

**THE NEW YORK CITY WATER BOARD**

**REQUEST FOR PROPOSALS  
FOR  
SERVICE LINE PROTECTION POLICY CONTRACTOR**

**DATE OF ISSUE: December 2, 2011**

**AUTHORIZED WATER BOARD CONTACT**

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

Jason K. Low  
Water Board Counsel  
New York City Water Board  
59-17 Junction Boulevard, 8th Floor  
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**RFP TIMETABLE**

Release Date of the RFP ..... December 2, 2011  
Deadline for Question Submission ..... 3:00 P.M. (EST), December 15, 2011  
Proposal Due Date ..... 11:00 A.M. (EST), January 9, 2012

Proposals are to be delivered to:

Jason K. Low  
Water Board Counsel  
New York City Water Board  
59-17 Junction Boulevard, 8th Floor  
Flushing, NY 11373-5108  
(718) 595-3114  
jasonl@dep.nyc.gov

Oral Presentations (as needed)..... Week of January 23, 2012  
Completion of Evaluation ..... February 17, 2012  
Completion of Initial Negotiations ..... Approximately March 23, 2012  
Award by Water Board ..... Approximately May 4, 2012  
Commencement of Work..... Approximately July 1, 2012

## **I. BACKGROUND**

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

Under the terms of a Lease Agreement between the City and the Board, the City has leased to the Board all of its rights, title and interest in the water and sewer system (the “System”) of the City. The Lease of the System provides that the New York City Department of Environmental Protection (“DEP”) will administer, operate, maintain and repair the System, and the Board will reimburse the City for this service. Currently, DEP’s Bureau of Customer Services (“BCS”) also collects all revenues of the System.

The System has over 760,000 residential accounts throughout all five boroughs of the City, including 673,187 that would be eligible for this program based on service line size. Each property owner in the City is responsible for maintaining his/her water service lines beginning at the connection to the water main in the street and continuing to the building line and sewer service lines from the building line to the connection to the city sewer, private sewer, private drain or approved outlet as defined by DEP. Because failure of a service line is unpredictable, repairs tend to be expensive, and individual property owners may not be prepared to respond quickly or with full knowledge of what is required to remedy the situation, the Board is of the opinion that there could be significant benefits of a service line protection program for the City’s water and sewer customers. Additionally, DEP believes that such a program would be in the best interest of the City, as the expeditious repair of leaking and broken service lines under the program would help prevent damage to City infrastructure, reduce response costs for the city, limit damage to homes, and enable City resources to be used more efficiently. For example, based on current information, approximately 25% of 311 complaints that DEP addresses are related to City infrastructure. The remainder of complaints are due to a variety of issues, including broken or obstructed private sewer lines, the absence of required check valves or improper installation of the same, groundwater intrusion, and other matters not related to the operation of the public sewer system.

Subsurface and other work on private service lines in the City must be performed by master plumbers licensed by the New York City Department of Buildings; as of October 2011, there were approximately 1,400 licensed master plumbers in the City. Only licensed master plumbers are permitted to perform sub-surface work.

***Water Service Lines.*** DEP is interested in offering water service line protection to residential properties with service lines of two inches or less. The age of the properties and the age and condition of the water service lines vary widely. As a proxy for the diameter of existing water service lines, the meter sizes of existing accounts are shown in the table at right. In most cases, meter size is representative of water service line diameter. However, in some instances, the two may not be equal, and this usually occurs when the service line is one size larger than the meter size. Note that DEP’s current requirements for repairing a water service line allow for partial

replacement to be completed with the same size line; for full replacements, the minimum service line diameter is 1”.

The stock of water service lines in the City is comprised of copper, galvanized steel, lead, brass, and ductile iron or a combination of lead and other materials. Brass and ductile iron are generally found only in water service lines of 2” or larger. Under current regulations, lead service lines cannot be repaired but must be replaced, and lines measuring less than 2” in diameter must be replaced with copper tubing or brass pipe. Based on conservative DEP estimates, it is possible that up to 6.5% of service lines could be at least partially made of lead.

In FY 2011, there were 3,659 water service line breaks. Approximately 98% of these were on service lines of 2” in diameter or smaller.

***Sewer Service Lines.*** DEP is potentially interested in offering sewer service line protection to residential properties that are also offered water service line coverage as defined herein. DEP estimates that the agency annually issues approximately 150 Commissioner’s Orders or “Cease and Desist Orders” for sewer service line failure.

## **II. PURPOSE OF THE RFP**

In issuing this Request for Proposals (“RFP”), the Board is soliciting competitive, sealed proposals from qualified vendors (“Proposers”) to offer (i) a water service line protection policy program or (ii) both water and sewer service line protection policy programs (herein, the “Program”) to the Board’s customers. Only one provider will be chosen to offer the Program, if a dual water and sewer service line offering is selected. The contract that results from this RFP (the “Contract”) will be a subscription-based contract awarded to the firm or company (the “Contractor”) offering the best combination of merit and price, as determined by the Board. The Contractor will be allowed to market the Program to the Board’s customers and enter into policy agreements with such customers. The Board and DEP will include policy premiums on the periodic bills of enrolled customers, and the Board and DEP will be responsible for collecting such premiums and remitting payment to the Contractor.

