit an alternative proposal for a non-New York City remittance address, the Proposer should also submit a second Price Proposal that will note the costs associated with such lockbox.

While locations in New York City are preferred, the total average time for remittance and price of remittance will be weighed with locational preference. The physical address for remittances delivered by express mail or courier may be at or near the processing facility, regardless of location.

#### 1.1 Data Capture

Remittance processing should capture data related to the dollar amount of the payment, the date of processing, the payer's CIS account number, and the payer's banking ABA routing, account, and check serial numbers. If one or more data point cannot be captured automatically it should be entered manually by the processes noted in this RFP or as proposed by the Proposer.

All checks received at the lockbox are supposed to have the correct CIS account number identified on the check. If they do not have the CIS account number on the check but are accompanied by a coupon, the lockbox operator should have the

ability to print the CIS account number on the check as part of remittance processing.

### 1.2 Type of Processing

There are three types of remittance processing services envisioned at this time:

a. Automatic Scanning
A coupon and check are electronically scanned and funds are presented and deposited; corresponding data is sent to credit each customer's CIS account.

b. Clerical Interface
Lockbox operator manually processes a check with no coupon or one that cannot be automatically scanned. CIS account data is included as payment is processed.

c. Client Intervention
If the lockbox operator is unable to post or fully process a payment, the lockbox operator will provide the Board, through an online system, the ability to handle such exception items and take one of the following actions:
   i) Assign the correct CIS account number to the payment;
   ii) Place the payment in a suspense file for lockbox processing; or
   iii) Have the check and its original media sent to BCS.

Customers are instructed not to send cash to the lockbox. However, in the event cash is remitted, the Contractor shall deposit such amounts into the Board's account and notify DEP of such deposit and any available CIS account information.

### 1.3 Batching

Remittance items shall be batched in groups not to exceed three hundred (300) items for electronic data transmission.

### 1.4 Unbankable Items

Remittances considered unbankable shall be made bankable by the Contractor as follows:

#### 1.4.1 Date

If the date is missing, the date of receipt is entered and stamped "Date Guaranteed".

#### 1.4.2 Dollar Amounts

If the written dollar amount does not equal the numeric amount, the check will be processed for the amount that matches the bill. If neither entry agrees with the bill, the check will be processed for the written amount. If both entries are missing, the item is returned to BCS as unbankable.

#### 1.4.3 Payee

If payee name is omitted, "New York City Water Board" shall be entered or stamped.

Additionally, unbankable items shall be grouped together and identified as unbankable and listed in an electronic report that shall be delivered according to Section IV.C.3.1.2. All original media for unbankable items (including the envelope and check) shall be sent to BCS daily according to Section IV.C.5.

### 1.5 Customer Correspondence

Customers are advised not to include correspondence with payments. The bill includes information on a separate P.O. box for customer correspondence that is maintained by BCS and not a part of this RFP. Nonetheless, remittances received at the lockbox may include customer correspondence. The lockbox operator will batch all of the original correspondence media daily and deliver it to DEP according to Section IV.C.5.

### 1.6 Change of Name/Address

A change of name/address check box is included on the front of each invoice tear-off section. (See Exhibit 2.) The lockbox operator shall inspect the front and back of each invoice for a change of name/address. The lockbox operator will then batch and deliver the original media in a group labeled, "Change of Name/Address", to BCS for processing according to Section IV.C.5.

## 2. Remote Lockbox

### 2.1 Remote Lockbox Technology

DEP maintains five borough offices and a central remittance location where check payments for water and sewer charges and other fees are accepted. Clerks in these locations currently operate Wausau Smart Source Adaptive check scanners on site to process payments. An average of 7,000 items is deposited via the remote lockbox each month. The majority of payments are deposited with payment recorded against each customer's balance in CIS; however, some payments are deposited and the checks are scanned for presentation purposes only, such as fees associated with permits and upstate payments. For all deposits, an image of the payment is captured.

It is preferable for the Contractor to utilize a system where checking account and coupon bar-coded account numbers can be automatically scanned for data purposes, so that it is not necessary for either the BCS operator or the Contractor to key such information manually. However, for checks without MICR ink, including checks that are handwritten, the operator should be able to scan the checks for presentation and manually enter the necessary data points.

### 2.2 Check Scanning Application

The check scanner application should have the ability to recognize information that has been scanned previously within a certain timeframe and alert the user that the item has already been scanned.

When scanning payments through Remote Lockbox, staff should be able to scan continuously up to a large batch limit (i.e. 300 items) for each type of deposit: coupon-check or check-only. Once the batch limit has been reached the check

scanning application should notify the operator that the batch limit has been reached and enforce the transmission of work to the Contractor.

If there is a time window when payments must be submitted for processing, the application should also notify staff to transmit any open batches to the Contractor before the cutoff time for same-day processing.

### 2.3 Reporting Applications

In addition to the data capture requirements of Section IV.B.1.1, the check scanning application should register the following data points for each scanned payment: scan date, operator user ID, and site location. Reports should be available in a summary or detail format that is searchable by all of these data points. The reports should show the work that is submitted as payments and processed by the Contractor. Check images should be able to be located by each data point.

## 3. DEP-Contractor Online Application

As an environmental agency, DEP favors electronic billing and processing as a means to reduce paper and transport waste. Therefore, the Contractor must provide the Board with a secure online payment venue. This venue will interface with BCS's existing *My DEP Account* system. BCS's current payment site accepts ACH transactions, as well as debit and credit card payments from MasterCard, American Express, and Discover. At a minimum, the Contractor's site must accept these payment modes, provide services and functionality supporting various payment methodologies such as future payments, prescheduled payments, direct debit, et al. Additionally, if the Contractor suggests accepting other credit cards or electronic payment methods, DEP will consider them as long as the current convenience fee schedule for DEP's customers is kept intact and other payment methods are not affected. Currently, DEP incurs minimal costs per ACH transaction that it absorbs, but it does pass along a convenience charge for credit and debit card payments.

Furthermore, DEP is interested in increasing the volume of payments received online. The internet payments shown on page 4 are primarily comprised of customers who go to DEP's website quarterly to pay their bills. However, as mentioned on Section IV.A, a portion of the "internet" ACH and credit card payments were received through BCS's direct debit program. For customers enrolled in this program, BCS automatically processes payment for customers' charges five days after bill issuance. As of April 7, 2012, approximately 25,000 customers were enrolled in this direct debit program.

BCS also initiated a paperless billing program in FY 2011, and as of April 7, 2012, 41,000 customers have enrolled. The Board and BCS are open to considering innovative ways to both encourage customers to opt for paperless billing and increase the percentage of payments received via the internet, especially from direct debit customers.

## 4. Mobile Device Payment Application

The Contractor shall provide Board customers the option to make payments via mobile devices. Such payment mediums shall accept, but not be limited to, ACH transactions; debit and credit card payments from MasterCard, American Express, and Discover; and remote scanning of coupons and check payments. BCS is currently developing an iPhone application for *My DEP Account*, and the Contractor's system should interface with

BCS's application. During the term of this Contract, DEP expects to develop additional mobile applications.

**5. Telephone (IVR/VRU) System**

The Contractor must offer a telephone payment venue (IVR/VRU). BCS's current telephone system accepts ACH transactions, as well as debit and credit card payments from MasterCard, American Express, and Discover. At a minimum, the Contractor's site must accept these modes of payment.

**6. Over-the-counter Local Payment Venue**

The Board currently accepts cash and check payments through one bank branch in each borough. While the volume of such payments is low, the Board requires that the Contractor accept cash and check payments. Such acceptance may be through other means of local remittance, but adequate security and reporting procedures must be in place.

**7. Wire Transfer**

The Board has several customers who pay through direct wire transfers and requires the ability to receive such transmissions. These transmissions should be tracked with CIS information in the Data File.

**8. Online Banking Payment Consolidation**

The Board has authorized several companies to consolidate online customer bank payments of water and wastewater charges. At a minimum, the primary Contractor, which will be the Contractor handling paper remittances, shall provide the transmission of data and funds related to these payment methods as described in Section IV.A. Additionally, if the Proposer offers banking consolidation services, the Proposer may include an offering of such services in its Proposal and explain how its services would complement the Board's existing payment methods.

The Board is also interested in potentially working with a centralized facilitator, who could transmit water and sewer charges electronically to the customers' banking institutions so that customers would be able to view their current charges electronically on the websites of their own financial institutions. The purpose of such a service would be to enable customers to pay their bills through their own institutions without having to reference DEP's billing statement for the current balance due. If the Proposer offers such a service, the Proposer is asked to provide detail on the service, its network, and pricing in its Proposal.

## C. GENERAL REQUIRED SERVICES

**1. Data Batching and Transmission Services**

All payments processed up until the daily cutoff time shall be batched and transmitted using FTPS in a single file to DEP. The transmission must occur by 2:00 p.m. each business day. The file contents must conform to the file layout as described in Exhibit 1. Prior to transmission, the data must be batched in groups not to exceed three hundred (300) transactions. The dollar total transmitted should match the funds deposited for that day. Unapplied payments will be transmitted to a specified account. (See Exhibit 1, for required Data File format specifications.)

The transmission must be sent to a secure server at 11 Metrotech Center, Brooklyn, NY. The transmission must be accompanied by an email sent to DEP's Production Control unit, confirming the dollar amounts for each batch range as well as the total dollar amount for the file. (See Exhibit 1 for a breakdown of batch ranges.)

### 1.1 Online Banking Services, Transmission of Additional Data

The Board has authorized secondary payment methods, such as online banking payment consolidators as noted above. The companies associated with these secondary payment methods collect water and wastewater payments, deposit the proceeds to the Board's account and include the payment data in a daily data file. The Contractor must accept receipt of such funds in the Board's account and accept and append the secondary data file to its Data File in the daily transmission, utilizing the batch ranges specified in Exhibit 1. The primary Contractor will not be responsible for any other task related to the secondary payment methods, other than receiving transferred funds and appending the daily data files to its daily Data File transmission.

