



REQUEST FOR PROPOSALS

TO PROVIDE

**CONSULTING SERVICES IN CONNECTION WITH OBTAINING AND MANAGING  
FEDERAL AND STATE GOVERNMENT GRANT FUNDS**

TO THE

NEW YORK CITY WATER BOARD

FEBRUARY 3, 2023

## TABLE OF CONTENTS

I.	INTRODUCTION.....	4
II.	THE BOARD, THE AUTHORITY, AND DEP.....	4
III.	SCOPE OF WORK.....	4
IV.	TERM.....	7
V.	CONTENTS OF PROPOSAL .....	8
VI.	SELECTION CRITERIA AND PROCESS.....	12
VII.	PROPOSAL SUBMISSION .....	12
VIII.	ADDITIONAL INFORMATION .....	14
IX.	INFORMATION ON FEDERAL PROCUREMENT STANDARDS AND RULES .....	15

## APPENDICES

Appendix A	General Provisions
Appendix B	New York City Water Board Form of Agreement
Appendix C	Scope of Work and Deliverables
Appendix D	Price Proposal
Appendix E	Evaluation Procedures
Appendix F	Certificate of Non-Collusion
Appendix G	Affidavit of Payment of Taxes
Appendix H	Doing Business Data Form
Appendix I	EEO Policy Statement
Appendix J	EEO Staffing Plan

**RFP TIMETABLE**

Release Date of the RFP..... February 3, 2023  
Deadline for Submitting Written Questions..... February 22, 2023 (4:00 P.M. Eastern Time)  
Pre-Proposal Informational Conference.....February 27, 2023 (11:00 A.M. Eastern Time)  
Proposal Due Date..... March 15, 2023 (4:00 P.M. Eastern Time)

*Proposals are to be delivered in accordance with the instructions included under Section VII(A) herein.*

Oral Presentations (as needed) ..... Weeks of March 20 and 27, 2023  
Completion of Negotiations and Legal Documentation with Selected Firm(s) ..... April 28, 2023  
Commencement of Work ..... May 8, 2023

*Please register for the Informational Conference or submit questions by emailing the designated contact person listed below.*

**DESIGNATED WATER BOARD CONTACT PERSON FOR INQUIRIES**

Proposing firms are advised that the Water Board’s designated contact person for all matters concerning this Request for Proposals is:

Omar Nazem  
New York City Water Board  
59-17 Junction Boulevard  
8th Floor  
Corona, NY 11373  
onazem@dep.nyc.gov  
718-595-3591

## **I. INTRODUCTION**

The New York City Water Board (the “Board”) is requesting proposals for consulting services to assist the Board and the New York City Department of Environmental Protection (“DEP”) in connection with obtaining governmental grant funds, principally from Federal and state sources of grant funding. The firm or firms retained to assist the Board and DEP will perform activities that include identifying, selecting, prioritizing, applying for, and monitoring grants of funding from U.S. Federal and state governmental grant makers. Representatives from both the Board and DEP will participate in the selection process.

The Board and DEP have historically funded operating and capital expenses with revenues from the sale of utility services to property owners and with the proceeds from the sale of bonds in the debt capital markets. With the rapid pace of Federal legislation making available new funding sources, as well as initiatives undertaken by the states, the Board and DEP seek to retain a consultant to assist in identifying and obtaining grant funds that would suitably complement existing sources of system funding.

## **II. THE BOARD, THE AUTHORITY, AND DEP**

The Board is a public benefit corporation of the State of New York (the “State”) that was created in tandem with the New York City Municipal Water Finance Authority (the “Authority”) by Sections 1045 and Section 1046 of Title II-A of the Public Authorities Law of New York State. The Authority was created to finance capital projects for the water and wastewater system through the issuance of bonds and notes, while the Board was created to establish the price of water and wastewater service and to perform a treasury and investment role in connection with the system’s cash flows. The City leased the City’s water and wastewater system to the Board in 1985, retaining DEP to operate the system, including managing the billing and collection on behalf of the Board. The City, DEP, the Board, and the Authority work together, alongside numerous other City agencies, to manage the operations and finances of the water and wastewater system.

DEP is the sole provider of water and wastewater service to substantially all of the City’s residents, in addition to providing water service to another one million residents north of the City, concentrated in Westchester County.

The City’s water and wastewater system generates approximately \$3.8 billion of operating revenues annually, has \$32 billion of outstanding debt instruments, and issues approximately \$2 billion of new debt each year.

## **III. SCOPE OF WORK**

The Board seeks to retain a consultant or consultants to provide consulting and analytical services to the Board and DEP in connection with securing and administering Federal and state grants, as well as other available subsidies, within the general categories funds made specifically available to water and sewer utilities, for purposes of infrastructure construction and project support, for cybersecurity,

and for related grant categories.

The consulting engagement is expected to be a multi-year engagement. The success of the consulting assignment and opportunities for future work with DEP and the Board will be determined based on an evaluation of the dollar amount of additional grant funds obtained compared to the expenditures made by the Board in the course of paying the consultant to obtain and administer the grant funding.

It is anticipated that three categories of tasks will fall under the proposed Scope of Work, and that the tasks may be performed in parallel with each other, as grant applications are developed and as new prospective sources of funding are identified.

Since many Federal programs are administered by state agencies, and since the states themselves may make funding available, it is anticipated that the selected consultant will need to have familiarity and comfort working with New York State governmental agencies.

### **Task A: Opportunity Identification and Selection**

- Lead research and evaluation efforts with respect to U.S. Federal and state grant programs, whether provided directly to localities or through a State administrative conduit.
- Identify key attributes of prospective grant funding sources, including the exact governmental funding source, the program terms and application deadlines, the criteria for eligibility, the dollar range of the funding opportunity, and identify criteria for DEP project eligibility.
- Work with agency personnel across DEP's operating bureaus and functional areas to establish an evaluation framework to use in identifying which grant sources may be applicable to DEP, how to sort between different project options, how to match projects of focus to the available grant sources, and to provide overall assistance to the agency in prioritizing where to allocate time and effort in preparing materials for applying for grants.
- Specific funding sources may include, but are not limited to, funds and funding programs made available under the Federal Infrastructure Investment and Jobs Act, the Federal Inflation Reduction Act, increased allocations to the State Revolving Fund (SRF) program, as well as funds available through an energy efficiency-focused or other type of Conservation Block Grant Program, Rebuilding American Infrastructure Sustainably and Equitably (RAISE) grants, the Energy Efficiency Revolving Loan Fund Capitalization Grant Program, funds available through Hydroelectric Efficiency Improvement Incentives or through the Cybersecurity and Infrastructure Security Agency, as well as other grant funding sources the consultant may identify, or may be directed to examine, by DEP or the Board.