The primary objectives of offering service line protection to City customers are to:

- Provide owners of residential properties affordable protection against the significant, unexpected costs of repairing or replacing leaking water service lines;
- Provide owners of residential properties affordable protection against the significant, unexpected costs of repairing or replacing broken sewer service lines and, potentially, clearing blockages;
- Ensure that timely, high-quality plumbing services in adherence to City codes are provided to covered customers;
- Educate property owners as to their responsibility regarding service line maintenance;
- Minimize damage to surrounding streets and infrastructure, and reduce expense to the property owner and DEP by ensuring repairs are made in a timely manner; and

- Minimize the impacts to homeowners, neighbors, and the public sewer system from improperly functioning sewer service lines.

### **III. SCOPE OF SERVICES**

The Board seeks to procure the services of a Contractor that will offer a service line protection plan as defined below (the “Scope of Services”). The Contractor will be expected to perform services, including the following:

1. Development of a publicity plan and marketing materials for marketing the offering to the Board and DEP’s customers;
2. Staffing and maintenance of a 24-7 toll-free call center for notifying the protection provider of service line issues;
3. Timely response to service line leaks or other failures, as further defined below;
4. High-quality repairs in adherence to the most current City rules and regulations, including specifications for materials and construction for service lines;
5. Performance of all preparation, repair and restoration work in adherence with all applicable federal, state and local environmental and health and safety regulations;
6. Basic restoration of ground surface features and compliance with New York City Department of Transportation (“DOT”) requirements after excavation for service line repair;
7. Strong customer service accountability to the Board and DEP for services provided to customers;
8. Data recording and management that will provide the Board and DEP with a detailed monthly report on the number and nature of calls, location and dates of repairs and replacements, and documentation of all work performed;
9. Upon DEP’s request, emergency service line repairs for properties not covered by the Program; such repairs shall be performed for a fixed fee as proposed and awarded; and,
10. Additional services relating to risk, insurance and bonding as DEP may request from time to time.

**Water Service Lines.** DEP will provide the Contractor with a database of eligible Tax Class 1 and Tax Class 2 properties with meter sizes 2” or less. There are approximately 673,187 eligible Tax Class 1 and 2 properties. Tax Class 1 includes 628,278 accounts, and Tax Class 2 includes 44,909 accounts. Approximately, 2,788 of these accounts have more than one meter and, thus, more than one service line. DEP will work diligently with the Contractor to identify applicable properties based on meter size, as this is the closest proxy for service line size without expensive, subsurface measuring. Policies must be extended to all DEP customers whose service lines are

thought to be of 2” in diameter or less. If a covered customer’s service line is found to be greater than 2” in diameter when a repair or replacement is made, such line shall also be covered and repaired or replaced with a service line of the required size.

All repair and replacement work must be performed pursuant to valid permits. The Contractor and its subcontractors will be responsible for obtaining DEP permits through the online Water and Sewer Permitting System (“WSPS”) and DOT Street Opening permits through DOT.

Timely response to water service line leaks and breaks will be determined based on the type of notice issued. There are two types of notices that DEP issues: three-day notices for non-emergency issues and ten-day notices for emergencies. For all non-emergency repairs, from the time of notification, the Contractor should commence work within 12 hours and complete work within 24 hours. For emergencies, the Contractor should be responsible for shutting off water service until restoration work is complete; additionally, the Contractor should commence repair work within four hours of notification and complete 100% of repairs within 24 hours of notification. For reference, 2,442 three-day notices and 1,219 ten-day notices were issued in FY 2011. If the Contractor does not complete work within the allowable timeframe, a liquidated damages provision may apply. The response times required above are related to addressing the service problems of covered properties; they do not encompass all restoration work. Nonetheless, the contractor will be expected to perform all pavement, sidewalk and curb restoration in accordance with the most current revision of the appropriate rules and regulations of DOT and in accordance with the requirements set forth in each work permit.

***Sewer Service Lines.*** If DEP chooses to offer sewer service line coverage, such policies will be offered to the same properties that are eligible to enroll in the water service line protection policy program. Furthermore, timely response to sewer service line issues will be required pursuant to the emergency and non-emergency timeframes stipulated for water service line response above. Because DEP does not issue three- or ten-day notices for sewer service line issues, “sewer emergencies” will be defined as sewer issues for which the New York State Department of Health issues a Public Health Order. All other sewer issues will be classified as non-emergencies.

***General Requirements.*** Policy coverage shall be unlimited per occurrence, with an unlimited number of claims per account per year. There shall be no deductible or additional service fee borne by the customer. All repairs and replacements shall be covered by a one-year warranty, regardless of whether or not the customer continues to maintain his/her account in good standing after the repair or replacement has occurred. If the Proposer submits an alternative price proposal pursuant to Section VII.B.4 herein, the alternative proposal should clearly state any point of nonconformance with these requirements.

For marketing purposes, the Contractor may use DEP’s logo and send mailings as inserts in DEP’s billings. DEP will review and approve all marketing materials before distribution, but the Contractor will be expected to cover the costs of producing all marketing materials. Additionally, if there is an incremental cost of postage when marketing materials are included as bill inserts, the Contractor will be expected to cover such incremental cost. Mailing information from DEP’s customer service database can also be provided for the purpose of additional

mailings. In the proposal, the Proposer should outline a proposed marketing plan and timeline, as well as the role the Proposer expects DEP to perform in the marketing process.

On behalf of the Board, DEP will collect the policy premiums with regular water and sewer charges, and the Board will pay the Contractor the amount equal to the premiums due on current policies. Policies will be offered on an opt-in basis, and DEP and the Contractor will exchange data files noting the enrolled customers on a daily basis. See Section VI – Anticipated Payment Structure for further details.

