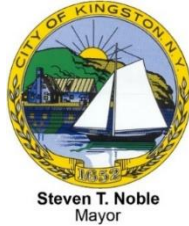


**City of Kingston, NY**  
**RFP # K23-01: Affordable Housing Program Design**



**REQUEST FOR PROPOSALS**

**Affordable Housing Fund Design**

Steven T. Noble      Mayor of the City of Kingston  
Bartek Starodaj     Director of Housing Initiatives

The City of Kingston, NY ("City") is pleased to issue this Request for Proposals (RFP) from qualified firms to assist the City of Kingston to design an affordable housing incentive fund.

**RFP # K23-01 Release Date: December 7, 2022**  
**Proposals Due: January 12, 2023 by 2:00 PM EST**

**Definitions:**

An "RFP" describes the situation or object for which the goods and or services are required, how they are expected to be used and/or problems that they are expected to be addressed. Vendors are invited to propose solutions that will result in the satisfaction of the City's objectives. The proposed solutions are evaluated against a predetermined set of criteria.

The term "Respondent" means any firm or individual submitting a response for the services listed in this RFP.

The term "response" means the material submitted by a Respondent in reply to this RFP.

**RFP/Project Contact Person:**

Bartek Starodaj  
Director of Housing Initiatives  
City Hall, 420 Broadway  
Kingston, NY 12401

**Telephone:** (845) 334-3928    **Email:** [bstarodaj@kingston-ny.gov](mailto:bstarodaj@kingston-ny.gov)

**City of Kingston, NY**  
**RFP # K23-01: Affordable Housing Program Design**

**RECEIPT CONFIRMATION FORM**

**PLEASE COMPLETE AND RETURN THIS CONFIRMATION FORM WITHIN 5 WORKING DAYS OF RECEIVING THIS RFP SPECIFICATION TO:**

Bartek Starodaj  
City Hall, 420 Broadway  
Kingston, NY 12401  
Telephone: (845) 334-3928  
[bstarodaj@kingston-ny.gov](mailto:bstarodaj@kingston-ny.gov)

**Failure to return this form may result in no further communication or addenda regarding this RFP.**

Company Name/Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

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

Telephone Number: \_\_\_\_\_ EXT: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

I have received a copy of the above noted RFP Specification. Mark one choice below.

We plan to submit a PROPOSAL.

We DO NOT plan to submit a PROPOSAL (please indicate reason below).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Title: \_\_\_\_\_

**City of Kingston, NY**  
**RFP # K23-01: Affordable Housing Program Design**

## **1.0 PROJECT PURPOSE**

The City of Kingston seeks a qualified consultant to assist the City of Kingston to design an affordable housing incentive fund.

The goals of the fund include:

- Encourage the development of new mixed-income, supportive and/or affordable housing throughout the City of Kingston by providing capital subsidies for rental or for-sale property.
- Complement other housing policy initiatives, including the goals of the City's new zoning code
- Deploy grant funds to complement tax credits and existing affordable housing finance tools
- Determine how to prioritize investment among projects with varying levels of income targeting

Under [the City of Kingston's Economic Recovery Plan](#), part of the American Rescue Plan, the City allocated an initial \$1 million dollars to incentivize the development of affordable housing development in the City. This incentive fund will complement the affordable housing mandates and incentives that are part of the City's new zoning code (see: <https://engagekingston.com/kingston-forward>). This code is anticipated to be adopted early 2023. The code includes a provision to allows developers to pay a payment to the City in lieu of complying with the affordable housing requirements; these could be one long-term source of funding to periodically replenish the fund.

## **2.0 SCOPE OF WORK**

The following outlines the minimum expected tasks associated with this RFP:

### **Task 1: Design an affordable housing incentive fund for the City of Kingston**

Given the goals outlined in 1.0 Project Purpose, the consultant shall outline which kinds of activities or programs the affordable housing incentive fund should target and specify the requirements proposals must meet to be eligible for funding. The result of this work is a public facing term sheet describing the incentive program.