## **Task B: Grant Application and Funding**

- Evaluate different approaches to positioning DEP applications for grant funding, taking into account both program eligibility criteria as well as DEP's capabilities and assets.
- Lead responsibility for authoring accurate, complete, and convincing grant application materials, including preparing or obtaining all information and supporting schedules required for complex and sometimes technical grant applications, including but not limited to authorship of:
  - Grant narratives, chapter sections, numerical and other charts and data tables;
  - Create outlines and written business cases;
  - Presentation materials, talking points, and meeting scripts for grant application processes involving oral presentations; and
  - Other materials and task-related documents as may be required or requested.
- Coordination between different departments within DEP, the Board, and as required external consultants, to obtain required background information, inputs, review, and sign-off of materials. Areas where it is anticipated that bureau and external consultant coordination will be required include:
  - Preparing or coordinating the preparation of engineering reports, including cost estimates and cost reasonableness verifications;
  - Preparing or coordinating the preparation of environmental reports;
  - Preparing or coordinating the preparation of analyses and tabulations of demographic and population data to explain the environmental justice (EJ) impact of proposed DEP projects; and
  - With the assistance of counsel and the agency's technical staff, authoring summaries of any applicable regulatory or legal constraints or requirements relevant to the requested grant funds.
- Provide advice and training with respect to the legal and regulatory requirements involved in applying for different types of grants, as well as the typical cycle and notice process involved in submitting complete and responsive grant applications.

- Prepare benefit-cost analyses that are suitable to include with grant application materials, and that are sufficiently detailed to be auditable and to allow for the reconstruction of the calculations.
- Please note that all documents, spreadsheets, presentation templates, and other materials used in preparing grant applications must be provided to the Board and DEP in editable digital file formats.

### **Task C: Grant Administration and Monitoring**

As required:

- Monitor and report on portfolio of active DEP grants;
- Prepare drafts for the Board and DEP of any required updates or progress reports to governmental funding sources;
- Perform evaluations of grant-funded projects as requested by agency management;
- Monitor the adequacy of allocated funds as compared to the budgeted and actual expenses of grant-funded projects;
- Provide periodic updates to the Board, DEP, and other involved City agencies; and
- Other tasks as may be required or requested.

The RFP will include a requested target allocation to small business and M/WBE subcontractors.

The firm will provide original copies of all materials and work papers developed during the term of the contract available to the Board upon request, including providing editable digital versions of all presentations, memoranda, spreadsheets, databases, scripts, source code, and other work-product. All information obtained or reviewed by the consultant(s) during all portions of this assignment will be deemed confidential. All documents and other work-product created during this assignment will become the property of the Board.

## **IV. TERM**

The initial term of the proposed contract is expected to be for two-years with two additional one-year extension options available, at the discretion of the Board.

## **V. CONTENTS OF PROPOSAL**

### **A. Qualifications and Technical Proposal**

1. Describe your firm's experience in providing grant identification and grant administrative consulting services, including:
  - a. Your firm's qualifications; and
  - b. A list of four comparable consulting assignments your firm has performed since 2016, including at least three organizations for which the senior personnel who would advise the Board and DEP have provided services. If your senior personnel has changed firms over this period, the list of the three organizations may include clients from the senior personnel's previous firm, but the list should indicate the firm affiliation of the senior personnel when these services were provided. Please provide contact names, e-mail addresses, and phone numbers of the individuals who may serve as references at these organizations.
2. List the senior personnel that will provide services to the Board and DEP including, for each individual:
  - a. Name, position, length of service, experience in providing grant-related consulting services, and the names of the organizations to which s/he has provided grant-related consulting services;
  - b. The location of the office(s) in which s/he works; and
  - c. A complete resume for members of the proposed project team.
3. The Board and DEP will require consultant personnel to develop a working knowledge of DEP and the City's water and wastewater system in order to provide the advice and written materials required under this contract. Describe how your firm will ensure that the Board and DEP will have access to multiple senior-level personnel within your firm, who will be fully knowledgeable about the services provided.
4. Describe the approach of your firm and the services your firm will provide including:
  - a. Any methodological approach or grant evaluation framework used by your firm;
  - b. Your approach to working with client organizations;
  - c. Examples of how you have presented previous client organizations in a favorable light to grantmaking authorities;
  - d. A summary of the types of data or documentation you anticipate requiring to perform the necessary work;



- e. Some samples of comparable work and successful grant applications performed for previous clients (these can be provided in an anonymized or redacted form); and
  - f. A description of your firm’s capabilities in the area of evaluating and making the case for information technology investments designed to enhance an organization’s cyber-security assets, protocols, and organization.
5. A proposed timeline and a description of the anticipated project modules that would be involved in assessing the applicable funding universe, collecting relevant background data, constructing an application framework, and authoring near-final drafts of grant applications.
  6. Describe any other qualifications or experience that make your firm particularly well-suited to be selected as a consultant to the Board and DEP.
  7. Please include a summary of the dedicated staffing and resources you would require from DEP and the Board as client organizations, in order to complete the work contemplated under the Scope of Work.
  8. Please include the Federal tax identification number for all firms that are included as part of the proposal.
  9. State whether the proposer maintains a headquarters or local office in the City of New York, as well as the number of the proposers’ employees who are employed by an office of the firm located within the City.

**B. Fees**

For the Scope of Work, provide an hourly fee schedule per category of employee. The hourly rates should include the expected profit margin to be incurred in the course of providing the services. The expenses incurred by the Consultant while performing the work described herein will not be reimbursed.

The maximum compensation authorized by the Board for performing the work contemplated in this RFP is \$5,000,000.

The Board encourages M/WBE firms to respond to the RFP. In addition, the Board further encourages firms that are not M/WBE firms to consider whether there may be an opportunity to partner with an M/WBE firm through a subcontractor or other arrangement.

The selection criteria scoring includes an evaluation score bonus for proposals that are submitted by an M/WBE firm, or that include a role for an M/WBE firm to partner with, or sub-contract with, another proposing firm. Please consult Appendix E, Evaluation Procedures, for information on how M/WBE criteria will be incorporated into the selection process.

### **C. Equal Employment Opportunity Information**

The Board encourages proposals from minority-owned and women-owned business enterprises (M/WBEs). M/WBEs responding to this RFP are also encouraged to apply for M/WBE certification with the New York City Department of Small Business Services and with the State of New York through Empire State Development.

The Board contracts with firms who undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, sexual orientation or marital status.

Please provide the following information:

1. Each proposer must complete and return “Appendix I—EEO Policy Statement” as part of their Proposal;
2. Using the enclosed EEO Staffing Plan (Appendix J), please indicate the number of personnel who will be involved in performing the work described in the Scope of Work using the applicable descriptive categories. If a person identifies in such a way that their self-identification spans multiple categories, it is fine to use fractional numbers when completing the schedule. If a person identifies in such a way that a suitable category cannot be located on the form, then please add an additional page with your submission making a statement to such effect, and ensuring that the total number of personnel can be tied back to the number of personnel in the description columns, when read in conjunction with any supporting notes and explanation;
3. If your firm is certified or qualifies as a women-owned or minority-owned business by either the New York Empire State Development Corporation, the New York City Department of Small Business Services, or another M/WBE certification program outside of New York, please enclose documentation demonstrating such certification or qualification.

Additional information and provisions are included in Appendix A, under Article 4.

