

**THE NEW YORK CITY WATER BOARD**

**REQUEST FOR PROPOSALS  
FOR  
CONSULTANT ON OPERATIONAL EFFICIENCIES**

**DATE OF ISSUE: April 14, 2011**

**AUTHORIZED WATER BOARD CONTACT**

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

Greg Ascierio  
Water Board Counsel  
New York City Water Board  
59-17 Junction Boulevard, 8th Floor  
Flushing, NY 11373-5108  
(718) 595-3607  
gascierio@dep.nyc.gov

## **REQUEST FOR PROPOSALS SUMMARY**

The New York City Water Board (“the Board”) is soliciting competitive sealed proposals from qualified vendors to provide consulting services regarding the operations and maintenance (“O&M”) of the water supply and wastewater system (the “System”) of New York City (the “City”), as defined in the Scope of Services included herein. The contract will be awarded to the contractor(s) offering the best combination of merit and price, as determined by the Board. The contract that results from this Request for Proposals (“RFP”) will combine a fixed-fee contract with performance-based incentives. The contract will be awarded in two phases, as outlined in the Scope of Services. The term of Phase I will be one year, with one additional one-year contract extension at the Board’s option. The term of Phase II will be two years, with two additional one-year contract extensions at the Board’s option. The award of Phase II will be contingent on the contractor(s)’s Phase I performance and will be structured as a performance-based contract.

The major objectives of the Board in seeking consulting services are to procure the services of a contractor(s) that will:

1. Evaluate DEP’s current O&M, reviewing all aspects of DEP’s current responsibilities for potential improvements, but with a particular focus on the areas of energy usage and production opportunities, chemical usage and pricing, and labor efficiencies;
2. Recommend implementable measures for DEP to improve and/or streamline O&M, increasing efficiencies and reducing costs;
3. Prepare a report summarizing findings and present analysis and recommendations to the Board and DEP;
4. Support public outreach, legislative initiatives, and/or other processes required to implement recommendations; and,
5. Work with DEP staff to manage implementation of recommended initiatives.

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**RFP TIMETABLE**

Release Date of the RFP ..... April 14, 2011  
Deadline for Question Submission ..... 3:00 P.M. (EDT), May 2, 2011  
Meeting to Discuss Questions Regarding the RFP ..... 11:00 A.M. (EDT), May 12, 2011  
Proposal Due Date ..... 12:00 P.M. (EDT), May 31, 2011

Proposals are to be delivered to:

Greg Ascierio  
Water Board Counsel  
New York City Water Board  
59-17 Junction Boulevard, 8th Floor  
Flushing, NY 11373-5108  
Email: [gascierio@dep.nyc.gov](mailto:gascierio@dep.nyc.gov)  
Telephone: (718) 595-3607

Oral Presentations (as needed)..... Week of June 13, 2011  
Completion of Evaluation ..... June 24, 2011  
Commencement of Work..... Approximately August 1, 2011

## **SECTION I. BACKGROUND/PURPOSE OF THE RFP**

The Board was created by the New York State Legislature in 1984. Its powers and duties are set forth in the New York City Municipal Water Finance Authority Act (the “Act”) constituting Title 2-A of Article 5 of the Public Authorities Law, as amended. The Board is a public benefit corporation whose primary duty under the Act is to establish and collect water and wastewater rates and charges in an amount sufficient to place New York City’s water supply and wastewater system (the “System”) on a self-sustaining basis. The System is operated and maintained by the Department of Environmental Protection of the City (“DEP”).

With substantial System assets ranging from upstate reservoirs to in-City wastewater treatment plants (“WWTPs”), the Board and DEP seek to optimize the operation and maintenance (“O&M”) of such assets and reduce costs borne by the ratepayers while maintaining or improving the current level of service. Therefore, the Board seeks to procure the services of a contractor or contractors that will provide consulting services focused on improving DEP’s O&M performance, while reducing costs and enhancing operational efficiencies.

## SECTION II. SCOPE OF SERVICES

The Board seeks to procure the services of a contractor or contractors that will provide consulting services regarding the O&M of the System. DEP has three primary operating bureaus that will be the focus of this assignment: the Bureau of Water Supply (BWS), the Bureau of Water & Sewer Operations (BWSO), and the Bureau of Wastewater Treatment (BWT). The overall headcount for these three bureaus totals approximately 4,100.

- BWS is responsible for the supply of water to Hillview Reservoir and the O&M and long-term planning for the City's upstate dams, aqueducts, shafts, reservoirs, water quality testing and watershed protection. To accomplish these tasks, BWS currently has a staff of approximately 850. BWS staff is located at facilities across the watershed and includes a variety of different skills from engineers to watershed maintainers.
- BWSO is responsible for the O&M of and long-term planning for Hillview Reservoir, in-City reservoirs, three City Water Tunnels and appurtenances, 6,600 miles of water mains and 7,400 miles of sewers. To accomplish these tasks, BWSO currently has a staff of approximately 1,300. Field staff (800) is located at garages within the five boroughs; distribution staff (200) is primarily located at Hillview and other Bronx locations; Executive and Engineering staff is located at DEP's offices in Queens.
- BWT is responsible for the O&M and long-term planning for the 14 Waste Water Treatment Plants (WWTPs), 95 pumping stations, four combined sewer overflow facilities (CSO), and 137 miles of intercepting sewers. To accomplish this mission, BWT has an authorized headcount of 1,950. Field staff (1,500) is located primarily at the 14 WWTPs and within collection facilities.

The consulting engagement will be undertaken in two phases. During Phase I, the contractor(s) will evaluate DEP's existing O&M performance and establish benchmarks of DEP's performance by which to judge improvements; recommend measures to improve the delivery of water and sewer services and reduce System expenses; and articulate such recommendations in a written report.

At the conclusion of Phase I, the contractor(s) may be requested to assist in the implementation of some or all of the recommendations as Phase II of the assignment. The award of the Phase II of the engagement will be a performance-based contract contingent on the Board and DEP's satisfaction with the results of the first phase. The Board may request that the selected contractor(s) provide any or all of the services listed in detail below.

**Phase I:** In the first phase of the engagement, the contractor(s) will be expected to:

**Task 1:** Evaluate DEP's current O&M performance and costs, reviewing all aspects for potential improvements including detail on the estimated costs and benefits of the recommendation, but with a particular focus on the following areas:

### **1) Labor: Increase productivity and streamline processes.**

Approximately 47% of the utility's expense budget is related to personnel costs (\$489M of a total fiscal year 2011 budget of \$1,042M). DEP's staff is critical to fulfilling its mission to provide clean safe drinking water and wastewater services. Making sure that DEP's forces are deployed as efficiently as possible will reduce O&M costs, which will result in lower water rate increases for the 835,000 bill-paying customers.

To achieve the objectives of this assignment, DEP will provide metrics, budget data, the work product of previous consulting assignments, and access to senior staff. DEP anticipates that the selected contractor will review and make recommendations in, but not limited to, the following areas:

- a) Identification and alignment of key performance indicators with the efficiency and performance goals of DEP's three operating bureaus: BWS, BWSO, and BWT;
- b) Staff Assignments: including the number and types of staff assigned to specific tasks, the ratio between supervisors and front-line forces, work locations, shift hours and skill-level assignment, organization of staff between drinking water and wastewater tasks, opportunities for administrative consolidation;
- c) Scheduling: including optimizing the order of work performed by field forces (e.g., investigation, assignment, repair), the scheduling of trade titles, the methodology for dispatching crews, and the optimization of forces between preventative maintenance and watch tasks;
- d) Vehicles and Equipment assignments and usage;
- e) Training requirements; and,
- f) Opportunities for contracting out of maintenance tasks.