### 1.2 Problem Resolution Procedures

The Contractor will provide a list of technical contacts, call trees and escalation procedures to DEP's IT department. This list will contain, at minimum, the names and titles, the office, mobile phone numbers and e-mail addresses of the Contractor's operations staff and managers responsible for the transmission of the Data File and daily email. Contractor technical and customer service staff and management are expected to be available 24/7. In the event the Contractor is unable to transmit the Data File or daily email to DEP's mainframe computer, DEP's Production Control Supervisor must be notified at (718) 595-4030 within 30 minutes of the event. If the Production Control Supervisor is not initially reached via telephone at the number above, the Contractor should follow the procedures established under the Contract to ensure that the Production Control Supervisor receives and acknowledges receipt of the notice. The Contractor shall provide DEP with periodic updates on the status of the problem until it is resolved.

In the event a Data File or email has not been received by 2:00 p.m., DEP's IT staff will contact the Contractor's operations staff and managers as appropriate and attempt to resolve the problem. Within 30 minutes of notice, regardless of the time of notice, the Contractor is expected to be available to resolve the problem, and resolution is expected as soon as possible that day. At the discretion of DEP's operations manager or designee, the Contractor may be instructed to deliver the Data File and email using an alternate method of delivery described below.

In the event DEP receives a Data File that cannot be processed because of a technical problem with the file, upon notification from DEP, the Contractor will correct the problem and transmit a corrected Data File the same day.

If conditions outside the control of DEP and the Contractor make it impossible to transmit, deliver or process the Data File and email, the Contractor may be required to transmit the Data File and email again on a subsequent day. The Contractor may also be required to transmit the current day's Data File and email on that same day.

#### 1.2.1 Alternate Methods of File Delivery

Alternate Method 1 - VPN Transmission
Within one hour of notification by DEP's operations manager or designee, the Contractor should be able to transmit the daily Data File over a Virtual Private Network.

Alternate Method 2 – Microsoft Windows Industry Standard Multi-media Storage Device (e.g., CD, DVD, or USB flash drive)
By the designated delivery time or a time otherwise deemed reasonable by DEP's Production Control Supervisor or designee and the Contractor, the storage device shall be delivered by express mail or courier.

Alternate Method 3 - Tape Cartridge
Within two hours of notification by DEP's operations manager or designee, the Contractor should be able to produce a 3490 36-track enhanced cartridge containing the daily Data File and have the cartridge delivered to the Board's data center currently located at 11 Metrotech Center, Brooklyn, NY.

### 1.3 Transmission Data Retention

For seven days following data transmission, the Contractor is responsible for maintaining copies of transmitted data in a manner that will allow for its retransmission.

## 2. Depository and Banking Services

**Proposers shall either be designated by the New York City Banking Commission as an authorized depository for City funds pursuant to Section 1524 of the City Charter or deposit Board funds into a bank designated by the New York City Banking Commission as an authorized depository for City funds pursuant to Section 1524 of the City Charter.** The list of authorized depositories may be found on the New York City Department of Finance's website at this link: http://www.nyc.gov/html/dof/html/services/services_bankingcommission.shtml.

The Contractor shall deposit processed remittances into the appropriate bank account on the day the remittance is received at the lockbox, subject to a daily cutoff time that allows for the corresponding Data File transmission prior to 2:00 p.m. The Proposer shall specify the availability of funds schedule and the cutoff time(s) for any deposits, after which time payments will be treated as if they were received on the next business day.

### 2.1 Outgoing Wire Transfers

The Board requires wire transfer capability, including repetitive line code usage, to transfer funds out of the Board's bank account.

### 2.2 Returned Checks

Any returned checks shall be re-deposited within twenty-four (24) hours unless the return reason does not allow for re-deposit. If a check is returned a second time, it shall be debited to the account.

## 3. Reporting Services

### 3.1 Data Reporting Services

Daily production reports must be available electronically by 7:00 am each following business morning. The reports shall show individual, batch and total amounts of payments transmitted. The reports shall identify processed, unprocessed, and dishonored payments as follows:

#### 3.1.1 Processed

The report shall show all items processed through the prior business day.

#### 3.1.2 Unprocessed

The report shall show all items processed through the suspense file and unbankable checks handled the prior business day. The original items shall be delivered to DEP according to Section IV.C.5.

#### 3.1.3 Returned Checks and Dishonored ACH and Credit Card Payments

The report shall note all debit and credit adjustments made in the prior day that resulted from returned checks and dishonored or inaccurately applied ACH and debit and credit card payments.

### 3.2 Daily Banking Reports

The Contractor shall provide daily bank balance reporting via a secure website no later than 7:00 a.m. the next business day, with access to summarized daily bank statements and supporting documentation for auditing requirements and reconciliation purposes. Available information must include the following: opening ledger and collected balances, individual and summary credits, individual and summary debits, closing ledger and collected balances, and funds currently available for transfer.

The Contractor should have the ability to assign a code to each credit identifying the credit as a specific type, i.e., a lockbox transmission deposit, a remote lockbox deposit from a particular borough, an ACH payment and any other payment type agreed to via the use of a coded deposit slip or other appropriate method. Debits must also be specified with a minimum level of information to include: amount, type of debit (i.e., wire transfer, insufficient funds, stop payment, encoding error, etc.), date of debit, date of original deposit (if returned check or dishonored payment), and CIS account number originally credited (if returned check or dishonored payment).

On a real-time basis, the Contractor should also provide the Board with access to monitor daily collections, transfers, and account balances.

### 3.2 Bank Account Statements

The Board requires one monthly statement delivered electronically via a secure file transfer or website. Monthly statements shall be delivered no later than the second week following the reporting month.

**4. Electronic Document Image Processing and Archiving Services**

The lockbox operator or depository bank shall electronically record the image of and provide storage and retrieval services for all checks received at the lockbox, including via remote lockbox scanning. All such images shall be available for retrieval via remote online access by DEP personnel no later than 8:00 a.m. the business day after processing. Additionally, the lockbox operator or depository bank shall maintain these images and continue to make them accessible to the Board for a minimum of six (6) years, surviving the termination of the Contract. Additionally, at the end of the Contract term and each awarded extension, the lockbox operator or depository bank shall provide Board staff with an electronic file of archived images of all checks received at the lockbox during the current Contract term. This file must:

a. Be in a format that is compatible with software currently in use by Board staff,

b. Be provided on a Microsoft Windows industry-standard multi-media storage device, preferably a USB flash drive or other device that will maximize file storage, and

c. Enable Board staff to search for payment images by the fields identified in Sections IV.B.1.1 and 2.3.

**5. Correspondence Delivery**

Before 10 a.m. on each business day, the Contractor shall deliver to DEP BCS all customer correspondence and change of name/address forms received through the prior business day. In addition, the Contractor shall deliver all unprocessed items, including items processed through the suspense file and unbankable checks, from the prior day. (See Sections IV.B 1.4, 1.5 and 1.6.) These deliveries may be made by express mail or courier.

**6. Security**

The Contractor(s) must provide appropriate levels of security for the processing of customer remittances. The Proposer shall specify how it will achieve the level and detail of security required by the Board and what procedures it will have in place. The Proposer shall also include the turnover rate of all employees with access to customer remittances, including the percentage of employees that are full-time, part-time, and temporary employees. Other security provisions, which may be discussed in this section, include the use of security cameras, security glass, appropriate supervision of employees, and any other relevant security provision. For electronic payments, the Citywide standards for the transmission of financial data must be followed. These standards are available at http://www.nyc.gov/html/doitt/downloads/pdf/data_calssification.pdf.

**7. Quality Control Services**

The Contractor(s) shall:

a. Analyze payment processing volumes on a regular basis, including volumes during peak processing periods, and provide and install appropriate levels of equipment and supplies at all times.

b. Implement methods to assure the accuracy and validity of data captured and transferred. On a regular basis, the Contractor shall provide the Board with a report on processing and transmission accuracy, including details related to

automated data capture, keyed data entry, and the number of successful transmissions with all required details versus the incomplete or erroneous transmissions as a result of encoding errors, misapplied payments, double posting, invalid account numbers, and transmission untimeliness or inaccuracy.

c. Implement procedures for tracking all remittances throughout the processing cycle, from mail pickup or delivery by courier service to a depository, through deposit. Penalties may be assessed if the throughput is not processed in accordance with the Contract's time frames.

d. Allow facilities inspections and audits with reasonable prior notice to appropriately identified Board staff or designated representatives.

e. Implement procedures for tracking electronic payments from the date of payment inception to the time of deposit.

f. Provide the Board with dedicated customer service representatives.

**8. Disaster Recovery**

The Contractor shall maintain a complete set of disaster recovery procedures, which shall be specified in each Proposal. Such procedures shall include details regarding the frequency of testing and the location and capabilities of any alternate processing sites.

The Contractor(s) shall comply with the following provisions:

a. If there is a processing delay of one business day or longer, the Contractor shall implement disaster recovery procedures as described in the Contractor's proposal.

b. All deposits shall be back-valued to the dates at which they would have been deposited had the disaster recovery procedures not been implemented.

c. All reporting requirements shall be maintained while the Contractor is in the disaster recovery mode.

d. Once the primary processing facility is rehabilitated, the Contractor shall process all outstanding work (i.e., "catch up") within three business days.

**9. Implementation**

The Contractor shall work with DEP to implement the Scope of Services, including adequate testing of all remittance processes, training of DEP staff, and ongoing technical and operational assistance. Likewise, each Proposal shall include a detailed description of the resources it will provide to DEP and a sample schedule for the proposed implementation process.

**10. Future Enhancements**

The Contractor shall exhibit a willingness and ability to work with the Board and DEP in developing future enhancements to the payment collection process. Likewise, the Proposer should note any new services it offers that it thinks would interest the Board.

## SECTION V. ANTICIPATED CONTRACT TERM

The Board anticipates the Contract will be for a term of five (5) years from the Board's notice to proceed. The Contract may also include an option to renew, at the Board's discretion, for two three (3)-year extensions at the expiration of the first five-year term. The Board reserves the right, prior to award of the Contract, to determine the length of the initial Contract term and each option to renew, if any.

## SECTION VI. ANTICIPATED PAYMENT STRUCTURE

The Contract that results from this solicitation will be in the form of a direct fee agreement. The Board will make monthly payments, based on monthly billings submitted by the Contractor.

## SECTION VII. MINIMUM QUALIFICATION REQUIREMENTS

Qualified Contractors must be one of the following:

1. A bank designated by the New York City Banking Commission as an authorized depository for City funds pursuant to Section 1524 of the City Charter;

   **or,**

2. A non-bank payment processor that will deposit the Board's funds in a bank designated by the New York City Banking Commission as an authorized depository for City funds pursuant to Section 1524 of the City Charter.