### **D. Litigation/Conflicts of Interest**

For each of the firms that is part of the proposal, please list and briefly describe:

1. Describe any pending administrative proceedings, investigations, and civil suits against the proposer or any individual employed by the proposer relating to the proposer’s or such individual’s performance of its professional duties.
2. Any litigation or administrative proceedings to which your firm is a party and which would either:
  - a. Materially impair your ability to perform the services enumerated herein for which this RFP was issued; or

- b. If decided in an adverse manner, would materially affect the financial condition of your firm.
3. Any existing disputes or proceedings between your firm and the City regarding the payment of taxes or your firm's performance of professional duties.
4. State whether or not any legal proceedings are pending to which the proposer is a party, as well as any such proceedings known to be contemplated by government authorities or private parties (including, without limitation, whether the proposer has received a "Wells Notice" relating to a matter in which charges have not yet been brought) and, if so, a description of each such proceeding.
5. Any material relationships that the proposer or any employee of the proposer has with any existing contractors to the Board or DEP or other persons or entities that may create a conflict of interest, or the appearance of a conflict of interest, in acting as a consultant to the Board and DEP.
6. Any family relationship that any employee of the proposer has with the Board or DEP (or officer, employee or member thereof) that may create a conflict of interest or the appearance of a conflict of interest in acting as consultant to the Board or DEP.
7. Any other matter that the proposer believes may create a conflict of interest or the appearance of a conflict of interest in acting as a consultant to the Board or DEP.
8. State whether or not, in the past ten years, the proposer or any of its partners, directors, officers or employees or anyone acting on its behalf, has ever been indicted or otherwise charged in connection with any criminal matter, which is still pending, or has ever been convicted of any crime or offense arising directly or indirectly from the conduct of the proposer's business, or whether any of the proposer's partners, directors, officers or employees or persons exercising substantial policy discretion has ever been indicted or otherwise charged in connection with any criminal matter, which is still pending, or has ever been convicted of any crime or offense involving misconduct or fraud, and, if so, please describe any such indictments, charges or convictions and surrounding circumstances in detail.
9. Identify all adverse determinations against the proposer or any of its partners, directors, officers or employees or persons acting on its behalf, with respect to actions, proceedings, claims or complaints concerning violations of Federal, State or City equal opportunity laws or regulations and a statement that the proposer is in compliance with all applicable Federal, State or City equal opportunity laws or regulations.

**E. Cover Letter**

The proposal should include a cover letter signed by a senior officer who is authorized to bind your firm and who will have direct responsibility for this engagement. It should indicate the business address, e-mail and telephone number of such senior officer.

## **F. Doing Business Data Form**

Proposers are required to complete the attached Doing Business Data Form (“Data Form”) (Appendix H) and return it with this proposal. Please also refer to Appendix H for information regarding the Doing Business Data Form.

## **G. Appendix A: “General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services”**

The firm or firms will be required to enter into a contract with the Board to perform the services described herein, which will incorporate Appendix A in the form attached hereto.

## **VI. SELECTION CRITERIA AND PROCESS**

The Board in cooperation with DEP will select a firm or firms based on the following which will be considered in the selection process:

- A.** Overall quality of the response to the RFP, including completeness, responsiveness, and clarity.
- B.** Technical ability, resources, and capacity of the proposing firm to provide the services described in this RFP.
- C.** Qualifications, experience, and availability of the individuals that will be assigned to provide the services described.
- D.** Cost competitiveness of the fee proposal, which includes a specific scoring bonus available to the three lowest price proposals from among those proposers receiving technical scores deemed sufficient for purposes of performing the work described in the Scope of Work.
- E.** The extent of M/WBE participation in performing the work will be considered as additional selection factors. The scoring adjustments for M/WBE proposers is included in Appendix E.

The selection process will be based upon written proposals, oral presentations (if required), and any other relevant information available to the Board.

## **VII. PROPOSAL SUBMISSION**

### **A. Submission Details**

Proposals including all exhibits and reference materials should be submitted via **both** of the methods stated below no later than 4:00 P.M. Eastern Time on Wednesday, March 15, 2023.

**First**, please email a digital set of your proposal documents to the email address [onazem@dep.nyc.gov](mailto:onazem@dep.nyc.gov). Please indicate “Grant Consulting RFP 2023 Proposal from [name of firm]” in the subject line. If the electronic files are too large in size to email, proposers should email a link to a data sharing site along with a covering note within the email making clear the identity of the proposer and the RFP they are responding to.

**Second**, please send seven printed sets of your proposal documents to the address below. Both the digital submission as well as the printed paper copies must be received by the 4:00 P.M. deadline in order to be considered timely. Prospective bidders are encouraged to use courier services that obtain a signature upon delivery of a document set, to use an express shipping service that offers delivery tracking and guaranteed next day delivery, or to have the proposer’s staff deliver the document set directly to the Board at the stated address, in order to ensure the submission arrives prior to the submission deadline.

Omar Nazem  
New York City Water Board  
59-17 Junction Boulevard  
8th Floor  
Corona, NY 11373

Both digital and print document sets must be received by 4:00 P.M. Eastern Time on March 15, 2023.

## **B. Inquiries**

Proposers are advised that communications regarding this RFP should be directed to the Board’s designated contact person, Omar Nazem, at [onazem@dep.nyc.gov](mailto:onazem@dep.nyc.gov) and 718-595-3591. Please label written correspondence with the subject line header “Grant Consulting RFP 2023 Inquiries from [name of firm].”

Prospective bidders wishing to register for the February 27 informational conference should send their interest in registering to [onazem@dep.nyc.gov](mailto:onazem@dep.nyc.gov).

## **C. Addenda to the RFP**

The Board may 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. It is the proposer's responsibility to ensure receipt of all addenda.

## **D. Subcontracting**

If any part of the work covered by the RFP is to be subcontracted, the proposer shall identify the sub-consultant by furnishing its corporate name and the names of its officers, as well as resumes for the personnel who will be involved in this engagement. The selected proposer will be responsible for all work covered herein and is the sole contact regarding contractual matters.

#### **E. Presentations and/or Interviews**

Proposers ranking highly according to the criteria described in Section VI herein and in Appendix E 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. The Board will schedule the time and location of these presentations.

#### **F. Standard Form Contract Language**

The firm will be expected to execute the Board's standard form contract along with Appendix A, which is attached hereto.

#### **G. Exceptions to RFP**

Any deviation from the legal or technical requirements contained herein must be stated in the proposal and listed on a separate sheet of paper labeled "Exceptions" that is attached to the proposal, along with the reason for the deviation. The inclusion of an "Exceptions" schedule will not constitute a waiver of the legal and technical requirements described herein.

### **VIII. ADDITIONAL INFORMATION**

Costs incurred in connection with the proposal are the sole responsibility of the proposers. All materials submitted in response to this RFP will become the property of the Board.

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

The Board may terminate its contract(s) with the selected firm(s) at any time upon notice to the respective firm(s).

The Board reserves, without limitation, the right to:

1. Reject any and all proposals received in response to this RFP;
2. Not award a contract;
3. Waive or modify any irregularities in proposals received or any other aspect of this procurement;
4. Conduct discussions with one or more proposers;
5. Award a contract without any discussion with proposers;

6. Negotiate separately with any combination of proposers; and
7. Assign the contract award to more than one firm.

The selected proposer(s) will be required to complete a PASSPort questionnaire or to provide an affidavit stating that a PASSPort questionnaire was previously submitted to the City within the prior twelve months. Information about PASSPort is available at: <https://passport.cityofnewyork.us> .