Based on expertise, the selected contractor(s) may recommend further analyses to yield productivity savings.

### **2) Inventory: Optimize inventory management.**

DEP purchases over \$24 million of spare parts each year. Currently, BWT manages inventories through a bar code system that is tied to the Computerized Maintenance Management System. This system has allowed DEP to share parts across facilities and realize over \$1 million in savings. The selected contractor(s) will review this system and DEP's other inventory management systems, as well as DEP's procurement policies to reduce inventory costs and optimize inventory maintenance.

### **3) Chemicals: Optimize chemical usage, recommend alternative chemicals and improve purchasing procedures.**

To meet drinking water quality and wastewater effluent standards, DEP utilizes chemicals that cost over \$58 million annually. The selected contractor(s) will review the types and volumes of chemicals utilized and make recommendations for DEP to reduce costs while

continuing to meet regulatory requirements. For example, the contractor(s) could evaluate whether there are less expensive alternatives to methanol, ethanol and glycerol for carbon addition. It is anticipated that the contractor(s) will make recommendations that can reduce dosing requirements either through equipment upgrades or through changes to standard operating procedures.

Certain chemicals used by DEP are purchased directly, and some (e.g., sodium hypochlorite) are purchased by the City's Department of Citywide Administrative Services. The selected contractor(s) will evaluate and make recommendations regarding the procurement process of chemicals and the potential for hedging purchasing to achieve potential cost savings.

#### **4) Sludge: Optimize sludge digestion and disposal**

At a cost of more than \$50 million annually, sludge processing and disposal is one of the highest expenses for BWT. BWT currently digests and dewater sludge. The resultant material is between 23% and 28% solids and is disposed of under various contracts priced per ton of sludge removed. Increasing the percentage of solids reduces the hauling costs to DEP. However, there are significant chemical and energy costs to achieving a higher percentage of solids. Together with the current biosolids procurement being undertaken by DEP, the selected contractor(s) will evaluate and propose adjustments that optimize the sludge dewatering process to balance the cost of achieving a high percentage of solids delivered with the disposal costs of the additional tons. (The costs of dewatering include the costs of energy expended on centrifuges, polymer additions and treatment of centrate, etc.)

#### **5) Energy: Achieve energy efficiencies, utilize anaerobic digester gas, and incorporate demand response into operations.**

Energy comprises roughly 10 percent of DEP's operating costs or over \$115M. The launch of several new facilities (e.g., the Catskill/Delaware UV Disinfection Facility) and new processes at existing facilities (e.g., biological nitrogen removal) are expected to increase DEP's energy consumption substantially over the next five years. DEP also faces uncertainty in the procurement costs for electricity, natural gas, and liquid fuels. For example, DEP has traditionally received favorable electricity rates as a government customer of NYPA, but it will face greater uncertainty in the future as a result of cost the expiration of the City's electricity supply contract with NYPA.

This assignment will build on previous work conducted by DEP and its consultants on greenhouse gas reduction and energy efficiency strategy, which includes comprehensive energy audits and desktop analysis of DEP's WWTPs, and DEP's own efforts to benchmark monthly energy consumption and pilot energy saving efforts at all WWTPs.

- a) Efficiency: The selected contractor(s) will review and make recommendations for any additional options for making changes to the wastewater treatment process, which will reduce energy consumption and costs while maintaining DEP's current performance. Ongoing efficiency initiatives within BWT include installation of energy efficient



lighting and turning down or off blowers and Main Sewage Pumps (MSPs) during low-flow periods.

- b) Anaerobic digester gas use: DEP produces approximately 2,300,000 MMBTUs of anaerobic digester gas (ADG) annually as a byproduct of the wastewater treatment process. It is one of the largest sources of greenhouse gases as well as a potential valuable fuel for the production of heat and/or power. For example, at the Newtown Creek WWTP, DEP is currently in negotiations to sell its excess digester gas, and at other facilities, DEP uses ADG as a boiler fuel for heat production or as a primary fuel for power generation from fuel cells, turbines, or engines. However, much of the ADG remains unused and is vented or flared. The contractor(s) will review DEP's existing capital program related to ADG utilization.
- c) Energy management: The contractor(s) will review DEP's energy procurement policies for electricity, natural gas and liquid fuels. For electricity, the focus will be on DEP's participation in peak load management programs, prospects for participation in demand response programs while meeting air permit compliance, and the mitigation of rising electricity costs for DEP. For liquid fuels, the focus will be on the procurement, storage, and usage of liquid fuels for upstate facilities. For natural gas, the contractor(s) will propose an integrated analysis of the utility's position as a producer of ADG and consumer of utility gas. The contractor(s) will assist DEP in identifying any offsetting or hedging of energy costs, which will reduce the expenses of the utility.

Each evaluation should include a review of current O&M practices with an estimate of related expenses. As discussed above, DEP has many O&M initiatives underway; a list of current projects will be provided to the contractor(s) prior to the commencement of work so that the O&M effects of such initiatives can be accounted for the contractor(s)' study. Additionally, the contractor(s) should use the results of consulting studies previously undertaken by DEP to inform this evaluation.

For additional examples of DEP O&M initiatives identified by DEP's operating bureaus, please see the attached matrix in Appendix A. Some of the initiatives listed have been implemented, some are underway, and others are concepts under consideration. For example, several ongoing labor efficiencies currently being considered or implemented by DEP include:

- The use of machinists' assistants to support Water Distribution Operations inspections of regulators and valves;
- Reduction in the staffing ratios for the Watch function at the dewatering facility to one or two Sewage Treatment Workers per shift as a result of automation;
- Reduction in more expensive weekend staffing at the Rockaway and Coney Island WWTPs in the summer and performance of current weekend functions during the night shift;
- Consolidation of the Jamaica Dewatering at the 26<sup>th</sup> Ward Dewatering facility; and,
- Consolidation of clerical staff by introducing new programs such as CityTime to

reduce timekeeping efforts and implementing new technology such as iPads to enable and streamline the capture of sample data remotely.

A full review of the initiatives already implemented or underway should not be performed by the contractor(s); however, if the contractor(s) has additional or alternative recommendations related to these initiatives, the recommendations would be welcomed by DEP and the Board as part of the analysis. The contractor(s) is asked to review and make any recommendations on all of DEP's initiatives in the conceptual stage as part of the thorough review of DEP's O&M.

**Task 2:** Recommend implementable measures for DEP to improve and/or streamline O&M, increase efficiencies, and reduce costs. Each recommendation should quantify the potential impact on expenses as well as any barriers to implementation. (The impact of current O&M initiatives should also be reflected the contractor(s)' recommendations.) Barriers to implementation may include collective bargaining agreements, statutory prohibitions, and capital investments. For recommendations that may require a capital investment, the contractor(s) will assist in the development of a business case to secure funding through DEP's asset management and capital investment planning process.

**Task 3:** Prepare a written report summarizing findings; present analysis and recommendations to the Board and DEP. All recommendations should be articulated in steps that lay out a clear path for implementation.

At the end of Phase I, DEP and the contractor(s) will review all recommendations of the contractor(s) and determine which should be considered for implementation in Phase II and presented to the Board for approval in its assignment of Phase II. As detailed more thoroughly under the "Price Proposal" section herein, if retained for Phase II, the contractor(s) will be eligible for performance-based compensation for the initiatives they have proposed or substantially amended.