Additionally, the Proposer must:

- Have a minimum of three years of experience in providing payment processing services.
- For the Scope of Service on which the Proposer is proposing, have managed remittance processing for at least three clients with annual dollar transactions amounting to more than $1 billion and transaction volume similar to that shown in the chart on page 4.

## SECTION VIII. PROPOSAL REQUIREMENTS AND PROCEDURES

### A. PROPOSAL PACKAGE

The proposal package must contain the following:

**1. Proposal Cover Letter**

The Proposer shall submit a cover letter transmitting its proposal package to the Board. The cover letter shall be signed and dated by an individual authorized to enter into a Contract with the Board on behalf of the Proposer. The cover letter shall include:

a. The Proposer's name, address and Federal Employer ID Number.

b. Name, title, telephone number, and email address of the individual who is authorized to commit the Proposer to a Contract.

c. Name, title, telephone number, and email address of the individual who is to be contacted regarding the content of the proposal, if different from above.

d. The name, address and Federal Employer ID Number of the subcontractor(s), if applicable.

e. The signature of the individual authorized to commit the Proposer to the proposal.

**2. Technical Proposal**

The technical proposal is a clear, concise description of how the Proposer intends to provide the services set forth in the Scope of Services. The technical proposal should not be a marketing piece; rather, it should detail how the Proposer plans to accomplish the Scope of Services and specify how the Proposer's services would be delivered, both to the Board and its customers. The proposal should also include technical specifications that will explain how each function works to DEP's IT department. At a minimum, the following information shall be included:

a. A description of the services to be provided.

b. A description of how the Proposer will meet the Board's requirements and goals.

c. A description of the processing procedures that will be used to provide the services, including processing time frames and accuracy standards. For lockbox remittances, the description shall also note the transport time(s) as outlined in Section IV.B.1 and include any recent applicable Phoenix-Hecht surveys. The Proposer should note if the 2:00 p.m. Data File transmission deadline is substantially different from that required by other customers, and it should note the minimum lead time it requires to initiate the daily transmission output.

d. For lockbox remittances, a description of the processing center, environment and equipment that will be used to provide the services, including approximate age of equipment, brand names, model numbers, etc. For other remittances, a description of the technology systems that will be used to provide the services. For each type of remittance, the Proposer shall provide the monthly volume it has handled via the proposed locations and/or technologies during the previous twelve months and note any changes that it has undertaken in operational staffing or processes due to a variability in volume.

e. An operational flow chart showing the complete remittance process required by the Scope of Services.

f. Detailed procedures relating to the security and safekeeping of payments received, as well as customer information related to both DEP accounts and payment information.

The technical proposal may include any other information the Proposer deems relevant. For the Scope of Services, actual examples (e.g. screen prints of electronic data retrieval services that will be available to Board staff, customer-facing online payment websites, or bill distribution presentation) may be included in an appendix.

**3. Statement of Qualifications**

The statement of qualifications is a presentation of the experience and capability of the Proposer's organization and the staff that will be providing the services. At a minimum, the following shall be included:

a. A narrative describing the Proposer's experience with emphasis on the provision of services similar or related to those required by the Scope of Services.

b. Documentation that clearly shows experience in performing similar projects, including statistics on the accuracy of services provided. A chart of the project organization with names, including the name of the day-to-day project manager.

c. A list of personnel to be assigned to the project, their function on the project, and a brief description of each individual's qualifications and professional experience as they apply to a specific task(s)in the Scope of Services. A detailed resume of each individual shall be submitted. Additionally, the Proposer should note any non-permanent staff it plans to employ in providing the Scope of Services.

d. An organization outline or chart, which shows the level of responsibility for key project staff members within the organization.

e. Audited financial statements for the Proposer's prior two fiscal years.

f. A list of at least three references for the Proposer who can provide information concerning the Proposer's experience in providing the kind of services described in the Scope of Services. At least two references should relate to engagements that meet the processing criteria of Section VII. The list of references should include the name of the reference entity, a brief description of the Proposer's engagement for such entity (or other relationship between the Proposer and the reference entity), and the name, title, email and telephone number of a contact person at the reference entity. For each reference, indicate which member(s) of the core staff, if any, worked on the engagement(s) and the role s/he played.

**If the Proposer expects to subcontract a portion of the work, a like statement of qualifications of each subcontractor shall be included.**

In addition, the Proposer may submit any other materials that will allow the Board to better evaluate the organization (e.g., letters of reference/recommendation, awards, etc.).

**4. Price Proposal**

The Price Proposal is a presentation of the details of the Proposer's total offering price. The Price Proposal must contain the cost for the entire project and cost breakdowns by function by unit and/or fixed cost. These costs shall be shown separately by unit and monthly and annual totals, subtotaled for the first five years of the Contract and each of the two three (3)-year extensions, and totaled for all eleven (11) years.

**The Price Proposal must be in the same format as the sample Price Proposal attached hereto as Exhibit 3.** The submitted Price Proposal must use the same volumes as indicated in the sample; additionally, as DEP is considering converting accounts to monthly billing, which could triple the remittance volume, if the Proposer would institute tiered pricing based on increased volumes, the Proposer should include such pricing in its proposal in the columns to the right of Exhibit 3. Items with no additional charge or where the charge is included in the price of another item shall be indicated with a "NC" notation for "no charge" in place of a price.

If the Proposer submits an alternative proposal for a remittance address outside of New York City, the Proposer should also submit an alternative Price Proposal for lockbox costs. In the Price Proposal, the transport costs to the lockbox processing facility should

be shown as a single daily charge; however, this charge may assume multiple daily deliveries.

The Price Proposal in Exhibit 3 attempts to include all charges that the Contractor(s) may bill the Board based on the Scope of Services. However, if the Proposer does not intend to bill the Board as delineated, please note all discrepancies. Likewise, if the Proposer intends to charge any additional fees beyond those outlined in Exhibit 3, please note and clearly describe such charges separately and include monthly and annual cost estimates.

All charges should include the cost of electronic storage of all processed images, pursuant to Section IV.C.4, and all other banking records as required by law.

To note, the Board would like to continue offering ACH remittance to customers at no charge to the customer; however, it will consider continuing to pass charges for debit and credit card payments through to customers. Please note whether the debit and credit card charges would vary depending on whether the Board or customer incurred such charges.

If the Proposer is offering depository services, the Price Proposal should state the Contractor's method of computing any interest on the Board's deposits that would be netted against expenses for lockbox processing. This analysis may include the average monthly rate earned by a customer of comparable size to the Board from 2009 through 2011, as a simple average of the rate paid in each month during the three-year period. The Board intends to hold deposits for processed payments overnight and transfer all funds out of the account the following business day. The Board collects approximately $3.0 billion a year in water and wastewater charges.

**The Price Proposal shall be submitted in a <u>separate sealed</u> envelope, clearly labeled "Price Proposal".**

**The Price Proposal shall be irrevocable for one hundred eighty (180) days from the date of the opening of Price Proposal.**

**The Proposer must sign the Price Proposal.**

**5. Required Board Documents**

The following documents shall be completed and submitted by the Proposer and, if applicable, each proposed subcontractor, in conjunction with the proposal package:

a. Acknowledgment of Addenda (attached as Appendix B). This form serves as the Proposer's acknowledgment of the receipt of addenda that may have been distributed by the Board prior to the proposal due date.

b. Certificate of Non-Collusion (Appendix C)

c. Affidavit of Payment of Taxes (Appendix D)

## B. PROPOSAL PACKAGE SUBMISSION REQUIREMENTS

Proposal packages are due on or before the proposal due date at the location prescribed in the RFP Timetable.

Proposers shall deliver one (1) original and six (6) copies of the proposal package. To prevent waste, proposals should be printed on double-sided pages.

The Price Proposal, one (1) original, shall be enclosed in a separate sealed envelope within the proposal package.

Only one copy of the Acknowledgment of Addenda, Certificate of Non-Collusion, and Affidavit of Payment of Taxes is required.

Proposers are advised that there is a forty (40) page limitation for proposals, excluding appendices, and are advised to be concise in the information they submit.

The outer envelope enclosing any materials submitted in response to this RFP shall be addressed as follows:

| | |
|---|---|
| FROM: | Proposer Name/Address |
| TO: | Jason K. Low<br>Water Board Counsel<br>New York City Water Board<br>59-17 Junction Boulevard, 8th Floor<br>Flushing, NY 11373-5108<br>(718) 595-3114<br>jasonl@dep.nyc.gov |
| RFP FOR: | Lockbox and Other Payment Processing Services |

Proposers shall be responsible for informing any commercial delivery service, if used, of all delivery requirements.

A full, electronic copy of the proposal package must also be emailed to jasonl@dep.nyc.gov or delivered on a CD with the hard copy submission.

## C. PROPOSAL EVALUATION PROCEDURES

### 1. Evaluation Procedures

The evaluation committee shall be comprised of a minimum of three (3) persons qualified to evaluate the components of this solicitation.

### 2. Evaluation Committee Procedures

All proposals received on or before the proposal due date and time at the location specified herein will be evaluated to determine whether they meet all of the minimum submission requirements set forth herein.

The evaluation committee will review the proposals that meet the minimum submission requirements according to the evaluation criteria and relative weights set forth below, and considering both merit and price, the committee will make a determination to: (1) recommend award of a Contract based on initial proposals; or (2) conduct discussions/negotiations with one or more Proposers. In the event the evaluation committee decides to conduct discussions/negotiations with one or more Proposers:

- The Board may require Proposers to give oral and/or visual presentations in support of their proposals or to exhibit or otherwise demonstrate the information contained therein.
- Upon completion of the discussions/negotiations, the evaluation committee may request that all or any of the Proposers still under consideration for award submit a best and final offer by a common due date and time.
- The evaluation committee will evaluate, rate and rank the best and final offers, weighing merit (according to the evaluation criteria set forth below) and price.

Contract award is subject to the approval of the Board or its Executive Director pursuant to the Board's procedures.

**3. Evaluation Criteria and Relative Weights**

The evaluation committee shall evaluate and rate all proposals meeting the minimum submission requirements by applying the evaluation criteria listed below. The Contract award will be based on the best combination of merit and price as determined by the Board.

