

Attach to Request for Proposals

**New York City Department of Transportation
Division: Administration**

REQUEST FOR PROPOSALS

TO PROVIDE A

BIKESHARE SYSTEM IN THE CITY OF NEW YORK

PIN: 84109MBAD390

E-PIN: 84111P0004

Addendum Nr. 3

December 20, 2010

This Addendum is Hereby Made Part of the Request for Proposals

NOTE:

Attached please find:

- 1. Addendum Nr. 3**
 - **Notice to All Proposers**
 - **Answers to Questions received from Vendors by the Close of Business on December 10, 2010.**
 - **General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services.**
 - **PowerPoint Presentation from the December 8, 2010 Pre-Proposal Conference**

- 2. Acknowledgement Receipt**

To Provide a Bikeshare System in the City of New York
PIN: 84109MBAD390
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Addendum Nr. 3
December 20, 2010

NOTICE TO ALL PROPOSERS

Hard copies of the documents which constitute this Addendum are available for pick up at the Contract Management Unit (CMU), 55 Water Street, Ground Floor, New York, NY 10041.

NO FURTHER TEXT ON THIS PAGE

REQUEST FOR PROPOSALS
TO PROVIDE A
BIKESHARE SYSTEM IN THE CITY OF NEW YORK
BIKESHARE QUESTIONS RECEIVED FROM VENDORS
12-10-10 c.o.b. deadline

Please Note: Listed questions shall be answered by a single response below.

PERMITTING & STATION LOCATIONS

1. What is NYCDOT's role/jurisdiction in station permitting and what are the expected timelines?

- What role does New York City play in assisting with Site Location of the racking systems?
- Will the city assign personnel to actively assist in approvals for station placement or are we simply another supplier dealing through regular channels?
- What agencies and authorities will have jurisdiction over placement of stations around the city?
- Please provide the relevant process and or Processes for obtaining Permits and an example of the associated fees. What is the structure of City agencies with regard to the issuing of permits?
- Could NYCDOT please provide details of any likely time constraints and/or typical turnaround times for the granting of permits for street works from receipt of application to approval?
- What is the position of the NYC Department of Parks as it relates to Bike Share? Are NYC Park properties part of the potential sites for bike share systems?
- Are the fees payable to NYCDOT and other City Agencies - known and available for consideration, alternatively, can the source for obtaining the relevant fee information be provided?

A1. For locations that the City of New York Department of Transportation ("NYCDOT") has jurisdiction, such as streets, sidewalks and some plaza areas, throughout New York City, NYCDOT will issue permits, subject to its rules, for the bikeshare system (the "System") siting plan. Depending on the Contractor's station siting plan, additional permits from other City of New York ("City") agencies, for example City Department of Parks and Recreation or the City Housing Authority, or from private landholders, may be required. However, the System will be administered by NYCDOT and, therefore, NYCDOT anticipates minimal use of other City agency or private property.

2. Has NYCDOT already selected station locations/layouts?

- Have specific locations for the bike share kiosks been identified?
- Will the location of stations be determined by NYCDOT or by the contractor or both?
- Will there be consideration toward the ability to park a vehicle proximate to the kiosk locations for the purposes of loading/unloading/reallocation of bicycles?

A2. NYCDOT has not identified any specific System station locations. Siting and station layout for the System shall be the responsibility of the Contractor, subject to final approval by NYCDOT.

3. Will NYCDOT provide the grid maps mentioned in the RFP Glossary?

- Does the NYCDOT offer site grid maps that can be used for the purposes of planning site locations, and if so, would it indicate right of way restricted areas?

A3. As per the Request for Proposals to provide a Bikeshare System in the City of New York (the "RFP") Glossary (RFP page 36), the selected Contractor will be provided this grid in GIS shapefile form. Downloadable GIS maps of New York City are available from the Department of City Planning website: <http://www.nyc.gov/html/dcp/html/bytes/applbyte.shtml> The "LION" file indicates right-of-way.

REPLACEMENTS/REMOVALS/RELOCATIONS

4. Can NYCDOT provide an estimate, cap or rationale for station removals, reinstallations and relocations?

- Since all removals, reinstallations and relocations of the System structures will be at NYCDOT's request, will NYCDOT allow an annual cap or annual allowance that must be borne by the Contractor and establish that any amounts over such an allowance will be borne by NYCDOT?
- It is acknowledged that NYCDOT may direct the Contractor to remove, replace and/or relocate System structures from time-to-time, in some cases for reasons that are outside the control of the Contractor (e.g., for construction and/or repairs to public utilities). Please confirm that where this occurs the Contractor can reasonably expect performance and financial relief to the extent incurred (e.g., through the impact of SLAs/Pis and loss of service fees and advertising revenue where demonstrable)?
- Could NYCDOT please provide some indication of the anticipated number of removals, replacements or relocations over the initial five year contract term?

A4. Such station relocations will be subject to Service Level Agreements (RFP Attachment C-17 Page 66) and NYCDOT expects a prompt timeframe for such relocations. In addition, NYCDOT will not provide financial relief during such System station relocations and such costs shall be borne solely by the Contractor.

5. Please clarify the expectation for “in-kind” materials replacement.

- Please provide details of all types of "in-kind" materials that may be encountered by the contractor.
- Please provide details of all types of "System Structures" that may be encountered that may require removal, relocation and or re-installation.
- If damage to the ground is likely to be caused, materials must be pre purchased to achieve a like for like replacement – is NYCDOT expecting to hold this stock themselves or would the supplier hold the stock in their own depot?

A5. As the RFP states that a typical station must not use a hard wired connection to a power grid (Attachment C-6 Page 47) NYCDOT expects damage, if any, to sidewalks, streets or other surfaces to be minimal. The “System Structures” referenced in the RFP are the equipment proposed by the Contractor. The [NYCDOT Street Design Manual](#) provides information about most of the commonly used materials and is the sole responsibility of the Contractor.

STATION DESIGN OPTIONS

6. Who determines the number of docking points per station?

Will the number of docking points per station be decided on by the contractor, NYCDOT or both?

A6. The Contractor will propose such details to NYCDOT. NYCDOT will review, assist with site planning, approvals and other related tasks. NYCDOT retains final approval over all station locations, configurations and sizes.

7. Are alternate station configurations (e.g. virtual or manned stations) permissible?

- Would it be permissible for the bike share system to allow for a “virtual kiosk” and remote collection/dispensing bike share bicycles via a handheld mobile device instead of a kiosk or dock in high demand areas that may require more bikes than limited space may allow? For example, at Columbus Circle Bike and Roll NYC is an existing NYC Parks vendor that can store 300 bikes and offer additional equipment such as kids and specialty bikes.
- Would the City allow the bike share operator to forgo the installation of the kiosks that would otherwise be needed to hold the 300 bicycles by partnering with Bike and Roll NYC for distribution at that location?

- Will onsite service at the kiosk be considered in terms of space and or working conditions for the attendant?

A7. NYCDOT expects a System that is accessible 24 hours a day, 365 days per year. The RFP does not preclude a proposer proposing viable alternatives in a technical proposal supported by a business model.

CONTRACT TERM

8. Can the initial contract term be extended and what are the criteria for NYCDOT's approval of the subsequent contract terms?