**Phase II:** In the second phase of the engagement, the contractor(s) will be expected to:

**Task 1:** Work with DEP staff to implement recommended initiatives, providing assistance and oversight to DEP management as needed.

**Task 2:** Support public outreach, legislative initiatives and/or other processes required to implement recommendations.

Information gathered during all stages of this assignment will be deemed confidential, and all work products will be owned by DEP and the Board.

## **SECTION III. PROPOSAL PROCEDURES AND REQUIREMENTS**

### **A. PROPOSAL EVALUATION PROCEDURES**

#### **1. Evaluation Procedures**

The evaluation committee will be comprised of a minimum of three persons qualified to evaluate the components of this solicitation.

#### **2. Evaluation Committee Procedures**

- a. All proposals received on or before the proposal due date and time at the location specified herein will be evaluated to determine whether they meet all of the minimum submission requirements set forth herein.
- b. The evaluation committee will make a determination to: (1) recommend award of a contract based on initial proposals; or (2) conduct discussions/negotiations with all or a “short list” of proposing contractors (“proposers”). In the case that the determination is made to conduct discussions/negotiations with all or a “short list” of proposers:
  - The Board may require proposers to give oral and/or visual presentations in support of their proposals or to exhibit or otherwise demonstrate the information contained therein.
  - Upon completion of the discussions/negotiations, the evaluation committee may request that all proposers still under consideration for award submit a best and final offer by a common due date and time.
  - The evaluation committee will evaluate, rate and rank the best and final offers by applying the evaluation criteria set forth herein.
- c. Contract award is subject to Board approval.

#### **3. Minimum Qualifications and Submission Requirements**

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

- a. The proposer must:
  - 1) Have a minimum of five years of experience in operating water and wastewater facilities. This must be based on the contractor or contractor(s) experience.
  - 2) Have a minimum of three years of experience in providing comparable consulting services on engagements reviewing O&M. This may include company experience and management and staff experience.

- 3) Demonstrate past engagements with a scope similar to that described herein.
  - 4) Provide at least three business or governmental references.
- b. The proposal must be responsive to the following minimum submission requirements:
- 1) Cover Letter
  - 2) Technical Proposal
  - 3) Statement of Qualifications
  - 4) Price Proposal
  - 5) Acknowledgment of Addenda
  - 6) Certificate of Non-Collusion
  - 7) Affidavit of Payment of Taxes

#### **4. Evaluation Criteria and Relative Weights**

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

Merit will be determined as follows:

- a. Merits of Technical Proposal – 55%  
Description of:
  - Services to be provided in Phase I – 20%
  - Services to be provided in Phase II – 35%
- b. Structure of price proposal – 15%
- c. Statement of Qualifications – Experience and Capability – 30%
  - Experience as utility operator – 15%
  - Experience on similar consulting engagements – 15%

## **B. PROPOSAL PACKAGE**

The proposal package should contain the following:

### **1. Proposal Cover Letter**

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

- a. The proposer's name, address and Federal Employer ID Number.
- b. Name, title, telephone number, and email address of the individual who is authorized to commit the proposer to a contract.
- c. Name, title, telephone number, and email address of the individual who is to be contacted regarding the content of the proposal, if different from above.
- d. The name, address and Federal Employer ID Number of the subcontractor(s), if applicable.
- e. The signature of the individual authorized to commit the proposer to the proposal.

### **2. Technical Proposal**

The technical proposal is a clear, concise narrative that addresses the proposer's overall concept and incorporates all requirements specified in SECTION II - SCOPE OF SERVICES. At a minimum, the following information should be included:

- a. A description of the services to be provided.
- b. A description of how the proposer will meet the Board's goals.

The technical proposal may include any other information the proposer deems relevant.

### **3. Statement of Qualifications**

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

- a. List experience operating a utility that provides water and wastewater services; at a minimum, include experience gained in the past five years. Please note any specific initiatives undertaken with regards to energy, chemicals, and labor that would be relevant to this RFP's Scope of Services. Please note which individuals from the team proposed below were involved with utility operations.

- b. List O&M consulting engagements of the proposer during the last three years, at a minimum. Please note which projects focused on water and sewer O&M and energy, chemicals and/or labor management. Please provide specific examples of O&M recommendations that were implemented and the proposer's level of involvement in the implementation. Please note which individuals from the team proposed below were involved with each project. Also include detailed case studies for three such projects; the case studies may be included in an appendix.
- c. Show a chart of the project organization with names and titles, including the name of the day-to-day project manager. Please designate the individual(s) who would have primary responsibility for day-to-day consulting services and the individual(s) who would provide primary backup.
- d. List personnel to be assigned to the project, including each person's function on the project and a brief description of his/her qualifications and professional experience as applicable for specific tasks in SECTION II - SCOPE OF SERVICES. For each individual, include professional title and contact information and submit a detailed resume in an appendix.
- e. Provide at least three references for clients who have worked with the primary individuals who will work for the Board. Include issuer name and contact person, with phone number and email address.
- f. Discuss the proposer's organizational structure and stability and any characteristics or other substantive information that would distinguish the proposer's ability to serve the Board in relation to SECTION II - SCOPE OF SERVICES.
- g. State whether the proposer maintains its headquarters, or other offices, in the City of New York and the number of the proposer's employees who are employed in the City.
- h. Describe the proposer's professional relationships with the City.
- i. Disclose any conflict of interest:
  - (i) Any material relationships that the proposer or any employee of the proposer has with any existing contractors to 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;
  - (ii) Any family relationship that any employee of the proposer has with the Board (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; and
  - (iii) 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.

Please describe any procedures the proposer either has, or would adopt, to assure the Board that a conflict of interest would not exist for the proposer in the future.

- j. 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.
- k. 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.
- l. 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.
- m. 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.
- n. Describe any litigation or administrative proceedings to which the proposer is a party, which, if decided in an adverse manner, would either materially impair the proposer's ability to perform the services enumerated herein and for which this RFP was issued.

**If applicable, a like statement of qualifications of each subcontractor should be included.**

In addition, the proposer may submit any other materials that will allow the Board to better evaluate the organization (e.g., letters of reference/recommendation, awards, etc.). Such materials, as well as items "h" through "n" above may be included in an appendix.

#### **4. Price Proposal**

The price proposal is a presentation of the details of the proposer's offering price. These costs should be shown for the full contract term.

With regard to fees, the Board has a strong preference for an hourly billing structure, combined with a performance-based incentive. The hourly compensation should be at a minimal level, with further performance-based compensation to be received based on a percentage of O&M savings recognized as savings are realized during the first full fiscal year following implementation. Performance-based compensation will be received based on the savings results of Phase II of the engagement.

Indicate whether such a fee arrangement is acceptable and provide a fee schedule and hourly estimate for each phase, task, and major activity of the engagement. Please also provide a proposed compensation formula (i.e., a percentage of recognized savings at which the proposer would expect to be compensated) for the performance-based portion of the contract. The performance-based compensation proposal should include an annual not-to-exceed amount.

If such a combination of an hourly billing structure and performance-based compensation is not acceptable, provide an alternative price proposal. The price proposal must contain the cost for the entire project and cost breakdowns by phase, task, and major activity.

Please include an estimate of expenses relative to total fees.