## **IX. INFORMATION ON FEDERAL PROCUREMENT STANDARDS AND RULES**

The selected firm or firms will play an important role in assisting the Board and DEP with obtaining funds and establishing project specifications in connection with the construction and maintenance of the City of New York's water and wastewater system. As such, Federal rules and requirements with respect to the role of competition and conflicts of interest when Federal funds are involved are especially relevant to this procurement.

Federal rules generally state that contractors and firms that assist a grant applicant in preparing Federal grant application materials are prohibited from seeking to subsequently perform the work that would be funded using the Federal grant funds. For example, if a firm assists in writing or structuring a Federal grant application, that firm would then in most instances be prohibited from receiving a portion of the Federal grant funds obtained by the application, whether as a consultant, engineer, administrator, or other role. The prohibition is usually interpreted broadly, and is typically understood to include restricting subsequent participation in any activity the grant funds would be used for, including engineering design work, construction work, as well as administrative activities such as grant administration and grant management during the post-award phase. Certain Federal grantmakers, such as FEMA, interpret the restriction to apply to former employees, restricting the ability of such employees to participate in activities such as grant management or performing the activities funded by the grant, in instances where the former employees were involved in writing or designing the grant application materials used to obtain the funds.

Prospective bidders should consult their legal counsel in order to understand how Federal regulations might restrict subsequent business activity, in particular with respect to the provisions of Title 2 of the Code of Federal Regulations, as well as applicable state and local law.

Proposers who submit a proposal in response to this Request for Proposals are representing to the Board and DEP that they understand their involvement in assisting the Board and DEP in obtaining Federal funds may restrict their ability to participate in procurements and business opportunities that are funded with the grant monies obtained through the work contemplated under this RFP.

APPENDIX A

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

**ARTICLE 1 - DEFINITIONS**

**Section 1.01 Definitions**

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

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

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

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

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

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

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

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

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

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

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

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



**ARTICLE 2 - REPRESENTATIONS  
AND WARRANTIES**

**Section 2.01 Procurement of Agreement**

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

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

**Section 2.02 Conflicts of Interest**

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

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

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

**Section 2.03 Fair Practices**

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

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

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

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

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

**Section 2.04 PASSPort**

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

**Section 2.05 Political Activity**

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

**Section 2.06 Religious Activity**

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

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

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

**Section 2.08 Bankruptcy and Reorganization**

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

**ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING**

**Section 3.01 Assignment**

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

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

## Appendix A

---

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

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

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

### **Section 3.02 Subcontracting**

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

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

C. All subcontracts shall contain provisions specifying that:

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

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

## Appendix A

---

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

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

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

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

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

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

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

## **ARTICLE 4 - LABOR PROVISIONS**

### **Section 4.01 Independent Contractor Status**

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

**Section 4.02 Employees**

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

**Section 4.03 Removal of Individuals Performing Work**

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

**Section 4.04 Minimum Wage**

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

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

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

## Appendix A

---

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

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

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

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

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

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

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

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

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

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

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

## Appendix A

---

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

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

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

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

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

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

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

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

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

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



## Appendix A

---

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

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

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

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

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

### **ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS**

#### **Section 5.01 Books and Records**

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

**Section 5.02 Retention of Records**

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

**Section 5.03 Inspection**

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

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

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

**Section 5.04 Audit**

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

## Appendix A

---

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

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

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

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

### **Section 5.05 No Removal of Records from Premises**

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

### **Section 5.06 Electronic Records**

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

### **Section 5.07 Investigations Clause**

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

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

## Appendix A

---

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

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

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

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

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

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

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

## Appendix A

---

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

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

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

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

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

## F. Definitions

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

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

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

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

## Appendix A

---

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

### **Section 5.08 Confidentiality**

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

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

## Appendix A

---

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

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

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

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

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

## **ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST**

### **Section 6.01 Copyrights**

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

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

## Appendix A

---

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

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

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

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

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

### **Section 6.02 Patents and Inventions**

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



**Section 6.03 Pre-existing Rights**

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

**Section 6.04 Antitrust**

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

**ARTICLE 7 - INSURANCE**

**Section 7.01 Agreement to Insure**

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

**Section 7.02 Commercial General Liability Insurance**

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

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

**Section 7.03 Professional Liability Insurance**

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

## Appendix A

---

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

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

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

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

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

### **Section 7.05 Unemployment Insurance**

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

### **Section 7.06 Business Automobile Liability Insurance**

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

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

## Appendix A

---

### Section 7.07 General Requirements for Insurance Coverage and Policies

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

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

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

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

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

### Section 7.08 Proof of Insurance

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

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

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

## Appendix A

---

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

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

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

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

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

### **Section 7.09 Miscellaneous**

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

## Appendix A

---

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

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

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

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

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

### **ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION**

#### **Section 8.01 Reasonable Precautions**

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

#### **Section 8.02 Protection of Board and City Property**

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

#### **Section 8.03 Indemnification**

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

## **Appendix A**

---

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

### **Section 8.04 Infringement Indemnification**

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

### **Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation**

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

### **Section 8.06 Actions By or Against Third Parties**

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

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

### **Section 8.07 Withholding of Payments**

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

## **Appendix A**

---

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

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

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

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

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

### **Section 8.08 No Third Party Rights**

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

## **ARTICLE 9 - CONTRACT CHANGES**

### **Section 9.01 Contract Changes**

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

### **Section 9.02 Changes Through Fault of Contractor**

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

**ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING**

**Section 10.01 Termination by the Board Without Cause**

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

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

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

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

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

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



## Appendix A

---

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

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

### **Section 10.03 Contractor Default**

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

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

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

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

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

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

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

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

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

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

## Appendix A

---

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

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

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

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

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

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

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

## Appendix A

---

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

### **Section 10.04 Force Majeure**

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

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

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

### **Section 10.05 Procedures for Termination**

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

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

## Appendix A

---

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

### **Section 10.06 Miscellaneous Provisions**

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

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

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

## ARTICLE 11 - CLAIMS

### Section 11.01 Choice of Law

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

### Section 11.02 Jurisdiction and Venue

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

### Section 11.03 Claims and Actions

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

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

### Section 11.04 No Claim Against Officers, Agents or Employees

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

**Section 11.05 General Release**

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

**Section 11.06 No Waiver**

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

**ARTICLE 12 - APPLICABLE LAWS**

**Section 12.01 All Legal Provisions Deemed Included**

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

**Section 12.02 Severability / Unlawful Provisions Deemed Stricken**

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

**Section 12.03 Compliance With Laws**

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

**Section 12.04 Americans with Disabilities Act (ADA)**

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

## Appendix A

---

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

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

### **Section 12.05 Participation in an International Boycott**

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

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

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

### **Section 12.06 MacBride Principles**

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

## **Appendix A**

---

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

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

### **ARTICLE 13 - MISCELLANEOUS PROVISIONS**

#### **Section 13.01 Merger**

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

#### **Section 13.02 Headings**

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

#### **Section 13.03 Notice**

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

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

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



## APPENDIX B

### AGREEMENT FOR SERVICES OF CONSULTANT

**AGREEMENT**, made and entered into as of this \_\_ day of \_\_\_\_, 2023, by and between the New York City Water Board (the “Board”), a corporate municipal instrumentality of the State of New York, and \_\_\_\_\_ (hereinafter referred to as the “Consultant”), a corporation located at \_\_\_\_\_, EIN \_\_\_\_\_.

