

**PROGRAM MANAGEMENT SERVICES IN CONNECTION WITH UPGRADING
THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION'S
WATER METERING INFRASTRUCTURE**

The bidder Q&A document and RFP materials appear on the following pages of this PDF packet.

The conference information to access the bidder call at 2:00pm Eastern Time on January 29, 2025 is:

Microsoft Teams conference link:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZDU5ZjVmYjAtN2Y3OC00NTUwLWlzMtctYjExYmRjNDg4MTBm%40thread.v2/0?context=%7b%22Tid%22%3a%22f470a35f-0853-4633-aae3-ce4e8b5085a3%22%2c%22Oid%22%3a%22fa46ec46-a062-4337-8f72-25c3821c177c%22%7d

Telephone conference access:

Phone number: 347-921-5612 // access code: 314 457 311 #



Program Management: AMR Upgrade Program

Pre-Bid Presentation
1/29/2025

Scope of Work Overview

Background: DEP is replacing 600,000 AMR devices and 325,000 small meters citywide over the next five years. DEP is seeking a firm to provide program management services to coordinate the multiple workstreams that will contribute to meeting these aggressive goals.

Key Tasks:

- Provide **strategic support** to the Bureau of Customer Services to ensure that the program is successful
- **Oversee the performance** of DEP's six meter and meter transmitter contractors to ensure that contractors are meeting their production targets and contract budgets, appropriately documenting authorized emergency work, and completing all tasks necessary to close out their contracts. Consultant PM is expected to coordinate closely with contractor PMs to monitor performance, address issues or escalate to DEP PM as needed.
- Develop and implement a **program management plan** that incorporates all workstreams through which this work will be accomplished; in addition to the six contractors, DEP will also be leveraging in-house staff to support this program
- Develop and implement a **risk management plan** that identifies risks to the program's success and offers strategies to mitigate those risks

Contractor Procurement

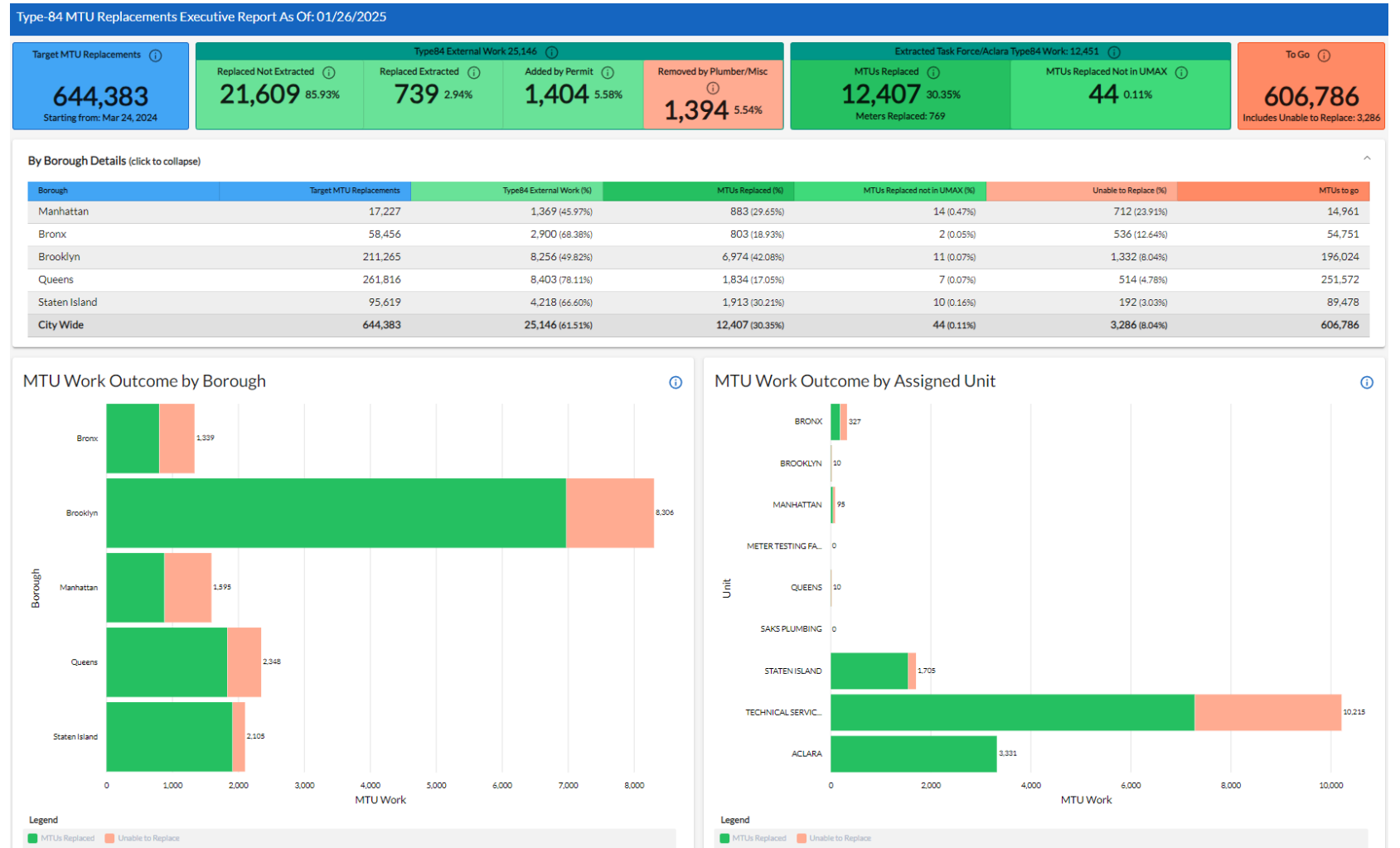
DEP is currently procuring six contracts to support the AMR Upgrade Program; all contracts are currently scheduled to register in June 2025 and can be viewed by accessing PASSPort (https://passport.cityofnewyork.us/page.aspx/en/rfp/request_browse_public) and searching for the contract name.

Contract Name	Type	Scope	Est. Cost	Expected Field Start Date	Contract Duration
MTU-024	MTU Only	Replace ~60,000 MTUs in the Bronx and Queens without an appointment	\$3.1M – \$4.3M	July 2025	3 years
MTU-005	MTU Only	Replace ~60,000 MTUs in Staten Island without an appointment	\$3.1M – \$4.2M	July 2025	3 years
SM-002	Small Meter	Replace ~31,000 small meters in the Bronx with an appointment	\$7.9M – \$10.7M	Oct 2025	4 years
SM-003	Small Meter	Replace ~71,000 small meters in Brooklyn with an appointment	\$16.2M – \$21.9M	Oct 2025	5 years
SM-004	Small Meter	Replace ~72,000 small meters in Queens with an appointment	\$16.7M – \$22.7M	Oct 2025	5 years
SM-005	Small Meter	Replace ~40,000 small meters in Staten Island with an appointment	\$8.1M – \$11.0M	Oct 2025	4 years

Program Tracking

- DEP has built project tracking dashboards to monitor and manage the various resources that are currently assigned to the AMR device replacement program.

- DEP expects the program management firm to offer suggestions or best practices to improve these systems.



Resources

- DEP looks forward to the consultant PM making recommendations on how best to structure the roles and responsibilities between DEP's staff and the consultant PM to meet the program's goals. Below is a summary of the resources available to deliver this program in addition to the Consultant PM. The Consultant PM will report jointly to DEP's Executive Director, Metering Operations and Director of Tech Services.
- **DEP Resources:**
 - Executive Director, Metering Operations: Senior manager responsible for the program's success
 - Director, Tech Services: Manager who oversees field and office staff that coordinate DEP meter contracts; provides technical direction on meter replacements and transmitter issues
 - Inventory Manager: Tracks inventory, orders materials from vendors, coordinates the distribution of materials to contractors and DEP staff
 - Field Inspectors: Perform quality inspections of contractor work, replace meters/meter transmission units, troubleshoot field conditions
 - Office Support: Review contractor invoices, process payments, issue service orders
- **Contractor Resources:**
 - Each Contractor is required to have a dedicated Project Manager and Inventory Manager

Questions?



Bidder Q&A for prospective vendors regarding the NYC Water Board Program Management RFP Dated January 8, 2025

Answers are as of January 27, 2025

1. Are the reference contacts required to submit responses in writing?

The references included with the response do not need to include a written response from the recommenders, although respondents can include written recommendations if they wish.

2. Must the references be from infrastructure-related projects?

References should involve work of a similar nature to the scope of work.

3. Will timesheets be required for vendor staff?

Time keeping and price structure will be governed by the final written legal agreement with the selected vendor or vendors. Vendors should assume that they could be required to maintain timesheets.

4. Is there an incumbent vendor that is or has provided these services?
 - a. If yes, are they allowed to bid on this opportunity?

The Water Board and DEP work with many vendors. The RFP describes a scope of work that would be a new Board procurement and a new scope of work. Vendors performing work for the Board or DEP in connection with a different scope of work are not prohibited from submitting a proposal in response to the Board's January 8, 2025 Program Management RFP.

5. May the experience of proposed team members or subcontractors be used to help satisfy bidder qualifications for the technical proposal?

The qualifications of the firms and individuals proposed to perform the work would be used to evaluate the proposer's ability to successfully complete the scope of work.

6. How will the three categories be weighted in determining the technical score?

The evaluation committee will be responsible for determining the weights.

7. What is the technical score threshold for determining bidder ability to perform?

The evaluation committee will be responsible for determining the technical score threshold.

8. Should the price proposal be sent/included as a separate file from the Technical proposal or as an Appendix with the Technical proposal?

The price proposal can be included as an appendix document or as a separate document.

9. Should the required forms/documents be included as an Appendix to the Technical proposal?

Vendors should include the required forms at the end of their proposal materials.

10. Should NYC and NYS certified MWBE firms that are bidding provide the certification?

Firms with MWBE certification are free to include the certification with their materials if they wish to.

11. Will bidders that hold both NYC and NYS certifications be weighted higher than those with one certification?

Firms will receive an MWBE point bonus or not. There are no gradations for MWBEs beyond whether the MWBE receives the point bonus or not.