The selected contractor(s) will be required to provide detailed hourly billing information monthly, sorted by assignment, as a basis for keeping track of consulting fees as they accrue and for planning for workload and consulting costs in subsequent periods. Indicate whether the proposer has internal accounting and billing systems that would make such detailed invoicing possible.

**The Price Proposal should be submitted in a separate, sealed envelope, clearly labeled "Price Proposal."**

**The price proposal should be irrevocable for one hundred eighty (180) days from the date of the opening of price proposal.**

**The proposer's authorized representative must sign the price proposal.**

#### **5. Required Board Documents**

The following documents, attached as Appendices C through E, will be completed and submitted by the proposer and, if applicable, each proposed subcontractor, in conjunction with the proposal package:



- a. Acknowledgment of Addenda (See Appendix C. This form serves as the proposer's acknowledgment of the receipt of addenda that may have been distributed by the Board prior to the proposal due date.)
- b. Certificate of Non-Collusion (See Appendix D.)
- c. Affidavit of Payment of Taxes (See Appendix E.)

**C. PROPOSAL PACKAGE SUBMISSION REQUIREMENTS**

- 1. Proposal packages are due on or before the proposal due date at the location prescribed in the RFP Timetable.
- 2. Proposers should deliver one (1) original and seven (7) copies of the proposal package. To prevent waste, proposers are strongly encouraged to print and/or copy responses on both sides of the page.
- 3. The price proposal, one (1) original, should be enclosed in a separate sealed envelope within the proposal package.
- 4. Only one copy of the Acknowledgment of Addenda, Certificate of Non-Collusion, and Affidavit of Payment of Taxes is required.
- 5. Proposers are advised that there is a twenty (20) page limitation for proposals, excluding appendices, and are advised to be concise in the amount of information they submit.
- 6. The outer envelope enclosing any materials submitted in response to this RFP should be addressed as follows:

FROM: Proposer Name/Address

TO: Greg Ascierio  
Water Board Counsel  
New York City Water Board  
59-17 Junction Boulevard, 8th Floor  
Flushing, NY 11373

RFP FOR: Consulting Services

- 7. Proposer will be responsible for informing any commercial delivery service, if used, of all delivery requirements and for ensuring that the information required in item "6", above, appears on the outer envelope used by such service.
- 8. A full, electronic copy of the proposal package should also be emailed to [gascierio@dep.nyc.gov](mailto:gascierio@dep.nyc.gov) or delivered on a CD with the hard copy submission.

## **SECTION IV. GENERAL INFORMATION**

### **1. STATUS OF INFORMATION**

- a. The Board will not be bound by any oral or written information released prior to the issuance of the RFP.
- b. The Board will not be bound by any oral or written representations, statements, or explanations other than those made herein, in Board written responses to contractor inquiries, or in formal written addenda to this RFP.

### **2. COMMUNICATION WITH DEP OR THE BOARD**

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

### **3. QUESTIONS REGARDING THE RFP**

- a. All inquiries regarding this solicitation will be emailed to the Board's designated contact person by 3:00 P.M. (EDT) on May 2, 2011, indicating "Consulting RFP Question" in the subject line.
- b. A meeting to review questions submitted will be held at DEP's headquarters at 59-17 Junction Boulevard, Flushing, NY 11373, at 11:00 A.M. (EDT) on May 12, 2011. Via email, please register all attendees with the Board's designated contact person by 11:00 A.M. (EDT) on May 10, 2011. Each proposer is limited to two attendees.
- c. To receive written responses to any questions submitted, please register the proposer and the proposer's representative contact with the Board by providing an email address to the Board's designated contact person by 3:00 P.M. (EDT) on May 2, 2011.

### **4. ADDENDA TO THE RFP**

- a. The Board will issue responses to inquiries related to substantive issues and any other corrections or amendments to the RFP that it deems necessary prior to the proposal due date in the form of written addenda. Such addenda will be posted on the Board's website: [www.nyc.gov/nycwaterboard](http://www.nyc.gov/nycwaterboard).
- b. It is the proposer's responsibility to assure receipt of all addenda. The proposer should verify with the Board's designated contact person prior to submitting a proposal that all addenda have been received. Proposers should acknowledge the number of addenda received as part of their proposals.

### **5. SUBCONTRACTING**

If any part of the work covered by the RFP is to be subcontracted, the proposer should identify the subcontractor by furnishing its corporate name and the names of its officers.

Any subcontracts are subject to approval as set forth in the Board's General Provisions Governing Contracts for Consultants, Professional and Technical Services. (See Appendix B.) The selected proposer will be responsible for all work covered herein and is the sole contact regarding contractual matters.

**6. MODIFIED PROPOSALS**

- a. The proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the proposal due date and time and, if applicable, up until the due date and time set for the submission of best and final offers.
- b. The evaluation committee will consider only the latest, timely-submitted proposal.

**7. WITHDRAWAL OF PROPOSALS**

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

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

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

**9. CONFIDENTIAL/PROPRIETARY INFORMATION**

- a. The proposer should specifically identify those portions of the proposal deemed to be confidential, proprietary information, or trade secrets and provide any justification why such material, upon request, should not be disclosed by the Board.
- b. Such information deemed by the proposer to be confidential/proprietary should be easily separable from the non-confidential/non-proprietary sections of the proposal.
- c. The Board is subject to the provisions of the Freedom of Information Law (FOIL), N.Y. Public Officers Law, Sections 84 through 90, relating to public access to agency records. The Board accepts no responsibility for disclosure of information designated as exempt from disclosure, but the Board does intend to evaluate, on a case by case basis, whether exemption from disclosure applies at such time as a FOIL request is made to the Board for examination of such a proposal.

**10. COSTS INCURRED BY PROPOSERS**

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

## **11. ORAL PRESENTATIONS AND/OR INTERVIEWS**

Proposers ranking highly according to the criteria established in Section III A 4. may be invited to give oral and/or visual presentations in support of their proposals or to exhibit or otherwise demonstrate the information contained therein. Such conference calls or presentations would be held during the week of June 13, 2011. The Board's designated contact person will schedule the time and location of these presentations.

## **12. DISCUSSIONS/NEGOTIATIONS/BEST AND FINAL OFFERS**

- a. The Board reserves the right to award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the proposer's best terms from a technical and cost standpoint.
- b. The Board reserves the right to enter into discussions/negotiations with one or more proposers and to request the submission of best and final offers from those proposers, who after the conclusion of such discussions/negotiations, are still under consideration for award. No proposer will have any rights against the Board arising from an invitation to enter into discussions/negotiations or to submit a best and final offer.

## **13. PROPOSER ACCEPTANCE OF RFP & CONTRACT PROVISIONS**

The submission of a proposal signifies that the proposer intends to compete for the award of the particular contract and that the proposer understands and accepts that the terms and conditions specified herein, and the General Provisions Governing Contracts for Consultants, Professional and Technical Services attached in Appendix B will become part of the final contract.

## **14. CONTRACT AWARD**

- a. The Board reserves the right to award the contract to other than the proposer offering the lowest overall cost.
- b. The contract(s) resulting from this solicitation will be awarded to the qualified proposer(s) whose proposal(s) offers the best combination of merit and price as determined by the Board, based on the evaluation factors set forth herein.

## **15. RFP POSTPONEMENT/CANCELLATION**

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

## **16. COMPLIANCE INFORMATION AND EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS**

The successful proposer will comply with the equal employment opportunity requirements contained in Appendix B. Non-compliance with any of the provisions will result in the disqualification or rejection of a proposal at the Board's sole discretion.