In the instance that a service line break occurs for a customer, who is no longer current or within the allowable delinquency for policy premiums but who was enrolled in the Program and current on payments in the last 90 days, the Contractor shall provide service to such customer. The Board will be responsible for compensating the Contractor for the overdue premiums payable.

#### **IV. AGENT FOR NYC WATER BOARD**

DEP will be acting for the Board with regard to the Contract by soliciting and evaluating proposals, recommending a contractor for selection, negotiating the Contract with the successful Proposer, administering the Contract, and any other function the Board assigns to DEP during the course of the Contract.

#### **V. ANTICIPATED CONTRACT TERM**

The Board anticipates the Contract will be for a term of five years from the Board's notice to proceed. The Contract may also include option(s) to renew, at the Board's sole discretion, for up to two additional five-year terms.

The Board reserves the right, prior to award of the Contract, to determine the length of the initial contract term and each option to renew, if any.

#### **VI. ANTICIPATED PAYMENT STRUCTURE**

The Board has a strong preference for a subscription-based service line protection policy offering. For further details, see Section VIII, subsection B, paragraph 4 ("Price Proposal").

The Board expects to allow the Contractor to offer a flat-rate, subscription-based water and/or sewer service line protection policies as the Board & DEP's authorized policy provider. Such offering will be made following the Board's execution of a Contract, as described below, and the Board's approval and adoption of the proposed charges. DEP will include the adopted subscription charges on customers' bills for water and sewer service and assume responsibility for the collection of such charges.

Customers' payments to the Board will be received in advance of the coverage period on a periodic basis that matches the customers' billing and/or payment cycle. Currently, 98.9% of the Board's customers who are eligible to enroll in the Program pay their bills on a quarterly basis,

0.8% pay their bills on an annual basis; and 0.3% pay their bills on a monthly basis. Policy coverage will be extended to customers who have paid the full amount due for their respective billing cycles or who are within a level of delinquency that is acceptable to the Board. The Board will take responsibility for payments on all current policies; the Contractor will not be responsible for Customer-related accounts receivable.

On a monthly basis, as policy payments are remitted to the Board, the Board will compensate the Contractor for subscription fees due on current policies. Actual compensation to the Contractor will depend on the participation rate and payment status of the Board’s customers.

The policies will be offered on an opt-in basis, and DEP and the Contractor will exchange data files noting the enrolled customers on a daily basis.

The Contract will be for an initial five-year term, with the option of two five-year extensions. The subscription fees shall be structured to be sufficient to cover all related expenses. The subscription fees shall be fixed for each fiscal year of the Contract at the rate(s) indicated in the price proposal. Similarly, renewal(s), if any, may provide for a maximum level of compensation, subject to increase as indicated in the price proposal at the discretion of the Board.

## **VII. MINIMUM QUALIFICATION REQUIREMENTS**

The Proposer must have a minimum of five years of experience operating a service line protection program. Also, within the last five years, the Proposer must have demonstrated the ability to manage a water and/or sewer service line protection program for at least one large municipal or private utility successfully. This will be determined based on the selection committee’s review of the Proposer’s Statement of Qualifications submitted in response to this RFP. The Proposer and all subcontractors must have a Worker’s Compensation experience modification rating (“EMR”) not to exceed 1.0. Additionally, the Proposer must commit to purchase and maintain at all times a performance bond in the amount of \$5 million. Proposals that fail to meet these requirements will be rejected.

## **VIII. PROPOSAL PROCEDURES AND REQUIREMENTS**

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

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

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

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

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

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

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

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

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

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

Merit shall be determined as follows:

- a. Technical Proposal – 50%
- b. Qualifications – 50%

## **B. PROPOSAL PACKAGE**

The proposal package must contain the following:

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

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

- a. The Proposer's name, address and Federal Employer ID Number.
- b. Name, title, telephone number, and email address of the individual who is authorized to commit the Proposer to a contract.

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

## **2. Technical Proposal**

The technical proposal is a clear, concise description of how the Proposer intends to provide the services set forth in the Scope of Services. This description should include exactly what services will be covered under the policies proposed, such as sewer service line blockages and/or the repair of backwater valves. To receive high marks, the technical proposal should outline how the Proposer plans to address each key issue noted in the Scope of Services from the development of marketing materials, to the handling of customer calls, to the distribution of work orders amongst contractors, to the follow-up and review of finished contractor work, etc.

The technical proposal should clearly define staffing, including the Proposer’s plan for retaining local licensed master plumbers for service line repair work and monitoring work performed. The Board recommends the use of a minimum of two New York City master licensed plumbers per borough. The Board encourages the Contractor to utilize minority and women owned business enterprises for licensed master plumbers and other subcontracting or partnership work, as possible. The technical proposal should also address the expertise of the Proposer’s key professional staff who will work on this engagement (the “Core Staff”), including explanations of how the Core Staff will be organized to work together and work or partner with the local plumbing contractors.

Additionally, the technical proposal must address the minimum and maximum response times for service line repair and completion of all related work, including sidewalk and street repair, pursuant to the requirements set forth in Section III: Scope of Services herein. The technical proposal should also include a description of the contractor’s environmental health and safety program and its ability to ensure that it and any subcontractors are in compliance with all federal, state and local regulations. The technical proposal may also describe any distinctive technologies the Proposer will use on the engagement and how such technologies will provide value to the services to be rendered. The technical proposal may include any other information the Proposer deems relevant.