12. Is there a preference for bidders with an NYC certification?

Firms will receive an MWBE point bonus or not. There are no gradations for MWBEs beyond whether the MWBE receives the point bonus or not.

13. Will MWBE firms that are not certified in NYC or NYS be given the same evaluation weighting as those that are certified?

Firms will receive an MWBE point bonus or not. There are no gradations for MWBEs beyond whether the MWBE receives the point bonus or not.

14. How many installation contracts is the Water Board expecting to utilize? Are the contracts currently in place?

DEP and the Board anticipate that approximately 6 vendor contracts will be involved. The contracts are active City procurements and are cataloged under the index numbers BCS-SM002, BCS-SM003, BCS-SM004, BCS-SM005, BCS-MTU024, and BCS-MTU005. Four of the contracts involve meters and two of the contracts involve transmitters, resulting in six distinct scopes of work to be performed by the selected installation vendors.

15. To effectively provide all of the requested proposal content, would the Water Board allow the page count to be increased to 50 pages?

Proposers should provide a response within the parameters stated in the RFP.

16. If partnering with an MWBE as a subcontractor, does the MWBE need to be registered in NY at the time of submission?

The evaluation committee will determine MWBE eligibility. MWBE firms able to substantiate their status as an MWBE firm are likeliest to receive the evaluation benefit of having an MWBE certification.

17. If the MWBE was in the process of registration at the time of proposal submission, would it impact the bonus points that could be achieved?

If a firm requested MWBE status but, upon further request, could not substantiate its status as an MWBE firm, the firm's evaluation prospects could be adversely impacted.

18. If a WBE acted as a subcontractor, would national WBE certification be acceptable to the Water Board?

Respondents are free to include the MWBE certifications they wish to include. The Board and DEP are most familiar with New York City and New York State certifications.

19. How will information about any addendums be provided?

Prospective vendors should monitor the Board's homepage at nyc.gov/nycwaterboard. As of January 27, 2025, there were no addendum or amendments to the RFP document dated January 8, 2025 beyond the addition of this Q&A document.

20. Is it expected that an information system will be used for meter inventory management? Are the meter inventory management processes already defined?

Meters are recorded using a Microsoft Dynamics-based database and customer billing platform. Inventories of meters and transmitters ready for installation are cataloged using DEP's existing in-house installation management systems, including UMAX and MDMS systems.

21. Will the selected vendor be required to perform inspection services regarding the installation work?

Inspections are not part of the scope of work for this procurement.

22. Will the selected vendor be required to perform periodic physical counts of inventory or to make warehouse inspections?

Physical inventory counts are not part of the scope of work for this procurement.

23. The RFP indicates that the meter replacement work is expected to be extensive and to take several years to complete, and that an initial contract term of three years is expected, and an extension of the term to five years would be a possibility, with maximum compensation of \$1.5 million. Should the program management costs be developed and limited to the initial three-year engagement? Or should the costs be structured to cover the entire potential installation period?

Vendors should anticipate a workload that would result in the completion of the scope of work during the initial three year term.

24. Is the \$1.5 million contract limit inclusive of any time extensions, or can funding be added when the contract time is extended?

Vendors should anticipate that the total compensation available for performing the scope of work is \$1.5 million.

25. Who will capture GPS data of the meters after installation?

Data collection from the meters and transmitters will be performed using existing DEP systems.

26. Who is responsible for integrating new meters and transmitters into the billing system?

Meter installers will work with the City on these tasks.

27. Is the 30 page limit single sided or double sided pages?

The 30 pages reflect thirty pages of content. Fifteen double sided pages is equivalent to thirty single-sided pages.

28. Do section dividers count towards the page count?

Section dividers do not count toward the page limit unless there is informational content on the pages.

29. Would the NYC Water Board consider an extension given the proximity of the submission deadline to the informational conference?

Proposers are requested to provide their proposals by the stated submission deadline.

30. Is the NYC Water Board open to any reconsideration of the contract budget?

Proposers are requested to submit a proposal in accord with the parameters in the RPF, including the contract budget.

31. Are bidders precluded from using offshore resources as part of their staffing approach?

Proposers are requested to provide a description of their firms, its staff locations, and other characteristics as described in the RFP.

32. Can 5 printed sets of responses be submitted via delivery that requires a receipt confirmation? Does it have to be in color or will black and white suffice?

Proposers can submit materials in color or black and white. If proposers wish to be assured of a delivery confirmation, they should use a shipping or delivery service that can provide them with a delivery confirmation.

33. Can vendors skip the submission of five hard copies of responses to ensure it continues to meet its environmental sustainability goals?

Vendors are asked to submit proposal materials in accord with the RFP's instructions.

34. Are the presentation in-person or virtual?

The format of the presentations will be determined based on the need for the presentations and in consultation with the firms selected to present.

35. What does 20% in-person mean? Is that 20% of a 5-day work week, which will be 1 day a week?

A 20% in-person allocation means that in a typical week, the vendor would be on-site for one day. Depending on schedules and need, the 20% allocation may mean more in-person days on certain weeks, and fewer in-person days on other weeks, depending on the requirements of DEP and the Board.

36. Who is responsible for installing water meters?

Customers are ultimately responsible for installing water meters. DEP will at times assist customers with meter installations, such as during the meter and transmitter upgrading program described through the scope of work associated with this RFP.

37. Will the selected vendor be responsible for meter or transmitter installation or correcting improperly installed or misconfigured meters or transmitters?

The selected vendor will be responsible for managing and coordinating the process to ensure that meters are properly configured and installed. Installation contractors will be responsible for performing the installations and ensuring that any installation or configuration issues are address, in cooperation with the supervision and oversight of the selected vendor and DEP project manager.

38. What would resolving disputed work involve?

Ensuring that the scope of work in the underlying contractor agreements is complete and that any incomplete work included in the scope of work is successfully completed and that any open items preventing vendor payment are completed.

39. Is each vendor expected to assign a project manager to perform the vendor's respective scope of work?

Yes.

40. How will work be assigned to the installation contractors?

Work will be assigned based on job type, geographic, and other parameters, such as borough location or whether the job involves a meter and transmitter or just a single component.

41. Is the vendor responsible for procuring the meter and transmitter inventories?

No.

42. Which entity will be responsible for maintaining the inventory management system that tracks meters and transmitters?

DEP will manage inventory systems and obtain data inputs required to update the inventory systems.

43. What the expected installation rates?

The expected installation rates will vary throughout the project and will be established by DEP in consultation with the vendors working on the project.

44. How will the appointment and scheduling systems be managed?

It is expected that vendors will provide and rely on their in-house scheduling systems.

45. Which entity will manage customer service calls related to post-installation issues?

Installation vendors will be responsible for post-installation service calls.

46. When is upgrade and installation work expected to begin?

July 2025.

47. How will initial customer communications be addressed?

DEP expects to inform customers about the installation work. After making an initial outreach, installation vendors would be responsible for ensuring that installation work is performed.

NEW YORK CITY WATER BOARD

REQUEST FOR PROPOSALS:

**PROGRAM MANAGEMENT SERVICES IN CONNECTION WITH UPGRADING THE CITY
OF NEW YORK'S WATER METERING INFRASTRUCTURE**

DUE: FEBRUARY 14, 2025 AT 4:00 P.M. EASTERN TIME

The New York City Water Board (the "Board") is soliciting proposals from firms to provide program management services to the Board and the New York City Department of Environmental Protection ("DEP"). The selected consultant(s) will support the Board and DEP in administering a group of contractors involved with upgrading the water meters and wireless meter transmitters installed in properties connected to the City of New York's water supply system. The contemplated Scope of Work is described in the Request for Proposals ("RFP") document, available using the link below. The Scope of Work will include coordinating and administering the installation work of DEP's contractors, working with the DEP project management team to ensure consistent progress of work, administering vendor contracts and requests made pursuant to the vendor's contract, and additional tasks as described in the RFP under the Scope of Work section.

To obtain the RFP, please visit nyc.gov/nycwaterboard or email onazem@dep.nyc.gov with the message subject line "Program Management RFP 2025".

The dates and times of the procurement process, and the procedures for submitting a proposal, are explained in more detail in the RFP document.

Prospective bidders are required to adhere to the procedures for communicating with the Board and DEP that are described in the RFP document.



REQUEST FOR PROPOSALS

TO PROVIDE

**PROGRAM MANAGEMENT SERVICES IN CONNECTION WITH UPGRADING
THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION'S
WATER METERING INFRASTRUCTURE**

IN PARTNERSHIP WITH THE

NEW YORK CITY WATER BOARD

JANUARY 8, 2025

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Appendix G	Doing Business Data Form
Appendix H	EEO Policy Statement
Appendix I	EEO Staffing Plan

TIMETABLE OF THE REQUEST FOR AND SUBMISSION OF PROPOSALS

Release Date of the Request..... January 8, 2025

Deadline for Submitting Written Questions..... January 22, 2025 (4:00 P.M. Eastern Time)

Proposer’s Information Conference January 29, 2025 (2:00 P.M. Eastern Time)

Proposals Due February 14, 2025 (4:00 P.M. Eastern Time)

Proposals should be delivered in accordance with the instructions under Section VII herein.

Proposer Interviews (if requested) Dates to Be Determined

Completion of Legal Documentation and Start of Work Before April 30, 2025

To register for the informational conference or to submit questions, please contact the designated Water Board person listed below.

DESIGNATED WATER BOARD CONTACT PERSON FOR INQUIRIES

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

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

I. INTRODUCTION

The New York City Water Board (the “Board”) is issuing this Request for Proposals (“RFP”) and seeking responses to assist the Board and the New York City Department of Environmental Protection (“DEP”) in connection with upgrading the water meter and transmitter infrastructure installed in the City.

DEP operates its water supply activities with the goal of ensuring reliable, high quality water service for DEP’s approximately 840,000 customers. The City’s property owners are required to install water meters and wireless transmitting devices for transmitting meter readings, for purposes of calculating customer water bills, and for property management purposes, to ensure that water consumption is appropriate to the size and use of the building.