The Board will only contract with contractors, which do not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions. The Board encourages proposals from women-owned and minority-owned businesses and from small and City-based businesses.

## **17. COMPLIANCE WITH VENDEX REQUIREMENTS**

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

## **18. LIMITATIONS OF LIABILITY**

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

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

**19. AFFIDAVIT OF PAYMENT OF TAXES**

All proposers should file with their proposals an affidavit, which affirms that the proposer has paid all applicable City income, excise, and other taxes, charges and fees for every year in which it has conducted business activity in the City. (See Appendix E.)

All proposers should also affirm and declare that they are not in arrears to the City of New York upon any debt, tax or contract, and are not in default, as a surety or otherwise, upon any obligation to the City or State of New York, or to any public authority, and have not been declared not responsible or disqualified by any agency of the City or the State of New York, or by any public authority, and that there is no proceeding pending against the proposer relating to the responsibility or qualification of the proposer to receive public contracts.

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

All proposers should file with their proposals a certificate of non-collusion, which affirms that the proposer has made an independent price offering without any collusion from competing proposers. (See Appendix D.)

**21. EXCEPTIONS TO RFP**

Any deviation from the legal or technical requirements contained herein must be stated in the proposal and separately listed and referenced on a separate sheet attached to the proposal and entitled “Exceptions”. Failure to list exceptions separately in the “Exceptions” attachment will be deemed to constitute consent to all such terms and conditions herein and will constitute a binding waiver by the proposer of all exceptions not listed. A general exception or reservation to the legal or technical terms and conditions will be deemed a nullity and may also result in the Board rejecting the proposal as non-responsive.

The contract to be entered into will incorporate the terms in the Board's General Provisions Governing Contracts for Consultants, Professional and Technical Services. (See Appendix B.) Submission of a proposal constitutes consent to these standard terms and conditions. Any exceptions must be explicitly stated in the proposal and separately listed in the attachment entitled “Exceptions.”

**22. CONTRACT NEGOTIATIONS**

Upon selection, the successful proposer will be invited to negotiate a contract with the Board. The contents of the selected proposal, together with the RFP, may be incorporated into and made part of the final contract. Should negotiations fail to result in a signed contract within a reasonable period of time as defined by the Board, the Board reserves the right to terminate negotiations and select another proposer, issue a new RFP, or take any other action consistent with the best interests of the Board.

The Board will not consider execution of the proposer's standard contract.

**23. TAXES**

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

**24. PUBLICITY AND COMMUNICATIONS**

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

**APPENDIX A**  
**DEP Operations and Maintenance Initiatives**

<b>BWS</b>			
<b>LABOR PRODUCTIVITY (WSM Functions)</b>			<b>Underway/ Conceptual</b>
1	Aqueduct / Dam Mowing	Are staffing ratios correct? Number of supervisors to WSM.	C
2	Road Repairs	For snow plowing, do we need two people?	C
3	Tree Removal - Aqueducts, Dams, Dikes	What cycle should this task be performed on?	C
4	NYC Owned Land - Inspections	Can aerial analysis be done by the Police Helicopter? Can the Police do more of the enforcement of conservation easements?	C
5	Reservoir Debris - Collection & Disposal	Are we sending the right staff with the right skills to perform this function?	C
6	Dam Inspections / Observations	Can the police assist with observations as part of sector patrols?	C
7	Maintenance of Facilities	What is the right mix between trade titles and WSMs? There is significant variations between East & West of what title does what function. For example, EOH oilers perform tasks done by WSMs WOH.	C
8	HVAC	WSMs have grieved out of performing boiler maintenance, requiring SEE staff (which is thin) to perform. How can this be improved?	C
9	Janitorial Services	How should janitorial tasks be staffed, WSMs, contract operations or part-time custodial staff?	C
10	Shaft 18 & Kensico Fluoride Supervisor/WSM Ratios	How can we change the shifts at Shaft 18, so that they are not scheduled for 16 hour shifts?	C
11	Wastewater Treatment Plant Staffing	What are the right number of WSMs per shift? Are we performing PM and Watch efficiently?	C
12		Is it cost effective to haul upstate sludge to Hunts Point? Should this be done with DEP staff or with a contractor?	C
13	Hazardous Material Response (Watershed/BWS facilities)	Given that Haz-Mat staff are primarily Construction Project Managers, would it be more appropriate to use a contractor for Haz-Mat response and reprogram the current staff to more appropriate tasks?	C
14	Geographical Reporting Locations (Eastern Operations)	Eastern Operations is located in a variety of barns and sheds. Can we sell this property to consolidate staff in a new facility? This would improve overall supervision and reduce maintenance costs of the buildings.	C
15	Standardize CMMS Systems	Upstate uses MP2 for some of its operations, but even in locations with active systems its use is inconsistent. How can we get the most out of the current system? Should the system be transitioned to the new Avantis program that will be used by UV?	C
<b>CHEMICALS</b>			
16	Fluoride	Is there a better procurement method?	C
17	Chlorine	How can we optimize chlorine dosing to meet regulatory requirements?	C
<b>WATER QUALITY OPERATIONS</b>			
18	Research Staffing	What is the appropriate mix between contract labs and in-house labs?	C
19	# & Location of Laboratories	Are we doing our sampling runs efficiently? Does the shuttle service make sense?	C
20	Staffing Ratio for Field Operations	Are the right number of staff assigned to take samples in the field?	C
<b>WATERSHED PROTECTION PROGRAMS</b>			
24	Staffing for Land Acquisition Program	Are we efficiently staffed to achieve the agency's goals? As less land can be solicited, do we need the same levels.	C
25	Permit Program		
26	# of Regulatory Inspections		
<b>ADMINISTRATION BWS</b>			
27	Administrative Facility Support: Kingston	What additional consolidations and efficiencies can be achieved?	C
28	Data Entry & Storage	Centralize data on reservoirs, land, dams purchased through the LAP.	C
<b>BWSO</b>			
<b>LABOR PRODUCTIVITY</b>			<b>Underway/ Conceptual</b>
30	Sewer Maintenance	Reorganization of Night Operations underway.	U
		How can we effectively mine our current data to ensure we are reducing SBUs and flooding related to maintenance issues.	C
31	Water Maintenance	Are the locations of the field yards efficient? Evaluation of how the absorption of hydrant flushing and leak detection units into water maintenance has improved service.	C
32	Repairs	Should there be more contracting-out of major repairs for catch basins or other types of work?	C
33	Distribution Operations	Reorganization of to use Machinist helpers instead of construction laborers to support the Machinists in regulator rebuilds.	U
34	Construction	Can the inspection forces for the emergency contract and permitting be consolidated?	C
35	Training	Does it make sense to create a training facility for field forces?	C