The consultant shall justify this design using data on the existing housing need in the City and proven examples of similar programs. Additionally, the design of the fund should comply with all relevant local and New York State legal standards.

At a minimum, deliverables must include a draft and final public facing term sheet.

### **Task 2: Design application procedures**

The consultant shall design the application procedures for the affordable housing incentive fund.

At a minimum, deliverables must include a draft and final description of application procedures.

### **Task 3: Design evaluation and selection criteria**

**City of Kingston, NY**  
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The consultant shall design evaluation criteria for the City to use when awarding funds under the incentive program and what governance process the City should take to award funds. Clear and equitable fund allocation criteria should support transparent and accountable decision-making.

At a minimum, deliverables must include a draft and final description of the evaluation criteria and governance model.

**Task 4: Design launch and monitoring procedures**

The consultant shall also recommend other rules and guidelines regarding administration of the fund, internal compliance measures, and reporting expectations for award recipients. Additionally, the consultant shall highlight any local enabling legislation that would be needed to establish the fund.

At a minimum, deliverables must include a draft and final description of the fund's administration.

**Task 5: Fund revenue**

The consultant should assess and recommend the best potential sources to fund the affordable housing incentive fund sustainably and adequately. The consultant's recommendations should be informed by the legal and financial opportunities and constraints for local revenue generation in New York State.

At a minimum, deliverables must include a draft and final Revenue Study.

**3.0 BUDGET REQUIREMENTS**

Respondents should propose a budget based on the Scope of Work.

**4.0 CONTRACT PERIOD**

The award term will commence on or about February 15, 2023 and end date on or about April 30, 2023.

The successful Respondent will execute a contract with the City of Kingston in substantial conformance with both this RFP and the City of Kingston Agreement for Professional Services, which is annexed hereto as Schedule "A." In addition, the successful Respondent must comply with the City of Kingston's policies and procedures for contracts and procurement, including, without limitation, the Procurement Policy Manual of the City of Kingston Purchasing Department.

On March 11, 2021, the U.S. Senate-amended H.R. 1319 (P.L. 117-2), known as the American Rescue Plan Act ("ARPA") was signed into law. Section 9901 of ARPA amended Title VI of the Social Security Act to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the "SLFRF"), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of COVID-19 in their communities.

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This project is funded by funds provided by the United States Treasury pursuant to ARPA. The successful Respondent must comply with applicable ARPA requirements for the contract and for post-award monitoring, including, without limitation, the Contract Provisions for Non-Federal Entity Contracts Under Federal Awards which are annexed hereto as Schedule "B."

**5.0 SCHEDULE OF PERTINENT DATES**

Listed below are specific and estimated dates and times of actions related to this RFP. In the event it is necessary to change the return date, the City will issue a supplemental addendum.

<b>Dates</b>	<b>Milestone</b>
December 7, 2022	RFP advertised
January 4, 2023	Last day to submit written inquiries
January 6, 2023	Addendum issued if any questions
January 12, 2023, 2:00 p.m.	Due Date for Proposals
January 16-January 31, 2023	Selection Committee evaluates proposals/possible interviews
Week of February 6 or 13, 2023	Notice of Intent to Award
On or about February 15, 2023	Contract Start Date
On or about April 30, 2023	Contract End Date

**6.0 BACKGROUND**

The Department of Housing Initiatives is a City department dedicated to support housing planning in the City of Kingston. The Department manages housing-related grants, supports the construction of new market-rate and affordable housing, develops policies to protect existing residents, and addresses the connection between housing and sustainability, health, and mobility. The Department also reviews the disposition of city-owned property suitable for housing development and collaborates with local and regional housing organizations.

**7.0 SUBMISSION REQUIREMENTS**

All Respondents to this RFP are required to submit detailed information as set forth below. Responses that do not materially conform to this outline will not be considered. Additional material and information, as deemed appropriate by the Respondent, may be included in the submission package.