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

**WHEREAS**, the Board has identified a need for the services of a consultant to provide consulting services in connection with identifying, applying for, managing, and performing other services with respect to Federal and state grants and other funding sources, in order to support and enhance the water and sewer activities of the New York City Department of Environmental Protection (“DEP”); and

**WHEREAS**, the Board by Resolution dated October 13, 2022, authorized the solicitation and expenditure of funds in connection with identifying and retaining a consulting firm to assist the Board and DEP in obtaining governmental grant funding, focused on state and Federally-sourced grants, whether provided directly to recipient organizations or through a State-administered conduit; and

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

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

#### **A. General Provisions – Appendix A**

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

#### **B. Scope of Work – Appendices [ ] and C**

The Consultant shall provide consulting services in connection with identifying, evaluating, applying for, and monitoring U.S. government grant funding, as described in

each of (i) the Consultant's Proposal and (ii) the Scope of Work dated \_\_\_\_\_, 2023, attached hereto as, respectively, Appendix [ ] and Appendix C, and incorporated and made a part hereof.

**C. Appendices [D Through F]**

The Consultant shall further comply with the provisions included in Appendices [D Through F], attached hereto, which are hereby incorporated and made a part hereof

**D. Term**

This agreement shall be effective as of \_\_\_\_\_, 2023 and continue for two years to the date of expiration, \_\_\_\_\_, 2025, with two extension options to the initial term of one-year each, available at the discretion of the Board, and subject to the Consultant's acceptance.

**E. Compensation; Expenses**

1. The Board shall compensate the Consultant for its actual services provided hereunder based on the following hourly rates and schedule of project tasks and hours of Consultant personnel time required to complete each task, as further described in the Price Proposal attached hereto as Appendix D and incorporated and made a part hereof.
2. The hourly rates stated below are inclusive of the Consultant's overhead and expected profit, and are the actual dollar amounts that will be used to calculate the amounts invoiced to the Board.

*Summary of the Price Proposal Referenced in Appendix D:*

	Seniority 1	Seniority 2	Seniority 3	Seniority 4	Seniority [x]
<b>Task A - Opportunity Identification and Selection</b>					
Hours of consultant personnel time by sub-module allocated by staff seniority level					
1. Grant funding landscape assessment, including grant source identification and funding opportunity estimates.					
2. Grant evaluation framework and criteria, accompanied by graded or ranked list of funding sources.					
3. Project selection framework and evaluation criteria, including mapping of projects to funding sources.					
4. Additional items as may be agreed on.	---	---	---	---	---

<b>Task B - Grant Application and Funding</b>					
Hours of consultant personnel time by sub-module allocated by staff seniority level					
1. Development of grant application strategy.					
2. Development of draft application templates and standard charts, narratives, and tables to support and explain funding requests.					
3. Application authorship and review, including all application elements described in the Scope of Work, as applicable.					
4. Additional items as may be agreed on.	---	---	---	---	---

<b>Task C - Grant Administration and Monitoring</b>					
Hours of consultant personnel time by sub-module allocated by staff seniority level					
1. Provide administration, monitoring, and reporting services over portfolio of grants obtained via the Consultant's efforts.					
2. Prepare progress and compliance reports, and other updates required by the grant making entity.					
3. Monitor grant expenditures in terms of budget and grant appropriations.					
4. Additional items as may be agreed on.	---	---	---	---	---

<b>[Additional Tasks as Recommended by the Consultant]</b>					
Hours of consultant personnel time by sub-module allocated by staff seniority level					

<b>Schedule of Hourly Rates by Consultant Personnel Seniority</b>	
Seniority 1	\$ _____
Seniority 2	\$ _____
Seniority 3	\$ _____
Seniority 4	\$ _____
Seniority [x]	\$ _____

	Total Estimated Hours	Total Estimated Cost
Task A		
Task B		
Task C		
Additional Tasks as proposed		
<b>Total Project</b>		

3. The total compensation payable to the Consultant by the Board pursuant to this Agreement for services provided hereunder shall not exceed \$5,000,000.
4. There will be no reimbursement for expenses of any kind incurred by the Consultant in the performance of services hereunder.

5. The Board shall make payment to the Consultant based upon the Consultant's submission of invoices on a \_\_\_\_\_ basis, which shall be in a form acceptable to the Board and which shall include a calculation detailing the work performed, mix of personnel seniorities, hourly rates used, and other information sufficient to allow the Board to make a reasoned determination of the correctness of the invoiced amount. Invoices should be submitted electronically by email to: [WBExpenseStaff@dep.nyc.gov](mailto:WBExpenseStaff@dep.nyc.gov).

#### **F. Relationship of Parties**

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

#### **G. Subcontracts With Minority/Women-Owned Business Enterprises (M/WBE)**

The Consultant shall make reasonable best efforts to retain M/WBE subcontractors for at least [ ] of the total compensation payable to the Consultant in the performance of services hereunder. The Consultant shall maintain records to document the specific efforts made to seek out and identify potential M/WBE subcontractors.

#### **H. Representations and Warranties**

1. Procurement of Agreement: The Consultant 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 Consultant 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 Consultant 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. 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 Consultant 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. Standard of Care: The Consultant shall perform its obligations under this Agreement in a professional and diligent manner, in accordance with applicable laws and recognized industry standards. The Consultant, its employees, and its subcontractors

shall act in a manner that is consistent with facilitating a safe, hospitable, and harassment-free working environment.

3. Compliance with Federal and State Standards Governing Contracts and Procurements: Consultant affirmatively represents that it will comply with all Federal rules and requirements, including rules governing the appropriate procedures in connection with procurement of goods and services involving Federal monies, in particular with respect to the applicable provisions of Title 2 of the Code of Federal Regulations, as well as applicable state and local laws, which may exclude the Consultant from participating in procurements and business opportunities that are funded with the grant monies obtained through the work performed under this Agreement.
4. Conflict of Interest: The Consultant represents and warrants that, to the best of its knowledge and belief, neither it nor any of its directors, officers, members, partners, employees, or subcontractors owes a duty or professional obligation, nor holds any interest, nor shall directly or indirectly acquire any interest, which would or may conflict in any manner or degree with the performance or rendering of the services described pursuant to this Agreement. The Consultant further represents and warrants that, to the best of its knowledge and belief, no person shall be employed by it, nor subcontractor retained by it, that holds an interest that may give rise to a conflict of interest, nor owes a duty or loyalty to another party that could impair or limit its ability to perform the obligations required by this Agreement or to adhere to the confidentiality provisions of Appendix A herein. It shall not be deemed a conflict of interest if the Consultant or any director, officer or employee of the Consultant has a water and sewer account with the Board and DEP.
5. Publicity and Media: Consultant represents and warrants that neither the fact or provisions of this Agreement, nor the scope or provisions of the Scope of Work contemplated under this Agreement, shall be disclosed for purposes of publicity or marketing, including to traditional or digital media outlets or news publications, without the Board's prior written consent. Any work or publication that is created or published pursuant to written permission provided pursuant to this Article H(5) shall be available to the Board and the City subject to a free and irrevocable license to reproduce, publish, or otherwise use or authorize others to use the authorized content.