**APPENDIX A**  
**DEP Operations and Maintenance Initiatives**

37	Data	What is the most effective way to manage CCTV data reels, plan files, etc.?	C
38	Asset Management	How can we more effectively mine the data to efficiently improve our service to customers and our maintenance of the assets?	C
<b>BWT</b>			
<b>LABOR PRODUCTIVITY</b>			<b>Underway/ Conceptual</b>
39	Trades	Our skilled trades staff (electricians and machinists) are assigned to specific locations; they each report to the same plant essentially every day. CMMS now allows us to better track labor hours. Can efficiencies be achieved through centralization and deployment of trades staff?	C
40	STW Watch	As automation increases, the need for round-the-clock operations staffing is decreasing, because Ops STWs have fewer physical measurements which they need to collect. We have been giving Ops STWs some maintenance work to fill their 8-hr day. Does it make more sense to consolidate/reduce Watch staff, and have all maintenance done by Day staff?	C
41	STW Maintenance	About 40% of the maintenance at our wastewater treatment plants is contracted out; we currently have 98 Requirements Contracts to do specific tasks, like centrifuge and elevator maintenance. The remainder is performed by in-house staff. Is this the right balance, or is there something more optimal?	C
42	Pump Stations	DEP has 95 wastewater pump stations, most of which are not manned. Are there more effective methods for deploying our collection forces to reduce the number of dry-weather by-passes or reduce their duration when they occur?	
<b>CHEMICALS/ENERGY/BIOSOLIDS</b>			
43	Chemical Type	Are there cheaper chemicals that can be used for the various parts of the operation that can replace sodium hypochlorite, sodium hydroxide, ferric chloride, methanol, ethanol, glycerol, and various polymers?	C
44	Chemical Dosing	Can savings be achieved by implementing practices or upgrading certain equipment that can reduce chemical dosages while achieving the same treatment levels?	C
45	Energy	Are there ways to reduce demand charges for electrical power?	C
46	Biosolids	Are there methods to achieve thicker sludge and cakes, thereby reducing volumes and transportation requirements, that result in a net savings?	C

## **APPENDIX B**

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

#### **ARTICLE 1. DEFINITIONS**

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

- A. "Board" shall mean the New York City Water Board.
- B. "City" shall mean the City of New York, New York.
- C. "Consultant" shall mean \_\_\_\_\_.
- D. "DEP" shall mean the New York City Department of Environmental Protection.
- E. "Executive Director" shall mean the Executive Director of the Board or his duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his authority.
- F. "Law" or "Laws" shall mean any Federal, State or Local Law, Ordinance, Rule or Regulation having the force of Law.

#### **ARTICLE 2. REPRESENTATIONS AND WARRANTIES**

##### **2.1 PROCUREMENT OF AGREEMENT**

- A. The 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.
- B. For a breach or violation of such representations or warranties, the Executive Director shall have the right to annul this Agreement without liability, entitling the Board to recover all monies paid hereunder and the 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.

## 2.2 CONFLICT OF INTEREST

The Consultant represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Consultant further represents and warrants that in the performance of this Agreement no person having such interest or possible interest shall be employed by it. No officer or employee of the Board shall participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Agreement or in the proceeds thereof. It shall not be deemed a conflict of interest if the Consultant or any director, officer or employee of the Consultant has a water and sewer account with NYCWB and payments made on such account are covered by this Agreement.

## 2.3 FAIR PRACTICES

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

- A. The prices in this Agreement have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- B. Unless otherwise required by Law, the prices which have been quoted in this Agreement and on the proposal submitted by the Consultant have not been knowingly disclosed by the Consultant prior to the proposal opening, directly or indirectly, to any other bidder or to any competitor; and
- C. No attempt has been made or will be made by the Consultant to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

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

### **ARTICLE 3. AUDIT BY THE BOARD**

- 3.1 All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the Board and by the Comptroller's Office of the City in accordance with applicable Law.
- 3.2 The Consultant shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be reasonably required by the Board so that it may evaluate the reasonableness of the charges and shall make its records available to the Board as the Board considers necessary.
- 3.3 All books, vouchers, records, reports, cancelled checks and any and all similar material directly or solely related to this Agreement may be subject to periodic inspection, review and audit by the Board. Such audit may include examination and review of the source and application of all funds whether from the Board, the City, any State, the Federal Government, private sources or otherwise.
- 3.4 The Consultant shall not be entitled to final payment under the Agreement until all requirements have been satisfactorily met.

### **ARTICLE 4. COVENANTS OF THE CONSULTANT**

#### **4.1 EMPLOYEES**

- A. All experts or consultants or employees of the Consultant who are employed by the Consultant to perform work under this Agreement are neither employees of the Board nor under contract to the Board and the Consultant alone is responsible for their work, direction, compensation and personal conduct while engaged under the Agreement. Nothing in this Agreement shall impose any liability or duty on the Board for the acts, omissions, liabilities or obligations of the Consultant, any person, firm, company, agency, association, corporation or organization engaged by the Consultant as expert, consultant, independent Consultant, specialist, trainee, employee, servant, or agent, or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security, or, except as specifically stated in this Agreement, to any person, firm, or corporation.
- B. The Consultant shall be solely responsible for all physical injuries or death to its agents, servants or employees or to any other person or damage to any property sustained during its operations and work on the project under this Agreement to the extent resulting from any negligent or wrongful act of omission or commission or error in judgment of any of its officers, trustees,

employees, agents, servants, or independent Consultants, and shall hold harmless and indemnify the Board, the City, and DEP from liability upon any and all claims for damages on account of such injuries or death to any such person or damages to property on account of any negligent act, error, or omission of the Consultant, its officers, trustees, employees, agents, servants or independent Consultants. The Consultant shall be solely responsible for the safety and protection of all of its employees while they are engaged in the performance of this Agreement. The Board shall provide the Consultant with prompt notice of any such claims, full cooperation in the defense of any such claims, and the assignment of the right to defend and/or settle any such claims.

C. Workers' Compensation and Disability Benefits

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

D. Unemployment Insurance

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

E. Minimum Wage

Except for those employees whose minimum wage is required to be fixed pursuant to Section 220 of the Labor Law of the State of New York, all persons employed by the Consultant in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by law, not less than the minimum wage as prescribed by law. Any breach or violation of the foregoing shall be deemed a breach or violation of a material provision of this Agreement.

4.2 INDEPENDENT CONSULTANT STATUS

The Consultant and the Board agree that the Consultant is an independent Consultant and not an employee of the Board, and that in accordance with such status as independent Consultant, the Consultant covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the Board, by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Board, including, but not limited to,

Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership credit.

#### 4.3 INSURANCE

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

- (1) Workers' Compensation/Disability Benefits: In statutory amounts.
- (2) Employer's Liability: The greater of statutory amounts or \$1,000,000 for each occurrence.
- (3) Commercial General Liability (including Owner's Protective Liability): A minimum of \$1,000,000 per occurrence and an annual aggregate of not less than \$2,000,000. The maximum deductible or self-insured retention ("SIR") for the Commercial General Liability policy shall be \$10,000.
- (4) Automobile Liability: A combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- (5) Umbrella/Excess Liability: A minimum of \$5,000,000 on a per occurrence and aggregate basis; this shall be in excess of primary general, automobile and employer's primary liability limits.
- (6) Professional Liability/Errors & Omissions Insurance: Professional liability ("PL") and/or errors and omissions ("E & O") insurance policies shall be written with a minimum amount of \$2,000,000 per claim and in the aggregate.

Such policy or policies of insurance shall be obtained from a company or companies, duly licensed to do business in the State of New York and the General Liability and Automobile Liability insurance policies shall name the Board as an additional insured thereunder. Such policies shall provide that in the event of cancellation thereof the Board shall be notified at least fifteen (15) days in advance thereof. Two (2) certificates of insurance shall be delivered to the Executive Director for approval as to form prior to the effective date of this Agreement.