The availability of accurate and timely water meter readings allows DEP to prepare customer bills that reflect the true measure of customer water usage, and supports the system’s strong financial profile and favorable credit ratings. To ensure that DEP’s installed base of meters and transmitters is maintained in such a way as to provide timely and accurate data for billing purposes, beginning in 2025, DEP plans to undertake an extensive program of upgrading water meters and meter transmitting devices.

The scope of the metering replacement work is expected to be extensive and to take several years to complete. During the program, it is expected that an estimated 325,000 water meters and 600,000 wireless transmitting devices will be replaced, with a focus on water meters connected to smaller diameter water lines. The meter and transmitter replacement work will be performed by independent contractors retained by DEP. In order to most effectively manage DEP’s portfolio of independent contractors, and to structure and allocate the work of the meter and transmitter replacements, DEP seeks to retain the services of a firm with experience in providing program management services of a type relevant for overseeing meter and wireless transmitting device replacement projects in the water utility industry.

Identifying the most appropriate package of firm capabilities and program management approach are questions DEP and the Board wish to answer during the RFP process. Firms responding to the RFP will have the opportunity to provide information about their firm and their proposed approach to managing an extensive meter and transmitter upgrade program on behalf of the Board and DEP.

II. THE BOARD, AUTHORITY, AND DEPT. OF ENVIRONMENTAL PROTECTION

The Board is a public benefit corporation of the State of New York (the “State”) that was created by Sections 1045 and Section 1046 of Title II-A of the Public Authorities Law of New York State. The Board is authorized under Section 1045 to enter into contracts for purposes of carrying out the Board’s duties and authorities. The City leased the City’s water and wastewater system to the Board in 1985, retaining DEP to operate the system, including managing the billing and collection of revenues on behalf of the Board.

DEP is the sole provider of water and wastewater service to substantially all of the City’s residents,

in addition to providing water service to another one million residents north of the City, concentrated in Westchester County.

The New York City Municipal Water Finance Authority (the “Authority”) is a partner public authority to the Board, and was established at the same time as the Board by Section 1045 of Title II-A of the Public Authorities Law of New York State. The Authority was created to finance capital projects for the water and wastewater system through the issuance of bonds and notes, while the Board was created to establish the price of water and wastewater service and to perform a treasury and investment role in connection with the system’s cash flows. The City, DEP, the Board, and the Authority work together, alongside numerous other City agencies, to manage the operations and finances of the water and wastewater system.

The City’s water and wastewater system generates approximately \$4.3 billion of operating revenues annually, has more than \$34 billion of outstanding debt, and issues approximately \$2 billion of new debt each year.

III. SCOPE OF WORK

The New York City Water Board is requesting proposals from vendors or groups of vendors that describe the relevant qualifications and expertise of each firm and that would provide a compelling and cost effective approach to performing the tasks comprising the Scope of Work described in this Section III.

The main categories of activity that the Scope of Work involves are:

- Providing program management services and project oversight to ensure that water meters and transmitters are replaced at an appropriate pace that is consistent with DEP’s revenue strategy.
- Administering contracts to ensure vendor conformity with contract provisions.

These two main areas of activity will span most aspects of managing the vendors involved with replacing and ensuring the connection to DEP’s water billing system of the upgraded water meters and transmitters that are planned for replacement throughout properties located in the City. The upgrading of meters and transmitters is expected to have a significant and positive financial impact on the City’s water and wastewater system.

Scope of Work:

1. Develop, update, and implement a program management plan and schedule describing how work will be performed through collaboration by DEP’s internal staff and external meter and meter transmitter vendors working as independent contractors.
2. Develop, update, and implement a risk management plan identifying any risks to the program’s successful completion and identify strategies to manage any risks.

3. Oversee the performance of DEP's external meter and transmitter replacement contractors:
- Arrange and lead periodic project coordination meetings with outside vendors to track progress and ensure the completion of vendor work assignments, including the identification and resolution of issues that could impair the timely completion of work assignments. The frequency of the meetings is expected to vary with the stage of the project, ranging from weekly meetings to 2-3 meetings per month, in addition to routine calls and coordination outreach as required.
 - Provide reviews and comments on and, as required, revise the work schedules of outside contractors, for purposes of ensuring the appropriateness of (a) work activities, (b) the format and approach planned for performing the work activities, staffing and time allocations, and (c) the selection and sequencing of how work is selected by the vendor, with the objective of ensuring the timely and thorough completion of work.
 - Leverage DEP's current inventory system, that tracks meters and transmitters to develop and maintain a record of the current inventory of meters and transmitters, along with a forecast of how inventory levels change based on the outlook for completed meter and transmitter replacements and for the arrival of shipments of new inventory, in order to ensure that adequate supplies will be available to allow vendors to perform the work described in their schedules.
 - Review the contractor's monthly progress reports, along with proposed schedule updates and revisions, in order to monitor and ensure an appropriate rate of progress toward work completions.
 - Monitor and, with the DEP project manager, review each contractor's budget and compile data for purposes of producing a monthly report detailing, per contract, the total spending to date, the remaining balance on the contract, and estimates of the amount and cost of any work performed but not yet billed, i.e., measures such as payables and work in progress.
 - Document the onboarding process and produce a standard operating procedure for the tasks related to mobilizing a new contractor and that are part of a new contractor's workflow.
 - Ensure that the DEP project manager is periodically provided with timely and complete updates of the project status and any changes to the expected timeline for project completion. The frequency of such updates is expected to vary with the project status, and may vary from weekly updates to updates provided 2-3 times per month, in addition to routine operating calls and discussions.
 - Perform ad hoc analyses, as requested by the DEP project manager, of the program's impact and implementation.

4. Manage emergency work allowance and change order requests by contractors, including:
 - Review all emergency work allowances requested by contractors and requests for contract change orders for conformity with contract terms and for consistency with the overall project goals.
 - Maintain a log documenting emergency work allowance and change order requests.
 - Coordinate with the DEP project manager to obtain decisions on emergency work order and change order requests and maintain a log of DEP's decisions on the requests.
 - Develop any supplemental documentation or work descriptions requested by DEP or the Board in connection with emergency work allowance or change order requests.
5. In collaboration with in-house legal counsel, oversee the closeout process of each vendor contract, including as requested:
 - Document and confirm completion of open items requiring completion by DEP's replacement vendors prior to contract closeout.
 - Resolve any disputed work.
 - Maintain a calculation of invoices and payments under the contract, and prepare a final calculation of payments and work performed under the contract, including an analysis of any cost and payment variances and a final true-up calculation of payments or refunds required to equalize the contract cost with the work performed.
 - Compile periodic M/WBE compliance reports for the contract, following the report format or template requested by the Board or DEP.
 - Conduct periodic contractor evaluations, following the report format or template requested by the Board or DEP.

The purpose of the Scope of Work is to both ensure that meters and transmitters are replaced at a sufficiently rapid pace so that DEP's metering system maintains its state of good repair and can support the system's revenue requirements, as well as to ensure that DEP's vendors conform with contract provisions.

IV. PRELIMINARY CONTRACT AND ECONOMIC TERMS

DEP and the Board anticipate that this RFP will result in the award of a three-year contract with maximum authorized compensation during the three-year term of up to \$1,500,000. Beyond the initial three-year term of the contemplated agreement, DEP and the Board anticipate that an extension of the

agreement for an additional period of up to two years will be included among the contract provisions, allowing for a full term of the contract of up to five years.

Prospective vendors are free to propose the compensation structure they believe most closely aligns the vendor's performance with the objectives of DEP and the Board. Board contracts for services of this nature are usually designed with vendor compensation calculated on the basis of hourly rates based on the seniority of the personnel working on the assignment, along with an accounting of the hours worked and the tasks performed during the invoice period.

A draft legal form of agreement is included with these RFP materials. The City's standard form of terms and conditions, included as Appendix A, is part of the legal form of agreement.

V. CONTENTS OF PROPOSALS

Proposers are requested to keep their proposals to a reasonable length, with a suggested page count of approximately 30 pages not including the required supplemental information schedules. The page limit of approximately 30 pages would include the firm's cover letter, qualifications and technical proposal, and fee and staffing schedule.

A. Qualifications and Technical Proposal

For each of the following questions, please provide an answer.

1. Describe your firm's experience and qualifications as they relate to the Scope of Work, addressing such topics as:
 - a. A description of your firm's history, business focus, and range of service offerings;
 - b. A description of your firm's project and program management expertise, in particular any utility industry expertise;
 - c. A description of your firm's expertise working with government organizations;
 - d. A description of your firm's expertise managing a portfolio of contracts and motivating vendor performance in situations involving private companies performing work on behalf of a government client;
 - e. Your firm's experience with inventory management methodologies and inventory tracking products or approaches.
2. A summary of the expertise and professional backgrounds of the team that would perform the work, including a description of where your firm's headquarters and staff are located, copies of the resumes and credentials of all of the proposed project team members, the length of time each of the key personnel who would work on the assignment have been employed by the proposer, a summary of the responsibilities each staff member would have while carrying out

the Scope of Work, and the seniority level of each proposed staff member. Please also indicate the staff member who would be the primary point of contact and the percentage of the lead staff member's capacity that would be dedicated specifically to performing the Scope of Work.

3. Describe the approach of your firm and the services your firm would provide for purposes of performing the described program management services, including:
 - a. A summary of how your firm would execute the work described in this RFP, including any methodological approach to program and project management employed by your firm, or similar management framework used by your firm;
 - b. Your approach to working with client organizations and their vendors;
 - c. A description of how your firm relies on remote work and videoconferencing. The Board anticipates that the selected vendor will be asked to perform the work in a hybrid capacity, with a regular on-site client presence of approximately 20% at DEP's offices in Queens at 59-17 Junction Boulevard and 58-58 Grand Avenue, combined with work performed at a remote location through the use of videoconferencing and other productivity software, structured around a core workday of 8:00am through 5:00pm Eastern Time;
 - d. Any examples of how your organization has helped previous clients manage similarly-complex infrastructure-related projects where the work involved independent contractors installing and/or replacing distributed infrastructure across many thousands of individual jobsites. Descriptions of previous assignments can include a discussion of the specific project or program management assignments performed, the dollar value of the assignment, and any other details deemed relevant by the proposer.
4. Provide a perspective on the timeline to establish a program with the Board to the point of operational readiness to take lead responsibility for the Scope of Work, and the resource requirements your firm expects will be required to provide the services.
5. Describe any other qualifications or experience that make your firm particularly well-suited to be selected as a consultant to the Board and DEP.
6. Please provide two or three client references with whom your firm previously worked on projects that were similar in scope to the Scope of Work. For each reference, please include a short summary of the work performed, the length of the engagement, and the name, title, organization, email, and phone number of the reference.