- Would NYCDOT entertain an initial term longer than 5 years (preferably 10 years) in order for the Contractor to recoup the financial investment required to initiate and build out the System while keeping the user fees at a reasonable level?
- Are there any goals, benchmarks, geographic coverage etc. that a contractor must reach to be given his two five-year renewals?
- The anticipated contract term is 5-years, with the scope for 2 further 5-year extensions. Whilst this is acknowledged as being at NYCDOT's discretion will NYCDOT be willing to establish and agree, subject to their stated year-on-year ability to commit to existing contracts, some general parameters around which an extension is reasonably likely to be granted (e.g., if the cost, revenue and SLA objectives of the scheme are being met within a 10% tolerance)?

A8. The initial contract term shall be for five (5) years and may be renewed, at NYCDOT's sole discretion, for two additional five (5) year terms. Regarding the subsequent renewal contract terms, NYCDOT is interested in a System that fully meets listed the agency goals (RFP Page 11).

RECOVERY OF PARKING REVENUE

9. What is meant by "Recovery of Parking Revenue?"

- Can you please explain "Recovery of Parking Revenue" (page 78) and to what aspects of the proposal it specifically pertains?
- Could NYCDOT please provide a brief explanation for "Recovery of Parking Revenue" ?
- Can you please further explain the comment in Appendix D-1, Question 5 "Recovery of Parking Revenues" Pg 78.

A9. In the event that the Contractor proposes a System station location that requires the removal of metered parking, the repayment of such estimated lost parking revenue to the City must be included in the submitted business model response (RFP Page 78).

SYSTEM SCOPE & ASSUMPTIONS

10. What size program is NYCDOT looking for and what is the timetable and location? Is phasing permissible?

- Is 10,000 bikes south of 60th street the static plan for the full initial five years of the contract? Does the City have a five year growth plan in mind?
- Could NYCDOT please confirm if the System Go Live date of April 1st 2012 is for the full scheme of 10,000 bikes and 600 stations or would a phased rollout be acceptable?
- Is the city amenable to a phased approach that builds to 10,000 bikes over the contract period?
- Could NYCDOT please provide some indication of System expansion, both for the initial 5 year term and subsequent additional terms?
- What is the timetable for the entire city roll-out? Is that all going to happen under this contract?
- Could NYCDOT please provide a copy of any assumptions they have with regard to proposed System areas?

- A10. NYCDOT is interested in a System that meets listed the agency goals (RFP page 11). There is no specific System bicycle/station/geographic/roll-out requirements contained in the RFP and proposers are required to provide such details in their technical proposals. NYCDOT expects the System, once all/any initial phasing is complete, to be fully operational during 2012.

DCP BIKE SHARE OPPORTUNITIES REPORT

11. Please explain the role of the 2009 Dept. City Planning Bikeshare Opportunities in New York City Report.

- The Bikeshare: Opportunities in New York City Report recommended a phased funding approach which is different to this RFP. Could NYCDOT please provide some background on the decision not to follow this approach?
- Could we obtain the preliminary analyses conducted by the NYCDOT which detail the financially self-sustaining system?

- A11. The New York City Department of City Planning's publication entitled, BIKE-SHARE Opportunities in New York City outlines one possible way to approach bike share in New York City (http://www.nyc.gov/html/dcp/html/transportation/td_bike_share.shtml) but is provided for informational purposes only. The RFP structure allows proposers to submit a wide variety of possible solutions, including funding mechanisms, to provide a System in New York City.

The City's preliminary analyses are outlined in the above referenced publication.

FINANCIAL ASSUMPTIONS

12. What are the terms of the Security Fund and what flexibility is there in those terms?

- When will the \$500,000 security fund noted on page 7 of the RFP need to be deposited? Will this fund be returned at the conclusion of the contract? Will there be an escrow agreement? Where will it be deposited? Will it bear interest in the interim? If so, at what rate and for which parties' benefit?
- 'Security Fund and Performance Payment Bonds': these requirements draw on our financial facility and restrict our ability to bid for, grow and conduct other business. Will NYCDOT be willing to consider other forms of surety that are less restrictive to prospective bidders? Furthermore, at what stage will the proposed value of bonds and the proportion of cash-to-bonds referred to in sub-section 'Performance and Payment Bonds' be available?

- A12. Such terms will not be negotiated with the Contractor and are specified in Section II D of the RFP (Page 7).

13. What is the timetable for securing funding?

- Generally speaking, what are the funding expectations with regard to this project? And more specifically, at what point in the timeline for this project does the NYCDOT expect proposers to have investors lined up?
- At what point in the timeline for this project does the NYCDOT expect proposers to have the funds in hand?
- And at each of these points, will the NYCDOT expect the funds (or commitments) to cover the full scope of the System, or would it suffice to layout a funding plan in stages?

- A.13 There is no explicit timetable. NYCDOT expects the selected Contractor to meet the milestones laid out in the RFP (Attachment C-18 Page 18). The RFP provides opportunities for a wide variety of funding sources and looks to proposers to indicate and demonstrate which will be the most successful in New York City. To the extent that your funding is secured at the time of

proposal submission (funding partners, available lines of credit, cash on hand etc.) please include such information in the Business Model response document (Appendix D-1 Question 3 Page 78).

14. To what extent will risk be shared between the City and the selected vendor?

- The basis of the RFP and NYCDOT 'preliminary analysis' appears to call for a 'revenue-risk' contracting model based on patronage forecast projections and studies already conducted. Can bidders rely on these patronage forecasts / studies for the purpose of their bids, or will they be required to underwrite patronage forecasts, or will this be a 'shared-risk', and if so - to what extent of 'risk-sharing'?
- Could NYCDOT please confirm the likely amount and any limits to Liquidated Damages that may be withdrawn from the Security Fund and in what circumstances ?
- Please confirm if the Contractor is expected to build the risk and costs associated with vandalism, theft and graffiti removal into their pricing (including Opex and Capex), or whether this is a cost and risk that NYCDOT will hold, or whether this should be a shared cost/risk - and if the latter, to what extent it is anticipated that this risk is shared? This question also ties in with Section 'J' on the same page relating to 'Ownership' and what degree of reliance we may place on the NYPD adequately protecting the assets of the System - and any associated security / replacement costs considerations.
- Is NYCDOT willing to finance the project if a business model is presented that shows a realistic path to financial self-sustainability? If not, can NYCDOT assist in or backstop program financing so as to improve the program's credit-worthiness and take advantage of lower borrowing costs?

A14. Risks and costs associated with the System (vandalism, theft and graffiti etc.) shall be borne solely by the Contractor and should be accounted for in the business model. NYCDOT will not share financial risk nor assist in the provision of funds. Liquidated damages will be set forth in the contract between the City and the selected Contractor.

15. Are there limits on fee structures, pricing or business models?

- Will NYCDOT have any bounds or limits on the fee structure for daily, weekly and annual membership, including any free usage periods ?
- On what basis will proposed (membership and user fees) rate increases be accepted by the NYCDOT ?
- Does the City have a business model preference (e.g. a non-profit vs a for profit enterprise?).
- Would it be permissible to offer pricing models that incorporate services provided by partners? For instance, could a pricing structure incorporate a ferry trip?

A15. Proposed membership and user fees should be reasonable, customary and should be in line with membership and user fees currently used by comparable bikeshare systems around the world. All rate and rate increases are subject to NYCDOT approval. NYCDOT does not have a preference on business model type and there is no restriction on pricing models.

16. What is the contract timeline?

At what stage will the detailed terms of the Contractual Agreement be available for review in order for the risks to be more fully assessed and priced? Alternatively, is there a general 'form-of-contract' specific to New York Public Authorities that is intended for use, and if so, where may we obtain access to the document?