Merit shall be determined as follows:

**a. Quality of Technical Proposal: 60%**

- The general approach and the extent to which the Proposer understands and meets the Board's objectives, 25%;
- The Proposer's quality control as it relates to remittance processing accuracy and timeliness, 20%;
- Level of appropriate procedures to ensure security of the payments processed, 15%.

**b. Experience and Capability: 40%**

- The qualifications and quantified experience of the firm and of the personnel to be assigned as shown on the required staff resumes, 10%;
- Quality of the Proposer's equipment and facilities, 10%;
- Past performance on projects of similar scope, purpose and size, 10%;
- References from clients/users of comparable services, 5%;
- The Proposer's financial condition, 5%.

## SECTION IX. GENERAL INFORMATION

### 1. STATUS OF INFORMATION

The Board shall not be bound by any oral or written information released prior to the issuance of this RFP.

The Board shall not be bound by any oral or written representations, statements, or explanations other than those made herein, in Board written responses to Proposer inquiries, or in formal written addenda to this RFP.

## 2. COMMUNICATION WITH THE AGENCY

Proposers are advised that, from the date this RFP is issued until the award of the Contract, no contact with Board or DEP personnel related to this solicitation is permitted, except as will be authorized by the Board's designated contact person.

## 3. ADDENDA TO THE RFP

The Board shall issue responses to inquiries related to substantive issues and any other corrections or amendments to the RFP that it deems necessary prior to the proposal due date in the form of written addenda. Such addenda will be posted on the Board's website: http://www.nyc.gov/nycwaterboard.

It is the Proposer's responsibility to assure receipt of all addenda. The Proposer should verify with the Board's designated contact person prior to submitting a proposal that all addenda have been received. Proposers shall acknowledge the number of addenda received as part of their proposals.

## 4. QUESTIONS REGARDING THE RFP

a. All inquiries regarding this solicitation shall be emailed to the Board's designated contact person by the date and time noted in the RFP Timetable, indicating "Lockbox and Other Payment Processing Services RFP Question" in the subject line.

b. To receive responses to any questions submitted, please register the Proposer and the Proposer's representative with the Board by providing an email address to the Board's designated contact person. Responses will also be posted on the Board's website: http://www.nyc.gov/nycwaterboard.

## 5. LETTER OF INTENT

If a firm intends to submit a proposal on this solicitation of services, its letter of intent should be mailed or emailed to the Board's designated contact person at the address listed above before the close of business on the day noted in the RFP Timetable. The letter should identify the name of the firm plus the name, location and telephone number of an authorized representative of the Proposer.

## 6. SUBCONTRACTING

If any part of the work covered by the RFP is to be subcontracted, the Proposer shall identify the subcontractor(s) by furnishing the corporate name, names of officers, and Federal Employer ID Number. All subcontracts are subject to approval as set forth in the Board's General Provisions Governing Contracts for Consultants, Professional and Technical Services. (See Appendix A.) The selected Proposer will be responsible for all work covered herein and is the sole contact regarding contractual matters.

## 7. MODIFIED PROPOSALS

The Proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the proposal due date and time. The Proposer

may also modify any best and final offer submission up until the due date and time set for such submission.

The evaluation committee shall consider only the latest, timely-submitted proposal.

**8. WITHDRAWAL OF PROPOSALS**

A proposal may be withdrawn in writing only prior to the proposal due date and time or, if applicable, up until the due date and time set for the submission of best and final offers.

**9. LATE PROPOSALS, LATE MODIFICATIONS AND LATE WITHDRAWALS**

Proposals received after the proposal due date and time are late and shall not be considered.

Modifications and withdrawals received after the proposal due date and time and/or, if applicable, after the due date and time set for the submission of best and final offers are late and shall not be considered.

**10. CONFIDENTIAL/PROPRIETARY INFORMATION**

The Proposer shall specifically identify those portions of the proposal deemed to be confidential, proprietary information, or trade secrets and provide any justification why such material, upon request, should not be disclosed by the Board.

Such information deemed by the Proposer to be confidential/proprietary shall be easily separable from the non-confidential/non-proprietary sections of the proposal.

The Board is subject to the provisions of the Freedom of Information Law (FOIL), N.Y. Public Officers Law, Sections 84 through 90, relating to public access to agency records. The Board accepts no responsibility for disclosure of information designated as exempt from disclosure, but the Board does intend to evaluate, on a case by case basis, whether exemption from disclosure applies at such time as a FOIL request is made to the Board for examination of such a proposal.

**11. COSTS INCURRED BY PROPOSERS**

The Board shall not be liable for any costs incurred by Proposers in the preparation of proposals or for any work performed in connection therewith.

**12. ORAL PRESENTATIONS AND/OR INTERVIEWS**

Proposers ranking highly according to the criteria established in Section VIII.C.3 may be invited to give oral and/or visual presentations in support of their proposals or to exhibit or otherwise demonstrate the information contained therein. Such conference calls or presentations would be held in early August. The Board's designated contact person will schedule the time and location of these presentations.

**13. DISCUSSIONS/NEGOTIATIONS/BEST AND FINAL OFFERS**

The Board reserves the right to award a Contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Proposer's best terms from a technical and cost standpoint.

The Board reserves the right to enter into discussions/negotiations with one or more Proposers and to request the submission of best and final offers from those Proposers, who after the conclusion of such discussions/negotiations, are still under consideration for award. No Proposer shall have any rights against the Board arising from an invitation to enter into discussions/negotiations or to submit a best and final offer.

## 14. PROPOSER ACCEPTANCE OF RFP

The submission of a proposal signifies that the Proposer (a) acknowledges and accepts the terms and conditions in this RFP, (b) intends to compete for the award of the Contract described herein, (c) will be reasonable in contract negotiations, and (d) acknowledges and accepts that the Contract will include Appendix A attached hereto (the Board's General Provisions Governing Contracts for Consultants, Professional and Technical Services) with such changes as the Board may make in its sole discretion.

In addition to Appendix A, the Proposer shall agree to an additional provision prohibiting the use, sale or transference of any list of the Board's customer names, addresses or other data for commercial or fund raising purposes or any other use.

## 15. CONTRACT AWARD

a. The Board reserves the right to award the Contract to other than the Proposer offering the lowest overall cost.

b. The Contract(s) resulting from this solicitation shall be awarded to the qualified Proposer(s) whose proposal(s) offers the best combination of merit and price as determined by the Board, based on the evaluation factors set forth herein.

## 16. RFP POSTPONEMENT/CANCELLATION

The Board reserves the right to postpone or cancel this RFP and to reject all proposals.

## 17. COMPLIANCE INFORMATION AND EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

The successful Proposer shall comply with the equal employment opportunity requirements contained in Appendix A. Non-compliance with any of the provisions will result in the disqualification or rejection of a proposal at the Board's sole discretion. The Board will only contract with firms that do not discriminate against employees or applicants 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. The Board encourages proposals from women-owned and minority-owned businesses and from small and City-based businesses.

## 18. COMPLIANCE WITH VENDEX REQUIREMENTS

The selected Proposer(s) will be required to complete a VENDEX Questionnaire or an affidavit stating that a VENDEX Questionnaire was submitted in the prior twelve (12) months. For more information on VENDEX, please visit www.nyc.gov/vendex.

## 19. LIMITATIONS OF LIABILITY

The issuance of this RFP does not commit the Board to award a contract or to pay any costs incurred by Proposers in the preparation and submission of proposals. The Board reserves the right to:

- Reject any or all proposals received in response to this RFP;
- Award Contracts to more than one Proposer;
- Not award a contract;
- Award a contract without any discussion with Proposers;
- Retain a successful Proposer for only a portion of the Scope of Services;
- Accept a proposal other than the proposal offering the lowest price;
- Waive or modify any irregularities in proposals received after prior notification to the Proposers;
- Adjust any proposed prices for the purpose of evaluation, based upon a determination that selection of the proposal will incur additional costs to the Board;
- Consider proposals or modifications received at any time before the award is made, if such is in the best interest of the Board;
- Request clarification and/or additional information from the Proposers during the evaluation process; and,
- Utilize any and all ideas submitted in the proposals received, unless those ideas are covered by legal patent or proprietary rights and the patent or those rights are indicated by the Proposers.

## 20. CERTIFICATE OF NON-COLLUSION AND INDEPENDENT PRICE DETERMINATION

All Proposers shall file with their proposals a certificate of non-collusion, which affirms that the Proposer has made an independent price offering without any collusion from competing Proposers. (See Appendix C.)

## 21. AFFIDAVIT OF PAYMENT OF TAXES

All Proposers shall file with their proposals an affidavit, which affirms that the Proposer has paid all applicable City income, excise, and other taxes, charges and fees for every year in which it has conducted business activity in the City. (See Appendix D.)
All Proposers shall also affirm and declare that they are not in arrears to the City of New York upon any debt, tax or contract, and are not in default, as a surety or otherwise, upon any obligation to the City or State of New York, or to any public authority, and have not been declared not responsible or disqualified by any agency of the City or the State of New York, or by any public authority, and that there is no proceeding pending against the Proposer relating to the responsibility or qualification of the Proposer to receive public contracts.

## 22. EXCEPTIONS TO RFP

Any deviation from the legal or technical requirements contained herein must be stated in the proposal and separately listed and referenced on a separate sheet attached to the proposal and entitled “Exceptions”. Failure to list exceptions separately in the “Exceptions” attachment shall be deemed to constitute consent to all such terms and

conditions herein and shall constitute a binding waiver by the Proposer of all exceptions not listed. A general exception or reservation to the legal or technical terms and conditions shall be deemed a nullity and may also result in the Board rejecting the proposal as non-responsive.

The Contract to be entered into shall include Appendix A hereto (the Board's General Provisions Governing Contracts for Consultants, Professional and Technical Services). Submission of a proposal constitutes consent to these terms and conditions. Any exceptions must be explicitly stated in the proposal and separately listed in the attachment entitled "Exceptions".

**23. CONTRACT NEGOTIATIONS**

Upon selection, the successful Proposer will be invited to negotiate a Contract with the Board. The Board will not consider execution of any Proposer's standard contract. At the Board's discretion, the contents of the selected proposal, together with the RFP, may be incorporated into and made part of the Contract. Should negotiations fail to result in a signed contract within a reasonable period of time as defined by the Board, the Board reserves the right to terminate negotiations and select another Proposer, issue a new RFP, or take any other action consistent with the best interests of the Board.