1. Receipt confirmation form which follows the cover page of this RFP should be completed and sent to the City of Kingston immediately if planning on submitting a proposal. Failure to file this form may result in no further communications regarding this RFP.
2. RFP submissions must be in a sealed envelope addressed to:

**City of Kingston, NY**  
**RFP # K23-01: Affordable Housing Program Design**

Bartek Starodaj  
Director of Housing Initiatives  
City Hall - 420 Broadway  
Kingston, NY 12401

On the face of the envelope, please include:

Name and Address of Respondent

RFP Number & Name: **RFP # K23-01: Affordable Housing Program Design**

3. Responses are due and must be received no later than **Thursday, January 12, 2023 at 2:00 p.m.** after which they will be publicly opened. Responses will not be accepted after the due date and time. It is recommended that proposals be submitted in advance, at least one business day prior to the specified date and time to allow for timely receipt.
  
4. General Submission Guidelines:
  - Respondents who plan to deliver their proposals on the deadline date should make a delivery appointment by emailing Bartek Starodaj.
  - Proposal must be sent electronically via a thumb drive. Printed proposals will not be accepted. Proposals sent via email will not be accepted.
  - Respondents are required to complete, and include within their RFP submission, the Information Sheet and Affidavit of Non-Collusion that are included in this RFP.
  - Pages should be paginated.
  - Illustrations may be included.
  - The response will be evaluated on the basis of its content, not length. The proposal shall be clear, concise and include sufficient detail for effective evaluation.
  - The City of Kingston will not be liable for any costs incurred by Respondents in the preparation of responses or for any work performed in connection therein.

## **9.0 PROPOSAL CONTENT**

The proposal should include the following information in the order specified:

- **TITLE PAGE:** Showing RFP number, responder's name, address, telephone, and Identification of the person(s) with the authority to represent and make legally binding commitments for the Consultant. Responder should also clearly identify the name(s) of the contact person responsible for inquiries, if different.
- **COVER LETTER:** A cover letter signed by the duly authorized member of the Consultant identified above.
- **QUALIFICATIONS AND EXPERIENCE:** Information about the Consultant and its qualifications for this project. Include information about prior engagements similar to that being solicited herein by the City. This should include a brief description of any prior experience helping communities plan,

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design, and/or implement affordable housing or housing trust funds. Provide names, resumes, and roles of all staff who will be involved in the project, including a description of the experience of each employee who has worked on similar projects.

- **PROPOSED PLAN:** A project narrative that describes the Consultant's understanding of the City's needs and the unique value the Consultant will bring to the process. This narrative should explain what steps will be necessary to implement each of the tasks defined in the scope of work, including recommended data and research needed, the plan to work with the City, and any additional information that would be beneficial for the evaluation committee to consider.
- **REFERENCES:** Provide a minimum of three (3) references, excluding the City of Kingston, for similar projects completed. Include contact name, telephone number, date of contract, dollar value of contract and brief description of the program.
- **TIMELINE:** Project Timeline: A schedule showing the Legal Consultant's proposed timeframes for completing the tasks defined in the Scope of Work.
- **FEE/COST PROPOSAL:** Fee Proposal: An itemized budget including all costs associated with each of the tasks identified in the Scope of Work. The fee schedule supplied will include all items of labor, materials, travel, equipment and other costs necessary to fully provide the service. Administrative costs for printing, postage, next-day mail, photocopying, telephone, printing, and other reimbursable expenses must be detailed. Travel expenses must be estimated and conform to guidelines adopted by the Municipality. Include a not-to-exceed estimate for completing the work described in the RFP. The Fee Proposal must be a document separate from the other parts of the proposal and appropriately identified as such.