A16. NYCDOT anticipates that the System will "go live" on or about April 1st, 2012. A contract will be awarded to the responsible proposer whose proposal is determined to be the most advantageous to the City, taking into consideration the technical proposal, business model, the price(s) to be charged for services to the public, in accordance with the factors or criteria which are set forth in the RFP.

17. What is the proposed revenue share?

Could an indication be given at what level NYCDOT anticipates System revenues would be shared with the City and likely % of revenue share, or is this down to reach bidder to propose?

A17. As a component of the business model, each proposer should list the level(s), percentage(s) and timing(s) of revenue to be shared with the City (Appendix D-1 Question 6 Page 78).

FACILITY SPACE

18. Can the City provide space for bike share operations facilities?

- Given the requirement that the bike share company locate its office and other facilities within 16 miles of City Hall, and considering the high cost of real estate within this radius, can the City make warehousing or other space available?
- Are there any existing facilities that could be used or shared for the operation of the scheme?
- Does the City have the ability to provide discounted space for repair/maintenance/vehicle parking/storage facilities?

A18. NYCDOT will not provide such facilities and such provision will be the sole responsibility of the Contractor.

SPONSORSHIP AND ADVERTISING QUESTIONS:

19. What are the sponsorship and advertising limitations? Are there guidelines?

- The RFP provides an advertising panel size limit of 2 X 4 feet or 8 square feet. It then also limits advertising per station to 1.5 square feet per dock. Depending on the number of docks, this could be more than 8 square feet. Is the city allowing advertising elsewhere on the station besides the panel?
- Can one company have both sponsorships and advertisements on a bike e.g, sponsor a bike with it's (sic) name on the frame and have an ad on the mud guard?
- Can we place sponsorship or advertising on the docking points (equipment in which the bike locks into)?
- Please specify the criteria that NYCDOT will utilize to grant its approval for the permitted forms of advertising and sponsorship placements listed in the RFP.
- We note that the NYDOT reserves the right to approve advertising and sponsorship, does the NYDOT have written guidelines?
- Would NYCDOT consider alternative sponsorship solutions e.g. 1 overall scheme sponsor?
- Is it reasonable to assume that all proposed marketing, advertising and sponsorship agreements (outside those stated to be prohibited on page 15 of the Request for Proposals (RFP) document) be generally encouraged / accepted? The potential concern with this matter is that the RFP suggests a 'revenue risk' model significantly dependent upon commercial advertising revenue. Whilst we have extensive experience with commercial advertising revenue arrangements in transport and on bike schemes the degree of restricting / promoting this feature is an important determinant in these sources of funding.
- We do not believe that the advertising opportunities offered by the RFP are sufficient to support the economic model. The 2' by 4' advertising format that is authorized is already present in large numbers (more than 7,000 panels) on NYC phone kiosks in the projected Bikeshare System deployment area and, as a result, the approximately 600 advertising panels that would be placed on the Station Computer Units would not raise significant revenues. Would the NYCDOT consider authorizing additional, more lucrative advertising options that can be relied on in the business model, including at locations that are separate from the bikeshare stations?

A19. All proposed advertising and sponsorship placement(s) are subject to NYCDOT approval. One advertising or sponsorship placement panel, approximately 2 x 4 feet in size, per Station Computer Unit will be permitted. In addition, one advertiser or sponsor may advertise or sponsor up to 1.5 square feet per bicycle for all bicycles in the System. Please review Section

IV A2 (RFP page 14) for the list of additional advertising and sponsorship placement options, however, NYCDOT shall not consider any further locations.

20. What are naming rights?

- In light of the statement that "Naming Rights" cannot be relied upon in the Business Model, does NYCDOT consider Barclays Bank funding and involvement in the City of London system with the "Barclays Cycle Hire" as naming rights or as a sponsorship?

A20. NYCDOT considers Barclays to have naming rights to the Barclays Cycle Hire bikeshare system in London.

21. What level of certainty is required for commercial advertising arrangements?

- How firm will the commercial advertising revenue arrangements need to be for the purpose of bid consideration? The bidding timescales for such an undertaking are short and it may be that all bidders can do is establish tentative arrangements, for which subsequent funding / 'sharing' may need to be subject to the eventual commercial revenue arrangements achieved.

A21. NYCDOT expects the Contractor to demonstrate, through the Technical Proposal, Business Plan and in accordance with the factors or criteria which are set forth in the RFP, the ability to provide a System on or about April 1st, 2012, the "go live" date.

STREET TEST:

22. What are the parameters of the Street Test?

- Have NYCDOT identified a location for the Street Test in summer / fall 2011 and will the Street Test be only available to the contractor for testing - i.e. not the general public ? Will this requirement be pre or post contract signature?
- Can usage fees be collected during Street Testing?
- Can the System have a Beta-test period during which they "go live" but are not subject to service levels in order to work out any System issues?

A22. NYCDOT has not identified a location for the Street Test. It is anticipated that the location will be determined during contract negotiations. The Street Test is intended to be available for use by the general public at service levels agreed upon during contract negotiations. Usage fees may be collected at rates set forth in the final contract. The Street Test will occur subsequent to the issuance of a Notice to Proceed by NYCDOT.

The Street Test will serve as the beta-test. SLAs will be enforced during this period, but may, as set forth in the final contract, be at a different level than during than after go-live.

23. How will the Street Test be evaluated and what type of changes will be requested?

- Whilst the Street Tests will be to NYCDOT's sole satisfaction, will this requirement be bounded by prior-agreed objective test criteria?
- Page 42 - C-3 , d) states that the NYCDOT can revise requirements following Street Tests at no cost to the City. What is the scope of changes that can be requested by the City?
- How long after the two-month Street Test planned for the Fall/Summer of 2011 does NYCDOT anticipate finalizing all critical aspects being assessed and evaluated (bike locking mechanism, stations, etc.) to allow for the targeted April 2012 "go live" date?

A23. Recognizing that refinements may be an iterative process, NYCDOT anticipates providing all of its requested changes in a timely manner after the completion of the Street Test. Test criteria for the Street Test will be set forth in the final contract.

SEASONALITY

24. Is the program intended to run all year?

- As specified in the RFP, the Bikeshare System is to be a 24-hour transportation network. Does NYCDOT expect the System to be operational all year long, twenty-four hours a day, seven days a week, including during the winter season (under potentially unsafe icy and/or snowy conditions) and other extreme weather conditions?
- Could NYCDOT please confirm if it is intended that any of the stations are to be removed during the winter months ?
- Is there any consideration in terms of seasonality of bike deployment?

A24. NYCDOT expects the System to complement the existing transit systems and operate on a twenty-four hour 365 day a year basis.

APPROVALS & TIMELINES

25. What is the timetable for the required approvals and permits?

- Can NYCDOT provide a timeline for all required governmental approvals and necessary permitting based on the April 2012 "go live" target?
- The design of the Stations will be subject to the review of the Public Design Commission and the Landmarks Preservation Commission. Will there be, or are there, prior guidelines (or principles) for consideration or will specific requirements need to be established for the specific infrastructure of this scheme? Could NYCDOT provide some guidelines on the likely approval timescale by the Public Design Committee for the station design ?

A25. There is no fixed timeline or absolute guidelines for such approvals.

26. What is the legal framework for this contract?

- Enabling a company to sell advertising on NYC streets has always needed to be accomplished through the ULURP process? Why is this different?
- Is this RFP considered a "Franchise" and therefore subject to the approval of the FCRC?
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A26. The RFP has been issued pursuant to the Procurement Policy Board Rules.