## **3. Statement of Qualifications**

The statement of qualifications is a presentation of the qualifications and experience of the Proposer’s organization and the staff that will be providing the services. At a minimum, the proposal should include the following:

- A detailed description of the Proposer’s experience in providing the kinds of services described in the Scope of Services. Of particular interest would be the Proposer’s

experience in providing such services to customers for water and/or sewer utilities where there are more than 10,000 subscription accounts.

- A detailed table listing all service line protection programs administered by the Proposer including, the name of the municipal or private utility for which coverage is offered, the type of service line coverage (i.e., water, sewer, gas or other), and the number of accounts per offering. The format of the table below may be used as a template.

City	Type of Line Covered				Total
	Water	Sewer	Gas	Other	
New York	<i># of Accounts</i>				

- The success rate of water and sewer repairs in the five largest programs managed by the Proposer, including the number of initial repairs made in each of the last two years and the number of recurring repairs, listed by the incidence of recurrence.
- The response times for water and sewer repairs in the five largest programs managed by the Proposer.
- The Core Staff for this engagement, including a senior project manager who will be responsible to the Board and DEP for managing the engagement. For each member of the Core Staff, the proposal should note the role s/he will play and his/her experience related to providing the kind of services described in the Scope of Services. For each member of the Core Staff, attach a resume (in an appendix to the proposal), including professional title and contact information, and provide a statement certifying that s/he will be available to play the designated role for the duration of the Contract. The Proposer may limit this certification to the initial term of the Contract (i.e., not including renewals, if any) if it wishes to do so.
- A detailed description of the Proposer’s call center arrangements, including staffing, language accessibility, and call center performance metrics for the most recent two years. The performance metrics should include: number of calls attempted, number of calls answered, average speed answered, average handling time, and longest waiting call.
- A list of at least three references for the Proposer who can provide information concerning the Proposer’s experience in providing the kind of services described in the Scope of Services. At least two references should relate to engagements that meet the account criteria of Section VII – Minimum Qualification Requirements. The list of references should include the name of the reference entity, a brief description of the engagement for such entity for which the Proposer provided services (or other relationship between the Proposer and the reference entity), and the name, title, email and telephone number of a contact person at the reference entity. For each reference,

indicate which member(s) of the Core Staff, if any, worked on the engagement(s) with the reference entity and the role s/he played.

- Whether the Proposer foresees the possibility of any conflict of interest or appearance of conflict of interest, and, if so, how the Proposer will assure that it does not place its own interests or the interests of others with which it has a financial or business relationship above the interests of the Board or the City. Note that the Proposer will be free to have clients that enter into contracts with the City so long as the Proposer has adequate protections in place to ensure that it does not place its own interests or the interests of such clients above those of the Board or the City.
- Audited financial statements from the most recent two fiscal years.
- Workers Compensation EMR for the last three years.
- OSHA 300 logs and OSHA injury incidence rate for the last three years.
- List of all federal, state or local violations and fines received in the last three years (OSHA, EPA, NYSDEC, FDNY, DOB, DOT, etc.).
- A description of the Proposer’s environmental health and safety program.
- At its option, the Proposer may submit any other materials that will allow the Board and DEP to better evaluate its qualifications for this engagement (e.g., letters of reference/recommendation, awards, etc.). Such materials may be included in an appendix.

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

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

The Price Proposal is a presentation of the details of the Proposer’s offering price.

The Board has a strong preference for a subscription-based service line protection policy offering. The Board expects to offer a flat-rate, subscription-based protection policy that will be offered and provided by the Contractor as the Board and DEP’s authorized policy provider. Such offering will be made following the Board’s assignment of a Contract and adoption of the proposed charges. DEP will include the adopted subscription charges on customers’ bills for water and sewer service, and the Board will compensate the Contractor on a monthly basis for premiums due. Actual compensation will depend on the participation of DEP’s customers in the Program offered.

Please state whether such a subscription-based price structure is acceptable, and if so, provide a proposed price schedule based on an annual per customer rate in the following table. As the Board may opt to offer only water service line coverage (Option #1) or include sewer service line coverage in a combined offering (Option #2), please complete the following pricing table for both Option #1 and Option #2. If the Board offers Option #2, the customer will have the option to select either or both types of coverage.

If a subscription-based price structure is not acceptable, please propose an alternative.

The Contract will be for an initial five-year term, with the option of two five-year extensions. The subscription fees shall be structured to be sufficient to cover all related expenses as required to perform the Scope of Services, including all labor, equipment, material, marketing and out-of-pocket expenses. There will be no additional expenses billed to the Water Board or DEP. The subscription fees shall not exceed the rates proposed in the format of the table below, subject to the Contract between the Board and Contractor. Similarly, renewal(s), if any, may be agreed to at a maximum level of compensation as proposed in the following table, subject to the Contract between the Board and Contractor. In the price proposal, the Proposer shall identify all escalations to the rate structure for any contract extensions. The Proposer should specify a maximum yearly increase in rates, expressed either in dollar terms or as a percentage.

Additionally, if a share of the revenues collected is given to the Water Board, please note how such payment will be calculated.

Furthermore, as noted in the Scope of Services, upon DEP's request, the contractor should be willing to perform emergency service line repairs for properties not covered by the Program. Please include a maximum price for each such repair.

Note: The Price Proposal (a) should be submitted in a separate, sealed envelope, clearly labeled "Price Proposal", (b) should be irrevocable for one hundred eighty (180) days from the date of the opening of Price Proposal, and (c) should be signed by the Proposer's authorized representative.