## **I. Addresses for Notices**

To the Board:

New York City Water Board  
Attention: Water Board Counsel  
59-17 Junction Boulevard  
8th Floor

Flushing, NY 11373

Phone: (718) 595-3591

Fax: (718) 595-3595

Email: [WBExpenseStaff@dep.nyc.gov](mailto:WBExpenseStaff@dep.nyc.gov)

[jasonl@dep.nyc.gov](mailto:jasonl@dep.nyc.gov)

[onazem@dep.nyc.gov](mailto:onazem@dep.nyc.gov)

To the Consultant:

---

---

---

---

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

**THE NEW YORK CITY WATER BOARD**

By: \_\_\_\_\_  
[Name]  
Executive Director

Dated:

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

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023 \_\_\_\_\_ appeared before me and duly acknowledged execution of the foregoing instrument.

NOTARY PUBLIC

\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title of Authorized Signatory]

Dated:

EIN # \_\_\_\_\_

State of \_\_\_\_\_) ss.:  
County of \_\_\_\_\_)

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me personally came \_\_\_\_\_, to me known to be the \_\_\_\_\_ of \_\_\_\_\_, described in the foregoing instrument, and acknowledged that s/he is authorized by all necessary action to execute this instrument on its behalf and that s/he subscribed the name of said firm thereto on behalf of said firm for the purpose therein mentioned.

NOTARY PUBLIC

## New York City Water Board – Solicitation for Grant Consulting Services

### APPENDIX C

#### SCOPE OF WORK AND DELIVERABLES

It is anticipated that three categories of tasks will fall under the proposed Scope of Work, and that the tasks may be performed in parallel with each other, as grant applications are developed and as new prospective sources of funding are identified.

Since many Federal programs are administered by state agencies, it is anticipated that the selected consultant will need to have familiarity and comfort working with New York State governmental agencies.

#### **Task A: Opportunity Identification and Selection**

- Lead research and evaluation efforts with respect to U.S. Federal and state grant programs, whether provided directly to localities or through a State administrative conduit.
- Identify key attributes of prospective grant funding sources, including the exact governmental funding source, the program terms and application deadlines, the criteria for eligibility, the dollar range of the funding opportunity, and identify criteria for DEP project eligibility.
- Work with agency personnel across DEP's operating bureaus and functional areas to establish an evaluation framework to use in identifying which grant sources may be applicable to DEP, how to sort between different project options, how to match projects of focus to the available grant sources, and to provide overall assistance to the agency in prioritizing where to allocate time and effort in preparing materials for applying for grants.
- Specific funding sources may include, but are not limited to, funds and funding programs made available under the Federal Infrastructure Investment and Jobs Act, the Federal Inflation Reduction Act, increased allocations to the State Revolving Fund (SRF) program, as well as funds available through an energy efficiency-focused or other type of Conservation Block Grant Program, Rebuilding American Infrastructure Sustainably and Equitably (RAISE) grants, the Energy Efficiency Revolving Loan Fund Capitalization Grant Program, funds available through Hydroelectric Efficiency Improvement



Incentives or through the Cybersecurity and Infrastructure Security Agency, as well as other grant funding sources the consultant may identify, or may be directed to examine, by DEP or the Board.

### **Task B: Grant Application and Funding**

- Evaluate different approaches to positioning DEP applications for grant funding, taking into account both program eligibility criteria as well as DEP's capabilities and assets.
- Lead responsibility for authoring accurate, complete, and convincing grant application materials, including preparing or obtaining all information and supporting schedules required for complex and sometimes technical grant applications, including but not limited to authorship of:
  - Grant narratives, chapter sections, numerical and other charts and data tables;
  - Create outlines and written business cases;
  - Presentation materials, talking points, and meeting scripts for grant application processes involving oral presentations; and
  - Other materials and task-related documents as may be required or requested
- Coordination between different departments within DEP, the Board, and as required external consultants, to obtain required background information, inputs, review, and sign-off of materials. Areas where it is anticipated that bureau and external consultant coordination will be required include:
  - Preparing or coordinating the preparation of engineering reports, including cost estimates and cost reasonableness verifications;
  - Preparing or coordinating the preparation of environmental reports;
  - Preparing or coordinating the preparation of analyses and tabulations of demographic and population data to explain the environmental justice (EJ) impact of proposed DEP projects; and
  - With the assistance of counsel and the agency's technical staff, authoring summaries of any applicable regulatory or legal constraints or requirements relevant to the requested grant funds.

- Provide advice and training with respect to the legal and regulatory requirements involved in applying for different types of grants, as well as the typical cycle and notice process involved in submitting complete and responsive grant applications.
- Prepare benefit-cost analyses that are suitable to include with grant application materials, and that are sufficiently detailed to be auditable and to allow for the reconstruction of the calculations.
- Please note that all documents, spreadsheets, presentation templates, and other materials used in preparing grant applications must be provided to the Board and DEP in editable digital file formats.

### **Task C: Grant Administration and Monitoring**

As required:

- Monitor and report on portfolio of active DEP grants;
- Prepare drafts for the Board and DEP of any required updates or progress reports to governmental funding sources;
- Perform evaluations of grant-funded projects as requested by agency management;
- Monitor the adequacy of allocated funds as compared to the budgeted and actual expenses of grant-funded projects;
- Provide periodic updates to the Board, DEP, and other involved City agencies; and
- Other tasks as may be required or requested.

The RFP will include a requested target allocation to small business and M/WBE subcontractors.

## **New York City Water Board – Solicitation for Grant Consulting Services**

### **APPENDIX D**

#### **PRICE PROPOSAL**

The structure of the Price Proposal as presented assumes an hourly fee approach, including a schedule showing the hourly fee associated with each of the staff seniorities the Consultant anticipates would be involved with the project, along with a division of the hours per task by seniority level, divided into project modules within each task. The hourly fees should reflect the full, actual dollar rates that will be used to calculate invoiced amounts, meaning that the dollar amounts should include the firm's labor, overhead, expected profit, and any other costs.

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

The Board has a preference for an hourly billing structure, although proposers are free to propose alternate or hybrid billing structures if they believe a different billing model would be more appropriate to the Scope of Work. However, all proposals must include the cost of the entire project with sufficient detail to allow the identification of costs by category, such as by task, module, or other activity.

The following table is provided as the recommended format to describe and tabulate the proposer's estimated hours, rates, and costs by project component. Proposers should feel free to adjust the number of different title seniorities, add additional project Tasks, and to use a discretionary number of modules for each Task; however, the Tasks described in the Scope of Work should each be included in the framework, at a minimum, along with the hours and rate estimates.

Please provide the Price Proposal as a separate, standalone document within both the paper and digital versions of your proposal submission packets.