ADA REQUIREMENT

27. Please explain the ADA requirement.

- Please could NYCDOT clarify the Disability requirements required by the scheme– is this as users or 'sponsors' of users?
- Are you asking for vehicles that can be used by the physically-disadvantaged to be included in this process?
- Are there any specific requirements by which NYCDOT would require users to be able to access the scheme?

A27. As applicable, the Contractor will be required to comply with the Americans with Disabilities Act and any additional federal, state, and local laws and rules relating to accessibility for people with disabilities as applicable. NYCDOT anticipates that each proposer will submit a unique System for evaluation and, therefore, each proposer must ensure compliance, if any, for each proposed System.

RFP PROCESS QUESTIONS

28. Can the response period be extended, what is contractually binding, what materials will we receive?

- The capital requirements to respond to this RFP will require substantial due diligence and effort to form competent and responsive teams that are adequately funded. Considering the capital involved, interested financial institutions will need to perform significant due diligence. Given the holidays, and the City's encouragement that we form teams, we respectfully request an extension to respond until May 31, 2011. This will still allow ample time for the successful respondent to conduct a two month street test in 2011, but will afford interested parties the necessary to complete the substantial amount of work necessary to attract capital, build a competent team and prepare complete responses.
- Can bidder's assume that the initial review of proposals by NYCDOT will be subject to clarification of any points in query prior to rejection, and will any clarification questions be published to all bidders as with other clarification questions under the RFP/bidding process?
- Could NYCDOT please indicate if Milestones as set out in Appendix C will be contractually binding ?

A28. At this time, NYCDOT does not anticipate modifying the RFP Timetable (RFP Section I Page 5) or making such clarifications. Submitted Milestones (RFP Attachment C-18 Page 71) will be binding and set forth in the final awarded contract.

29. What is the evaluation process and what are the required formats?

- 'Initial Technical Evaluation' and 'Short-Listed Business Model Categories' (pages 19 and 20). The % evaluation bands shown are indicative of the overall weighting for the evaluation; however, it will be important and useful for prospective bidders to understand the detailed structure behind the evaluation that determines the % scoring attributed. It also helps confirm the objectivity of the evaluation process. By way of example: the section 'Qualifications and Experience' allocates up to 20% of the scoring for Initial Technical Evaluation (which is a critical pass/fail score): is there a threshold for achieving the maximum 20% score (e.g. 10-years or more experience with bike schemes); or, would a bidder with 20-years experience score better than one with 10 years experience. Similar considerations apply to almost all categories within the evaluation weighting and it would be important for prospective bidders for NYCDOT to publish a more detailed evaluation scoring framework.
- Is there a further breakdown of scoring criteria?
- Could NYCDOT please confirm if the Business Model will need to be submitted in a prescribed format or will each bidder develop their own ?

A29. The evaluation criteria is fully described in Section V of the RFP (Page 5). Business model instructions are fully described in Section IV of the RFP (Pages 14 -15 and page 78). Proposers may utilize a business format of their choice. However, NYCDOT prefers a financial pro forma format (RFP page 78).

CITY REGULATIONS AND OUTSIDE RESOURCES

30. Could NYCDOT please clarify the requirement for Automobile Liability Insurance?

A30. NYCDOT will require automobile liability insurance in the amount of two million dollars (\$2,000,000) aggregate and one million dollars (\$1,000,000 per occurrence) and naming the City, its officers, agents, and employees as an additional insured (Section II D of the RFP page 8).

31. Could NYCDOT please confirm if it is or is likely to be a legal requirement for cyclists to wear helmets during the contract term?

A31. New York City does not currently have a helmet law for adults. Children under the age of 13 are required to wear helmets.

32. Will the Terms and Conditions of Hire be a NYCDOT contract between it and the general public?

A32. Such terms shall be between the Contractor and participants of the System.

33. Please provide details of all NYCDOT rules, regulations and specifications relevant to this RFP.

A33. Each proposer must complete due diligence prior to submitting a proposal in response to this RFP.

34. Please provide details of the sections of all the applicable building and electrical codes of the City.

A34. Each proposer must complete due diligence prior to submitting a proposal in response to this RFP. Such information may be located on the Department of Buildings website at: <http://www.nyc.gov/html/dob/html/home/home.shtml>

35. What are the Mayor's PlaNYC 2030 goals?

A35. Please review the document at: <http://www.nyc.gov/html/planyc2030/html/home/home.shtml>

36. Is there a requirement for multiple languages? If so, which languages?

A36. There is no such specific requirement in the RFP. However, NYCDOT expects and strongly recommends such capability.

MISCELLANEOUS QUESTIONS

37. "The Central Computer System should be upgraded and maintained on a daily basis". Can we have clarity as to what is required here? Is this referring to backups, monitoring and security patches?

A37. Such daily upgrades and maintenance shall include but not be limited to backups, monitoring and security patches.

38. Should NYCDOT request that the Contractor make the information system available to independent "app" developers, could the Contractor charge an annual fee for it?

A38. Such capability may be proposed, subject to NYCDOT approval.

39. Will Contractor be permitted to sell the System's subscribers database to third parties?

A39. Such capability may be proposed, subject to NYCDOT approval.

40. "The Contractor will provide reports to NYCDOT in accordance with an agreed upon schedule or on request". Are there specific reports required? If so may we have details on what is required?

A40. The required reports will be set forth in the final awarded contract.

41. Under what circumstances can the NYCDOT request additional features and increased functionality related to the website?

A41. Such additional functionality will beat NYCDOT's request.

42. Will there be separate contracts for electric bikes? Trikes? Multi-rider vehicles?

A42. Such separate contracts are not currently anticipated by NYCDOT for such vehicles.

43. Will credit be given to proposers who maximize the diversity of design, who offer a methodology to enable this to happen?

A43. NYCDOT will adhere to evaluation criteria is fully described in Section V of the RFP (Page 5).

44. What provisions are you providing to make certain that bike shops will not be damaged by these developments, as has been done in Barcelona and other cities with bike share programs, and have you met with them to discuss this?

A44. This question is outside of the scope of this RFP.

45. Won't relaxed rules in regards to the use of sidewalk and street use have to be written so that stores and building landlords can also designate increased space for the use of cycle storage?

A45. This question is outside of the scope of this RFP.

46. Can a University, for instance, establish a system of its own, to serve its student body and the surrounding communities, or is this an exclusive contract, in effect a monopoly?

A46. An exclusive contract will be negotiated and awarded to the responsible proposer whose proposal is determined to be the most advantageous to the City, to be operated on property under the control of NYCDOT, taking into consideration the technical proposal, business model, the price(s) to be charged for services to the public, in accordance with the factors or criteria which are set forth in the RFP.

47. When bikes need to be re-positioned en masse, will you give credit to companies that do this using the least-polluting method?

A47. The evaluation criteria are fully described in Section V of the RFP (Page 5).

48. Will preference be given to USA corporations as opposed to foreign entities?

A48. No, NYCDOT will adhere to evaluation criteria is fully described in Section V of the RFP (Page 5).

Pre-proposal Conference Question and Answers

RFP PROCESS AND TIMELINE QUESTIONS:

1. Will the pre-proposers conference attendees list be available and when?

A1. Yes. The list was provided on 12/10/2010.

2. When will the answers to the written and verbal questions be answered?

A2. COB on Friday, 12/17/2010. Please note, this date was extended to COB on Monday, 12/20/2010.

3. What is the estimated timeframe for the oral presentations?

A3. We anticipate that the oral presentations and demonstrations will be held approximately a month after proposals are received, depending on scheduling.

4. What type of service level agreements are you expecting?

A4. For the purposes of responding this RFP, proposers should propose service level agreement thresholds and values in the SLA section of the RFP. NYCDOT is expecting service level values that will ensure a robust, high functioning and well maintained System.