**24. TAXES**

Sales to the Board are exempt from the payment of State and City sales and compensating use taxes. Therefore, cost proposals should exclude such taxes.

**25. PUBLICITY AND COMMUNICATIONS**

News releases, public announcements or communications revealing material terms and conditions of a proposal, or made for the purposes of restricting competition, are prohibited.

**26. GOVERNING LAWS**

This RFP and any ensuing contract(s) are and will be governed by and construed in accordance with all applicable laws, rules, regulations, and executive orders of New York State and New York City, including but not limited to:

- The City's MacBride Principles Law (Local Law 34);
- The City's Rules Relating to Requirements for Designation of Depository Banks by the Banking Commission, as amended;
- The City's Executive Order No. 50 [Equal Employment Opportunity]; and
- The Board's General Provisions Governing Contracts for Consultants, Professional and Technical Services.

## SECTION X. ADDITIONAL CONTRACT PROVISIONS

In addition to Appendix A, General Provisions Governing Contracts for Consultants, Professional and Technical Services, the following provisions must be incorporated into the Contract. Submission of a proposal constitutes consent to the following provisions, unless an exception is specifically noted.

## A. LIQUIDATED DAMAGES

The Proposer shall agree to the following liquidated damages or assessed penalty provisions.

1. If payments are not processed and/or deposits are not credited in accordance with the time frames set forth in the Contract, the Contractor(s) shall pay to the Board the lost investment opportunity for the funds in question. The interest rate to be used in this calculation shall be the Fed funds rate as published in that day's *Wall Street Journal*.

2. If a payment is lost or stolen, and this is shown to be the fault of the Contractor(s), the Contractor(s) shall pay to the Board any interest accrued on the lost or stolen payment, plus liquidated damages of $100 in payment of the Board's administrative costs. Under such circumstance, the Contractor(s) shall also pay restitution to the affected customer of any amount not otherwise restituted by any other bank.

3. If there are processing errors that deviate from the processing specifications set forth in the Contract, the Contractor(s) shall pay to the Board liquidated damages of $25 per processing deviation.

In addition to the above provisions, the contract(s) shall contain the following section:

4. "The Contractor shall be subject to liquidated damages on the basis of statistically valid sampling techniques. If a randomly drawn sample from a population of remittance items indicates a processing flaw in the population, and the incidence of the processing flaw in the sample is sufficiently large to reject the null hypothesis of "no processing flaws" in the overall population at a ninety-nine percent level of confidence, then the Contractor shall pay liquidated damages for the processing flaw in the overall population at the incidence indicated by the sample."

To note: with regards to items 3 and 4 above, if the Proposer might suggest an alternative incentive/penalty arrangement for meeting or failing to meet agreed-upon performance standards and service levels that it believes would achieve the Board's goals of assuring the accuracy and timeliness of payment processing, please include an example of such provision in an appendix.

# Exhibit 1
# Scannable Data Capture and Data File Format

| File Layout for the Payments Processing: Header Record (file FCSAC13.QSAM) | | | | |
|---|---|---|---|---|
| **Field #** | **Field Name** | **Format** | **Value** | **Comments** |
| 1 | Batch No - julian day | N(3) | | 3 digit julian day of year |
| 2 | Batch No - Control no | N(3) | "001" - "700" | |
| 3 | Entry-no | N(3) | "000" | |
| 4 | Account_no | N(13) | "9999999999999" | |
| 5 | Total entries | N(7) | | Number of records in batch not including header record |
| 6 | Total Payment Amount | N(11,2) | | 11 bytes |
| 7 | Total Coupon Amount | N(11,2) | | 11 bytes ( zeros if not available) |
| 8 | Transaction Date | X(6) | | mmddyy |
| 9 | Filler | X(23) | spaces | |
| **Detail Record** | | | | |
| 1 | Batch No - julian day | N(3) | | 3 digit julian day of year |
| 2 | Batch No - Control no | N(3) | "001" - "700" | "999" will be used for empty batches |
| 3 | Entry-no | N(3) | "001" - "075" | 000" - Header record, "001" - "075" - Detail records. Not more than 75 records are recommended in a batch. |
| 4 | Account-no | N(13) | | Account_no is 13 digits long with leading zeros. Please note that second and third digits are always zeros and 11th and 12th digits also are always zeros. "8888888888888" - indicator for an empty batch |
| 5 | Transaction Type | X(2) | "P" | 1st byte = space, 2nd byte = "P" |
| 6 | Location | X(3) | | 1st 2 bytes = borough code- 01-Manhattan, 02-Bronx, 03-Brooklyn, 04-Queens, 05-Staten Island; 3rd byte = "1" (zero fill if not available) |
| 7 | Payment Amount | N(11,2) | | 11 bytes |
| 8 | Coupon Amount | N(11,2) | | 11 bytes / If coupon amount available then '0' (zero) will put here. |
| 9 | Transaction Date | X(6) | | mmddyy |
| 10 | DOF Transaction Type | X(4) | spaces | |
| 11 | Water Interest | N(11,2) | "00000000000" | 11 bytes |
| 12 | MSC Bank No. | X(6) | spaces | |
| 13 | Filler | X(4) | spaces | |

The first batch in the file must be 001.
Lockbox remittance: 001-499
Remote lockbox: 500-599
Over-the-counter (Apple Bank):
- Cash: 601-605
- Check: 621-625

Consolidated online banking:
- CheckFree: 651-675
- Metavante: 676-700
- iPay Tech: 701-710
- Online Resources: 711-720

NYCServ *(801-900 reserved)* :
- Walk-in: 801-809
- Credit cards: 891-894
- ACH: 895-900

IVR/VRU:
- ACH: 901-910
- Credit card: 911-920

Internet:
- Credit card: 921-930
- ACH: 931-940

Auto-debit:
- Credit card: 941-950
- ACH: 951-960

Photogroup: 997

*Open Batch Numbers: 626-650; 721-800; 961-998*

**Data File Example**

```
1150010009999999999990000075000029497890000323761304241 2
1150010010000461436001 P0310000001806300000018063042412    00000000000
1150010025000353147001 P0310000004597800000045978042412    00000000000
1150010037000310213001 P0310000003448300000034483042412    00000000000
1150010043000530881001 P0410000001477900000014779042412    00000000000
```

*Continued for 8861 rows.*

**Exhibit 2**
**Sample Invoice**

**Environmental Protection**

| ACCOUNT NUMBER | BILL DATE | PAYMENT DUE BY | AMOUNT DUE | AMOUNT ENCLOSED |
|---|---|---|---|---|
| 6000: _ _ _ _ 001 | Apr 25, 2012 | May 23, 2012 | $ 188.84 | $ |

☐ Check for name/address change (See reverse side)

041600079761500104252012000000188845

Make check payable to: NYC Water Board. Please send payment in the enclosed envelope to:

T1 P1 9781

A B3 W 120 600079761500 1 D

**NYC WATER BOARD**
**PO BOX 371488**
**PITTSBURGH, PA 15250-7488**

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR MAILED PAYMENT. PLEASE WRITE YOUR ACCOUNT NUMBER ON YOUR CHECK.

| ACCOUNT NUMBER | BILL DATE | PAYMENT DUE BY | AMOUNT DUE | |
|---|---|---|---|---|
| 6000. _ _ _ _ 001 | Apr 25, 2012 | May 23, 2012 | $ 188.84 | AFTER MAY 23, 2012 INTEREST CHARGES AT THE RATE OF 0.75% PER MONTH ARE INCLUDED. |

**BILLING INFORMATION**

| | | |
|---|---|---|
| Previous bill - Jan 26, 2012 | | $205.26 |
| Interest Charge - Feb 25, 2012 | | 1.54 |
| Payment Received - Mar 12, 2012 | Thank you | 206.80- |
| | **PRIOR BALANCE** | 0.00 |

**RATE:** BASIC WATER AND SEWER

Meter Number _ _ _ _ _ _ From 1/19/12 To 4/17/12 Days 89
Read type ACTUAL Prior Read 8100 Current Read 10400 Usage 2300 Cubic Feet
2300 Cubic Feet = 23 Hundred Cubic Feet (HCF).

| | | |
|---|---|---|
| Total Usage | 23 HCF | |
| Water charge | | 72.91 |
| Sewer charge | | 115.93 |
| Total amount due | | $188.84 |
| **PLEASE PAY THIS AMOUNT** | | **$188.84** |

This bill reflects payments processed before Apr 25, 2012.
Your next bill date is scheduled for Jul 25, 2012.
Your meter(s) will be read during the preceding week.

Please see the back of the bill for an explanation of the rates.

Service Address:

Please direct correspondence or calls to:
DEP/BCS CUSTOMER SERVICE
PO BOX 739055
ELMHURST, NY 11373-9055
(718) 595-7000

**IMPORTANT MESSAGES**

This billing period:

For meter E20464937
Your daily average usage = 0.26 HCF (194 GALLONS)
Your daily average cost = $ 2.12

SAVE TIME AND PAPER, VISIT NYC.GOV/DEP AND SIGN UP FOR PAPERLESS BILLING TODAY.

TO LEARN MORE ABOUT THE CITY'S WORLD-CLASS WATER SYSTEM, FOLLOW US ON FACEBOOK AT WWW.FACEBOOK.COM/NYCWATER OR TWITTER AT WWW.TWITTER.COM/NYCWATER

**ACCOUNT HISTORICAL USAGE**

BILLED
1 HCF = 100 CUBIC FEET = 748 GALLONS

Printed on recycled paper

*Drink NYC Tap Water*

**IS YOUR NAME AND BILLING ADDRESS CORRECT?**

**NAME OR ADDRESS CHANGE:** To change the name on the account or the address to where the bill should be mailed, please **check the box** on the front of the bill, **complete** the information below and submit this coupon with your payment. A Customer Registration Form is also available on our website, www.nyc.gov/dep or by calling our Customer Service Call Center at (718) 595-7000, Monday through Friday, 9:00am to 6:00pm, Saturday, 9:00am to 2:00pm.

