

LEGAL DOCUMENT APPENDIX ATTACHMENT

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**APPENDIX
GENERAL TERMS AND CONDITIONS**

1 CHANGE ORDER

Any change in the scope or description of the work, or in the contract price, shall be executed by written order of the County. This shall constitute a Change Order. This shall not affect the validity of the contract or any terms or conditions not changed thereby.

2 RESPONDENT RESPONSIBILITY

Each Respondent shall fully acquaint himself with conditions relating to the scope and restrictions attending the execution of the work under the conditions of this proposal. It is expected that this will sometimes require on-site observation. The failure or omission of a Respondent to acquaint himself with existing conditions shall in no way relieve him of any obligation with respect to this proposal or to the contract.

3 RETAINAGE

The County shall retain 10 percent of the amount due as a security. The retainage will be paid to the Contractor after all the work has been completed on the project and the County has accepted the products.

4 OFFICIAL PROJECT SCHEDULE

During contract negotiations, the Contractor must supply a detailed "Official Project Schedule" (OPS) with firm dates for delivery of all products, broken out into distinct production areas, and inclusive of all milestones listed in Section 8. This schedule shall become a part of the contract. Amendments to the OPS must be agreed to in writing by the County and the Contractor, and published by the Contractor in the OPS. At all points during this project, it is incumbent upon the Contractor to have an agreed upon, and published, Official Project Schedule. The County shall make no payments to the Contractor during periods where no Official Project Schedule exists. In the event the Contractor does not provide an updated OPS reflecting all modifications agreed upon by the County and Contractor, the County reserves the right to enforce the published schedule that is most advantageous to the County.

5 EXCUSABLE DELAY

The Contractor shall not be liable for any excess costs if the failure to perform the contract arises

out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

6 LICENSES, PERMITS, AND CERTIFICATES

All licenses, permits, and certificates required for and in connection with any and all parts of the work to be performed under the provisions of these contract documents shall be secured by the Contractor entirely at his/her own expense.

7 INDEPENDENT CONTRACTOR

The relationship of the Contractor to the County shall be that of an independent contractor.

8 AFFIRMATIVE ACTION

The Contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment of the disabled, and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, national origin, age, or disability.

9 ASSIGNMENT AND SUBCONTRACTING

The Contractor shall not assign or subcontract the work, or any part thereof, without the previous written consent of Westchester County, nor shall he assign, by power of attorney or otherwise, any of the money payable under the Contract unless written consent of the County has been obtained. No right under the Contract, nor claim for any money due or to become due, shall be asserted against the County, or persons acting for the County, by reason of any so-called assignment of the Contract or any part thereof, unless such assignment has been authorized by the written consent of the County. In case the Contractor is permitted to assign monies due or to become due under the Contract, the instrument of assignment shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of the work.

The Contractor shall be fully responsible and accountable to the County for the acts and omissions of his subcontractors, and of persons directly or indirectly employed by him.

10 PROTECTION OF PROPERTY AND PUBLIC LIABILITY

The Contractor shall be accountable for any damages resulting from his/her operations. The Contractor shall pay for all damages. He/She shall be fully responsible for the protection of all persons, including members of the public and employees of other contractors or subcontractors and all public and private property.

11 CONFIDENTIAL MATTERS

The Contractor and its subcontractors shall treat as confidential all data and information gathered by the Contractor and its subcontractors, and all reports, recommendations, drawings, specifications, photographs, and data. The Contractor and its subcontractors must agree not to communicate and disclose the aforesaid matters to a third party or use them in advertising, publications, or propaganda and/or in another job or jobs, unless written consent is obtained from the County.

12 OWNERSHIP OF DOCUMENTS

All documents submitted to the County or prepared for the County pursuant to this Contract will be property of the County. However, the Contractor will bear the risk of loss of any document not submitted to the County before such loss occurs.

13 UNDERSTANDINGS

Please take notice, by submission of a proposal in response to this request for proposals, Respondent agrees and understands:

- that any proposal, attachments, additional information, etc. submitted pursuant to this Request for Proposals constitute merely a suggestion to negotiate with the County of Westchester and is not a bid under Section 103 of the New York State General Municipal Law;
- that submission of a proposal, attachments, and additional information shall not entitle the Respondent to enter into a service agreement with the County of Westchester for the required services;

- that by submitting a proposal, the Respondent agrees and understands that the County of Westchester is not obligated to respond to the proposal, nor is it legally bound in any manner whatsoever by submission of same;
- that any and all counter-proposals, negotiations or any communications received by a Respondent, its officers, employees or agents from the County, its elected officials, officers, employees or agents, shall not be binding against the County of Westchester, its elected officials, officers, employees or agents unless and until a formal written agreement for the services sought by this RFP is duly executed by both parties and approved by the Westchester County Board of Acquisition & Contract, and the Office of the Westchester County Attorney.