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

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

#### 4.4 PROTECTION OF BOARD PROPERTY

- A. The Consultant assumes the risk of, and shall be responsible for, any loss or damage to Board or DEP property, including property and equipment leased by the Board or DEP, used in the performance of this Agreement and to the extent caused, whether directly or indirectly, by the acts, conduct, omissions or lack of good faith of the Consultant, its officers, managerial personnel and employees, or any person, firm, company, agent or others engaged by the Consultant as expert, consultant, specialist, or subconsultant hereunder.
- B. In the event that any such Board or DEP property as described in subsection A immediately above is lost or damaged, except for normal wear and tear, then the Board shall have the right to withhold further payments hereunder for the purpose of set-off, in sufficient sums to cover such loss or damage.
- C. The Consultant agrees to indemnify the Board or DEP and hold it harmless from any and all liability or claim for damages due to any such loss or damage to any Board or DEP property described in subsection A above.
- D. The rights and remedies of the Board provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

#### 4.5 CONFIDENTIALITY

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

#### 4.6 BOOKS AND RECORDS

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

#### 4.7 RETENTION OF RECORDS

The Consultant agrees to retain all books, records, and other documents relevant to this Agreement for six years after the final payment or termination of this Agreement, whichever is later, with said materials to be offered to DEP or

destroyed at DEP's discretion at such time. Officers and employees of the Board and any other persons duly authorized by the Board shall have full access to and the right to examine any of said materials during said period at reasonable times.

#### 4.8 COMPLIANCE WITH LAW

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

#### 4.9 INVESTIGATIONS

- A. The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the State of New York or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry.
- B. (1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State of New York, or;
- (2) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or New York State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract or license entered into with the City, New York State, or any political subdivision thereof or any local development corporation within the City, then;
- C. (1) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days' written



notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

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

D. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

- (1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the Board; and/or
- (2) The cancellation or termination of any and all such existing Board contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the Board incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the Board.

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

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

(b) 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.

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

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

F. (1) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as matter of right.

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

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

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

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

#### 4.10 ASSIGNMENT

A. The Consultant shall not assign, transfer, convey or otherwise dispose of this Agreement or of Consultant's rights, obligations, duties, in whole or in part, or of its right to execute it, or its right, title or interest in it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, unless prior written consent of the Executive

Director shall be obtained. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.

- B. Failure of the Consultant to obtain any required consent to any assignment shall be cause for termination for cause, at the option of the Executive Director; and if so terminated, the Board shall thereupon be relieved and discharged from any further liability and obligation to the Consultant, its assignees or transferees, and all monies that may become due under the Agreement shall be forfeited to the Board except so much thereof as may be necessary to pay the Consultant's employees.
- C. The provision of this clause shall not hinder, prevent, or affect an assignment by the Consultant for the benefit of its creditors made pursuant to the Laws of the State of New York.
- D. This Agreement may be assigned by the Board to any corporation, agency or instrumentality having authority to accept such assignment.

#### 4.11 SUBCONTRACTING

- A. The Consultant agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Agreement without the prior approval of the Executive Director. Such approval shall not be unreasonably withheld. Two copies of each such proposed subcontract shall be submitted to the Executive Director with the Consultant's written request for approval. All such subcontracts shall contain provisions specifying:
  - (1) that the work performed by the subconsultant must be in accordance with the terms of the Agreement between the Board and the Consultant;
  - (2) that nothing contained in such Agreement shall impair the rights of the Board;
  - (3) that nothing contained herein, or under the Agreement between the Board and the Consultant, shall create any contractual relation between the subconsultant and the Board; and
  - (4) that the subconsultant specifically agrees to be bound by the confidentiality provision set forth in this Agreement between the Board and the Consultant.
- B. The Consultant agrees that it is fully responsible to the Board to the extent of the wrongful acts and omissions of the subconsultants and of persons either directly or indirectly employed by them as it is for the negligent or wrongful acts and omissions of persons directly employed by it.

- C. The aforesaid approval is required in all cases other than individual employer/employee contracts.
- D. The Consultant shall not in any way be relieved of any responsibility under this Contract by any subcontract.

4.12 PUBLICITY

- A. The prior written approval of the Board is required before the Consultant or any of its employees, servants, agents, or independent Consultants may, at any time during or after completion or termination of this Agreement, make any statement to the press or issue any material for publication through any media of communication bearing on the work performed or data collected under this Agreement.
- B. If the Consultant publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, the Board shall have a royalty free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

4.13 PARTICIPATION IN AN INTERNATIONAL BOYCOTT

- A. The Consultant agrees that neither the Consultant nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.
- B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Consultant or a substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Board may, at its option, render forfeit and void this Agreement.
- C. The Consultant shall comply in all respects, with the provisions of Section 6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

4.14 EQUAL EMPLOYMENT OPPORTUNITY

- A. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) (“E.O. 50”), as revised, and the rules set forth at 66 RCNY § 10-01 et seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Consultant 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 subconsultants 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 Consultant 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 Consultant understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:
- (1) Disapproval of the Consultant; and/or

- (2) Suspension or termination of the Agreement; and/or
- (3) Declaring the Consultant 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 Consultant to be non-responsible.
- D. The Consultant 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 subconsultant or vendor. The Consultant 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 Consultant needed to produce the item contracted for shall not be considered a subconsultant or vendor for purposes of this Paragraph.
- E. The Consultant 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 subconsultant 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 Consultant needed to produce the item contracted for shall not be considered a subconsultant for purposes of this Paragraph.
- F. Nothing contained in this Section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

#### 4.15 INVENTIONS, PATENTS AND COPYRIGHTS

- A. Any discovery or invention arising out of or developed in the course of performance of this Agreement shall be promptly and fully reported to the Board, and if this work is supported by a federal grant of funds, shall be promptly and fully reported to the Federal Government for determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued

thereon, shall be disposed of and administered in order to protect the public interest.

- B. No report, document or other data produced in whole or in part with contract funds shall be copyrighted by the Consultant nor shall any notice of copyright be registered by the Consultant in connection with any report, document or other data developed for this Agreement.
- C. In no case shall subsections A and B of this section apply to, or prevent the Consultant from asserting or protecting its rights in any report, document or other data, or any invention which existed prior to or was developed or discovered independently from the activities related to this Agreement.

#### 4.16 INFRINGEMENTS

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

#### 4.17 ANTI-TRUST

The Consultant hereby assigns, sells and transfers to the Board all right, title and interest in and to any claims and causes of action arising under the anti-trust Laws of the State of New York or of the United States relating to the particular goods or services purchased or procured by the Board under this Agreement.

### **ARTICLE 5. SUSPENSION OR TERMINATION OF PERFORMANCE**

- A. The Executive Director may at any time, and for any reason, direct the Consultant to stop any work under the Agreement for a period of time. Such direction shall be given by at least ten (10) days notice, in writing, which shall specify the period during which the work shall be stopped. The Consultant shall resume the work upon the date specified in such direction, or upon such other date as the Executive Director may thereafter specify, in writing. The period during which the work shall have been stopped shall be deemed an extension of time for the performance of the Agreement. Stoppage of work under this Article shall not give rise to any claim against the Board or the City for damages or for extra remuneration.
- B. If the Consultant, through any cause, fails to perform any of the terms, covenants, or provisions of the Agreement on his part to be performed, or if he for any cause fails to progress its work called for hereunder in a manner the Executive Director considers reasonable, or if in the opinion of the Executive Director the conduct of the Consultant is such that the interests of the City or the Board are likely to be impaired or prejudiced, or if the Consultant has become or is likely to become in the reasonable judgment of the Board

insolvent, or if the Consultant has commenced or is likely to commence in the reasonable judgment of the Board any proceeding under the Bankruptcy Act, or if the Consultant violates any of the terms, covenants, or provisions of said Agreement, then the Executive Director, acting for and in behalf of the Board and the City shall have the right to terminate said Agreement by giving notice in writing of the fact and date of termination (the "Termination Date") to the Consultant.