Name: _____
(print)

Phone: Home (___) _____ Mobile (___) _____ Email _____

Street: _____

City: _____ State: _____ Zip: _____

Signature: _____ Date: _____

---

**QUESTIONS ABOUT YOUR BILL:** If you have questions about this bill, please call the Customer Service Call Center at (718) 595-7000, Monday through Friday, 9:00am to 6:00pm, Saturday, 9:00am to 2:00pm.

**PAYING YOUR BILL:** You can pay your bill by phone or online. Payments using Electronic Funds Transfer (EFT) are free. Most credit cards are accepted and a convenience fee of 2.45% will be added. **PHONE:** call (866) 622-8292; **ONLINE:** go to www.nyc.gov/dep and click on the blue "My DEP Account" button to pay online using either an EFT or a credit card. Please see the enclosed flyer for more options.

**DIRECT DEBIT and PAPERLESS BILLING:** Customers who sign up for direct debit and paperless billing are eligible to receive a 2% discount on their bill. For qualifications and more details, visit www.nyc.gov/dep.

**MAIL:** Send your payment, check or money order, in the enclosed envelope to the NYC Water Board, at the address on the front of the bill. Please place a stamp on the envelope and *write the account number on the face of the check or money order*. To pay in person, see locations on the enclosed flyer.

**AUTOMATED METER READING (AMR)** equipment is being installed at all properties in New York City. Contractors working for DEP will have DEP IDs showing an employee name and picture. **This service is at no charge to you.** If payment is requested, call 311 or (718) 595-7000 immediately. For more information on AMR, visit www.nyc.gov/dep.

Con Edison meter readers still read water meters. They wear Con Edison uniforms and carry ID cards showing a picture and the employee name.

**PLEASE NOTE:** failure to pay water and sewer charges may lead to service termination or other enforcement actions.

**LATE PAYMENT CHARGES (LPC):** Your payment in full must be **received** by the Water Board no later than the "Due Date" listed on the front of this bill. Late payment charges will be added if the payment is received after that date.

**UNDERSTANDING THE CHARGES:**

- **Basic Water Rate:** Effective 7/1/11 you are charged $3.17 per hundred cubic feet (HCF), which is equivalent to 748 gallons of water. **Sewer Rate (Wastewater):** Properties connected to the City sewer system are charged 159% of the water charge. The current **combined water and sewer charges** are $8.21 per HCF.
- **Minimum Metered Charges:** A minimum charge is billed when water usage is less than $0.43 per day. Minimum charges are billed as long as the service line and connection to the water main exists. A sewer charge is also added to the minimum water charge. Current combined minimum charges for water and sewer services are $1.11 per day.
- **Estimated Charges:** Estimated bills, if based upon historical usage are considered valid bills and must be paid. If an actual meter reading is not obtained or the reading does not appear to match your historical usage, you will receive an estimated charge. Call (718) 595-7000 to schedule a meter reading appointment.

**EMERGENCIES:** To report water service disruptions, water or sewer main breaks, open hydrants, or to file an air, noise, or hazardous material complaint, please call the New York City hotline, 311, 7 days a week, 24 hours a day.

DEP: Dial 311 for all City Services, Help Desks and Hotlines.
Con Edison: 800-75-CONED

**ESPAÑOL:** Para obtener servicio en Español, llame (718) 595-7000, Lunes a Viernes, 9:00am a 6:00pm, Sábado, 9:00am a 2:00pm.

**Exhibit 3 - *Revised***
**Price Proposal**

| | | | Current Volume Pricing | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Average Annual Volume | Average Monthly Volume | Unit Price | Monthly Total | Annual Total | Five-year Total | Renewal 1 Three-year Total | Renewal 2 Three-year Total | Grand Total | Unit Price at 2xs Volume | Unit Price at 3xs Volume |
| **Fixed monthly charges** | | | | | | | | | | | |
| Account maintenance | 12 | 1 | | | | | | | | | |
| P.O. box rental | 1 | N/A | | | | | | | | | |
| Transport to lockbox processing facility | 252 | 21 | | | | | | | | | |
| Remote lockbox license & transmission fee | 12 | 1 | | | | | | | | | |
| Online application maintenance charge | 12 | 1 | | | | | | | | | |
| Mobile application maintenance charge | 12 | 1 | | | | | | | | | |
| Telephone IVR/VRU system maintenance charge | 12 | 1 | | | | | | | | | |
| Over-the-counter maintenance charge | 12 | 1 | | | | | | | | | |
| Electronic imaging & DEP retrieval | 12 | 1 | | | | | | | | | |
| Remote electronic banking access | 12 | 1 | | | | | | | | | |
| Periodic electronic reports (daily, monthly, etc.) | 12 | 1 | | | | | | | | | |
| Correspondence package handling | 252 | 21 | | | | | | | | | |
| | | | | | | | | | | | |
| **General lockbox processing** | | | | | | | | | | | |
| Automatically processed check with coupon | 1,680,000 | 140,000 | | | | | | | | | |
| Check processed without coupon | 210,000 | 17,500 | | | | | | | | | |
| Manually processed remittance | 114,000 | 9,500 | | | | | | | | | |
| Returned/redeposited payment (incl. failed redeposit) | 6,900 | 575 | | | | | | | | | |
| Cash payment handling | 72 | 6 | | | | | | | | | |
| Correspondence & address item handling | 14,880 | 1,240 | | | | | | | | | |
| Web decisioning/exception items | 19,200 | 1,600 | | | | | | | | | |
| | | | | | | | | | | | |
| **Remote lockbox processing** | | | | | | | | | | | |
| Scanned check - CIS account captured | 58,800 | 4,900 | | | | | | | | | |
| Scanned check - presentation only | 22,800 | 1,900 | | | | | | | | | |
| Scanned coupon | 58,800 | 4,900 | | | | | | | | | |
| | | | | | | | | | | | |
| **ACH/Credit/Debit Card Payments** | | | | | | | | | | | |
| ACH transactions | 448,455 | 37,371 | | | | | | | | | |
| ACH return items | 4,661 | 388 | | | | | | | | | |
| Debit/credit card processing | 29,400 | 2,450 | | | | | | | | | |
| Customer | 29,400 | 2,450 | | | | | | | | | |
| Board | 29,400 | 2,450 | | | | | | | | | |
| Additional mobile payment charges | - | N/A | | | | | | | | | |
| Additional telephone IVR/VRU charges | 156,000 | 13,000 | | | | | | | | | |
| Online banking consolidation transfer | 1,008 | 84 | | | | | | | | | |
| | | | | | | | | | | | |

**Exhibit 3 - *Revised***
**Price Proposal**

| | Average Annual Volume | Average Monthly Volume | Unit Price | Monthly Total | Annual Total | Five-year Total | Renewal 1 Three-year Total | Renewal 2 Three-year Total | Grand Total | Unit Price at 2xs Volume | Unit Price at 3xs Volume |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Over-the-counter local payments** | | | | | | | | | | | |
| Cash payment *(customer or Board)* | 1,659 | 138 | | | | | | | | | |
| Check payment *(customer or Board)* | 1,541 | 128 | | | | | | | | | |
| | | | | | | | | | | | |
| **Online banking payment consolidation** | | | | | | | | | | | |
| Individual customer payments | 504,000 | 42,000 | | | | | | | | | |
| Presentment of charges on customers' banking websites | 504,000 | 42,000 | | | | | | | | | |
| | | | | | | | | | | | |
| **Electronic wire transfers** | | | | | | | | | | | |
| Incoming wire transfer | 1,413 | 118 | | | | | | | | | |
| Outgoing wire transfer | 252 | 21 | | | | | | | | | |
| CHIPS transfer | 252 | 21 | | | | | | | | | |
| | | | | | | | | | | | |
| **Total cost** | | | | | | | | | | | |
| | | | | | | | | | | | |
| If any additional fees will be charged, please note these in the space below; include additional pages if needed. For instance, while the Board would prefer to receive a single, all-in monthly reporting charge, if the proposal is to charge the Board per report for data or banking information, please provide detail. | | | | | | | | | | | |
| | | | | | | | | | | | |
| **Additional Charges** | | | | | | | | | | | |

# APPENDIX A
# GENERAL PROVISIONS GOVERNING CONTRACTS FOR CONSULTANTS, PROFESSIONAL AND TECHNICAL SERVICES

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## ARTICLE 1. DEFINITIONS

As used throughout this Agreement, the following terms shall have the meanings set forth below:

"Board" shall mean the New York City Water Board.

"City" shall mean the City of New York.

"Contractor" shall mean _____.

"DEP" shall mean the New York City Department of Environmental Protection.

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

"Law" or "Laws" shall mean any Federal, State or Local Law, Ordinance, Rule or Regulation having the force of Law.

## ARTICLE 2. REPRESENTATIONS AND WARRANTIES

### 2.1 PROCUREMENT OF AGREEMENT

A. The Contractor represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. 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 hereof.

B. For a breach or violation of such representations or warranties, the Executive Director shall have the right to annul this Agreement without liability, entitling the Board to recover all monies paid hereunder and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the Board for the falsity or breach, nor shall it constitute a waiver of the Board's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Agreement.

### 2.2 CONFLICT OF INTEREST

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 would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Contractor further represents and warrants that in the performance of this Agreement no person having such interest or possible interest shall be employed by it. No officer or employee of the Board shall participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Agreement or in the proceeds thereof. It shall not be deemed a conflict of interest if the Contractor or any director, officer or employee of the Contractor has a water and sewer account with NYCWB and payments made on such account are covered by this Agreement.

2.3 FAIR PRACTICES

The Contractor and each person signing on behalf of any Contractor represent and warrants and certifies, under penalty of perjury, that to the best of its knowledge and belief:

A. The prices in this Agreement 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;

B. Unless otherwise required by Law, the prices which have been quoted in this Agreement and on the proposal submitted by the Contractor have not been knowingly disclosed by the Contractor prior to the proposal opening, directly or indirectly, to any other bidder or to any competitor; and

C. No attempt has been made or will be made by the Contractor to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

The fact that the Contractor (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of the above.

## ARTICLE 3. AUDIT BY THE BOARD

All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the Board and by the Comptroller's Office of the City in accordance with applicable Law.

The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be reasonably required by the Board so that it

may evaluate the reasonableness of the charges and shall make its records available to the Board as the Board considers necessary.