In addition to the foregoing, by submitting a proposal, the Respondent also understands and agrees that the County of Westchester reserves, and may at its sole discretion exercise, the following rights and options with respect to this Request for Proposals:

- To reject any or all proposals;
- To issue additional solicitations for proposals and/or amendments to this RFP;
- To waive any irregularities in proposals received after notification to Respondents affected;
- To select any proposal as the basis for negotiations of a contract, and to negotiate with one or more of the Respondents for amendments or other modifications to their proposals;
- To conduct investigations with respect to the qualifications of each Respondent;
- To exercise its discretion and apply its judgment with respect to any aspect of this RFP, the evaluation of proposals, and the negotiations and award of any contract;
- To enter into an agreement for only portions (or not to enter into an agreement for any) of the services contemplated by the proposals with one or more of the Respondents;
- To select the proposal that best satisfies the interests of the County and not necessarily on the basis of price or any other single factor.

While this is a Request For Proposals and not a bid, the County reserves the right to apply the case law under General Municipal Law § 103 regarding bidder responsibility in determining whether a Respondent is a responsible vendor for the purpose of this RFP process.

The County assumes no responsibility or liability of any kind for costs incurred in the preparation or submission of any proposal.

The County is not responsible for any internal or external delivery delays which may cause any proposal to arrive beyond the stated deadline. To be considered, proposals MUST arrive at the place specified herein prior to the deadline.

Evaluation criteria are not necessarily listed in order of importance. The County reserves the right to weigh its evaluation criteria in any manner it deems appropriate.

13.1 Proposal Requirements

Requests for clarification of this RFP must be written via mail or email and submitted to:

Dongming Tang, Software Architect II (GIS)
Westchester County
148 Martine Avenue, Room 214
White Plains, NY 10601
Voice: (914) 995-4437
Email: dqt3@westchestergov.com

no later than 4:00 p.m. on Wednesday, August 13, 2008. Substantive requests for information received prior to the deadline will be distributed by the County in the form of an addendum to this RFP addressed to all recipients, or as a posting at <http://www.westchestergov.com/rfp/>, on or before August 20, 2008.

NO COMMUNICATIONS OF ANY KIND WILL BE BINDING AGAINST THE COUNTY, EXCEPT FOR THE FORMAL WRITTEN RESPONSES TO ANY REQUEST FOR CLARIFICATION.

Proposals MUST be signed. Unsigned proposals will be rejected.

Respondents may be required to give an oral presentation to the County to clarify or elaborate on the written proposal.

No proposal will be accepted from nor any agreement awarded to any Respondent that is in arrears upon any debt or in default of any obligation owed to the County. Additionally, no agreement will be awarded to any Respondent that has failed to satisfactorily perform pursuant to any prior agreement with the County.

13.2 Contents of Proposal

The New York State Freedom of Information Law as set forth in Public Officers Law, Article 6, Sections 84-90, mandates public access to government records. However, proposals submitted in response to this RFP may contain technical, financial background or other data, public disclosure of which could cause substantial injury to the Respondent's competitive position or constitute a trade secret. Respondents who have a good faith belief that information submitted in their proposals is protected from disclosure under the New York Freedom of Information Law shall:

- a) insert the following notice in the front of its proposal:

“NOTICE

The data on pages ___ of this proposal identified by an asterisk (*) contains technical or financial information constituting trade secrets or information the disclosure of which would result in substantial injury to the Respondent’s competitive position.

The Respondent requests that such information be used only for the evaluation of the proposal, but understands that any disclosure will be limited to the extent that the County considers proper under the law. If the County enters into an agreement with this Respondent, the County shall have the right to use or disclose such information as provided in the agreement, unless otherwise obligated by law.”

and

b) clearly identify the pages of the proposals containing such information by typing in bold face on the top of each page " *** THE RESPONDENT BELIEVES THAT THIS INFORMATION IS PROTECTED FROM DISCLOSURE UNDER THE STATE FREEDOM OF INFORMATION LAW.**"

The County assumes no liability for disclosure of information so identified, provided that the County has made a good faith legal determination that the information is not protected from disclosure under applicable law or where disclosure is required to comply with an order or judgment of a court of competent jurisdiction.