B. Fees

For the Scope of Work, provide an hourly fee schedule per category of employee. The hourly rates

should include the expected profit margin to be incurred in the course of providing the services. The expenses incurred by the consultant while performing the work described herein will not be reimbursed. Please also provide an estimate of the number of hours and staffing levels required to perform the Scope of Work described in the RFP, following the template in Appendix C.

The maximum compensation expected to be authorized by the Board for performing the work described in this RFP is \$1,500,000.

C. Cover Letter

The consultant's response to the RFP should include a cover letter signed by at least one senior officer who is authorized to bind your firm and who would have direct responsibility for this engagement if your organization were selected to perform all or part of the Scope of Work. The letter should indicate the business address, e-mail and telephone number of such senior officer.

D. Vendor Diversity and Equal Opportunity Information

The Board, DEP, and the City of New York are committed to vendor diversity. The Board encourages proposals from minority-owned and women-owned business enterprises (M/WBEs). M/WBEs responding to this RFP are also encouraged to apply for M/WBE certification with the New York City Department of Small Business Services and with the State of New York through Empire State Development. In addition, the Board further encourages firms which are not M/WBE firms to consider whether there may be an opportunity to partner with an M/WBE firm through a subcontractor or other arrangement.

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

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

Please provide the following information:

1. Each proposer must complete and return "Appendix H—EEO Policy Statement" as part of their Proposal;
2. Using the enclosed EEO Staffing Plan (Appendix I), please indicate the number of personnel who will be involved in performing the work described in the Scope of Work using the applicable descriptive categories. If a person identifies in such a way that their self-identification spans multiple categories it is fine to use fractional numbers when completing the schedule. If a person identifies in such a way that a suitable category cannot be located on the form, then please add an additional page with your submission making a statement to

such effect, and ensuring that the total number of personnel can be tied back to the number of personnel in the description columns, when read in conjunction with any supporting notes and explanation;

3. If your firm is certified or qualifies as a women-owned or minority-owned business by either the New York Empire State Development Corporation, the New York City Department of Small Business Services, or another M/WBE certification program outside of New York, please enclose documentation demonstrating such certification or qualification.

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

E. Litigation/Conflicts of Interest

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

1. Describe any pending administrative proceedings, investigations, and civil suits against the proposer or any individual employed by the proposer relating to the proposer's or such individual's performance of their professional duties.
2. Any litigation or administrative proceedings to which your firm is a party and which would either:
 - a. Materially impair your ability to perform the services enumerated herein for which this RFP was issued; or
 - b. If decided in an adverse manner, would materially affect the financial condition of your firm.
3. Any existing disputes or proceedings between your firm and the City regarding the payment of taxes or your firm's performance of professional duties.
4. State whether or not any legal proceedings are pending to which the proposer is a party, as well as any such proceedings known to be contemplated by government authorities or private parties (including, without limitation, whether the proposer has received a "Wells Notice" relating to a matter in which charges have not yet been brought) and, if so, a description of each such proceeding.
5. Any material relationships that the proposer or any employee of the proposer has with any existing contractors to the Board or DEP or other persons or entities that may create a conflict of interest, or the appearance of a conflict of interest, in acting as a consultant to the Board and DEP.
6. Any family relationship that any employee of the proposer has with the Board or DEP (or officer, employee or member thereof) that may create a conflict of interest or the appearance of a conflict of interest in acting as consultant to the Board or DEP.

7. Any other matter that the proposer believes may create a conflict of interest or the appearance of a conflict of interest in acting as a consultant to the Board or DEP.
8. State whether or not, in the past ten years, the proposer or any of its partners, directors, officers or employees or anyone acting on its behalf, has ever been indicted or otherwise charged in connection with any criminal matter, which is still pending, or has ever been convicted of any crime or offense arising directly or indirectly from the conduct of the proposer's business, or whether any of the proposer's partners, directors, officers or employees or persons exercising substantial policy discretion has ever been indicted or otherwise charged in connection with any criminal matter, which is still pending, or has ever been convicted of any crime or offense involving misconduct or fraud, and, if so, please describe any such indictments, charges or convictions and surrounding circumstances in detail.
9. Identify all adverse determinations against the proposer or any of its partners, directors, officers or employees or persons acting on its behalf, with respect to actions, proceedings, claims or complaints concerning violations of Federal, State or City equal opportunity laws or regulations and a statement that the proposer is in compliance with all applicable Federal, State or City equal opportunity laws or regulations.

F. Doing Business Data Form

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

G. Appendix A: "General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services"

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

VI. SELECTION CRITERIA AND PROCESS

The Board in cooperation with DEP will identify proposers to invite for interviews and with whom to finalize legal documentation of a consulting agreement as described in Appendix D. The criteria the Board and DEP plan to consider include:

- A. Overall quality of the response to the RFP, including completeness, responsiveness, and clarity.
- B. Technical ability, resources, and capacity of the proposing firm to provide the services described in this RFP.
- C. Qualifications, relevant experience, and availability of the individuals who will be assigned

to provide the services described.

- D.** Cost competitiveness of the fee proposal, which includes a specific scoring bonus available to the three lowest price proposals from among those proposers receiving technical scores deemed sufficient for purposes of performing the work described in the Scope of Work.
- E.** The extent of M/WBE participation in performing the work will be considered as an additional selection factor.

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

DEP and the Board typically review the backgrounds of the key personnel who would staff the project, including any subcontractors, and may request additional interviews or further qualification assessments of the individuals serving in key positions. The Board may also periodically meet with the selected vendor to review the appropriateness of staffing levels and the personnel working on the assignment. DEP and the Board place a high value on continuity of service, and will focus on vendors viewed as likely to maintain team continuity during the term of the assignment. In the event of staff turnover, DEP and the Board would require the ability to review and approve new personnel staffed on the assignment.

VII. INSTRUCTIONS FOR SUBMITTING PROPOSALS

A. Submission Details

Proposals including all exhibits and reference materials should be submitted via **both** of the methods stated below no later than 4:00 P.M. Eastern Time on Friday, February 14, 2025.

First, please email a digital set of your proposal documents to the email address onazem@dep.nyc.gov. Please indicate “Program Management RFP 2025 Proposal from [name of firm]” in the subject line. If the electronic files are too large in size to email, proposers should email a link to a data sharing site along with a covering note within the email making clear the identity of the proposer and the RFP they are responding to.

Second, please send five printed sets of your proposal documents to the address below. Both the digital submission as well as the printed paper copies must be received by the 4:00 P.M. deadline in order to be considered timely.

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

Both digital and print document sets must be received by 4:00 P.M. Eastern Time on February 14, 2025.

B. Inquiries

Proposers are advised that communications regarding this RFP should be directed to the Board’s designated contact person, Omar Nazem, at onazem@dep.nyc.gov and 718-595-3591. Please label written correspondence with the subject line header “Program Management RFP 2025 Inquiries from [name of firm].” Vendor requests to participate in the vendor information session should also be sent to the designated contact person.

C. Addenda to the RFP

The Board may issue informational updates or responses to inquiries related to substantive issues and any other corrections or amendments to the RFP that it deems necessary prior to the proposal due date in the form of written addenda. It is the proposer's responsibility to ensure receipt of all addenda.

D. Subcontracting

If it plans to rely on sub-consultants, the proposer should identify the sub-consultants or the anticipated number and types of sub-consultants it plans to involve with the project. If the sub-consultant’s corporate name and the names of its officers are known at the time of submission, please include their names along with the resumes of the personnel who would be involved in this engagement. The selected proposer will be responsible for all work covered herein and is the sole contact regarding contractual matters.

E. Presentations and/or Interviews

Proposers ranking highly according to the criteria described in Section VI herein and in Appendix D may be invited to give oral and/or visual presentations in support of their proposals or to exhibit or otherwise demonstrate the information contained therein. The Board will schedule the time and location of these presentations.

F. Exceptions to RFP

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

VIII. INFORMATION ON NEW YORK CITY WATER BOARD CONTRACT POLICIES

Respondents to this RFP selected to move forward in connection with performing the Scope of Work will be requested to negotiate a definitive legal agreement with the Board that follows the Board's standard form of agreement with vendors.

The Board's form of agreement includes the standard City of New York Appendix A: "General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services." The Board's form of agreement also includes as appendix material or supporting schedules additional forms that the vendor would be required to sign, including a Certificate of Non-Collusion, the City of New York's Doing Business Data Form, an Affidavit of Payment of Taxes, an EEO Policy Statement, and the requirement to complete an Equal Employment Opportunity Staffing Plan.

IX. ADDITIONAL INFORMATION

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

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

The Board reserves, without limitation, the right to:

1. Reject any and all proposals received in response to this RFP;
2. Not award a contract;
3. Conduct discussions with one or more proposers;
4. Award a contract without any discussion with proposers;
5. Modify the Scope of Work and define participation in the RFP process as it advances in a way that is most likely to ensure completion of the Scope of Work;
6. Negotiate separately with any firm or combination of firms;
7. Assign the final contract award to more than one firm;
8. Waive or modify any irregularities in proposals received or any other aspect of the procurement;
9. Negotiate final contractual terms with the selected firm or firms.

APPENDIX A

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

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ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

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

A. “Agency Chief Contracting Officer” or “ACCO” means the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff.

B. “Agreement” means the various documents, including this Appendix A, that constitute the contract between the Contractor and the Board.

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

D. “City” means the City of New York.

E. “City Chief Procurement Officer” or “CCPO” means the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

F. “Commissioner” or “Agency Head” means the Board’s Executive Director. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.