5. Will this program go through the ULURP process?

A5. No

6. Does the City anticipate making a profit on this program? Is the program meant to be self-supporting?

A6 Yes, the City is looking for a financially self-supporting program as well as the ability for the City to share in revenue generated.

7. Will this be an exclusive contract? Will other bike share programs be allowed in areas not delineated in the RFP?

A7. The NYCDOT is looking for a Contractor to provide bike share in New York City on property under its control. While it is exclusive for such property, it is not so for property or area under the control of other City agencies or other third parties.

8. How will Community Boards be involved?

A8. They will be brought into the process at the appropriate time.

9. Will approval from the NYC Department of Buildings be necessary [for stations]?

A9. Depending on your proposal and the final station locations, approvals may be necessary from other City agencies.

10. What is the timeline for launching bike share? Is the go-live date of April 1, 2012 official?

A10. The April 1, 2012 go-live date is approximate.

RFP REQUIREMENTS AND SCOPE QUESTIONS:

11. Do the 10,000 bikes need to be provided at the beginning of the bike share program?

A11. NYCDOT is interested in a financially profitable, self-sustaining program that meets the agency goals listed on pg. 11 of the RFP. The number of bikes and location of the bike share program area should be proposed by RFP respondents. There is not a 10,000 bicycle mandatory requirement. NYCDOT is interested in seeing responders' proposals regarding the size, scale, initial phasing and total roll-out required to create, at a minimum, a self-sustaining System in New York City.

12. Is the City flexible in its requirements- for example, are bikes allowed that do not have 26" wheels?

A12. Please refer to the RFP.

13. Is the City flexible in allowing non-identical bikes?

A13. Please refer to the RFP.

14. Is the City planning on 49,000 bikes eventually?

A14. Please see answer A11 above.

FINANCIAL QUESTIONS:

15. Where would money paid as a result of the service level agreements go? Does it stay with the City?

A15. Please see answer A6 above.

ADVERTISING AND SPONSORSHIP QUESTIONS:

16. What is the City's motivation for allowing only one advertiser or sponsor per bicycle and per station?

A16. The parameters are in the RFP and those are the parameters to which you must comply with in your response. There is no flexibility on those parameters.

17. Can you explain the parameters for LCD panels?

- For the electronic advertising email, No LCD panels on the stations. Is that to assume that you cannot install an LCD panel on the installation? Or is that aimed to limit targeted advertising on for example the check-in screen?
- But that's not intended to limit potential operators from generating advertising revenue from a targeted on screen advertising on a log in screen, is that correct?

A17. LCD displays are not permitted on the stations. This does not preclude advertising or sponsorship as part of the check-in screen on the kiosk. The final parameters of such a display would be subject to any applicable law and NYCDOT's approval.

18. What is the difference between advertising and sponsorship, and has Corporation Counsel given approval to the advertising?

A18. Advertising is "call to action" for products or services. Corporation Counsel has reviewed the RFP.

19. Will there be different contracting terms depending on whether you propose a sponsorship model or an advertising model? Will the process we have to go through be different?

A19. No. The parameters for advertising and sponsorship are in the RFP. The Contractor may have advertising and sponsorship or both. The final contract between the City and the Contractor may have various governing terms depending upon the parameters of the awarded proposal.

MISC. QUESTIONS:

20. Does the city anticipate making public right away and/or parking spaces available for the stations?

A20. Proposers are expected to explain their station siting needs in their responses. Final station locations will be selected from those proposed subject to City approval. NYCDOT retains final approval rights over all station locations and layouts.

21. Has there been any pushback from CEMUSA?

A21. CEMUSA presently has a franchise with the City for installation, maintenance of coordinated Street Furniture. CEMUSA is permitted to advertise on such structures subject to the terms of its Franchise Contract.

22. Are you making any provisions for electric assisted bicycles and why are you not allowing hard wiring? Can you give the rationale?

A22. No electric assisted bicycle provision; and the hard wiring is part of the parameters of the RFP, so no hard wiring, as such the RFP speaks for itself.

23. In regard to hard wiring can the City give any additional instructions?

A23 Proposers must comply with all applicable building, electrical and other applicable codes, as well as comply with all other law, rules, specifications and policies.

24. Has the RFP really addressed the additional feature of public bicycling parking in addition to the Bikeshare systems, if they can accomplish both?

A24. No.

25. Can/should we use the assumptions from the 2009 Department of City Planning Bikeshare Opportunities in New York City Report?

A25. DCP's 2009 Bike Share Opportunities report outlines one possible way to approach bike share in New York City. The report is for information purposes only. You should feel free to use that data and/or expand upon it as you see fit. We are looking to you to propose a System that your company believes will be the most successful in New York City.