The contents of the proposal which is accepted by the County, except portions "Protected from Disclosure", may become part of any agreement resulting from this RFP.

ATTACHMENTS

SCHEDULE A:

- I. Insurance and Indemnification Requirements**
- II. Terms & Conditions (Sample Contract)**
- III. Standard Insurance Provisions (Consultant)**
- IV. Questionnaire Regarding Business Enterprises Owned and Controlled by Persons of Color or Women**
- V. Certification Regarding Business Dealings with Northern Ireland**

SCHEDULE B: Vendor Certification

SCHEDULE A

SCHEDULE A - I

CONTRACT

After selection of the successful respondent, a formal written contract will be prepared by the County of Westchester and will not be binding until signed by both parties and approved by the Westchester County Board of Acquisition & Contract and the Office of the County Attorney. NO RIGHTS SHALL ACCRUE TO ANY RESPONDENT BY THE FACT THAT A PROPOSAL HAS BEEN SELECTED BY THE COUNTY FOR SUBMISSION TO THE BOARD OF ACQUISITION & CONTRACT FOR CONTRACT APPROVAL. SAID BOARD HAS THE RIGHT TO REJECT ANY RECOMMENDATION AND THE APPROVAL OF SAID BOARD IS NECESSARY BEFORE A VALID AND BINDING CONTRACT MAY BE EXECUTED BY THE COUNTY.

INDEMNIFICATION AND INSURANCE

The respondent accepts and agrees that language in substantially the following form will be included in the contract between the respondent and the County:

"In addition to, and not in limitation of the insurance requirements contained herein the Consultant agrees:

(a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, the Consultant shall indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of the acts or omissions hereunder by the Consultant or third parties under the direction or control of the Consultant; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto.

The Consultant shall provide proof of the following coverages:

(a) General Liability insurance with a minimum liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or a combined single limit of \$1,000,000 naming the County of Westchester as additional insured. Coverage shall include Contractual, Independent Contractors/Subcontractors and Products and Completed Operations.

(b) Automobile Liability with a minimum liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage, or a combined single limit of \$1,000,000. Coverage to include Owned, non owned and hired autos.

(c) Workers' Compensation coverage in statutory amounts.

(d) Professional Liability coverage with a minimum liability per occurrence of \$1,000,000.

All policies shall be obtained from companies licensed to conduct business in the State of New York. Companies providing insurance coverage shall be required to have nothing less than an "A" rating or better by the A.M. Best Company of Aldrich, New Jersey.

The insurance companies issuing the policy or policies shall have no recourse against the County of Westchester (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy."

Insurance coverage in amount and form shall not be deemed acceptable until approved by the County of Westchester, Department of Risk Management. The Director of Risk Management may alter insurance requirements at his discretion.

SCHEDULE A - II

THIS AGREEMENT made the _____ day of _____ 20__

by and between

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601

(hereafter the "County")

and

CONSULTANT, having an office and principal place of business at _____

(hereafter the "Consultant")

WITNESSETH:

FIRST: The Consultant shall provide _____, as more fully described in Schedule "A", which is attached hereto and made a part hereof (the "Work"). The Work shall be carried out by the Consultant in accordance with current industry standards and trade practices.

A list of key personnel of the Consultant, who shall be responsible for the implementation of this Agreement, is set forth in Schedule "A". The Consultant shall provide the County with prior written notice of any proposed changes in key personnel, and the Chief Information Officer of or his/her duly authorized designee (the "CIO") shall have sole discretion to approve or disapprove of any such personnel changes.

SECOND: The term of this Agreement shall commence on ___ and shall terminate on ___, unless terminated earlier pursuant to the provisions of this Agreement.

The Consultant shall report to the County on its progress toward completing the Work, as the Commissioner may request, and shall immediately inform the Commissioner in writing of any cause for delay in the performance of its obligations under this Agreement.