G. “Comptroller” means the Comptroller of the City of New York.

H. “Contractor” means the entity entering into this Agreement with the Board.

I. “Days” means calendar days unless otherwise specifically noted to mean business days.

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

K. “Department” or “Agency” shall mean the Board.

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

M. “Law” or “Laws” means the New York City Charter (“Charter”), the New York City Administrative Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of

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the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

- N. “SBS” means the New York City Department of Small Business Services.
- O. “State” means the State of New York.

ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS, AND DISCLOSURES

Section 2.01 Procurement of Agreement

A. The Contractor represents and warrants that, with respect to securing or soliciting this Agreement, the Contractor is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). The Contractor makes such representation and warranty to induce the Board to enter into this Agreement and the Board relies upon such representation and warranty in the execution of this Agreement.

B. For any breach or violation of the representation and warranty set forth in Paragraph A above, the Executive Director shall have the right to annul this Agreement without liability, entitling the Board to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the Board provided in this Section 2.01(B) are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

Section 2.02 Conflicts of Interest

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

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Section 2.02(B) shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

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

Section 2.03 Certification Relating to Fair Practices

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

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

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

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

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section 2.03.

Section 2.04 Disclosures Relating to Vendor Responsibility

The Contractor represents and warrants that it has duly executed and filed all disclosures as applicable, including registration in PASSPort. The Contractor acknowledges that the Board's reliance on the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and the Contractor represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 Disclosure Relating to Bankruptcy and Reorganization

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

Section 2.06 Authority to Execute Agreement

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The Contractor represents and warrants that: (i) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (iii) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms.

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

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

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

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

D. The provisions of this Section 3.01 shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.

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

Section 3.02 Subcontracting

A. All subcontractors must be approved by the Board prior to commencing work under a subcontract.

1. *Approval when subcontract is \$5,000 or less.* The Board hereby grants approval for all subcontractors providing services covered by this Agreement pursuant to a subcontract in an amount that does not exceed \$5,000.00. The Contractor must submit monthly reports to the Board listing all such subcontractors.

2. *Approval when subcontract is greater than \$5,000.*

a. The Contractor shall not enter into any subcontract for an amount greater than \$5,000.00 without the prior approval by the Board of the subcontractor.

b. Prior to entering into any subcontract for an amount greater than \$5,000.00, the Contractor shall submit a written request for the approval of the proposed subcontractor to the Board giving the name and address of the proposed subcontractor, the portion of the work and materials that it is to perform and furnish, and the estimated cost of the subcontract. If the subcontractor is providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available, the Contractor shall submit proof of professional liability insurance in the amount required by Article 7. In addition, the Contractor shall provide a list of the proposed subcontractors and provide the following information: maximum subcontract value, description of subcontractor work, start and end date of the subcontract, and the subcontractor's industry.

c. Upon receipt the information required above, the Board in its discretion may grant or deny preliminary approval for the Contractor to contract with the subcontractor.

d. The Board shall notify the Contractor within 30 Days whether preliminary approval has been granted. If preliminary approval is granted, the Contractor shall provide such documentation as may be requested by the Board to show that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the required work, including the proposed subcontract and proof of the proposed subcontractor's PASSPort registration.

e. Upon receipt of all relevant documentation, the Board shall notify the Contractor in writing whether the proposed subcontractor is approved. If the proposed subcontractor is not approved, the Contractor may submit another proposed subcontractor unless the Contractor decides to do the work. No subcontractor shall be permitted to perform work unless approved by the Board.

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f. For proposed subcontracts that do not exceed \$5,000.00, the Board's approval shall be deemed granted if the Board does not issue a written approval or disapproval within 45 Days of the Board's receipt of the written request for approval or, if applicable, within 45 Days of the Board's acknowledged receipt of fully completed PASSPort Questionnaires for the subcontractor.

B. All subcontracts must be in writing. All subcontracts shall contain provisions specifying that:

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

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

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

4. The subcontractor specifically agrees to be bound by Section 4.05(D) and Article 5 of this Appendix A and specifically agrees that the Board may enforce such provisions directly against the subcontractor as if the Board were a party to the subcontract.

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

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

E. The Board may revoke the approval of a subcontractor granted or deemed granted pursuant to Section 3.02(A) if revocation is deemed to be in the interest of the Board in writing on no less than 10 Days' notice unless a shorter period is warranted by considerations of health, safety, integrity issues, or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The Board shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The Board shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

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

G. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section 3.02.

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the Board agree that the Contractor is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the Board or of the City. Accordingly, the Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, assert the existence of any relationship or status on the part of the Contractor, with respect to the Board or the City, that differs from or is inconsistent with that of an independent contractor.

Section 4.02 Employees and Subcontractors

All persons who are employed by the Contractor and all the Contractor's subcontractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this Agreement are neither employees of the Board nor of the City. The Contractor, and neither the Board nor the City, is responsible for their work, direction, compensation, and personal conduct while the Contractor is engaged under this Agreement. Nothing in this Agreement, and no entity or person's performance pursuant to or in connection with this Agreement, shall create any employment relationship between the Board or the City and the Contractor's employees, agents, subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the Board or the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Contractor, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to any officer, agent, or employee of the Contractor or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). The Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the Board or the City, including any department, agency, office, or unit of the Board or the City, or (ii) make or support in any way on behalf of or for the benefit of the Contractor, its employees, officers, or agents any demand, application, or claim upon or against the Board or the City for any right or benefit applicable to an official or employee of the Board or the City or to any officer, agent, or employee of the Contractor or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to

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or in connection with the Agreement shall impose any liability or duty on the Board or the City to any person or entity whatsoever.

Section 4.03 Removal of Individuals Performing Work

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

Section 4.04 Minimum Wage; Living Wage

A. Except for those employees whose minimum wage is required to be fixed in accordance with N.Y. Labor Law §§ 220 or 230 or by Admin. Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section 4.04 shall be deemed a material breach of this Agreement.

B. If this Agreement involves the provision of homecare services, day care services, head start services, services to persons with cerebral palsy, building services, food services, or temporary services, as those services are defined in Admin. Code § 6-109 ("Section 6-109"), in accordance with Section 6-109, the Contractor agrees as follows:

1. The Contractor shall comply with the requirements of Section 6-109, including, where applicable, the payment of either a prevailing wage or a living wage, as those terms are defined in Section 6-109.

2. The Contractor shall not retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of Section 6-109, for seeking or communicating information regarding rights conferred by Section 6-109, for exercising any other rights protected under Section 6-109, or for participating in any investigatory or court proceeding relating to Section 6-109. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of Section 6-109, or who seeks or communicates information regarding rights conferred by Section 6-109 in circumstances where he or she in good faith believes it applies.

3. The Contractor shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects, or

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assignments that are subject to the requirements of Section 6-109, and the wages paid and benefits provided for such hours worked. The Contractor shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of four years after completion of this Agreement. For contracts involving building services, food services, or temporary services, the Contractor shall submit copies of payroll records, certified by the Contractor under penalty of perjury to be true and accurate, to the Board with every requisition for payment.

4. The Contractor and all subcontractors shall pay all covered employees by check and shall provide employees check stubs or other documentation at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning living wages, prevailing wages, supplements, and health benefits. In addition, if this Agreement is for an amount greater than \$1,000,000.00, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Board). For any subcontract for an amount greater than \$750,000.00, checks issued by a subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Board).

5. The Contractor shall ensure that its subcontractors comply with the requirements of Section 6-109, and shall provide written notification to its subcontractors of those requirements. All subcontracts made by the Contractor shall be in writing and shall include provisions relating to the wages, supplements, and health benefits required by Section 6-109. No work may be performed by a subcontractor employing covered employees prior to the Contractor entering into a written subcontract with the subcontractor.

6. Each year throughout the term of the Agreement and whenever requesting the Board's approval of a subcontractor, the Contractor shall submit to the Board an updated certification, as required by Section 6-109 and in the form of the certification attached to this Agreement, identifying any changes to the current certification.

7. Failure to comply with the requirements of Section 6-109 may, in the discretion of the Board, constitute a material breach by the Contractor of the terms of this Agreement. If the Contractor and/or subcontractor receives written notice of such a breach and fails to cure such breach within 30 Days, the Board shall have the right to pursue any rights or remedies available under this Agreement or under applicable law, including termination of the Agreement. If the Contractor fails to perform in accordance with any of the requirements of Section 6-109 and fails to cure such failure in accordance with the preceding sentence, and there is a continued need for the service, the Board may obtain from another source the required service as specified in the original Agreement, or any part thereof, and may charge the Contractor for any difference in price resulting from the alternative arrangements, and may, as appropriate, invoke such other sanctions as are available under the Agreement and applicable law. In addition, the Contractor agrees to

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pay for all costs incurred by the Board in enforcing the requirements of Section 6-109, including the cost of any investigation conducted by or on behalf of the Board or the Comptroller, where the Board discovers that the Contractor or its subcontractor(s) failed to comply with the requirements of this Section 4.04(B) or of Section 6-109. The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the Board is hereby authorized to deduct from a Contractor's account or invoices an amount equal to the cost of such investigation.

Section 4.05 Non-Discrimination in Employment

A. General Prohibition. To the extent required by law, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

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

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

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

3. There may be deducted from the amount payable to the Contractor by the Board under this Agreement a penalty of \$50.00 for each person for each calendar day

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during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be terminated by the Board, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section 4.05.

The provisions of this Section 4.05(B) shall be limited to operations performed within the territorial limits of the State of New York.

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

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

2. It shall be unlawful for any person or any servant, agent or employee of any person, described in Section 4.05(C)(1) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

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

Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section 4.05(C) shall, upon conviction thereof, be punished by a fine of not more than \$100.00 or by imprisonment for not more than 30 Days, or both.

D. E.O. 50 -- Equal Employment Opportunity

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

a. 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

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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;

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

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

d. 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;

e. 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 SBS, Division of Labor Services ("DLS"); and

f. 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.

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

a. Disapproval of the Contractor; and/or

b. Suspension or termination of the Agreement; and/or

c. Declaring the Contractor in default; and/or

d. In lieu of any of the foregoing sanctions, imposition of an employment program.

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

4. The Contractor agrees to include the provisions of the foregoing Sections 4.05(D)(1)-(3) in every subcontract or purchase order in excess of \$100,000.00 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Section 4.05(D)(4).

5. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Section 4.05(D)(5).

6. Nothing contained in this Section 4.05(D) 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.

Section 4.06 Paid Sick Leave Law

A. Introduction and General Provisions.

1. The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.¹ Contractors of the Board or of other governmental entities may be required to provide sick time pursuant to the PSLL.

¹ Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant Admin. Code § 20-912(g), such employer has the option of providing such employees uncompensated sick time.

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2. The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the Admin. Code. It is administered by the City's Department of Consumer Affairs ("DCA"). DCA's rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York ("Rules").

3. The Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this Agreement. The Contractor further acknowledges that such compliance is a material term of this Agreement and that failure to comply with the PSLL in performance of this Agreement may result in its termination.

4. The Contractor must notify the Executive Director in writing within 10 Days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this Agreement. Additionally, the Contractor must cooperate with DCA's education efforts and must comply with DCA's subpoenas and other document demands as set forth in the PSLL and Rules.

5. The PSLL is summarized below for the convenience of the Contractor. The Contractor is advised to review the PSLL and Rules in their entirety. On the website www.nyc.gov/PaidSickLeave there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the PSLL. The Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

B. *Pursuant to the PSLL and the Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its "calendar year" pursuant to the PSLL ("Year") must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than 40 hours of sick time to an employee in any Year.

2. An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per Day. In addition, an employee may carry over up to 40 hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than 40 hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first Day of such Year.

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3. An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

c. closure of such employee's place of business by order of a public official due to a public health emergency; or

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

4. An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSLL must be treated by the employer as confidential.

5. If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

6. Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the PSLL does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

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2. an employee covered by a valid collective bargaining agreement in effect on April 1, 2014, until the termination of such agreement;
3. an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSSL are expressly waived in such collective bargaining agreement;
4. an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSSL for such employee;
5. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
6. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
7. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
8. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSSL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSSL.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the PSSL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

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F. *Records.* An employer must retain records documenting its compliance with the PSSL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSSL.

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the PSSL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 Days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSSL has occurred, it has the right to issue a notice of violation to the employer.

2. DCA has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSSL civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the PSSL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSSL provides minimum requirements pertaining to sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSSL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule, or regulation.

Section 4.07 Whistleblower Protection Expansion Act

A. In accordance with Local Laws 30 and 33 of 2012, codified at Admin. Code §§ 6-132 and 12-113, respectively,

1. Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Agreement to (i) the Commissioner of the Department of Investigation, (ii) a member of

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the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Commissioner of DEP, or Executive Director.

2. If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of this Section 4.07, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

3. Contractor shall post a notice attached hereto in a prominent and accessible place on any site where work pursuant to the Agreement is performed that contains information about:

a. how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Agreement; and

b. the rights and remedies afforded to its employees under Admin. Code §§ 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Agreement.

4. For the purposes of this Section 4.07, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

5. This Section 4.07 is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000.00; accordingly, Contractor shall include this Section 4.07 in all subcontracts with a value in excess of \$100,000.00.

B. Section 4.07 is not applicable to this Agreement if it is valued at \$100,000.00 or less. Sections 4.07(A)(1), (2), (4), and (5) are not applicable to this Agreement if it was solicited pursuant to a finding of an emergency. Section 4.07(A)(3) is neither applicable to this Agreement if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

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

Section 5.02 Retention of Records

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

Section 5.03 Inspection

A. At any time during the Agreement or during the record retention period set forth in Section 5.02, the Board and the City, including DEP and DEP’s Office of the Inspector General, as well as City, State, and federal auditors and any other persons duly authorized by the Board shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, documents, and other evidence maintained or retained by or on behalf of the Contractor pursuant to this Article 5. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Board, DEP, and DEP’s Office of the Inspector General, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the Board. The Contractor shall make such books, records documents, and other evidence available for inspection in the City of New York or shall reimburse the Board for expenses associated with the out-of-City inspection.

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

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particular services or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession's services in New York State, the Contractor shall promptly inform the Board or other entity seeking to observe such work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section 5.03.

Section 5.04 Audit

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the Board, the City, including the Comptroller, the Board, DEP, and DEP's Department's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the Board. Such audits may include examination and review of the source and application of all funds whether from the Board, the City, the State, the federal government, private sources, or otherwise.

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

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

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section 5.04.

Section 5.05 No Removal of Records from Premises

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

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Board, City books, records, documents, or data that has been removed from City premises, including such materials as may be applicable to DEP.

Section 5.06 Electronic Records

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

Section 5.07 Investigations Clause

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

B.

1. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent 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 Board, the City, or State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State, or;

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

C.

6. The Executive Director shall, in their sole discretion, 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.

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7. If any non-governmental party to the hearing requests an adjournment, the Executive Director 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 that may attach after a final determination by the Executive Director may include, but are not limited to:

1. The disqualification for a period of five years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the Board or the City; and/or

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

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

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

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

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

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

F. Definitions

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

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

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

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

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

Section 5.08 Confidentiality

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports,

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information, or data shall not be made available to any person or entity without the prior written approval of the Board. The obligation under this Section 5.08 to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise (“disclosure demand”), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Executive Director, in writing or by e-mail, that it received a disclosure demand for to disclose such reports, information or data and (2) if requested by the Board, the Contractor shall not disclose such reports, information, or data until the Board and the City have exhausted their legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the Board the disclosure demand for such reports, information or data.

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

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

D. The Contractor, and its officers, employees, and agents shall notify the Board, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least 24 hours prior to any statement to the press or at least five business days prior to the submission of the material for publication, or such

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shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

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

F. A breach of this Section 5.08 shall constitute a material breach of this Agreement for which the Board may terminate this Agreement pursuant to Article 10. The Board reserves any and all other rights and remedies in the event of unauthorized disclosure.

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights and Ownership of Work Product

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

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

C. The Contractor acknowledges that the Board or the City may, in its sole discretion of each, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The

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Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

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

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

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

Section 6.02 Patents and Inventions

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

Section 6.03 Pre-existing Rights

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

Section 6.04 Antitrust

The Contractor hereby assigns, sells, and transfers to the Board all right, title, and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the

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United States relating to the particular goods or services procured by the Board under this Agreement.

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

The Contractor shall maintain the following types of insurance if and as indicated in Schedule A (with the minimum limits and special conditions specified in Schedule A) throughout the term of this Agreement, including any applicable guaranty period. All insurance shall meet the requirements set forth in this Article 7. Wherever this Article 7 requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

Section 7.02 Workers’ Compensation, Disability Benefits, and Employers’ Liability Insurance

A. The Contractor shall maintain workers’ compensation insurance, employers’ liability insurance, and disability benefits insurance, in accordance with Law on behalf of, or in regard to, all employees providing services under this Agreement.

B. Within 10 Days of award of this Agreement or as otherwise specified by the Board, and as required by N.Y. Workers’ Compensation Law §§ 57 and 220(8), the Contractor shall submit proof of Contractor’s workers’ compensation insurance and disability benefits insurance (or proof of a legal exemption) to the Board in a form acceptable to the New York State Workers’ Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

1. Form C-105.2, *Certificate of Workers’ Compensation Insurance*;
2. Form U-26.3, *State Insurance Fund Certificate of Workers’ Compensation Insurance*;
3. Form SI-12, *Certificate of Workers’ Compensation Self-Insurance*;
4. Form GSI-105.2, *Certificate of Participation in Worker’s Compensation Group Self-Insurance*;
5. Form DB-120.1, *Certificate of Disability Benefits Insurance*;
6. Form DB-155, *Certificate of Disability Benefits Self-Insurance*;
7. Form CE-200 – *Affidavit of Exemption*;

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8. Other forms approved by the New York State Workers' Compensation Board; or
9. Other proof of insurance in a form acceptable to the Board.

Section 7.03 Other Insurance

A. *Commercial General Liability Insurance.* The Contractor shall maintain commercial general liability insurance in the amounts specified in Schedule A covering operations under this Agreement. Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and "occurrence" based rather than "claims-made." Such coverage shall list the Board, together with its officials and employees, and any other entity that may be listed on Schedule A as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26 and, if construction is performed as part of the services, ISO Form CG 20 37.

B. *Commercial Automobile Liability Insurance.* If indicated in Schedule A and/or if vehicles are used in the provision of services under this Agreement, the Contractor shall maintain commercial automobile liability insurance for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the commercial automobile liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

C. *Professional Liability Insurance.*

1. If indicated in Schedule A, the Contractor shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such services to be provided under this Agreement. The policy or policies shall cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of the Contractor or anyone employed by the Contractor.

2. All subcontractors of the Contractor providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified in Schedule A. At the time of the request for subcontractor approval, the Contractor shall provide to the Board, evidence of such professional liability insurance on a form acceptable to the Board.

3. Claims-made policies will be accepted for professional liability insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two years. If available as an option, the Contractor shall purchase extended

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reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

D. *Crime Insurance.* If indicated in Schedule A, the Contractor shall maintain crime insurance during the term of the Agreement in the minimum amounts listed in Schedule A. Such insurance shall include coverage, without limitation, for any and all acts of employee theft including employee theft of client property, forgery or alteration, inside the premises (theft of money and securities), inside the premises (robbery or safe burglary of other property), outside the premises, computer fraud, funds transfer fraud, and money orders and counterfeit money. The policy shall name the Contractor as named insured and shall list the Board as loss payee as its interests may appear.

E. *Cyber Liability Insurance.* If indicated in Schedule A, the Contractor shall maintain cyber liability insurance covering losses arising from operations under this Agreement in the amounts listed in Schedule A. The Board shall approve the policy (including exclusions therein), coverage amounts, deductibles or self-insured retentions, and premiums, as well as the types of losses covered, which may include but not be limited to: notification costs, security monitoring costs, losses resulting from identity theft, and other injury to third parties. If additional insured status is commercially available under the Contractor's cyber liability insurance, the insurance shall cover the Board, together with its respective officials and employees, as additional insured.

F. *Other Insurance.* The Contractor shall provide such other types of insurance in the amounts specified in Schedule A.

Section 7.04 General Requirements for Insurance Coverage and Policies

A. Unless otherwise stated, all insurance required by Section 7.03 of this Agreement must:

1. be provided by companies that may lawfully issue such policies;
2. have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and
3. be primary (and non-contributing) to any insurance or self-insurance maintained by the Board (not applicable to professional liability insurance/errors and omissions insurance) and any other entity listed as an additional insured in Schedule A.