**Price Proposal of \_\_\_\_\_**  
*Firm/company name*

<b>Option #1: Water Service Line Coverage Offering Only</b>	
<b>Water Service Line</b>	<b>Annual Cost per Customer* (\$)</b>
Year 1	
Year 2	
Year 3	
Year 4	
Year 5	
Extension 1	
Annual Increase (\$ or %)	
Extension 2	
Annual Increase (\$ or %)	
Water Board Revenue Share (\$ or %)	
Each DEP-Requested Emergency Repair	

<b>Option #2: Water and Sewer Service Line Coverage Offering</b>	
<b>Water Service Line</b>	<b>Annual Cost per Customer* (\$)</b>
Year 1	
Year 2	
Year 3	
Year 4	
Year 5	
Extension 1	
Annual Increase (\$ or %)	
Extension 2	
Annual Increase (\$ or %)	
Water Board Revenue Share (\$ or %)	
Each DEP-Requested Emergency Repair	
<b>Sewer Service Line</b>	
Year 1	
Year 2	
Year 3	
Year 4	
Year 5	
Extension 1	
Annual Increase (\$ or %)	
Extension 2	
Annual Increase (\$ or %)	
Water Board Revenue Share (\$ or %)	
Each DEP-Requested Emergency Repair	

\* The Annual Cost per Customer for premiums should be gross of the Water Board Revenue Share. Also, for “Each DEP-Requested Emergency Repair”, the cost proposed should be the cost for each complete repair, not an annual cost.

**5. Required Board Documents**

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

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

**C. PROPOSAL PACKAGE SUBMISSION REQUIREMENTS**

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

FROM: Proposer Name/Address

TO: Jason K. Low  
Water Board Counsel  
New York City Water Board  
59-17 Junction Boulevard, 8th Floor  
Flushing, NY 11373-5108  
(718) 595-3114  
jasonl@dep.nyc.gov

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

## **IX. GENERAL INFORMATION**

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

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

### **2. COMMUNICATION WITH THE AGENCY**

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

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

- a. All inquiries regarding this solicitation shall be emailed to the Board’s designated contact person by 3:00 P.M. (EST) on December 15, 2011, indicating “Service Line Protection Policy Contractor RFP Question” in the subject line.
- b. To receive responses to any questions submitted, please register the Proposer and the Proposer’s representative contact with the Board by providing an email address to the Board’s designated contact person. Responses will also be posted on the Board’s website: <http://www.nyc.gov/nycwaterboard>.

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

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

## **5. SUBCONTRACTING**

If any part of the work covered by the RFP is to be subcontracted, the Proposer shall identify the subcontractor(s) by furnishing the corporate name, names of officers, and Federal Employer ID Number. With regards to subcontractors hired to repair and/or replace service lines, such detailed information does not have to be submitted with the Proposer's proposal, but it must be provided prior to execution of any contract. All subcontracts are subject to approval as set forth in the Board's General Provisions Governing Contracts for Consultants, Professional and Technical Services. (See Appendix A.) The selected Proposer will be responsible for all work covered herein and is the sole contact regarding contractual matters.

## **6. MODIFIED PROPOSALS**

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

## **7. WITHDRAWAL OF PROPOSALS**

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

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

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

## **9. CONFIDENTIAL/PROPRIETARY INFORMATION**

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

basis, whether exemption from disclosure applies at such time as a FOIL request is made to the Board for examination of such a proposal.

#### **10. COSTS INCURRED BY PROPOSERS**

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

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

Proposers ranking highly according to the criteria established in Section VIII may be invited to give oral and/or visual presentations in support of their proposals or to exhibit or otherwise demonstrate the information contained therein. Such conference calls or presentations would be held during the week of January 23, 2012. The Board's designated contact person will schedule the time and location of these presentations.

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

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

#### **13. PROPOSER ACCEPTANCE OF RFP**

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

#### **14. CONTRACT AWARD**

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

**15. RFP POSTPONEMENT/CANCELLATION**

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

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

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

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

**17. COMPLIANCE WITH VENDEX**

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

**18. LIMITATIONS OF LIABILITY**

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

- Reject any or all proposals received in response to this RFP;
- Award contracts to more than one vendor;
- Not award a contract;
- Award a contract without any discussion with Proposers;
- Retain a successful Proposer for only a portion of the Scope of Services;
- Accept a proposal other than the proposal offering the lowest price;
- Waive or modify any irregularities in proposals received after prior notification to the Proposers;
- Adjust any proposed prices for the purpose of evaluation, based upon a determination that selection of the proposal will incur additional costs to the Board;

- Consider proposals or modifications received at any time before the award is made, if such is in the best interest of the Board;
- Request clarification and/or additional information from the Proposers during the evaluation process; and,
- Utilize any and all ideas submitted in the proposals received, unless those ideas are covered by legal patent or proprietary rights and the patent or those rights are indicated by the Proposers.

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

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

**20. AFFIDAVIT OF PAYMENT OF TAXES**

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

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

**21. EXCEPTIONS TO RFP**

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

The contract to be entered into shall include Appendix A attached hereto (the Board’s General Provisions Governing Contracts for Consultants, Professional and Technical Services) with such changes as the Board may make in its sole discretion. Submission of a proposal constitutes consent to these terms and conditions. Any exceptions must be explicitly stated in the proposal and separately listed in the attachment entitled “Exceptions.”

## **22. CONTRACT NEGOTIATIONS**

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

The Board will not consider execution of any Proposer's standard contract. The Board expects that the final contract will include Appendix A attached hereto, with such changes as the Board may make in its sole discretion.