The Consultant shall properly maintain a detailed daily log relative to the services rendered for which compensation is to be paid by the County pursuant to the terms of this Agreement, which shall be submitted on a monthly basis. This log shall include, but not be limited to, the following:

1. Date.
2. Names and titles of employees rendering service.
3. Nature of service rendered.

4. Required time expended.

The Consultant shall complete those specific Work items identified in Schedule "A" by the interim deadlines set forth therein, unless an interim deadline is extended by the Commissioner in writing, subject to any necessary legal approval of such amendment.

THIRD: For the Work to be performed pursuant to Section "1," the Consultant shall be paid an amount not-to-exceed \$___ Dollars, in the manner and at the rates set forth in Schedule "A", which is attached hereto and made a part hereof. Except as otherwise expressly stated in this Agreement, no payment shall be made by the County to the Consultant for out-of-pocket expenses or disbursements made in connection with the Work to be performed hereunder.

Any and all requests for payment to be made, including any request for partial payment if such is permitted hereunder, shall be submitted by the Consultant on properly executed payment vouchers of the County and paid only after approval by the Commissioner. All payment vouchers must be accompanied by a numbered invoice and must contain the invoice number where indicated. All invoices submitted during each calendar year shall utilize consecutive numbering and be non-repeating. In no event shall final payment be made to the Consultant prior to completion of all Work and the approval of same by the Commissioner.

The Consultant shall, at no additional charge, furnish all labor, services, materials, tools, equipment and other appliances necessary to complete the Work, unless specific additional charges are expressly permitted under this Agreement. It is recognized and understood that even if specific additional charges are expressly permitted under this Agreement, in no event shall total payment to the Consultant exceed the not-to-exceed amount set forth above.

FOURTH: Prior to the making of any payments hereunder, the County may, at its option, audit such books and records of the Consultant as are reasonably pertinent to this Agreement to substantiate the basis for payment. The County will not withhold payment pursuant to this paragraph for more than thirty (30) days after payment would otherwise be due pursuant to the provisions of this Agreement, unless the County shall find cause to withhold payment in the course of such audit or the Consultant fails to cooperate with such audit. The County shall, in addition, have the right to audit such books and records subsequent to payment, if such audit is commenced within one year following termination of this Agreement.

FIFTH: The parties recognize and acknowledge that the obligations of the County under this Agreement are subject to annual appropriations by its Board of Legislators pursuant to the Laws of Westchester County. Therefore, this Agreement shall be deemed executory only to the extent of the monies appropriated and available. The County shall have no liability under this Agreement beyond funds appropriated and available for payment pursuant to this Agreement. The parties understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. The County shall retain the right, upon the occurrence of the adoption of any County Budget by its Board of Legislators during the term of this

Agreement or any amendments thereto, and for a reasonable period of time after such adoption(s), to conduct an analysis of the impacts of any such County Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates set forth herein. If the County subsequently offers to pay a reduced amount to the Consultant, then the Consultant shall have the right to terminate this Agreement upon reasonable prior written notice.

This Agreement is also subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Consultant, then the Consultant shall have the right to terminate this Agreement upon reasonable prior written notice.

SIXTH: (a) The County, upon ten (10) days notice to the Consultant, may terminate this Agreement in whole or in part when the County deems it to be in its best interest. In such event, the Consultant shall be compensated and the County shall be liable only for payment for services already rendered under this Agreement prior to the effective date of termination at the rates specified in Schedule "A". Upon receipt of notice that the County is terminating this Agreement in its best interests, the Consultant shall stop work immediately and incur no further costs in furtherance of this Agreement without the express approval of the Commissioner, and the Consultant shall direct any approved subconsultants to do the same.

In the event of a dispute as to the value of the Work rendered by the Consultant prior to the date of termination, it is understood and agreed that the Commissioner shall determine the value of such Work rendered by the Consultant. The Consultant shall accept such reasonable and good faith determination as final.

(b) In the event the County determines that there has been a material breach by the Consultant of any of the terms of the Agreement and such breach remains uncured for forty-eight (48) hours after service on the Consultant of written notice thereof, the County, in addition to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power and authority to complete the Work provided for in this Agreement, or contract for its completion, and any additional expense or cost of such completion shall be charged to and paid by the Consultant. Without limiting the foregoing, upon written notice to the Consultant, repeated breaches by the Consultant of duties or obligations under this Agreement shall be deemed a material breach of this Agreement justifying termination for cause hereunder without requirement for further opportunity to cure.