NYC Bikeshare RFP

Pre-Proposal Conference
December 8, 2010 10:00 AM



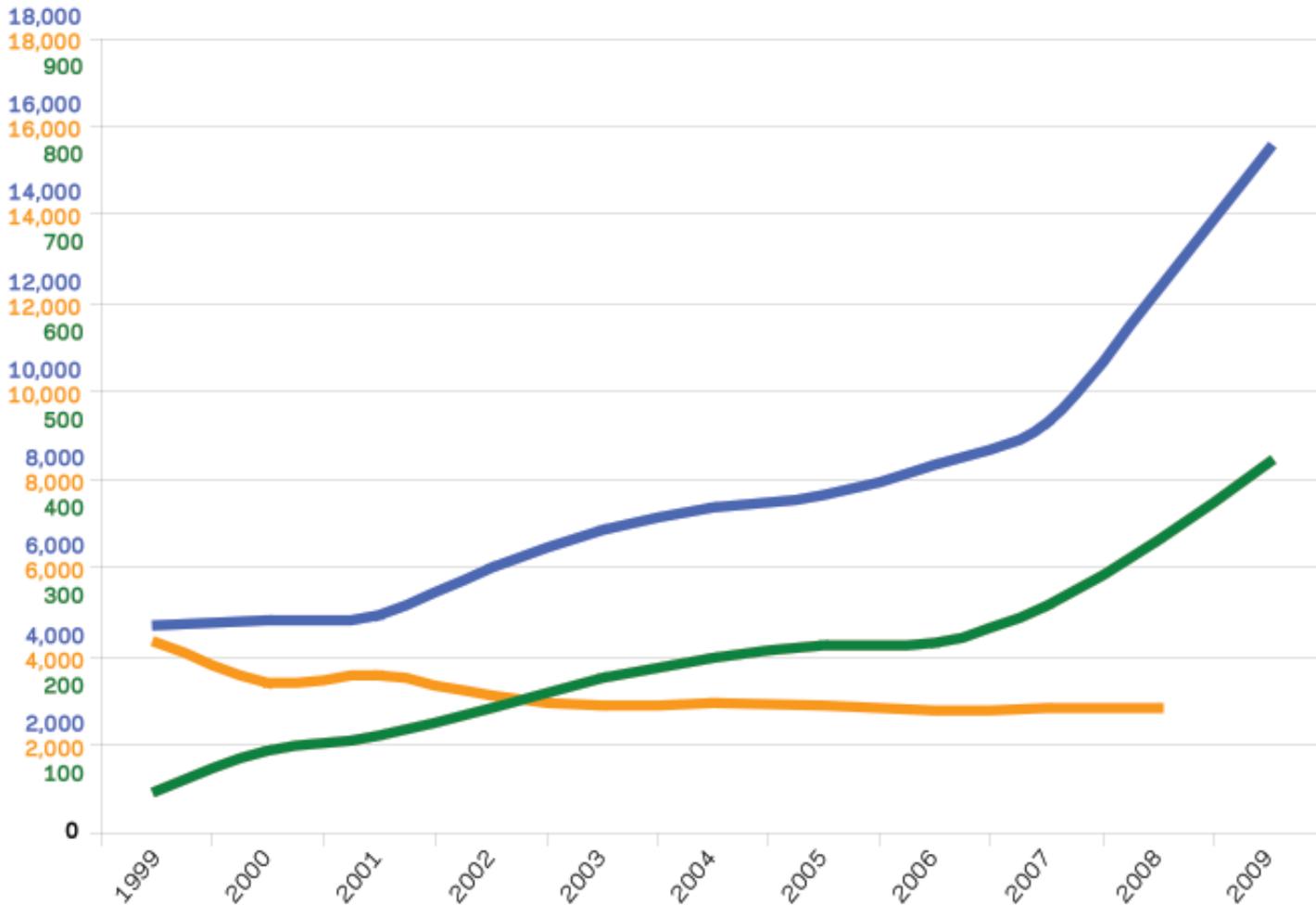
Department of Transportation

Bike Share Programs Around the World



NYC cycling trends

Lane Miles Added, Commuter Cycling Increase & Cyclist Injuries
1999-2009



Injury data from NYCDOT & NYPD
Commuter Cyclist data from selected commuter counts

Short trips

- 54% of all trips within NYC on all transport modes are less than two miles, as are 39% of all car trips
- 138,766 taxi trips per day are under one mile (32% of city-wide daily taxi trips)
- Subways generally not used for <1 mile trips
- Many city bus routes average under 6 mph

ACCO Information

AUTHORIZED AGENCY CONTACT PERSON

Proposers are advised that the Authorized Agency Contact Person for all matters concerning this solicitation is:

Polly B. Horton

Office of the Agency Chief Contracting Officer

New York City Department of Transportation

55 Water Street, 8th Floor

New York, New York 10041

Telephone: (212) 839-4370

Fax: (212) 839-4241

Email: bikesharerfp@dot.nyc.gov

REQUEST FOR PROPOSALS
TO PROVIDE A
BIKESHARE SYSTEM IN THE CITY OF NEW YORK
PIN: 84109MBAD390
EPIN: 84111P0004

Acknowledgement of Receipt of Solicitation

“All questions submitted by proposers and answers to those questions will be made available via addenda to all proposers who received a copy of this Solicitation and who indicated in their Acknowledgement of Receipt of Solicitation their intention to submit a proposal”.

The Acknowledgement is located on page 4 of the RFP.

ACKNOWLEDGEMENT OF RECEIPT OF SOLICITATION

NYCDOT STRONGLY RECOMMENDS THAT YOUR FIRM EMAIL THIS ACKNOWLEDGEMENT TO NYCDOT, AT THE ADDRESS BELOW, TO ENSURE THAT YOU RECEIVE ALL FUTURE ADDENDA TO THIS SOLICITATION

EMAIL: bikesharerfp@dot.nyc.gov

WE WILL PARTICIPATE IN THE SOLICITATION - SEND ANY ADDENDA TO THE CONTACT PERSON LISTED BELOW: Solicitation Contract Title: Provide a Bikeshare System in the City of New York

| | | |
|--|--------|--------|
| Company: | | |
| Address: | | |
| City: | State: | ZIP: |
| Contact Person: | Phone: | Email: |
| Solicitation Contract Number: | Fax: | |
| Please indicate the number of people you plan to have attend the pre-proposal conference: ____ | | |

OR

WE DO NOT PLAN TO SUBMIT A PROPOSAL, BECAUSE (Please check as many as apply).
Please check all the reasons that apply and return this form to: bikesharerfp@dot.nyc.gov

- 1) Size of this contract is not within the interest of Company.
- 2) Company had an insufficient amount of time to prepare proposal. (Please provide the date that the Company acquired the Solicitation and any other pertinent information.)
- 3) Contract work not within the specialty of the Company. (Please cite Company's area of specialty.)
- 4) Other. (Please explain in comment section below.)

| |
|---|
| Comments: (Please use additional sheets if necessary) |
| |

Signature

Title

REQUEST FOR PROPOSALS
TO PROVIDE A
BIKESHARE SYSTEM IN THE CITY OF NEW YORK
PIN: 84109MBAD390
EPIN: 84111P0004

Proposal Due Date, Time and Location

Date: Wednesday, February 16, 2011 **Time:** 2:00 PM

Location: NYCDOT Contracts Section

55 Water Street, Ground Floor, New York, NY 10041

- Proposals shall be hand delivered.
- E-mailed or faxed proposals will not be accepted.
- Proposals received after the Proposal Due Date and Time shall be deemed late and will not be accepted.

REQUEST FOR PROPOSALS
TO PROVIDE A
BIKESHARE SYSTEM IN THE CITY OF NEW YORK
PIN: 84109MBAD390
EPIN: 84111P0004

Key Dates/Contract Term

- Street Test
- The contract term shall commence upon the issuance of a Notice to Proceed by NYCDOT.
- “Go live” on or about April 1st, 2012.
- Five (5) years and may be renewed, at NYCDOT’s sole discretion, for two additional five (5) year terms.

REQUEST FOR PROPOSALS
TO PROVIDE A
BIKESHARE SYSTEM IN THE CITY OF NEW YORK
PIN: 84109MBAD390
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Stations Attachment C-6 Ref. 7a

- A “No” answer will result in automatic disqualification.
- The typical Station must not use a hard wired connection to a power grid.
- A limited number of Stations may be hard wired at NYCDOT’s sole approval.

Short-listed Proposers

- Anticipated top three rated technically viable proposers.
- Oral presentation to demonstrate the proposed system.
- Bicycle and station may be compensated up to \$5,000 for such equipment.

REQUEST FOR PROPOSALS
TO PROVIDE A
BIKESHARE SYSTEM IN THE CITY OF NEW YORK
PIN: 84109MBAD390
EPIN: 84111P0004

Q&A

REQUEST FOR PROPOSALS
TO PROVIDE A
BIKESHARE SYSTEM IN THE CITY OF NEW YORK
PIN: 84109MBAD390
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Technical Proposal

Attachments C-1, C-19 and C-20 (Narrative)

Attachments C-2 through C-16 (Excel File)

Narrative in Column 3

Response in Column 5

- May include, if applicable, images, diagrams etc.
- May attach additional labeled/indexed pages.