All books, vouchers, records, reports, cancelled checks and any and all similar material directly or solely related to this Agreement may be subject to periodic inspection, review and audit by the Board. Such audit may include examination and review of the source and application of all funds whether from the Board, the City, any State, the Federal Government, private sources or otherwise.

The Contractor shall not be entitled to final payment under the Agreement until all requirements have been satisfactorily met.

## ARTICLE 4. COVENANTS OF THE CONTRACTOR

### 4.1 EMPLOYEES

A. All experts or contractors or employees of the Contractor who are employed by the Contractor to perform work under this Agreement are neither employees of the Board nor under contract to the Board and the Contractor alone is responsible for their work, direction, compensation and personal conduct while engaged under the Agreement. Nothing in this Agreement shall impose any liability or duty on the Board for the acts, omissions, liabilities or obligations of the Contractor, any person, firm, company, agency, association, corporation or organization engaged by the Contractor as expert, contractor, independent contractor, specialist, trainee, employee, servant, or agent, or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security, or, except as specifically stated in this Agreement, to any person, firm, or corporation.

B. The Contractor shall be solely responsible for all physical injuries or death to its agents, servants or employees or to any other person or damage to any property sustained during its operations and work on the project under this Agreement to the extent resulting from any negligent or wrongful act of omission or commission or error in judgment of any of its officers, trustees, employees, agents, servants, or independent contractors, and shall hold harmless and indemnify the Board and the City from liability upon any and all claims for damages on account of such injuries or death to any such person or damages to property on account of any negligent act, error, or omission of the Contractor, its officers, trustees, employees, agents, servants or independent contractors. The Contractor shall be solely responsible for the safety and protection of all of its employees while they are engaged in the performance of this Agreement. The Board shall provide the Contractor with prompt notice of any such claims, full cooperation in the defense of any such claims, and the assignment of the right to defend and/or settle any such claims.

C. Workers' Compensation and Disability Benefits

If this Agreement is of such character that the employees engaged thereon are required to be insured by the provisions of Chapter 615 of the Laws of 1922, known as the "Workers' Compensation Law" and acts amendatory thereto, the Agreement shall be void and of no effect unless the Contractor shall secure compensation for the benefit of, and keep insured during the life of this Agreement, such employees in compliance with the provisions of said law, inclusive of Disability Benefits; and, shall furnish the Board with two (2) certificates of these insurance coverages.

D. Unemployment Insurance

Unemployment Insurance shall be obtained and provided by the Contractor for its employees.

E. Minimum Wage

Except for those employees whose minimum wage is required to be fixed pursuant to Section 220 of the Labor Law of the State of New York, 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 or violation of the foregoing shall be deemed a breach or violation of a material provision of this Agreement.

4.2 INDEPENDENT CONTRACTOR STATUS

The Contractor and the Board agree that the Contractor is an independent contractor and not an employee of the Board, and that in accordance with such status as independent contractor, the Contractor covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the Board, by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Board, including, but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership credit.

4.3 INSURANCE

A. During the performance of the Services under this Agreement, the Contractor shall maintain the following insurance:

(1) Workers' Compensation/Disability Benefits: In statutory amounts.

(2) Employer's Liability: The greater of statutory amounts or $1,000,000 for each occurrence.

(3) Commercial General Liability (including Owner's Protective Liability): A minimum of $1,000,000 per occurrence and an annual aggregate of not less

than $5,000,000. The maximum deductible or self-insured retention ("SIR") for the Commercial General Liability policy shall be $750,000.

(4) Automobile Liability: A combined single limit of $1,000,000 for each person and $1,000,000 for each accident.

(5) Professional Liability/Errors and Omissions Insurance: Professional liability ("PL") and/or errors and omissions ("E & O") insurance policies shall be written with a minimum amount of $5,000,000 per claim and in the aggregate.

Such policy or policies of insurance shall be obtained from a company or companies, duly licensed to do business in the State of New York and the General Liability and Automobile Liability insurance policies shall name the Board and the City as an additional insured thereunder. In the event that such policy or policies are cancelled, the Consultant shall provide notice to the Executive Director at least fifteen (15) days in advance thereof.

B. In the event that any claim is made or brought against the Board arising out of negligent or careless acts of an employee of the Contractor, within the scope of his employment, or arising out of the Contractor's negligent performance of this Agreement, then the Board shall have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the said claim or action to the extent that the claim is not covered by insurance. The rights and remedies of the Board provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

4.4 PROTECTION OF BOARD PROPERTY

A. The Contractor assumes the risk of, and shall be responsible for, any loss or damage to Board or City property, including property and equipment leased by the Board or City, used in the performance of this Agreement and to the extent caused, whether directly or indirectly, by the acts, conduct, omissions or lack of good faith of the Contractor, its officers, managerial personnel and employees, or any person, firm, company, agent or others engaged by the Contractor as expert, contractor, specialist, or subcontractor hereunder.

B. In the event that any such Board or City property as described in subsection A immediately above is lost or damaged, except for normal wear and tear, then the Board shall have the right to withhold further payments hereunder for the purpose of set-off, in sufficient sums to cover such loss or damage.

C. The Contractor agrees to indemnify the Board or City and hold it harmless from any and all liability or claim for damages due to any such loss or damage to any Board or City property described in subsection A above.

D. The rights and remedies of the Board provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

4.5 CONFIDENTIALITY

All of the reports, images, information or data, furnished to or prepared, assembled or used by the Contractor under this Agreement are to be held confidential, and prior to publication, the Contractor agrees that the same shall not be made available to any individual or organization without the prior written approval of the Board, unless disclosure is required by law or legal process. This section shall survive termination of this Agreement.

4.6 PUBLICITY

A. The prior written approval of the Board is required before the Contractor or any of its employees, servants, agents, or independent contractors may, at any time during or after completion or termination of this Agreement, make any statement to the press or issue any material for publication through any media of communication bearing on the work performed or data collected under this Agreement.

B. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, the Board and City shall have a free and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

4.7 BOOKS AND RECORDS

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

4.8 RETENTION OF RECORDS

The Contractor agrees to retain all books, records, and other documents relevant to this Agreement for six years after the final payment or termination of this Agreement, whichever is later, with said materials to be offered to the Board and DEP or destroyed at the Board or DEP's discretion at such time. Officers and employees of the Board and any other persons duly authorized by the Board shall have full access to and the right to examine any of said materials during said period at reasonable times.

4.9 COMPLIANCE WITH LAW

Contractor shall render all services under this Agreement in accordance with the applicable provisions of any Laws set forth in effect at the time such services are rendered.

4.10 INVESTIGATIONS

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

B. (1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the 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 of New York, or;

(2) If any person refuses to testify for a reason other than the assertion of his of her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or New York 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, New York State, or any political subdivision thereof or any local development corporation within the City, then;

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

(2) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph E below without the Board incurring any penalty or damages for delay or otherwise.

D. The penalties which may attach after a final determination by the 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; and/or

(2) The cancellation or termination of any and all such existing Board 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 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.

E. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (3) and (4) below in addition to any other information which 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 are 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.

(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 D above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in 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. (1) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as matter of right.

(2) The term "person" as used herein 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 herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or Board or otherwise transacts business with the City or Board.

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

G. In addition to and notwithstanding any other provision of this Agreement the commissioner or agency head may in his or her sole discretion terminate this Agreement upon not less than three (3) days written notice in the event Contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

4.11 <u>ASSIGNMENT</u>

A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement or of Contractor's rights, obligations, duties, in whole or in part, or of its right to execute it, or its right, title or interest in it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, unless prior written consent of the Executive Director shall be obtained. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.

B. Failure of the Contractor to obtain any required consent to any assignment shall be cause for termination for cause, at the option of the Executive Director; and if so terminated, the Board shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees or transferees, and all monies that may become due under the Agreement shall be forfeited to the Board except so much thereof as may be necessary to pay the Contractor's employees.

C. The provision of this clause 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 of New York.

D. This Agreement may be assigned by the Board to any corporation, agency or instrumentality having authority to accept such assignment.

4.12 SUBCONTRACTING

A. The Contractor agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Agreement without the prior approval of the Executive Director. Such approval shall not be unreasonably withheld. One copy of each such proposed subcontract shall be submitted to the Executive Director with the Contractor's written request for approval. All such subcontracts shall contain provisions specifying:

(1) That the work performed by the subcontractor must be in accordance with the terms of the Agreement between the Board and the Contractor;

(2) That nothing contained in such Agreement shall impair the rights of the Board;

(3) That nothing contained herein, or under the Agreement between the Board and the Contractor, shall create any contractual relation between the subcontractor and the Board; and

(4) That the subcontractor specifically agrees to be bound by the confidentiality provision set forth in this Agreement between the Board and the Contractor.

B. The Contractor agrees that it is fully responsible to the Board to the extent of the wrongful acts and omissions of the subcontractors and of persons either directly or indirectly employed by them as it is for the negligent or wrongful acts and omissions of persons directly employed by it.

C. The aforesaid approval is required in all cases other than individual employer/employee contracts.

D. The Contractor shall not in any way be relieved of any responsibility under this Contract by any subcontract.

4.13 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 Export Administration Act of 1979, as amended, 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, 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 Board may, at its option, render forfeit and void this Agreement.

C. The Contractor shall comply in all respects, with the provisions of Section 6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

4.14 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 Commissioner to impose any or all of the following sanctions:

(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 subconstractor 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.

4.15 INVENTIONS, PATENTS AND COPYRIGHTS

A. Any discovery or invention arising out of or developed in the course of performance of this Agreement shall be promptly and fully reported to the Board, and if this work is supported by a federal grant of funds, shall be promptly and fully reported to the Federal Government for 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.

B. No report, document or other data produced in whole or in part with contract funds shall be copyrighted by the Contractor nor shall any notice of copyright be registered by the Contractor in connection with any report, document or other data developed for this Agreement.

C. In no case shall subsections A and B of this section apply to, or prevent the Contractor from asserting or protecting its rights in any report, document or other data, or any invention which existed prior to or was developed or discovered independently from the activities related to this Agreement.

4.16 INFRINGEMENTS

The Contractor shall be liable to the Board and hereby agrees to indemnify and hold the Board harmless for any damage or loss or expense sustained by the Board from any infringement by the Contractor of any copyright, trademark or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of this Agreement.