- C. The Executive Director shall have the right to terminate the work for which the Consultant is engaged hereunder at any time for any reason deemed to be in the Board's interest. In such event, the Consultant shall be paid any fees as shall have been earned by it, in the reasonable opinion of the Executive Director. Such postponement, delay, suspension, or termination shall not give rise to any cause of action against the Board or the City for damages or for extra remuneration.
- D. Upon termination of this Agreement the Consultant shall comply with the following close-out procedures:
  - (1) Accounting for and refund to the Board, within thirty (30) days of the Termination Date, any unexpended funds which have been paid to the Consultant pursuant to this Agreement.
  - (2) Furnishing within thirty (30) days of the Termination Date, an inventory to the Board of all equipment, appurtenances and property purchased through or provided under this Agreement carrying out any Board directive concerning the disposition thereof.
  - (3) Not incurring or paying any further obligation pursuant to this Agreement beyond the Termination Date except for reasonable termination costs. Any obligation necessarily incurred by the Consultant on account of this Agreement prior to receipt of notice of termination and falling due after such date shall be paid by the Board in accordance with the terms of this Agreement. In no event shall the word "obligation", as used herein, be construed as including any lease agreement, oral or written, entered into between the Consultant and its landlord.
  - (4) Turn over to the Board or its designees within thirty (30) days of the Termination Date, all drawings, specifications, books, records, documents and material specifically relating to this Agreement.
  - (5) Submit, within ninety (90) days of the Termination Date, a final statement and report relating to this Agreement. The report shall be made by a certified public accountant or a licensed public accountant. The Consultant shall receive equitable compensation for the work which in the Executive Director's reasonably incurred opinion have been satisfactorily performed by the Consultant up to the Termination Date, such



compensation to be fixed by the Executive Director, subject to audit by the Board and post-audit by the Comptroller, and provided further that the Board may take over the work to be done and complete the work by Agreement or otherwise, the Consultant being liable to the Board for any reasonable excess cost occasioned to the Board thereby.

- E. In the event the Board shall terminate this Agreement, in whole or in part, as provided by this Article, the Board may procure, upon such terms and in such manner as deemed appropriate, services similar to those so terminated, and the Consultant shall continue the performance of this Agreement to the extent not terminated hereby.
- F. Notwithstanding any other provisions of this Agreement, the Consultant shall not be relieved of liability to the Board for damages sustained by the Board by virtue of Consultant's breach of this Agreement, and the Board may withhold payments to the Consultant for the purpose of set-off until such time as the exact amount of damages due to the Board from the Consultant is determined.
- G. The rights and remedies of the Board provided in this article shall not be exclusive and are in addition to all other rights and remedies provided by law or under this Agreement.

## **ARTICLE 6. MISCELLANEOUS**

### **6.1 CONFLICT OF LAWS; FORUM**

- A. This Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Consultant, and shall be governed by and construed in accordance with the Laws of the State of New York.
- B. The parties agree that any and all claims asserted by or against the Board arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this Agreement and intent, the Consultant agrees:
  - (1) If the Board initiates any action against the Consultant in Federal Court or in New York State Court, service of process may be made on the Consultant either in person, wherever such Consultant may be found, or by registered mail addressed to the Consultant at its address as set forth in this Agreement, or to such other address as the Consultant may provide to the Board in writing; and
  - (2) With respect to any action between the Board and the Consultant in New York State Court, the Consultant hereby expressly waives and relinquishes

any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

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

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

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

## 6.2 GENERAL RELEASE

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

## 6.3 CLAIMS AND ACTIONS THEREON

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

B. No action shall lie or be maintained against the Board by the Consultant upon any claims based upon this Agreement unless such action shall be commenced within six (6) months after the date of filing in the Office of Executive Director of the certificate for the final payment hereunder, or within six (6) months of the termination or conclusion of this Agreement, or within six (6) months after the accrual of the Cause of Action, whichever first occurs.

- C. In the event any claim is made or any action brought in any way relating to the Agreement herein, the Consultant shall use all reasonable efforts to render to the Board any and all assistance which the Board may require of the Consultant. The Consultant may request payment for such work at the rates specified herein. The Board shall not unreasonably withhold such payment.
- D. The Consultant shall report to the Board in writing within three (3) working days of the initiation by or against the Consultant of any legal action or proceeding in connection with or relating to this Agreement.

6.4 NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

6.5 WAIVER

Waiver by the Board or the Consultant of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless and until the same shall be agreed to in writing by the Board and the Consultant as required and attached to the original Agreement.

6.6 NOTICE

The Consultant and the Board hereby designate the business addresses hereinbefore specified as the places where all notices, directions or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Actual delivery of any such notice, direction or communication to a party at the aforesaid place, or delivery by certified mail shall be conclusive and deemed to be sufficient service thereof upon such party as of the date such notice, direction or communication is received by the party. Such address may be changed at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified above. Nothing in this section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by law, including the Civil Practice Law and Rules.

6.7 ALL LEGAL PROVISIONS DEEMED INCLUDED

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

6.8 SEVERABILITY

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

6.9 POLITICAL ACTIVITY

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

6.10 MODIFICATION

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

6.11 PARAGRAPH HEADINGS

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

6.12 NO REMOVAL OF RECORDS FROM PREMISES

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

### 6.13 INSPECTION AT SITE

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

### **ARTICLE 7. MERGER**

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

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

- A. Pursuant to the provisions of Section 6-115.1 of the Administrative Code of the City of New York, the Consultant and any individual or legal entity in which the Consultant 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 Consultant certify that either: (a) they have no business operations in Northern Ireland, or (b) they shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.
- B. For purpose of this section, "MacBride" Principles shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:
  - 1. increase the representation of individuals from under-represented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
  - 2. take steps to promote adequate security for the protection of employees for underrepresented religious groups both at the workplace and while traveling to and from work;
  - 3. ban provocative religious or political emblems from the workplace
  - 4. publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
  - 5. establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
  - 6. abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
  - 7. develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups;
  - 8. establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and

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

**APPENDIX C**

**ACKNOWLEDGEMENT OF ADDENDA**

RFP TITLE: The New York City Water Board Request for Proposals for Consultant on Operational Efficiencies

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

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

ADDENDUM # 1: DATED \_\_\_\_\_ , 20\_\_

ADDENDUM # 2: DATED \_\_\_\_\_ , 20\_\_

ADDENDUM # 3: DATED \_\_\_\_\_ , 20\_\_

ADDENDUM # 4: DATED \_\_\_\_\_ , 20\_\_

ADDENDUM # 5: DATED \_\_\_\_\_ , 20\_\_

ADDENDUM # 6: DATED \_\_\_\_\_ , 20\_\_

PART II: \_\_\_\_\_

NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS RFP

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

PROPOSER (NAME): \_\_\_\_\_

PROPOSER (SIGNATURE): \_\_\_\_\_

**APPENDIX D**

**CERTIFICATE OF NON-COLLUSION**

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

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

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

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

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

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

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



## APPENDIX E

### 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.