YES/NO/NA in Column 3

“Yes”, “No,” or “Not Applicable (NA)” in Column 5

- Yes = Yes, can provide this feature or function
- No = No, cannot provide this feature or function for reasons explained in the Comments/Explanation column (Column 5)
- NA = This feature or function is not applicable for reasons explained in the Comments/Explanation column (Column 5).

| SAMPLE: FOR DEMONSTRATION PURPOSES ONLY | | | | |
|---|--|---------------|---------------|--|
| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 |
| Ref. | Element | Type | Yes/ No/NA | Comments/ Explanations |
| 1 | Please describe your proposed Bicycle including Bicycle weight and material(s). | Narrative | | Text to be provided by Proposer. |
| 2 | Please describe how GPS and RFID will be incorporated into the Bicycle design. | Narrative | | Text to be provided by Proposer. |
| 3 | NYCDOT expects that the following criteria can be met. If this is not the case, please indicate. | | | |
| | a Bicycle elements/parts cannot be removed without specialized, proprietary tools. | Yes/No/ NA | Yes | Proposer may include additional information if desired |
| | b Bicycles have a “one size fits all” design that fits the majority of the adult population with seat-only adjustment. Seat adjustment should not require any additional tools. | Yes/No/ NA | No | Explanation of “No” response to be provided by Proposer. |

REQUEST FOR PROPOSALS
TO PROVIDE A
BIKESHARE SYSTEM IN THE CITY OF NEW YORK
PIN: 84109MBAD390
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Technical Proposal

Attachment C-17

Response in Columns 7 & 8

- For each Performance Indicator (PI), proposers should indicate the proposed performance Thresholds and the corresponding dollar value they are willing to pay if they do not meet these Thresholds.
- Proposers may propose additional or alternative Service Level Agreements (SLAs).

| SAMPLE: FOR DEMONSTRATION PURPOSES ONLY | | | | | | | |
|---|------------------------------|---|--|--------------------|-----------------------------|-------------|-------------|
| Col. 1 | Col. 2 | Col. 3 | Col. 4 | Col. 5 | Col. 6 | Col. 7 | Col. 8 |
| Ref. | Performance Indicator (PI) | PI Description | Measurement Tool | Measurement Period | Units | Threshold 1 | Threshold 2 |
| SAMPLE 1 | Bicycle seat functionality | Total number of functioning Bicycle Seats | <i>Extrapolation from field checks by DOT staff.</i> | Daily | Percentage of Bicycle Seats | 100%-95% | 90%-0% |
| | | | | | | \$100 | \$500 |
| SAMPLE 2 | Stations light functionality | Hours Station lights do not work properly | <i>Extrapolation from field checks by DOT staff.</i> | Week | Hours | 1-5 | >5 |
| | | | | | | \$100 | \$500 |

Attachment C-18

Response in Column 4

- Indicating for each NYCDOT milestone, whether proposer concurs in NYCDOT's proposed date or propose an alternative milestone date.

APPENDIX A

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

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

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

A. “Agency Chief Contracting Officer” or “ACCO” shall mean the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.

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

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

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

E. “Commissioner” or “Agency Head” shall mean the head of the Department 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.

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

G. “Contractor” shall mean the entity entering into this Agreement with the Department.

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

I. “Department” or “Agency” shall mean the City agency that has entered into this Agreement.

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

K. “Procurement Policy Board” or “PPB” shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.

L. “PPB Rules” shall mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York (“RCNY”), § 1-01 et seq.

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

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement

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

B. For any breach or violation of the representations and warranties set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City 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 City provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

Section 2.02 Conflicts of Interest

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

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal

interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Paragraph B shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

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

[PARAGRAPHS D-H ARE APPLICABLE ONLY TO HUMAN OR CLIENT SERVICE CONTRACTS.]

D. Except as provided in Paragraph E below, the Contractor's employees and members of their immediate families, as defined in Paragraph F below, may not serve on the Board of Directors of the Contractor ("Board"), or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement.

E. If the Board has more than five (5) members, then Contractor's employees may serve on the Board, or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement, provided that (i) Contractor's employees are prohibited from voting on any such personnel matters, including but not limited to any matters directly affecting their own salary or other compensation, and shall fully disclose all conflicts and potential conflicts to the Board, and (ii) Contractor's employees may not serve in the capacity either of Chairperson or Treasurer of the Board (or equivalent titles), nor constitute more than one-third of either the Board or any such committee.

F. Without the prior written consent of the Commissioner, no person may hold a job or position with the Contractor over which a member of his or her immediate family exercises any supervisory, managerial or other authority whatsoever whether such authority is reflected in a job title or otherwise, unless such job or position is wholly voluntary and unpaid. A member of an immediate family includes: husband, wife, domestic partner, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, first cousin, and separated spouse. Where a member of an immediate family has that status because of that person's relationship to a spouse (e.g., father-in-law), that status shall also apply to a relative of a domestic partner. For purposes of this Section, a member of the Board is deemed to exercise authority over all employees of the Contractor.

G. If the Contractor has contracts with the City that in the aggregate during any twelve-month period have a value of more than One Million Dollars (\$1,000,000) and such amount constitutes more than fifty percent (50%) of the Contractor's total revenues, then the Contractor must have a minimum of five (5) persons on its Board.

H. Paragraphs D-H of this Section 2.02 apply only if Contractor is a not-for-profit corporation.

Section 2.03 Fair Practices

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

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

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

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

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

Section 2.04 VENDEX

The Contractor represents and warrants that it and its principals have duly executed and filed all required VENDEX Questionnaires and, if applicable, Certificates of No Change, pursuant to PPB Rule § 2-08 and in accordance with the policies and procedures of the Mayor's Office of Contract Services. The Contractor understands that the Department's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 Political Activity

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for

public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 2.06 Religious Activity

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

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

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

Section 2.08 Bankruptcy and Reorganization

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

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, or the right to execute it, or the right, title or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Commissioner. 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 Department giving the name and address of the proposed assignee. The proposed assignee's VENDEX questionnaire must be submitted within thirty (30) Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, 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 Agency

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 Commissioner. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees, or transferees, who shall forfeit all monies earned under this Agreement, except so much as may be necessary to pay the Contractor's employees.

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

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

Section 3.02 Subcontracting

A. The Contractor shall not enter into any subcontract for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. All subcontracts must be in writing.

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

C. All subcontracts shall contain provisions specifying that:

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

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

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

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

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

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

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

G. The Department'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 Department, the Contractor shall provide the Department a copy of any subcontract.

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

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the Department agree that the Contractor is an independent contractor and not an employee of the Department or the City. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers'

Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

Section 4.02 Employees

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

Section 4.03 Removal of Individuals Performing Work

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful and skilled in the work for which he or she shall be employed. Whenever the Commissioner 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 Commissioner shall provide the Contractor an opportunity to be heard on no less than five (5) Days' written notice. The Commissioner may direct the Contractor not to allow the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

Section 4.04 Minimum Wage

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

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

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

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 City under this Agreement a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5.01 Books and Records

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

Section 5.02 Retention of Records

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

Section 5.03 Inspection

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

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

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

Section 5.04 Audit

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

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

B. Audits by the City, including the Comptroller, the Department, and the 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 Department and by the Comptroller in the exercise of his/her powers under Law.

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

Section 5.05 No Removal of Records from Premises

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

Section 5.06 Electronic Records

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

Section 5.07 Investigations Clause

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

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

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

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

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

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

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

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

2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the 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 City.

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E. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information 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 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 Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (C)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definitions

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

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

3. The term "entity" as used in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with 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 Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in

writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

Section 5.08 Confidentiality

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

B. The Contractor shall provide notice to the Department within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City 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 City 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 Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City’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 Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least twenty-four (24) hours prior to any statement to the press or at least five (5) business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

E. At the request of the Department, the Contractor shall return to the Department 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 Department 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 Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information, or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

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

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights

A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the 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 City 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 City, 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 City. The Department may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

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

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

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

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

Section 6.02 Patents and Inventions

The Contractor shall promptly and fully report to the Department 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 City all right, title and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the United States relating to the particular goods or services procured by the City under this Agreement.

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

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

Section 7.02 Commercial General Liability Insurance

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Department, and shall be "occurrence" based rather than “claims-made.”

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

C. The Contractor shall ensure that each subcontractor adds the City, together with its officials and employees, as an Additional Insured under all Commercial General Liability Insurance policies obtained by a subcontractor covering work performed by such subcontractor under this Agreement with coverage at least as broad as the most recently issued ISO Form CG 20 26.