<b>Task A - Opportunity Identification and Selection</b>					
Hours of consultant personnel time by sub-module allocated by staff seniority level					
1. Grant funding landscape assessment, including grant source identification and funding opportunity estimates.					
2. Grant evaluation framework and criteria, accompanied by graded or ranked list of funding sources.					
3. Project selection framework and evaluation criteria, including mapping of projects to funding sources.					
4. Additional items as may be agreed on.	---	---	---	---	---

<b>Task B - Grant Application and Funding</b>					
Hours of consultant personnel time by sub-module allocated by staff seniority level					
1. Development of grant application strategy.					
2. Development of draft application templates and standard charts, narratives, and tables to support and explain funding requests.					
3. Application authorship and review, including all application elements described in the Scope of Work, as applicable.					
4. Additional items as may be agreed on.	---	---	---	---	---

<b>Task C - Grant Administration and Monitoring</b>					
Hours of consultant personnel time by sub-module allocated by staff seniority level					
1. Provide administration, monitoring, and reporting services over portfolio of grants obtained via the Consultant's efforts.					
2. Prepare progress and compliance reports, and other updates required by the grant making entity.					
3. Monitor grant expenditures in terms of budget and grant appropriations.					
4. Additional items as may be agreed on.	---	---	---	---	---

<b>[Additional Tasks as Recommended by the Consultant]</b>					
Hours of consultant personnel time by sub-module allocated by staff seniority level					

<b>Schedule of Hourly Rates by Consultant Personnel Seniority</b>	
Seniority 1	\$ _____
Seniority 2	\$ _____
Seniority 3	\$ _____
Seniority 4	\$ _____
Seniority [x]	\$ _____

	Total Estimated Hours	Total Estimated Cost
Task A		
Task B		
Task C		
Additional Tasks as proposed		
Total Project		

## APPENDIX E

### EVALUATION PROCEDURES FOR SUBMITTED PROPOSALS

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

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

The weighting of how the technical score will be calculated when evaluating the proposals is presented below:

Demonstrated relevant experience: 39%

Demonstrated organizational capability: 28%

Quality of technical approach: 33%

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

A proposal may be eligible to receive the M/WBE point preference provided that an M/WBE firm is involved with the proposal in a significant way – whether as lead proposer, sub-contractor, co-proposer, or other arrangement. The draft form of legal agreement includes a requirement that the Consultant pursue reasonable best efforts to include an M/WBE sub-contractor, with an economic participation of at least 15% of the total value of the contract. Proposers that already have an M/WBE classification would not be required to retain an M/WBE subcontractor.

The Board reserves the sole discretion to determine which proposals include an M/WBE component that would justify receiving the M/WBE point preference. For example, a consortium of firms submitting a combined bid, in which one firm has an M/WBE designation and the other firms in the consortium do not, and where the M/WBE firm's anticipated participation in the total economic value of the bid is 1%, might not receive an M/WBE point adjustment, on the grounds that the M/WBE participation would be small compared to the total value of the bid. Alternately, a proposal in which M/WBE participation was expected to be 15% of the bid's total economic value, and in which the proposed M/WBE firm would take lead responsibility for several important workstreams, might – in the judgment of the Board – receive

an M/WBE score adjustment. All else equal, larger proposed M/WBE participation, where participation is measured as a percentage of the expected total contract value, is likelier to result in the award of an M/WBE point bonus than lower participation percentages.

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

- The least expensive proposer from among the pool of firms selected based on technical scores will receive additional points equal to 8% of its technical score, including the M/WBE 10-point score adjustment, if applicable.
- The next least expensive technically qualified proposer will receive additional points equal to 6% of its technical score.
- The third least expensive technically qualified proposer will receive additional points equal to 4% of its technical score.
- No further proposers will receive additional points based on price beyond the proposers presenting the three least expensive prices available from all of the opened proposals.
- If there is a tie between firms presenting offers with identical cost proposals, then all firms tied for price will receive the percentage score boost they would be eligible to receive were there no tie for price at the price point in question. In the event of tied price proposals, more than three firms may be awarded additional points based on price. The Board and DEP will calculate total cost for each of the opened proposals, and will have the final discretion to determine the allocation of score adjustments based on price, the ordering of the price proposals, and how price adjustments in the event of tied price proposals will be calculated.
- The maximum score available is 108, which would be the score awarded to a firm achieving a top technical score of 90, receiving an M/WBE 10-point score adjustment, and also submitting the lowest cost proposal from among the pool of firms deemed technically capable of performing the Scope of Work, resulting in an 8% point price score adjustment to its adjusted technical score of 100, for a total of 108.

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

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

Proposer A (an M/WBE): 78 technical points, price \$850,000;

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

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

- Proposer C's raw technical score of 71 is determined to be below the allowable threshold.
- Proposer A's raw technical score is adjusted upward by 10 points to an adjusted technical score of 88, to reflect the firm's M/WBE classification.
- Following awarding of the M/WBE score adjustments and removing those proposals with raw technical scores determined to be too low, a rank order of the proposals based on cost is established indicating, from least to most expensive, Proposer A, Proposer D, and Proposer B.
- The scores of Proposers A, D, and B would be adjusted upward by 8%, 6%, and 4%, respectively, to reflect the relative affordability of their prices.
- The final adjusted scores, with M/WBE and price points included, would be: Proposer A 95.0; Proposer B 84.2, and Proposer D 84.8.
- Contract negotiations would commence with Proposer A.

**Basis for Contract Award:**

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

The Board and DEP may ask a short list of bidders to submit a written best and final offer prior to making a final selection.

**CERTIFICATE OF NON-COLLUSION**

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

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

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

DATE: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

PROPOSER NAME: \_\_\_\_\_

PROPOSER SIGNATURE: \_\_\_\_\_

PROPOSER FIRM: \_\_\_\_\_



**AFFIDAVIT OF PAYMENT OF TAXES**

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

Full name of Proposer or Bidder \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

CHECK ONE AND INCLUDE APPROPRIATE NUMBER:

\_\_\_\_\_ A. Individual or Sole Proprietorship\*  
SOCIAL SECURITY NUMBER

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_ C. Corporation  
EMPLOYER IDENTIFICATION NUMBER

\_\_\_\_\_

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

\_\_\_\_\_  
Title

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

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

To be completed by the City agency prior to distribution Agency \_\_\_\_\_ Transaction ID \_\_\_\_\_

**Check One**

**Transaction Type (check one)**

- Proposal  Award  Concession  Economic Development Agreement  Franchise  Grant  Pension Investment Contract  Contract

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

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York, as will the organizations that own 10% or more of the entity. No other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's PASSPort registration or VENDEX requirements.**

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

**Entity Information**

*If you are completing this form by hand, please print clearly.*

Entity EIN/TIN \_\_\_\_\_ Entity Name \_\_\_\_\_

**Filing Status**

**(Select One)**

**NEW:** Data Forms submitted now must include the listing of **organizations**, as well as individuals, with 10% or more ownership of the entity. Until such certification of ownership is submitted through a change, new or update form, a no change form will not be accepted.