SEVENTH: The Consultant agrees to procure and maintain insurance naming the County as additional insured, as provided and described in Schedule "B", entitled "Standard Insurance Provisions", which is attached hereto and made a part hereof. In addition to, and not in limitation of the insurance provisions contained in Schedule "B", the Consultant agrees:

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the negligence of the County, the Consultant shall indemnify and hold harmless the County, its officers,

employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Consultant or third parties under the direction or control of the Consultant; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto.

EIGHTH: (a) The Consultant represents that, as a material element of this agreement, and prior to the rendering of any services to the County, it has filed with the Westchester County Clerk an instrument in the form attached hereto as Schedule "C". In addition, the Consultant hereby represents that, if operating under an assumed name, it has filed the necessary certificate pursuant to New York State General Business Law Section 130.

(b) The Consultant represents and warrants that it has not employed or retained any person, other than a bona fide full-time salaried employee working solely for the Consultant to solicit or secure this Agreement, and that it has not paid or agreed to pay any person (other than payments of fixed salary to a bona fide full-time salaried employee working solely for the Consultant) any fee, commission, percentage, gift or other consideration, contingent upon, or resulting from, the award or making of this Agreement. For the breach or violation of this provision, without limiting any other rights or remedies to which the County may be entitled, or any civil or criminal penalty to which any violator may be liable, the County shall have the right, in its discretion, to terminate this Agreement without liability, and to deduct from the contract price, or otherwise to recover, the full amount of such fee, commission, percentage, gift or consideration.

NINTH: The Consultant expressly agrees that neither it nor any Consultant, subconsultant, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Consultant acknowledges and understands that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.

TENTH: The Consultant shall comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations, including, but not limited to, those applicable to the Consultant as an employer of labor. The Consultant shall further comply, at its own expense, with all applicable rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subconsultants and others employed to render the Work hereunder.

ELEVENTH: Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by persons of color or women in contracts and projects funded by all departments of the County. Attached hereto and forming a part hereof as Schedule "D" is a Questionnaire entitled Business Enterprises Owned and Controlled by Persons of Color or Women. The Consultant agrees to complete the questionnaire attached hereto as Schedule "D", as part of this Agreement.

TWELFTH: All records or recorded data of any kind compiled by the Consultant in completing the Work described in this Agreement, including but not limited to written reports, studies, drawings, blueprints, computer printouts, graphs, charts, plans, specifications and all other similar recorded data, shall become and remain the property of the County. The Consultant may retain copies of such records for its own use and shall not disclose any such information without the express written consent of the Commissioner. The County shall have the right to reproduce and publish such records, if it so desires, at no additional cost to the County.

Note: Include the following paragraphs only if the subject matter of the contract involves intellectual property rights, such as a contract with a photographer or a contract which will result in the production of a report, brochure, advertisement, television show, custom software, etc. that the County desires the right to reproduce.

Notwithstanding the foregoing, all deliverables created under this Agreement by the Consultant are to be considered "works made for hire." If any of the deliverables do not qualify as "works made for hire," the Consultant hereby assigns to the County all right, title and interest (including ownership of copyright) in such deliverables and such assignment allows the County to obtain in its name copyrights, registrations and similar protections which may be available. The Consultant agrees to assist the County, if required, in perfecting these rights. The Consultant shall provide the County with at least one copy of each deliverable.

The Consultant agrees to defend, indemnify and hold harmless the County for all damages, liabilities, losses and expenses arising out of any claim that a deliverable infringes upon an intellectual property right of a third party. If such a claim is made, or appears likely to be made, the Consultant agrees to enable the County's continued use of the deliverable, or to modify or replace it. If the County determines that none of these alternatives is reasonably available, the deliverable may be returned.

THIRTEENTH: The Consultant shall not delegate any duties or assign any of its rights under this Agreement without the prior express written consent of the County. The Consultant shall not subcontract any part of the Work without the written consent of the County, subject to any necessary legal approvals. Any purported delegation of duties, assignment of rights or subcontracting of Work under this Agreement without the prior express written consent of the County is void. All subcontracts that have received such prior written consent shall provide that subconsultants are subject to all terms and conditions set forth in this Agreement. It is recognized and understood by the Consultant that for the purposes of this Agreement, all Work performed by a County-approved subconsultant shall be deemed Work performed by the Consultant and the Consultant shall insure that such subcontracted work is subject to the material terms and conditions of this Agreement.