Section 7.03 Professional Liability Insurance

A. At the Department's direction, if professional services are provided pursuant to this Agreement, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

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

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

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

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

Section 7.05 Unemployment Insurance

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

Section 7.06 Business Automobile Liability Insurance

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as ISO Form CA0001, ed. 10/01.

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

Section 7.07 General Requirements for Insurance Coverage and Policies

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

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

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

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

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

F. All insurance policies required pursuant to Sections 7.02 and 7.03 shall contain the following endorsement: “This policy may not be cancelled, terminated, modified or changed for any reason other than non-payment unless thirty (30) Days prior written notice is sent by the Insurance Company to the Named Insured, the Commissioner [insert Agency], and to the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. For non-payment, at least ten (10) Days written notice must be provided.”

Section 7.08 Proof of Insurance

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

1. C-105.2 Certificate of Workers’ Compensation Insurance;

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

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

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

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

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

Section 7.09 Miscellaneous

A. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, the Contractor shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement (including notice to Commercial General Liability Insurance carriers for events relating to the Contractor's own employees) no later than twenty (20) Days after such event. Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of

the persons or things injured, damaged, or lost. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

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

C. Insurance coverage in the minimum amounts required in this Article shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the 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. The Contractor waives all rights against the City, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

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 City and of others from damage, loss or injury resulting from the Contractor's and/or its subcontractors' operations under this Agreement.

Section 8.02 Protection of City Property

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

Section 8.03 Indemnification

The Contractor shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the

provisions of this Agreement or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.04 Infringement Indemnification

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

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

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

Section 8.06 Actions By or Against Third Parties

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

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

Section 8.07 Withholding of Payments

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

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

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

D. The Department 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 City provided for in this Section shall not be exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

Section 8.08 No Third Party Rights

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

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

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

Section 9.02 Changes Through Fault of Contractor

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

ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause

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

B. If the City terminates this Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City 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 City 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. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section shall be accompanied by an appropriate reduction in the services performed under this Agreement.

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

C. If the City reduces funding pursuant to this Section, the following provisions apply. The City 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 City 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 shall not apply, and the Department 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 City 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 Commissioner;
 4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:
 - a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;
 - b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;
 - c. a criminal violation of any state or federal antitrust law;
 - d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
 - e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or
 - f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.
 5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or

federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

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

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

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

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

E. The Commissioner, 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 in accordance with applicable PPB Rules. After such completion, the Commissioner 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 Commissioner, 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 City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, 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 Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, 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 Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

C. If the City terminates the Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City 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 City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.05 Procedures for Termination

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

1. Accounting for and refunding to the Department, within forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;

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

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

4. Submitting to the Department, within ninety (90) Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant; and

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

Section 10.06 Miscellaneous Provisions

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

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

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

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. The provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.

B. 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.

C. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

Section 11.02 Electronic Funds Transfer

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City 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 institution or other authorized payment agent and shall complete the “EFT Vendor Payment Enrollment Form” available from the Agency or at <http://www.nyc.gov/dof> in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. 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 City 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.

B. The Agency Head may waive the application of the requirements of this Section to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Agency may waive the requirements of this Section for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

C. This Section is applicable to contracts valued at Twenty-Five Thousand Dollars (\$25,000) and above.

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 City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any

other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section.

Section 12.03 Resolution of Disputes

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Section shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within thirty (30) Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement

shall not be read to replace any other notice requirements contained in the Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section as the Contractor initiating the dispute.

3. Agency Head Determination. Within thirty (30) Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

4. Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Section. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB

may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

E. Presentation of Dispute to the Comptroller. Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

1. Time, Form, and Content of Notice. Within thirty (30) Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

2. Agency Response. Within thirty (30) Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

3. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) Days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.

F. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

1. the chief administrative law judge of the Office of Administrative Trials and Hearings (“OATH”) or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section as may be necessary in the execution of the CDRB’s functions, including, but not limited to, granting extensions of time to present or respond to submissions;

2. the City Chief Procurement Officer (“CCPO”) or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

3. a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established, and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller’s Office. The Contractor shall concurrently submit four complete sets of the petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH’s offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

2. Agency Response. Within thirty (30) Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH’s offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) Days.

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

4. CDRB Determination. Within forty-five (45) Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

5. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be thirty (30) Days after the date the parties are formally notified of the CDRB's decision.

6. Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with PPB Rules § 4-09.

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section.

Section 12.04 Claims and Actions

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement shall not be made or asserted in any legal proceeding, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement.

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

Section 12.05 No Claim Against Officers, Agents or Employees

No claim shall be made by the Contractor against any officer, agent, or employee of 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 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 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 Department 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 PPB Rules

This Agreement is subject to the PPB Rules. In the event of a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

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

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

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

Section 13.06 Voter Registration

A. Participating Agencies. Pursuant to Charter § 1057-a, if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; the Department of Small Business Services; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Health; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. Distribution of Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.

4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of

Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

5. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

6. For the purposes of Paragraph A of this Section, the word "Contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

C. Assistance in Completing Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

D. Required Statements. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor's or government services are not conditioned on being registered to vote.

2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.

3. The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.

4. The Contractor and the Contractor's employees shall not:

a. seek to influence an applicant's political preference or party designation;

b. display any political preference or party allegiance;

c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section are material conditions of this Agreement.

F. The provisions of this Section do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

Section 13.07 Participation in an International Boycott

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

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

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

Section 13.08 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 13.09 Access to Public Health Insurance Coverage Information

A. **Participating Agencies.** Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section applies as provided in Paragraph B of this Section, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. **Applicability to Certain Contractors.** This Section shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. "Contractors" to whom this Section applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor's contractual obligation.

C. **Distribution of Public Health Insurance Pamphlet.** In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene pursuant to Section 17-183 of the Admin. Code (hereinafter "pamphlet"), the Contractor hereby agrees as follows:

1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.

2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual

with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.

3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

4. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter §1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

D. Non-applicability to Certain Services. The provisions of this Section shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

B. The requirements of this Section shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

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 vary any of the terms contained in this

Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

Section 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

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

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

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

AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, 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 contract except _____.

Full name of Proposer or Bidder *[below]*

Address _____

City _____ State _____ Zip Code _____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

- A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER _____

- B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER _____

- C - Corporation

EMPLOYER IDENTIFICATION NUMBER _____

By _____
Signature

Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

- * Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer'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 businesses seeking City contracts.

CERTIFICATION BY BROKER

[Pursuant to Article Seven of Appendix A, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.]

CERTIFICATION BY BROKER

The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

[Name of broker (typewritten)]

[Address of broker (typewritten)]

[Signature of authorized officer of broker]

[Name of authorized officer (typewritten)]

[Title of authorized officer (typewritten)]

[Contact Phone Number for Broker (typewritten)]

[Email Address of Broker (typewritten)]

Sworn to before me this

____ day of _____, 201_

NOTARY PUBLIC

THE CITY OF NEW YORK

DEPARTMENT OF TRANSPORTATION

ACKNOWLEDGEMENT RECEIPT OF ADDENDUM Nr. 3

To Provide a Bikeshare System in the City of New York

PIN: 84109MBAD390

EPIN: 84111P0004

ADDENDUM Nr. 3

December 20, 2010

I, _____

(NAME AND TITLE)

A duly authorized representative of

(NAME OF PROPOSER)

**Acknowledge receipt of Addendum Nr. 3, dated December 20, 2010,
for PIN 84109MBAD390 (EPIN 84111P0004), for which
Proposals will be received by 2:00 p.m., February 16, 2011.**