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

C. There shall be no self-insurance program, including a self-insurance retention, exceeding \$10,000.00, with regard to any insurance required under Section 7.03 unless approved in writing by the Executive Director. Any such self-insurance program shall provide the Board and any other additional insured listed on Schedule A with all rights that would be provided by traditional insurance required under this Article 7, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

D. The limits of coverage for all types of insurance for the Board, including its officials and employees, and any other additional insured listed on Schedule A that must be provided to such additional insured(s) shall be the greater of (i) the minimum limits set forth in Schedule A or (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.

Section 7.05 Proof of Insurance

A. For each policy required under Section 7.03 and Schedule A of this Agreement, the Contractor shall file proof of insurance and, where applicable, proof that the Board, including its officials and employees, is an additional insured with the Board within ten Days of award of this Agreement. The following proof is acceptable:

1. A certificate of insurance accompanied by a completed certification of insurance broker or agent (included in Schedule A of this Agreement) and any endorsements by which the Board, including its officials and employees, have been made an additional insured; or

2. A copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

B. Proof of insurance confirming renewals of insurance required under Section 7.03 must be submitted to the Board prior to the expiration date of the coverage. Such proof must meet the requirements of Section 7.05(A).

C. The Contractor shall provide the Board with a copy of any policy required under this Article 7 upon the demand for such policy by the Executive Director or the New York City Law Department.

D. Acceptance by the Executive Director of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article 7 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

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E. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 7 shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the address referred to in Section 14.04 and to the address listed in Schedule A for the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.06 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim, or suit is required under a policy required by Section 7.03 and Schedule A, the Contractor shall provide the insurer with timely notice thereof on behalf of the Board. Such notice shall be given even where the Contractor may not be covered under such policy if this Agreement requires that the Board be an additional insured (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the New York City Water Board, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured on Schedule A) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the Board, to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the Board and the City, together with its officials and employees, and any other entity listed as an additional insured on Schedule A for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the Board or the City together with its officials and employees, and any other entity listed as an additional insured on Schedule A.

B. The Contractor's failure to maintain any of the insurance required by this Article 7 and Schedule A shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the Board or the City at any time.

C. Insurance coverage in the minimum amounts required in this Article 7 shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the Board or the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. With respect to insurance required by Section 7.03 and Schedule A (but not including professional liability/errors and omissions insurance), the Contractor waives all rights against the Board and the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A for any damages or losses that are covered under any insurance required under this Article 7 (whether or not such insurance is actually procured or

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claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to maintain insurance with regard to any operations under this Agreement and requires such subcontractor to list the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also list the Board, including its officials and employees, and any other entity listed as an additional insured on Schedule A as an additional insured. With respect to commercial general liability insurance, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

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

Section 8.02 Protection of City Property

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

Section 8.03 Indemnification

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the Board and the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the Board, the City, or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the Board, the City, or their respective officials or employees from being completely indemnified by the Contractor, the Board, the City, and their respective officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.04 Infringement Indemnification

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

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The Contractor's obligation to indemnify, defend and hold harmless the Board, the City, and their officials and employees shall neither be (i) limited in any way by the Contractor's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the Board, the City, or their officials or employees to avail themselves of the benefits of such insurance.

Section 8.06 Actions By or Against Third Parties

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

B. The Contractor shall report to the Board in writing within five business days of the initiation by or against the Contractor of any legal action or proceeding relating to this Agreement.

Section 8.07 Withholding of Payments

A. If any claim is made or any action is brought against the Board for which the Contractor may be required to indemnify the Board or the City pursuant to this Agreement, the Board shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

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

C. The Board shall not, however, impose a set-off in the event that an insurance company that provided insurance pursuant to Section 7.03 above has accepted the City's tender of the claim or action without a reservation of rights.

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

E. The rights and remedies of the Board provided for in this Section 8.07 are not exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

Section 8.08 No Third Party Rights

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

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

Changes to this Agreement may be made only as duly authorized by the Executive Director or his or her designee. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. The Contractor deviates from the requirements of this Agreement without a duly approved and executed change order document or written contract modification or amendment at its own risk.

Section 9.02 Changes Through Fault of Contractor

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

ARTICLE 10 - TERMINATION, DEFAULT, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES

Section 10.01 Termination by the Board Without Cause

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

B. In its sole discretion, the Board shall have the right to terminate this Agreement, in whole or in part, upon the request of the Contractor to withdraw from the Contract, in accordance with the provisions of Section 10.05.

C. If the Board terminates this Agreement pursuant to this Section 10.01, the following provisions apply. The Board shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the Board pursuant to Section 10.05. The Board shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the Board in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

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

A. If this Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments, then, should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the Board shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section 10.02(A) shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Section 10.02(A), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 Days from the date of such notice. Prior to sending such notice of reduction, the Board shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Board shall not be bound to utilize any of

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the Contractor's suggestions and that the Board shall have sole discretion as to how to effectuate the reductions.

C. If the Board reduces funding pursuant to this Section 10.02, the following provisions apply. The Board shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the Board in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this Section 10.02 shall not apply, and the Board may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this Agreement as appropriate.

Section 10.03 Contractor Default

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Executive Director, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Executive Director may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section 10.03.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Executive Director may declare the Contractor in default pursuant to this Section 10.03. Before the Executive Director may exercise his or her right to declare the Contractor in default, the Executive Director shall give the Contractor an opportunity to be heard upon not less than five business days’ notice. The Executive Director may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

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D. After the opportunity to be heard, the Executive Director may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section 10.03, in accordance with the provisions of Section 10.05.

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

Section 10.04 Force Majeure

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

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

C. If the Board terminates the Agreement pursuant to this Section 10.04, the following provisions apply. The Board shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The Board shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the Board in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.05 Procedures for Termination

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A. The Board shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section 10.05 and Section 14.04. For termination without cause, the effective date of the termination shall not be less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and, unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Executive Director may determine. If the Board terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

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

1. Accounting for and refunding to the Board, within 45 Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;

2. Furnishing within 45 Days an inventory to the Board of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Board or City directive concerning the disposition of such equipment, appurtenances and property;

3. Turning over to the Board or its designees all books, records, documents and material specifically relating to this Agreement that the Board has requested be turned over;

4. Submitting to the Board, within 90 Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant, unless the Board waives, in writing, the requirement that a certified public accountant or licensed public accountant make such report; and

5. Providing reasonable assistance to the Board in the transition, if any, to a new contractor.

Section 10.06 Miscellaneous Provisions

A. The Executive Director, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the Board. If the Executive Director suspends this Agreement pursuant to

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this Section 10.06, the Board shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The Board shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the Board in accordance with the terms of this Agreement.

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

C. The rights and remedies of the Board and the City provided in this Article 10 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

Section 10.07 Liquidated Damages

If Schedule A or any other part of this Agreement includes liquidated damages for failure to comply with a provision of this Agreement, the sum indicated is fixed and agreed as the liquidated damages that the Board or the City will suffer by reason of such noncompliance and not as a penalty.

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

A. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

B. Subject to providing satisfactory invoices and supporting details, and subject to review and approval by the Board's Executive Director, Contractor can reasonably expect to receive prompt payment of invoices submitted pursuant to this Agreement.

Section 11.02 Electronic Funds Transfer

A. As reasonably practicable, the Contractor agrees to accept payments under this Agreement from the Board by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial

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institution or other authorized payment agent and shall complete the “EFT Vendor Payment Enrollment Form” available from the Board or at <http://www.nyc.gov/dof> and shall provide the completed form to the Board. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the Board for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

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

Section 12.02 Jurisdiction and Venue

The parties agree that any and all claims asserted by or against the Board arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section 12.02, the Contractor shall be responsible for and shall promptly reimburse the Board for any attorneys’ fees incurred by the Board in removing the action to a proper court consistent with this Section 12.02.

Section 12.03 [Reserved]

Section 12.04 Claims and Actions

A. Any claim, that is not subject to dispute resolution under this Agreement, against the Board for damages for breach of contract shall not be made or asserted in any action, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as provided in this Agreement.

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

Section 12.05 No Claim Against Officials, Agents, or Employees

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

Section 12.06 General Release

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

Section 12.07 No Waiver

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

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 [Reserved]

[Reserved].

Section 13.02 All Legal Provisions Deemed Included

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

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

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

Section 13.04 Compliance With Laws

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

Section 13.05 Unlawful Discrimination in the Provision of Services

A. *Discrimination in Public Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

B. *Discrimination in Housing Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, partnership status, marital status, presence of children, disability, presence of a service or emotional support animal, race, color, national origin, alienage or citizenship status, lawful occupation, or lawful source of income (including income derived from social security, or any form of federal, state, or local public government assistance or housing assistance including Section 8 vouchers), or any other class of individuals protected from discrimination in housing accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

C. *Admin. Code § 6-123.* In accordance with Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the Admin. Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of \$50,000.00 that such subcontractor shall not engage in any such unlawful discriminatory practice.

D. *Immigration status.* In connection with the services provided under this Agreement, the Contractor shall not inquire about the immigration status of a recipient or potential recipient of such services unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) the Contractor is required by law to inquire about such person's immigration status.

Section 13.05 Americans with Disabilities Act (ADA)

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

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

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

Section 13.06 [Reserved]

Section 13.07 Political Activity

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

Section 13.08 Religious Activity

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

Section 13.09 Participation in an International Boycott

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

B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of participation in an international boycott in violation of the provisions of the

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Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Agreement.