FOURTEENTH: Pursuant to Act No. 56-1999, no County procuring officer may award or recommend for award any contract not subject to competitive bidding to a party that does not execute a certification in substantially the form attached hereto and forming a part hereof as Schedule "E". Therefore, the Consultant agrees, as part of this Agreement, to complete the form attached hereto as Schedule "E".

FIFTEENTH: The Consultant and the County agree that the Consultant and its officers, employees, agents, Consultants, subconsultants and/or consultants are independent contractors and not employees of the County or any department, agency or unit thereof. In accordance with their status as

independent contractors, the Consultant covenants and agrees that neither the Consultant nor any of its officers, employees, agents, contractors, subconsultants and/or consultants will hold themselves out as, or claim to be, officers or employees of the County or any department, agency or unit thereof. Therefore, the Consultant agrees, as part of this Agreement, to complete the form attached hereto as Schedule "F".

SIXTEENTH: Failure of the County to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect. Acceptance by the County of any Work or the payment of any fee or reimbursement due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver by the County of any provision hereof shall be implied.

SEVENTEENTH: All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by registered or certified mail, postage pre-paid), as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to the following:

To the County:

with a copy to:

County Attorney
Michaelian Office Building, Room 600
148 Martine Avenue
White Plains, New York 10601

To the Consultant:

EIGHTEENTH: This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations,

commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

In the event of any conflict between the terms of this Agreement and the terms of any schedule or attachment hereto, it is understood that the terms of this Agreement shall be controlling with respect to any interpretation of the meaning and intent of the parties.

NINETEENTH: Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Agreement, except in the event that specific third party rights are expressly granted herein.

TWENTIETH: The Consultant recognizes that this Agreement does not grant the Consultant the exclusive right to perform the Work for the County and that the County may enter into similar agreements with other Consultants on an "as needed" basis.

TWENTY-FIRST: This Agreement shall be executed in triplicate and may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that for any cause of action arising out of this Agreement shall be brought in the County of Westchester.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

TWENTY-SECOND: Pursuant to Federal Executive Order 12549, and as prescribed by federal regulations, including 48 C.F.R. Subpart 4, the Consultant hereby agrees to complete the Debarment and Suspension Certificate attached hereto as Schedule ["G"] and which is made a part hereof. In addition, the Consultant agrees to sign the certifications regarding Drug Free Workplace and Lobbying, attached hereto as Schedules ["H"] and ["I"], and made a part hereof.

TWENTY-THIRD: The Consultant shall use all reasonable means to avoid any conflict of interest with the County and shall immediately notify the County in the event of a conflict of interest. The Consultant shall also use all reasonable means to avoid any appearance of impropriety.

TWENTY-FOURTH: This Agreement shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

IN WITNESS WHEREOF, The County of Westchester and the Consultant have caused this Agreement to be executed.

THE COUNTY OF WESTCHESTER

By: _____

Name:

Title:

[NAME OF CONSULTANT]

By: _____

Name:

Title:

Approved as to form
and manner of execution

County Attorney

County of Westchester

ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss.:

COUNTY OF)

On the _____ day of _____ in the year 2005 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Date: _____

Notary Public

CERTIFICATE OF AUTHORITY

(CORPORATION)

I, _____,
(Officer other than officer signing contract)

certify that I am the _____ of
(Title)

the _____
(Name of Corporation)

a corporation duly organized and in good standing under the _____
(Law under which organized, e.g., the New York Business Corporation Law) named in the foregoing agreement; that

(Person executing agreement)

who signed said agreement on behalf of the

(Name of Corporation)

was, at the time of execution

(Title of such person)

of the Corporation and that said agreement was duly signed for and on behalf of said Corporation by authority of its Board of Directors, thereunto duly authorized and that such authority is in full force and effect at the date hereof.

(Signature)

STATE OF NEW YORK)

) ss.:

COUNTY OF)

On the _____ day of _____ in the year 2005 before me, the undersigned, a Notary Public in and for said State, _____ personally appeared, personally

known to me or proved to me on the basis of satisfactory evidence to be the officer described in and who executed the above certificate, who being by me duly sworn did depose and say that he/she resides at _____, and he/she is an officer of said corporation; that he/she is duly authorized to execute said certificate on behalf of said corporation, and that he/she signed his/her name thereto pursuant to such authority.