## **23. TAXES**

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

## **24. PUBLICITY AND COMMUNICATIONS**

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

**NEW YORK CITY WATER BOARD  
APPENDIX A**

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

**ARTICLE 1. DEFINITIONS**

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

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

**ARTICLE 2. REPRESENTATIONS AND WARRANTIES**

**2.1 PROCUREMENT OF AGREEMENT**

- A. The Contractor represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. The Contractor further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the Board to enter into this Agreement and the Board relies upon such representations and warranties in the execution hereof.
- B. For a breach or violation of such representations or warranties, the Executive Director shall have the right to annul this Agreement without liability, entitling the Board to recover all monies paid hereunder and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. This remedy, if effected, shall not constitute the sole remedy

afforded the Board for the falsity or breach, nor shall it constitute a waiver of the Board's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Agreement.

## 2.2 CONFLICT OF INTEREST

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

## 2.3 FAIR PRACTICES

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

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

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

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

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

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

#### **4.1 EMPLOYEES**

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

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

C. Workers' Compensation and Disability Benefits

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

D. Unemployment Insurance

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

E. Minimum Wage

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

4.2 INDEPENDENT CONTRACTOR STATUS

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

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

#### 4.3 INSURANCE AND PERFORMANCE BOND

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

- (1) Workers' Compensation/Disability Benefits: In statutory amounts.
- (2) Employer's Liability: The greater of statutory amounts or \$1,000,000 for each occurrence.
- (3) Commercial General Liability (including Owner's Protective Liability): A minimum of \$1,000,000 per occurrence and an annual aggregate of not less than \$5,000,000. The maximum deductible or self-insured retention ("SIR") for the Commercial General Liability policy shall be \$750,000.
- (4) Automobile Liability: A combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- (5) Umbrella/Excess Liability: A minimum of \$5,000,000 on a per occurrence and aggregate basis; this shall be in excess of primary general, automobile and employer's primary liability limits.
- (6) Professional Liability/Errors and Omissions Insurance: Professional liability ("PL") and/or errors and omissions ("E & O") insurance policies shall be written with a minimum amount of \$5,000,000 per claim and in the aggregate.

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

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

exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

- C. The Contractor must purchase and maintain at all times a performance bond in the amount of \$5,000,000.

#### 4.4 PROTECTION OF BOARD PROPERTY

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

#### 4.5 CONFIDENTIALITY

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

advance notice to the Board, in writing or by e-mail, that it intends to disclose such reports, information or data and the Board does not inform the Contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

- B. The Contractor shall provide notice to the Board within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Board of such steps. In the event of such breach of security, without limiting any other right of the Board, the Board shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The Board shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Board shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the Board’s discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.
- C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.
- D. The Contractor, and its officers, employees, and agents shall notify the Board, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least twenty-four (24) hours prior to any statement to the press or at least five (5) business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any

material for publication that includes confidential information as prohibited herein.

- E. At the request of the Board, the Contractor shall return to the Board any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Board in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Board, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Board does not request such information, or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 4.7.
- F. A breach of this Section shall constitute a material breach of this Agreement for which the Board may terminate this Agreement pursuant to Article 5. The Board reserves any and all other rights and remedies in the event of unauthorized disclosure.

#### 4.6 BOOKS AND RECORDS

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

#### 4.7 RETENTION OF RECORDS

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

#### 4.8 COMPLIANCE WITH LAW

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

#### 4.9 INVESTIGATIONS

- A. The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the State of New York or City

governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry.

- B. (1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State of New York, or;
- (2) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or New York State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract or license entered into with the City, New York State, or any political subdivision thereof or any local development corporation within the City, then;
- C. (1) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days' written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
- (2) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph E below without the Board incurring any penalty or damages for delay or otherwise.
- D. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:
- (1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such

person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the Board; and/or

- (2) The cancellation or termination of any and all such existing Board contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the Board incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the Board.
- E. (1) The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate:
- (a) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony are sought.
  - (b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
  - (c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the Board.
  - (d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under D above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in C(1) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

- F. (1) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as matter of right.
- (2) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
- (3) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or Board or otherwise transacts business with the City or Board.
- (4) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.
- G. In addition to and notwithstanding any other provision of this Agreement the commissioner or agency head may in his or her sole discretion terminate this Agreement upon not less than three (3) days written notice in the event the Contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

#### 4.10 ASSIGNMENT

- A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement or of the Contractor's rights, obligations, duties, in whole or in part, or of its right to execute it, or its right, title or interest in it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, unless prior written consent of the Executive Director shall be obtained. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.
- B. Failure of the Contractor to obtain any required consent to any assignment shall be cause for termination for cause, at the option of the Executive Director; and if so terminated, the Board shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees or transferees, and all monies that may become due under the Agreement shall be forfeited to the Board except so much thereof as may be necessary to pay the Contractor's employees.

- C. The provision of this clause shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State of New York.
- D. This Agreement may be assigned by the Board to any corporation, agency or instrumentality having authority to accept such assignment.