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

Section 13.10 MacBride Principles

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

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

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

Section 13.11 [Reserved]

Section 13.12 [Reserved]

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 [Reserved]

Section 14.02 Merger

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

Section 14.03 Headings

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

Section 14.04 Notice

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A. The Contractor and the Board hereby designate the business addresses and email addresses specified in Schedule A (and if not specified in Schedule A, as specified at the beginning of this Agreement) as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

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

C. Nothing in this Section 14.04 shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

SCHEDULE A

Article 7 -- Insurance		
Types of Insurance (per Article 7 in its entirety, including listed paragraph)	Minimum Limits and Special Conditions	
<input checked="" type="checkbox"/> Workers' Compensation §7.02 <input checked="" type="checkbox"/> Disability Benefits Insurance §7.02 <input checked="" type="checkbox"/> Employers' Liability §7.02	Statutory amounts.	
<input checked="" type="checkbox"/> Commercial General Liability §7.03(A)	<p><u>\$1,000,000.00</u> per occurrence</p> <p><u>\$1,000,000.00</u> personal & advertising injury (unless waived in writing by the Board)</p> <p><u>\$2,000,000.00</u> aggregate</p> <p><u>\$0</u> products/completed operations</p> <p>Additional Insureds:</p> <p>1. City of New York, including its officials and employees, and</p> <p>2. _____</p> <p>3. _____</p>	
<input type="checkbox"/> Commercial Auto Liability §7.03(B)	<p><u>\$1,000,000.00</u> per accident combined single limit</p> <p>If vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90</p>	
<input type="checkbox"/> Professional Liability/Errors & Omissions <div style="text-align: right;">§7.03(C)</div>	<p><u>\$1,000,000.00</u> per claim</p>	
<input type="checkbox"/> Crime Insurance §7.03(D)	<p><u>\$5,000,000.00</u> Employee Theft/Dishonesty</p>	

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	<p>\$ _____ Computer Fraud</p> <p>\$ _____ Funds Transfer Fraud</p> <p>\$ _____ Client Coverage</p> <p>\$ _____ Forgery or Alteration</p> <p>\$ _____ Inside the Premises (theft of money and securities)</p> <p>\$ _____ Inside the Premises (robbery or safe burglary of other property)</p> <p>\$ _____ Outside the Premises</p> <p>\$ _____ Money Orders and Counterfeit Money</p> <p>New York City Water Board is a loss payee as its interests may appear</p>
<p><input type="checkbox"/> Cyber Liability Insurance §7.03(E)</p>	<p><i>[If there is a significant cyber risk, please consult with the Law Department about specific insurance requirements.]</i></p>
<p><input type="checkbox"/> [OTHER]</p>	<p><i>[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]</i></p>
<p><input type="checkbox"/> [OTHER]</p>	<p><i>[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]</i></p>
<p>Section 14.04 – Notice</p>	
<p>Board’s Mailing Address and Email Address for Notices</p>	<p><i>New York City Water Board Attention: Treasurer’s Office 59-17 Junction Boulevard 8th Floor Corona, NY 11373</i></p>

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	<i>With an electronic copy to: nycwaterboard@dep.nyc.gov</i>
Contractor's Mailing Address and Email Address for Notices	

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

APPENDIX B

AGREEMENT FOR SERVICES OF CONSULTANT

AGREEMENT, made and entered into as of this __ day of _____, 2025, by and between the New York City Water Board (the “Board”), a corporate municipal instrumentality of the State of New York, and _____ (hereinafter referred to as the “Consultant”), a corporation located at _____, EIN _____.

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

WHEREAS, the Board has identified a need for the services of a management consultant to provide management consulting and strategic planning services in connection with undertaking a comprehensive review of the New York City Department of Environmental Protection (“DEP”), involving development of a new strategic plan as well as an operational and financial review of DEP’s current plans and operations; and

WHEREAS, the Board by Resolution dated _____, 2025, authorized the solicitation and expenditure of funds in connection with identifying and retaining a management consulting firm; and

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

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

A. General Provisions – Appendix A

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

B. Scope of Work – Appendices [] and C

The Consultant shall provide management consulting services in connection with performing a comprehensive strategic, operational, and financial review of DEP, as described in each of (i) the Consultant’s Proposal and (ii) the Scope of Work dated

_____, 2025, attached hereto as, respectively, Appendix [] and Appendix C, and incorporated and made a part hereof.

C. Appendices [D Through F]

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

D. Term

This agreement shall be effective as of _____, 2025 and continue for one year to the date of expiration, _____, 2025, with one extension option to the initial term of one-year, available at the discretion of the Board, and subject to the Consultant’s acceptance.

E. Compensation; Expenses

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

	Hourly Rate
Seniority 1	\$ ____
Seniority 2	\$ ____
Seniority 3	\$ ____
Seniority 4	\$ ____
Seniority [X]	\$ ____

Summary of the Price Proposal Included as Appendix D:

	Estimated Hours to Perform the Task	Estimated Dollar Cost of Consultant Personnel Time
Task 1		
Task 2		
Task 3		
Additional Tasks as May Be Proposed by Consultant(s)		
Total – All Tasks		

3. The total compensation payable to the Consultant by the Board pursuant to this Agreement for services provided hereunder shall not exceed \$[_____].
4. There will be no reimbursement for expenses of any kind incurred by the Consultant in the performance of services hereunder.
5. The Board shall make payment to the Consultant based upon the Consultant’s submission of invoices on a _____ basis, which shall be in a form acceptable to the Board and which shall include a calculation detailing the work performed, mix of personnel seniorities, hourly rates used, and other information sufficient to allow the Board to make a reasoned determination of the correctness of the invoiced amount. Invoices should be submitted electronically by email to: WBExpenseStaff@dep.nyc.gov.

F. Relationship of Parties

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

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

The Consultant shall make reasonable best efforts to retain M/WBE subcontractors for at least 15% of the total compensation payable to the Consultant in the performance of services hereunder. The Consultant shall maintain records to document the specific efforts made to seek out and identify potential M/WBE subcontractors.

H. Addresses for Notices

To the Board:

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

Phone: (718) 595-3591
Fax: (718) 595-3595
Email: WBExpenseStaff@dep.nyc.gov
jasonl@dep.nyc.gov
onazem@dep.nyc.gov

To the Consultant:

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

THE NEW YORK CITY WATER BOARD

By: _____
[Name]
Executive Director

Dated:

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

Sworn before me this _____ day of _____, 2025 _____ appeared before me and duly acknowledged execution of the foregoing instrument.

NOTARY PUBLIC

By: _____
[Name, Title of Authorized Signatory]

Dated:

EIN # _____

State of _____) ss.:
County of _____)

Sworn before me this _____ day of _____, 2025, before me personally came _____, to me known to be the _____ of _____, described in the foregoing instrument, and acknowledged that s/he is authorized by all necessary action to execute this instrument on its behalf and that s/he subscribed the name of said firm thereto on behalf of said firm for the purpose therein mentioned.

NOTARY PUBLIC

New York City Water Board – Solicitation for Metering Program Management Services

APPENDIX C

PRICE PROPOSAL

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

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

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

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

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

	Year 1			Year 2			Year 3		
	Seniority 1	Seniority 2	Seniority 3	Seniority 1	Seniority 2	Seniority 3	Seniority 1	Seniority 2	Seniority 3
Scope of Work									
<i>Estimate of required hours</i>									
Task 1 - planning and scheduling									
Task 2 - risk management									
Task 3 - contractor administration									
Task 4 - contract action requests									
Task 5 - ongoing contract administration									

[Additional Uses of Time as Recommended by the Consultant]
Hours of consultant personnel time by sub-module allocated by staff seniority level

Schedule of Hourly Rates by Consultant Personnel Seniority	
Seniority 1	\$ _____
Seniority 2	\$ _____
Seniority 3	\$ _____

	Total Estimated Hours	Total Estimated Cost
Task 1		
Task 2		
Task 3		
Task 4		
Task 5		
Total Project		

APPENDIX D

EVALUATION PROCEDURES FOR SUBMITTED PROPOSALS

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

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

A weighted technical score will be calculated taking into account factors that fit within the following categories:

Demonstrated relevant experience

Demonstrated organizational capability

Quality of technical approach

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

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

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

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

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

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

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

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

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

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

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

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

Basis for Contract Award:

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

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

CERTIFICATE OF NON-COLLUSION

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

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

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

DATE: _____/_____/_____

PROPOSER NAME: _____

PROPOSER SIGNATURE: _____

PROPOSER FIRM: _____

AFFIDAVIT OF PAYMENT OF TAXES

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

Full name of Proposer or Bidder _____

Address _____

City _____ State _____ Zip Code _____

CHECK ONE AND INCLUDE APPROPRIATE NUMBER:

_____ A. Individual or Sole Proprietorship*
SOCIAL SECURITY NUMBER

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

_____ C. Corporation
EMPLOYER IDENTIFICATION NUMBER

By: _____
Signature

Title

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

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

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

Check One

Transaction Type (check one)

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

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

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

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

Entity Information

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

Entity EIN/TIN _____ Entity Name _____

Filing Status

(Select One)

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

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

Entity is a Non-Profit Yes No

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

Address _____

City _____ State _____ Zip _____

Phone _____ E-mail _____

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

Principal Officers

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

Chief Executive Officer (CEO) or equivalent officer

This position does not exist

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

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

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former CEO _____ on date _____

Chief Financial Officer (CFO) or equivalent officer

This position does not exist

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

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

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former CFO _____ on date _____

Chief Operating Officer (COO) or equivalent officer

This position does not exist

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

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

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former COO _____ on date _____

Principal Owners

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

There are no owners listed because (select one):

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

Other (explain) _____

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

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

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

Organization Name _____

Organization Name _____

Organization Name _____

Remove the following previously-reported Principal Owners

Name _____ Removal Date _____

Name _____ Removal Date _____

Name _____ Removal Date _____

Senior Managers

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

Senior Managers

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

Remove the following previously-reported Senior Managers

Name _____ removal date _____

Name _____ removal date _____

Certification

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

Name _____ Title _____

Entity Name _____ Work Phone # _____

Signature _____ Date _____

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

What is the purpose of this *Data Form*?

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

Why have I received this *Data Form*?

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EEO POLICY STATEMENT

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

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

Print Name of Firm

Signature of Authorized
Representative

Print Name of Authorized
Representative

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

(Instructions on the following page)

Contractor Name:

Report Includes – Please select one from the options below:

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

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

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

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

INSTRUCTIONS

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

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

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

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

DESCRIPTION OF JOB CATEGORIES

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

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

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

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

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

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

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

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

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

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

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