Notary Public

Date

SCHEDULE "A"

(SCOPE / SPECIFICATIONS)

SCHEDULE A - III

STANDARD INSURANCE PROVISIONS

(CONSULTANT)

1. Prior to commencing work, the Consultant shall obtain at its own cost and expense the required insurance from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better, and shall provide evidence of such insurance to the County of Westchester, as may be required and approved by the Director of Risk Management of the County. The policies or certificates thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the Director of Risk Management of the County of Westchester by registered mail, return receipt requested, for all of the following stated insurance policies. All notices shall name the Consultant and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Consultant shall upon notice to that effect from the County, promptly obtain a new policy, submit the same to the Department of Risk Management of the County of Westchester for approval and submit a certificate thereof. Upon failure of the Consultant to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated. Failure of the Consultant to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Consultant from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Consultant concerning indemnification. All property losses shall be made payable to and adjusted with the County.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of any operations under the Agreement, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Consultant until such time as the Consultant shall furnish such additional security covering such claims in form satisfactory to the County of Westchester.

2. The Consultant shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the "Special Conditions" of the contract specifications):

(a) Workers' Compensation. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law.

State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

(Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits' Policy, or both, a temporary permit may be issued if the employer completes form C-105.2 in duplicate. A copy of form C-105.2 is sent to the Workers' Compensation Board, Information Unit for investigation and report.)

If the employer is self-insured for Workers' Compensation, he should present a certificate from the New York State Workers' Compensation Board evidencing that fact.

(b) Employer's Liability with a minimum limit of \$100,000.

(c) General Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or a combined single limit of \$1,000,000 (c.s.l), naming the County of Westchester as an additional insured. This insurance shall indicate on the certificate of insurance the following coverages:

(i) Premises - Operations.

(ii) Broad Form Contractual.

(d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages:

(i) Owned automobiles.

(ii) Hired automobiles.

(iii) Non-owned automobiles.

(e) Consultant's Professional Liability. The Consultant shall provide proof of such insurance. (Limits of \$1,000,000).

3. All policies and certificates of insurance of the Consultant shall contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County of Westchester (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County of Westchester is named as an insured, shall not apply to the County of Westchester.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County of Westchester (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Consultant.

SCHEDULE A - IV

For Informational Purposes Only

QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES

OWNED AND CONTROLLED BY PERSONS OF COLOR OR WOMEN

As part of the County's program to encourage the meaningful and significant participation of business enterprises owned and controlled by persons of color or women in County contracts, and in furtherance of Local Law No. 27-1997 we request that you answer the questions listed below.

The term persons of color means a United States citizen or permanent resident alien who is and can demonstrate membership of one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North American; or (d) Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian sub-continent or the Pacific Islands.

An enterprise owned and controlled by persons of color or women means a business enterprise including a sole proprietorship, limited liability partnership, partnership, limited liability corporation or corporation that is (a.) at least 51% owned by one or more persons of color or women; (b.) an enterprise in which such ownership by persons of color or women is real, substantial and continuing; (c.) an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and (d.) an enterprise authorized to do business in this state which is independently owned and operated.

In addition, a business enterprise owned and controlled by persons of color or women shall be deemed to include any business enterprise certified as an MBE or WBE pursuant to Article 15-a of the New York State Executive Law and implementing regulations, 9 NYCRR subtitle N Part 540 et seq. , or as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., and the relevant provisions of the Code of Federal Regulations as amended.

1. Are you a business enterprise which is owned and controlled by persons of color or women in accordance with the standards listed above?

- _____ No
- _____ Yes (as a business owned and controlled by persons of color)
- _____ Yes (as a business owned and controlled by women)

2. If you are a business owned and controlled by persons of color, please specify, the minority classifications which apply: _____

3. Are you certified with the State of New York as a minority business enterprise ("MBE") or a women business enterprise ("WBE")?

- _____ No
- _____ Yes (as a MBE)
- _____ Yes (as a WBE)

4. If you are certified with the State of New York as an MBE, please specify the minority classifications which apply: _____

5. Are you certified with the Federal Government as a small disadvantaged business concern?

_____ No

_____ Yes

Name of Firm/Business Enterprise: _____

Address: _____

Name/Title of Person completing MBE/WBE Questionnaire: _____

Signature: _____

SCHEDULE A - V

CERTIFICATION REGARDING BUSINESS DEALINGS WITH NORTHERN IRELAND

A. 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 (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles.

B. For purposes of this Certification, "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 underrepresented 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 from 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 differential 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 for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers 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. For purposes of this Certification, "Northern Ireland" shall be understood to be the six counties partitioned from the Irish Province of Ulster, and administered from London and/or from Stormont.