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

**Entity is a Non-Profit**  Yes  No

**Entity Type**  Corporation (any type)  Joint Venture  LLC  Partnership (any type)  Sole Proprietor  Other (specify) \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ E-mail \_\_\_\_\_

*Provide your e-mail address in order to receive notices regarding this form by e-mail.*

**Principal Officers**

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

**Chief Executive Officer (CEO) or equivalent officer**

This position does not exist

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

First Name \_\_\_\_\_ MI \_\_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

This person replaced former CEO \_\_\_\_\_ on date \_\_\_\_\_

**Chief Financial Officer (CFO) or equivalent officer**

This position does not exist

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

First Name \_\_\_\_\_ MI \_\_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

This person replaced former CFO \_\_\_\_\_ on date \_\_\_\_\_

**Chief Operating Officer (COO) or equivalent officer**

This position does not exist

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

First Name \_\_\_\_\_ MI \_\_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

This person replaced former COO \_\_\_\_\_ on date \_\_\_\_\_

**Principal Owners**

Please fill in the required identification information for all individuals or organizations that, through stock shares, partnership agreements or other means, **own or control 10% or more of the entity**. If no individual or organization owners exist, please check the appropriate box to indicate why and skip to the **Senior Managers** section. If the entity is owned by other companies that control 10% or more of the entity, those companies must be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals or organizations that are no longer owners at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Owners."

**There are no owners listed because (select one):**

- The entity is not-for-profit
- The entity is an individual
- No individual or organization owns 10% or more of the entity

Other (explain) \_\_\_\_\_

**Individual Owners (who own or control 10% or more of the entity)**

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

**Organization Owners (that own or control 10% or more of the entity)**

Organization Name \_\_\_\_\_

Organization Name \_\_\_\_\_

Organization Name \_\_\_\_\_

**Remove the following previously-reported Principal Owners**

Name \_\_\_\_\_ Removal Date \_\_\_\_\_

Name \_\_\_\_\_ Removal Date \_\_\_\_\_

Name \_\_\_\_\_ Removal Date \_\_\_\_\_

**Senior Managers**

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

**Senior Managers**

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

**Remove the following previously-reported Senior Managers**

Name \_\_\_\_\_ removal date \_\_\_\_\_

Name \_\_\_\_\_ removal date \_\_\_\_\_

**Certification**

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

Name \_\_\_\_\_ Title \_\_\_\_\_

Entity Name \_\_\_\_\_ Work Phone # \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

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

**What is the purpose of this *Data Form*?**

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

**Why have I received this *Data Form*?**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## *EEO POLICY STATEMENT*

The Contractor, if selected, agrees to the following conditions with respect to the performance of the contract with the Board:

- (i) That the Contractor will not discriminate on the basis of race, creed, color, national origin, sex, sexual orientation, age, disability, or marital status against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force relating to this contract.
- (ii) That all of Contractor's solicitations or advertisements for employees will state that, in the performance of this contract, all qualified applicants will be afforded equal employment opportunities without discrimination on the basis of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status.
- (iii) That the Contractor will, upon request, verify that each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, will not discriminate on the basis of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status and, upon request, further verify that such agency, union, or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- (iv) That the Contractor will comply with the provisions of the Human Rights Law (Article 15 of the Executive Law), including those relating to non-discrimination on the basis of prior criminal conviction and prior arrest, and with all other State and federal statutory and constitutional non-discrimination provisions.

---

Print Name of Firm

---

Signature of Authorized  
Representative

---

Print Name of Authorized  
Representative

**NEW YORK CITY WATER BOARD  
EQUAL EMPLOYMENT OPPORTUNITY (EEO) – STAFFING PLAN**

(Instructions on the following page)

Contractor Name:

**Report Includes – Please select one from the options below:**

- Workforce utilized on this contract
- Contractor’s total workforce

Job Categories	Hispanic/Latino		Not Hispanic or Latino											
			Male						Female					
	Male	Female	White	Black/African American	Native Hawaiian/Other Pacific Islander	Asian	Native American/Alaska Native	Two or More Races	White	Black/African American	Native Hawaiian/Other Pacific Islander	Asian	Native American/Alaska Native	Two or More Races
Senior Level Officials/Managers														
Mid-Level Officials/Managers														
Professionals														
Technicians														
Sales Workers														
Administrative Support Workers														
Skilled Craftsmen														
Operatives Semi-Skilled														
Laborers & Helpers														
Service Workers														
<b>TOTAL</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Journeypersons														
Apprentices														
Trainees														

**Electronic Signature of Service Provider:**  I certify that the information submitted herein is true, accurate and complete to the best of my knowledge.  
**Name** (Please Type): \_\_\_\_\_ **Date:** \_\_\_\_\_

**NEW YORK CITY WATER BOARD**  
**EQUAL EMPLOYMENT OPPORTUNITY (EEO) – STAFFING PLAN**

---

**INSTRUCTIONS**

**General Instructions:** All contractors must complete an EEO Staffing Plan and submit it no later than the date of execution of the contract.

Where the work force to be utilized in the performance of the contract **can** be separated out from the contractor's total work force, the contractor shall complete this form *only for the anticipated work force to be utilized on the contract*. Where the work force to be utilized in the performance of the contract **cannot** be separated out from the contractor's total work force, the contractor shall complete this form for the contractor's *total work force*.

**RACE/ETHNIC IDENTIFICATION:** Definitions of race and ethnicity for purposes of completion of this form are as follows:

- **Hispanic or Latino** - A person having origins in Cuba, Mexico, Puerto Rico, South or Central America.
- **White** - A person having origins of Europe, the Middle East, or North Africa.
- **Black or African-American** - A person having origins in any of the black racial groups of Africa.
- **Native Hawaiian or Other Pacific Islander**- A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- **Asian** - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent
- **American Indian or Alaska Native** – A person having origins in any of the original peoples of North, Central, and South America and who maintain tribal affiliation or community attachment.
- **Two or More Races** - All persons who identify with more than one of the above (Non-Hispanic or Latino) five races.

**DESCRIPTION OF JOB CATEGORIES**

The major job categories used in EEO Staffing Plan are listed below.

**Senior Level Officials and Managers** - Individuals residing in the highest levels of organizations who plan, direct and formulate policies, set strategy and provide the overall direction of enterprises/organizations for the development and delivery of products or services.

**Mid-Level Officials and Managers** - Individuals who receive directions from the Senior Level management and serve as managers, other than those who serve as Senior Level Officials and Managers, including those who oversee and direct the delivery of products, services or functions at group, regional or divisional levels of organizations

**Professionals** - Most jobs in this category require bachelor and graduate degrees, and/or professional certification. In some instances, comparable experience may establish a person's qualifications.

**Technicians** - Jobs in this category include activities that require applied scientific skills, usually obtained by post-secondary education of varying lengths, depending on the particular occupation, recognizing that in some instances additional training, certification, or comparable experience is required.

**Sales Workers** - These jobs include non-managerial activities that wholly and primarily involve direct sales.

**Administrative Support Workers** - These jobs involve non-managerial tasks providing administrative and support assistance, primarily in office settings.

**Skilled Craftsmen** – Includes higher skilled occupations in construction (building trades craft workers and their formal apprentices) and natural resource extraction workers. Examples of these types of positions include: boilermakers; brick and stone masons; carpenters; electricians; painters

**Operatives Semi-Skilled** - Most jobs in this category include intermediate skilled occupations and include workers who operate machines or factory-related processing equipment. Most of these occupations do not usually require more than several months of training. Examples include: textile machine workers;

**Laborers & Helpers** - Jobs in this category include workers with more limited skills who require only brief training to perform tasks that require little or no independent judgment.

**Service Workers** - Jobs in this category include food service, cleaning service, personal service, and protective service activities.