4.17 ANTI-TRUST

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 anti-trust Laws of the State of New York or of the United States relating to the particular goods or services purchased or procured by the Board under this Agreement.

## ARTICLE 5. SUSPENSION OR TERMINATION OF PERFORMANCE

5.1 The Executive Director may at any time, and for any reason, direct the Contractor to stop any work under the Agreement for a period of time. Such direction shall be given by at least ten (10) days notice, in writing, which shall specify the period during which the work shall be stopped. The Contractor shall resume the work upon the date specified in such direction, or upon such other date as the Executive Director may thereafter specify, in writing. The period during which the work shall have been stopped shall be deemed an extension of time for the performance of the Agreement. Stoppage of work under this

Article shall not give rise to any claim against the Board or the City for damages or for extra remuneration.

5.2 If the Contractor, through any cause, fails to perform any of the terms, covenants, or provisions of the Agreement on his part to be performed, or if he for any cause fails to progress its work called for hereunder in a manner the Executive Director considers reasonable, or if in the opinion of the Executive Director the conduct of the Contractor is such that the interests of the City or the Board are likely to be impaired or prejudiced, or if the Contractor has become or is likely to become in the reasonable judgment of the Board insolvent, or if the Contractor has commenced or is likely to commence in the reasonable judgment of the Board any proceeding under the Bankruptcy Act, or if the Contractor violates any of the terms, covenants, or provisions of said Agreement, then the Executive Director, acting for and in behalf of the Board and the City shall have the right to terminate said Agreement by giving notice in writing of the fact and date of termination (the "Termination Date") to the Contractor.

5.3 The Executive Director shall have the right to terminate the work for which the Contractor is engaged hereunder at any time for any reason deemed to be in the Board's interest. In such event, the Contractor shall be paid any fees as shall have been earned by it, in the reasonable opinion of the Executive Director. Such postponement, delay, suspension, or termination shall not give rise to any cause of action against the Board or the City for damages or for extra remuneration.

5.4 Upon termination of this Agreement the Contractor shall comply with the following close-out procedures:

A. Accounting for and refund to the Board, within thirty (30) days of the Termination Date, any unexpended funds which have been paid to the Contractor pursuant to this Agreement.

B. Furnishing within thirty (30) days of the Termination Date, an inventory to the Board of all equipment, appurtenances and property purchased through or provided under this Agreement carrying out any Board directive concerning the disposition thereof.

C. Not incurring or paying any further obligation pursuant to this Agreement beyond the Termination Date except for reasonable termination costs. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after such date shall be paid by the Board in accordance with the terms of this Agreement. In no event shall the word "obligation", as used herein, be construed as including any lease agreement, oral or written, entered into between the Contractor and its landlord.

D. Turn over to the Board or its designees within thirty (30) days of the Termination Date, all drawings, specifications, books, records, documents and material specifically relating to this Agreement.

E. Submit, within ninety (90) days of the Termination Date, a final statement and report relating to this Agreement. The report shall be made by a certified public accountant or a licensed public accountant. The Contractor shall receive equitable compensation for the work which in the Executive Director's reasonably incurred opinion have been satisfactorily performed by the Contractor up to the Termination Date, such compensation to be fixed by the Executive Director, subject to audit by the Board and post-audit by the Comptroller, and provided further that the Board may take over the work to be done and complete the work by Agreement or otherwise, the Contractor being liable to the Board for any reasonable excess cost occasioned to the Board thereby.

5.5 In the event the Board shall terminate this Agreement, in whole or in part, as provided by this Article, the Board may procure, upon such terms and in such manner as deemed appropriate, services similar to those so terminated, and the Contractor shall continue the performance of this Agreement to the extent not terminated hereby.

5.6 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 Contractor's breach of this Agreement, and the Board may withhold payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the Board from the Contractor is determined.

5.7 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 6. MISCELLANEOUS

6.1 CONFLICT OF LAWS; FORUM

A. This Agreement shall be deemed to be executed in the City of New York, 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.

B. The parties agree that any and all claims asserted by or against the Board arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this Agreement and intent, the Contractor agrees:

(1) If the Board initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth in this Agreement, or to such other address as the Contractor may provide to the Board in writing; and

(2) With respect to any action between the Board and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

(3) With respect to any action between the Board and the Contractor in Federal Court located in New York City, the Contractor expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

(4) If the Contractor commences any action against the Board in a court located other than in the City and State of New York, upon request of the Board, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

C. If any provision(s) of this Section is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

6.2 GENERAL RELEASE

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a general release to the Board from any and all claims of and liability to the Contractor arising out of the performance of this Agreement.

6.3 CLAIMS AND ACTIONS THEREON

A. No action at law or proceeding in equity against the Board shall lie or be maintained upon any claim based upon this Agreement or arising out of this Agreement or in any way connected with this Agreement unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

B. No action shall lie or be maintained against the Board by the Contractor upon any claims based upon this Agreement unless such action shall be commenced within six

(6) months after the date of filing in the Office of Executive Director of the certificate for the final payment hereunder, or within six (6) months of the termination or conclusion of this Agreement, or within six (6) months after the accrual of the Cause of Action, whichever first occurs.

C. In the event any claim is made or any action brought in any way relating to the Agreement herein, the Contractor shall use all reasonable efforts to render to the Board any and all assistance which the Board may require of the Contractor. The Contractor may request payment for such work at the rates specified herein. The Board shall not unreasonably withhold such payment.

D. The Contractor shall report to the Board in writing within three (3) working days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

6.4 NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

No claim whatsoever shall be made by the Contractor against any officer, agent or employee of the Board working within the scope of his or her employment for, or on account of, anything done or omitted in connection with this Agreement. No claim whatsoever shall be made by the Board against any officer, agent or employee of the Contractor working within the scope of his or her employment for, or on account of, anything done or omitted in connection with this Agreement.

6.5 WAIVER

Waiver by 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 this Agreement unless and until the same shall be agreed to in writing by the Board and the Contractor as required and attached to the original Agreement.

6.6 NOTICE

The Contractor and the Board hereby designate the business addresses hereinbefore specified 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. Actual delivery of any such notice, direction or communication to a party at the aforesaid place, or delivery by certified mail shall be conclusive and deemed to be sufficient service thereof upon such party as of the date such notice, direction or communication is received by the party. Such address may be changed 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 above. 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 Civil Practice Law and Rules.

6.7 ALL LEGAL PROVISIONS DEEMED INCLUDED

It is the intent and understanding of the parties to this Agreement that each and every provision of Law required to be inserted in this Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the Law and without prejudice to the rights of either party hereunder.

6.8 SEVERABILITY

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

6.9 POLITICAL ACTIVITY

There shall not be partisan political activity or any activity to further the election or defeat of any candidate for public, political or party office as part of or in connection with this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

6.10 MODIFICATION

No waiver or modification of any of the terms of this Agreement shall be valid unless in writing and approved by the opposing party.

6.11 PARAGRAPH HEADINGS

Paragraph headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement and in no way affect this Agreement.

6.12 NO REMOVAL OF RECORDS FROM PREMISES

Where performance of this Agreement involves use by the Contractor of Board or DEP papers, files, data or records at Board or DEP facilities or offices, the Contractor shall not remove any such papers, files, data or records, therefrom without the prior approval of the Board's or DEP’s designated official.

6.13 INSPECTION AT SITE

The Board shall have the right to have representatives of the Board and DEP present at the site of the engagement to observe the work being performed.

## ARTICLE 7. MERGER

This written Agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto, or to vary any of the terms contained herein.

## ARTICLE 8. CERTIFICATION REGARDING BUSINESS DEALINGS WITH NORTHERN IRELAND

8.1 Pursuant to the provisions of Section 6-115.1 of the Administrative Code of the City of New York, 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 certify that either: (a) they have no business operations in Northern Ireland, or (b) they shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

8.2 For purpose of this section, "MacBride" Principles shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

A. Increase the representation of individuals from under-represented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;

B. Take steps to promote adequate security for the protection of employees for underrepresented religious groups both at the workplace and while traveling to and from work;

C. Ban provocative religious or political emblems from the workplace

D. Publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;

E. Establish layoff, recall and termination procedures which do not in practice favor a particular religious group;

F. Abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;

G. Develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups;

H. Establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and

I. Appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

8.3 The Contractor agrees that the warranties and representations in paragraph A are material conditions of this Agreement. If the Board receives information that the Contractor is in violation of paragraph A the Board shall review such information and give the relevant party opportunity to respond. If the Board finds that such a violation has occurred, the Board may declare the Contractor in default, and/or terminate this Agreement. In the event of any such termination, the Board may procure the supplies, services or work from another source in any manner the Board deems proper. The Contractor shall pay to the Board, the difference between the contract price for the uncompleted portion of this Agreement and the cost to the Board of completing performance of this Agreement either by itself or by engaging another Contractor. If this is a requirements contract, the Contractor shall be liable for the difference in price, if this is a construction contract, the Board shall also have the right to hold the Contractor in partial or total default in accordance with the default provision of this Agreement. In addition, the Contractor may be declared not to be a responsible bidder or proposer for up to three (3) years, following written notice to the Contractor, giving the Contractor the opportunity for a hearing at which the Contractor may be represented by counsel. The rights and remedies the Board hereunder shall be in addition to, and not in lieu of, any rights and remedies the Board has pursuant to this Agreement or by operation of law or in equity.

# APPENDIX B

## ACKNOWLEDGEMENT OF ADDENDA

RFP TITLE: The New York City Water Board Request for Proposals for Lockbox and Other Payment Processing Services

DIRECTIONS: Complete Part I or Part II, whichever is applicable.

PART I: LISTED BELOW ARE THE DATES OF ISSUE FOR EACH ADDENDUM RECEIVED IN CONNECTION WITH THIS RFP:

ADDENDUM # 1: DATED_____ , 20__

ADDENDUM # 2: DATED_____ , 20__

ADDENDUM # 3: DATED_____ , 20__

ADDENDUM # 4: DATED_____ , 20__

ADDENDUM # 5: DATED_____ , 20__

ADDENDUM # 6: DATED_____ , 20__

PART II: _____ NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS RFP

DATE: _____/_____/_____

PROPOSER (NAME): _____

PROPOSER (SIGNATURE): _____

# APPENDIX C

## 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: _____

# APPENDIX D

## 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.