D. The Contractor agrees that the warranties and representation in paragraph "A" are material conditions of this Agreement. If the County receives information that the Contractor is in violation of paragraph "A", the County shall review such information and give the Contractor opportunity to respond. If the County finds that such a violation has occurred, the County may declare the Contractor in default, and/or terminate this Agreement. In the event of any such termination, the County may procure the supplies, services or work from another source in accordance with applicable law. The Contractor shall pay to the County the difference between the contract price for the uncompleted portion of this Agreement and the cost to the County of completing performance of this Agreement either by itself or by engaging another Contractor. If this is a contract other than a construction contract, the Contractor shall be liable for the difference in price if the cost of procurement from another source is greater than what the County would have paid the Contractor plus any reasonable costs the County incurs in any new procurement and if this is a construction contract, the County shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this Agreement. In addition, the Contractor may be declared not to be a responsible bidder or respondent 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 of the County hereunder shall be in addition to, and not in lieu of, any rights and remedies the County has pursuant to this Agreement or by operation of law or in equity.

Agreed:

Name of Contractor: _____

By (Authorized Representative): _____

Title: _____ Date: _____

SCHEDULE A - VI

REQUIRED DISCLOSURE OF RELATIONSHIPS TO COUNTY

(Prior to execution of a contract by the County, a potential County contractor must complete, sign and return this form to the County)

Contract Name and/or ID No.:

(To be filled in by County)

Name of Contractor:

(To be filled in by Contractor)

A.) Related Employees:

1. Are any of the employees that you will use to carry out this contract with Westchester County also an officer or employee of the County, or the spouse, or the child or dependent of such County officer or employee? Yes _____ No _____

If yes, please provide details: _____

B.) Related Owners:

1. If you are the owner of the Contractor, are you or your spouse, an officer or employee of the County? Yes _____ No _____

If yes, please provide details: _____

To answer the following question, the following definition of the word "interest" shall be used:

Interest means a direct or indirect pecuniary or material benefit accruing to a county officer or employee, his or her spouse, child or dependent, whether as the result of a contract with the county or otherwise. For the purpose of this chapter, a county officer or employee shall be deemed to have an "interest" in the contract of:

- i. His/her spouse, children and dependents, except a contract of employment with the county;
- ii. A firm, partnership or association of which such officer or employee is a member or employee;
- iii. A corporation of which such officer or employee is an officer, director or employee; and
- iv. A corporation of which more than five (5) percent of the outstanding capital stock is owned by any of the aforesaid parties.

2. Do any officers or employees of the County have an **interest** in the Contractor or in any subcontractor that will be used for this contract? Yes _____ No _____

If yes, please provide details: _____

Authorized Company Official shall sign below and type or print information below the signature line:

Name:

Title: _____

Date: _____

SCHEDULE B: VENDOR CERTIFICATION

VENDOR CERTIFICATION

(To Be Included with Proposal)

Vendor Certification

The undersigned agrees and understands that this proposal and all attachments, additional information, etc. submitted herewith constitute merely an offer to negotiate with the County of Westchester and is NOT A BID. Submission of this proposal, attachments, and additional information shall not obligate or entitle the proposing entity to enter into a service agreement with the County of Westchester for the required services. The undersigned agrees and understands that the County of Westchester is not obligated to respond to this proposal nor is it legally bound in any manner whatsoever by the submission of same. Further, the undersigned agrees and understands that any and all proposals and negotiations shall not be binding or valid against the County of Westchester, its directors, officers, employees or agents unless an agreement is signed by a duly authorized officer of the County of Westchester and approved by the Office of the County Attorney.

It is understood and agreed that the County of Westchester reserves the right to reject consideration of any and all proposals including, but not limited to, proposals which are conditional or incomplete. It is further understood and agreed that the County of Westchester reserves all rights specified in the Request for Proposals.

It is represented and warranted by those submitting this proposal that except as disclosed in the proposal, no officer or employee of the County of Westchester is directly or indirectly a party to or in any other manner interested in this proposal or any subsequent service agreement that may be entered into.

Vendor Name

By: _____

Name and Title