#### 4.11 SUBCONTRACTING

- A. The Contractor agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Agreement without the prior approval of the Executive Director. Such approval shall not be unreasonably withheld. One copy of each such proposed subcontract shall be submitted to the Executive Director with the Contractor's written request for approval. All such subcontracts shall contain provisions specifying:
  - (1) that the work performed by the subcontractor must be in accordance with the terms of the Agreement between the Board and the Contractor;
  - (2) that nothing contained in such Agreement shall impair the rights of the Board;
  - (3) that nothing contained herein, or under the Agreement between the Board and the Contractor, shall create any contractual relation between the subcontractor and the Board; and
  - (4) that the subcontractor specifically agrees to be bound by the confidentiality provision set forth in this Agreement between the Board and the Contractor.
- B. The Contractor agrees that it is fully responsible to the Board to the extent of the wrongful acts and omissions of the subcontractors and of persons either directly or indirectly employed by them as it is for the negligent or wrongful acts and omissions of persons directly employed by it.
- C. The aforesaid approval is required in all cases other than individual employer/employee contracts.
- D. The Contractor shall not in any way be relieved of any responsibility under this Contract by any subcontract.

#### 4.12 PARTICIPATION IN AN INTERNATIONAL BOYCOTT

- A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of

1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

- B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Contractor or a substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Board may, at its option, render forfeit and void this Agreement.
- C. The Contractor shall comply in all respects, with the provisions of Section 6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

#### 4.13 EQUAL EMPLOYMENT OPPORTUNITY

- A. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) (“E.O. 50”), as revised, and the rules set forth at 66 RCNY § 10-01 et seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:
  - 1. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
  - 2. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners’, partners’ or shareholders’ race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;
  - 3. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;
  - 4. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;

5. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the City Department of Small Business Services, Division of Labor Services (“DLS”); and
  6. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- B. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:
1. Disapproval of the Contractor; and/or
  2. Suspension or termination of the Agreement; and/or
  3. Declaring the Contractor in default; and/or
  4. In lieu of any of the foregoing sanctions, imposition of an employment program.
- C. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Board declaring the Contractor to be non-responsible.
- D. The Contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars (\$100,000) to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.
- E. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor

needed to produce the item contracted for shall not be considered a 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.

#### 4.14 COPYRIGHTS

- A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the Board.
- B. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement (“Copyrightable Materials”) shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the Board shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the Board, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the Board. The Board may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Board and set forth in the license.
- C. The Contractor acknowledges that the Board may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.
- D. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material,

the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the Board upon execution of this Agreement.

- E. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.
- F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the Board shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for Board or other governmental purposes.

#### 4.15 PATENTS AND INVENTIONS

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

#### 4.16 PRE-EXISTING RIGHTS

In no case shall Sections 4.14 and 4.15 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.

#### 4.17 INFRINGEMENTS

The Contractor shall defend, indemnify and hold the Board 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 Board may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Contractor and/or its subcontractors in the performance of this Agreement. The Contractor shall defend, indemnify, and hold the Board harmless regardless of whether or not the alleged infringement arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any claim would preclude the Board from being completely

indemnified by the Contractor, the Board shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

4.18 ANTI-TRUST

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

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

- A. The Executive Director may at any time, and for any reason, direct the Contractor to stop any work under the Agreement for a period of time. Such direction shall be given by at least ten (10) days notice, in writing, which shall specify the period during which the work shall be stopped. The Contractor shall resume the work upon the date specified in such direction, or upon such other date as the Executive Director may thereafter specify, in writing. The period during which the work shall have been stopped shall be deemed an extension of time for the performance of the Agreement. Stoppage of work under this Article shall not give rise to any claim against the Board or the City for damages or for extra remuneration.
- B. If the Contractor, through any cause, fails to perform any of the terms, covenants, or provisions of the Agreement on his part to be performed, or if he for any cause fails to progress its work called for hereunder in a manner the Executive Director considers reasonable, or if in the opinion of the Executive Director the conduct of the Contractor is such that the interests of the City or the Board are likely to be impaired or prejudiced, or if the Contractor has become or is likely to become in the reasonable judgment of the Board insolvent, or if the Contractor has commenced or is likely to commence in the reasonable judgment of the Board any proceeding under the Bankruptcy Act, or if the Contractor violates any of the terms, covenants, or provisions of said Agreement, then the Executive Director, acting for and in behalf of the Board and the City shall have the right to terminate said Agreement by giving notice in writing of the fact and date of termination (the "Termination Date") to the Contractor.
- C. The Executive Director shall have the right to terminate the work for which the Contractor is engaged hereunder at any time for any reason deemed to be in the Board's interest. In such event, the Contractor shall be paid any fees as shall have been earned by it, in the reasonable opinion of the Executive Director. Such postponement, delay, suspension, or termination shall not give rise to any cause of action against the Board or the City for damages or for extra remuneration.

- D. Upon termination of this Agreement the Contractor shall comply with the following close-out procedures:
- (1) Accounting for and refund to the Board, within thirty (30) days of the Termination Date, any unexpended funds which have been paid to the Contractor pursuant to this Agreement.
  - (2) Furnishing within thirty (30) days of the Termination Date, an inventory to the Board of all equipment, appurtenances and property purchased through or provided under this Agreement carrying out any Board directive concerning the disposition thereof.
  - (3) Not incurring or paying any further obligation pursuant to this Agreement beyond the Termination Date except for reasonable termination costs. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after such date shall be paid by the Board in accordance with the terms of this Agreement. In no event shall the word "obligation", as used herein, be construed as including any lease agreement, oral or written, entered into between the Contractor and its landlord.
  - (4) Turn over to the Board or its designees within thirty (30) days of the Termination Date, all drawings, specifications, books, records, documents and material specifically relating to this Agreement.
  - (5) Submit, within ninety (90) days of the Termination Date, a final statement and report relating to this Agreement. The report shall be made by a certified public accountant or a licensed public accountant. The Contractor shall receive equitable compensation for the work which in the Executive Director's reasonable incurred opinion have been satisfactorily performed by the Contractor up to the Termination Date, such compensation to be fixed by the Executive Director, subject to audit by the Board and post-audit by the Comptroller, and provided further that the Board may take over the work to be done and complete the work by Agreement or otherwise, the Contractor being liable to the Board for any reasonable excess cost occasioned to the Board thereby.
- E. In the event the Board shall terminate this Agreement, in whole or in part, as provided by this Article, the Board may procure, upon such terms and in such manner as deemed appropriate, services similar to those so terminated, and the Contractor shall continue the performance of this Agreement to the extent not terminated hereby.
- F. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the Board for damages sustained by the Board by virtue of the Contractor's breach of this Agreement, and the Board may withhold payments to the Contractor for the purpose of set-off until such time

as the exact amount of damages due to the Board from the Contractor is determined.

- G. The rights and remedies of the Board provided in this article shall not be exclusive and are in addition to all other rights and remedies provided by law or under this Agreement.

## **ARTICLE 6. MISCELLANEOUS**

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

- A. This Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York.
- B. The parties agree that any and all claims asserted by or against the Board arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this Agreement and intent, the Contractor agrees:
- (1) If the Board initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth in this Agreement, or to such other address as the Contractor may provide to the Board in writing; and
  - (2) With respect to any action between the Board and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.
  - (3) With respect to any action between the Board and the Contractor in Federal Court located in New York City, the Contractor expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.
  - (4) If the Contractor commences any action against the Board in a court located other than in the City and State of New York, upon request of the Board, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot

transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

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

## 6.2 GENERAL RELEASE

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

## 6.3 CLAIMS AND ACTIONS THEREON

- A. No action at law or proceeding in equity against the Board shall lie or be maintained upon any claim based upon this Agreement or arising out of this Agreement or in any way connected with this Agreement unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.
- B. No action shall lie or be maintained against the Board by the Contractor upon any claims based upon this Agreement unless such action shall be commenced within six (6) months after the date of filing in the Office of Executive Director of the certificate for the final payment hereunder, or within six (6) months of the termination or conclusion of this Agreement, or within six (6) months after the accrual of the Cause of Action, whichever first occurs.
- C. In the event any claim is made or any action brought in any way relating to the Agreement herein, the Contractor shall use all reasonable efforts to render to the Board any and all assistance which the Board may require of the Contractor. The Contractor may request payment for such work at the rates specified herein. The Board shall not unreasonably withhold such payment.
- D. The Contractor shall report to the Board in writing within three (3) working days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

## 6.4 NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

employee of the Contractor working within the scope of his or her employment for, or on account of, anything done or omitted in connection with this Agreement.

6.5 WAIVER

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

6.6 NOTICE

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

6.7 ALL LEGAL PROVISIONS DEEMED INCLUDED

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

6.8 SEVERABILITY

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

6.9 POLITICAL ACTIVITY

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

6.10 MODIFICATION

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

6.11 PARAGRAPH HEADINGS

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

6.12 NO REMOVAL OF RECORDS FROM PREMISES

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

6.13 INSPECTION AT SITE

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

**ARTICLE 7. MERGER**

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

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

- A. Pursuant to the provisions of Section 6-115.1 of the Administrative Code of the City of New York, the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor certify that either: (a) they have no business operations in Northern Ireland, or (b) they shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride

Principles, and shall permit independent monitoring of their compliance with such principles.

- B. For purpose of this section, "MacBride" Principles shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:
1. increase the representation of individuals from under-represented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
  2. take steps to promote adequate security for the protection of employees for underrepresented religious groups both at the workplace and while traveling to and from work;
  3. ban provocative religious or political emblems from the workplace;
  4. publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
  5. establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
  6. abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
  7. develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups;
  8. establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
  9. appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.
- C. The Contractor agrees that the warranties and representations in paragraph A are material conditions of this Agreement. If the Board receives information that the Contractor is in violation of paragraph A the Board shall review such information and give the relevant party opportunity to respond. If the Board finds that such a violation has occurred, the Board may declare the Contractor in default, and/or terminate this Agreement. In the event of any such termination, the Board may procure the supplies, services or work from another source in any manner the Board deems proper. The Contractor shall pay to the Board, the difference between the contract price for the uncompleted portion of this Agreement and the cost to the Board of completing performance of this Agreement either by itself or by engaging another Contractor. If this is a requirements contract, the Contractor shall be liable for the difference in price, if this is a construction contract, the Board shall also have the right to hold the Contractor in partial or total default in accordance with the default provision of this Agreement. In addition, the Contractor may be declared not to be a responsible bidder or proposer for up to three (3) years, following written notice to the Contractor, giving the Contractor the opportunity for a hearing at which the Contractor may be represented by counsel. The rights and remedies the Board hereunder shall be in addition to, and not in lieu of, any rights and remedies the Board has pursuant to this Agreement or by operation of law or in equity.

**APPENDIX B**

**ACKNOWLEDGEMENT OF ADDENDA**

RFP TITLE: The New York City Water Board Request for Proposals for Service Line Protection Policy Contractor

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

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

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

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

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

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

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

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

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

NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS RFP

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

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

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

## APPENDIX C

### CERTIFICATE OF NON-COLLUSION

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

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

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

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

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

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

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

**APPENDIX D**

**AFFIDAVIT OF PAYMENT OF TAXES**

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

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

Address \_\_\_\_\_

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

CHECK ONE AND INCLUDE APPROPRIATE NUMBER:

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

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_  
Title

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

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