Submittal Checklist - Submissions should include:

- 1) Proposal with content as described above;
- 2) One (1) copy in digital format (pdf on thumb drive);
- 3) Fee proposal in a separate document and identified as such.
- 4) Completed Affidavit of Non-Collusion found at the end of this RFP;
- 5) Completed Information Sheet found at the end of this RFP.

## **10.0 EVALUATION CRITERIA**

Only those proposals that contain complete information and required certifications will be considered. All proposals will be evaluated and examined by a committee of City of Kingston representatives using multiple criteria. The City is not required to accept the proposal that includes the lowest fee offer. The project will be awarded to a qualified Respondent who, based on the committee's evaluation, submits the proposal that best meets the City's needs. The selected firm will have extensive experience and comprehensive technical skills, and work collaboratively with the City to implement the project.

Proposals will be evaluated in accordance with applicable City of Kingston procurement policies and procedures. Evaluation will be performed to determine each Respondent's understanding of work to be performed, technical approach, and potential for completing the work as specified in the RFP components

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and ranking with competing Respondents. The City may organize and conduct interviews of the top-ranked candidates.

The Selection Committee will choose the Consultant based upon an evaluation of proposals using the following criteria:

- Respondent's demonstrated practice area expertise (60%);
- Respondent's capacity to achieve the City's goals within the specified time period (30%);
- Cost factors (10%)

Minority and women-owned business enterprises are encouraged to apply.

### **11.0 METHOD OF AWARD**

The City will award this project to the Respondent whose total proposal, in the opinion of the City of Kingston, best meets the above-listed criteria.

A notice of award will not be binding upon the City until the contract has been fully executed by both parties; and the City's ability to enter into a contract with the notice of award recipient is contingent upon funding available to the City.

The successful Respondent will execute a memorandum of understanding with the City of Kingston in substantial conformance with this RFP.

### **12.0 INQUIRIES**

All questions pertaining to this RFP are required to be made in writing no later than **January 4, 2023** and must be submitted using the questionnaire form included within this specification. All questions must be **emailed to Bartek Starodaj at [bstarodaj@kingston-ny.gov](mailto:bstarodaj@kingston-ny.gov)**. Respondents with a question directly related to this specification are required to cite the particular page and number, section, and paragraph to which the inquiry refers.

All substantive questions received by the above-mentioned deadline will receive a response in the form of an addendum issued no later than **January 6, 2023**.

The addendum will be sent to all Respondents who have registered to receive the RFP. Only an addendum from the City of Kingston will be considered official. Respondents are advised that the City of Kingston cannot ensure a response to any inquiries received after the due date for question submissions.



## **13.0 TERMS AND CONDITIONS**

**Instructions to Respondents: All submissions must be in accordance with this Request for Proposals.**

**RFP Information:** The information provided for Respondents is for informational purposes only. It may not be relied upon and does not constitute a representation or warranty by the City of Kingston, its representatives, employees, officers, agents, or consultants that the information contained therein is accurate or complete. No legal commitment, obligation, or liability of the City of Kingston or its representatives, employees, officers, agents, or consultants will arise by use of, or the information relating to, any of these materials.

**Revisions, Interpretations, Corrections:** Revisions, interpretations, or corrections of specifications made by the City of Kingston will be by addendum issued before the date set forth for the submission of responses to this RFP. Interpretations, corrections, or changes made in any other manner will not be binding, and Respondents will not rely upon such revisions, interpretations, corrections or changes.

**Conflict of Interest:** The City of Kingston's employees and the immediate family of City of Kingston employees are not permitted to submit a response to this RFP. Furthermore, no official or employee of the City of Kingston will have any personal interest, direct or indirect, in this transaction, nor will any such elected or appointed official, department head, agent, or employee having such an interest participate in any decision, meeting, or evaluation or exert any opinion or influence relating to this transaction that affects his or her personal interests or the interests of any person or entity in which he or she is directly or indirectly interested.

**RFP Award Acceptance:** The City of Kingston reserves the right at all times to accept or reject in their sole discretion, any or all responses and to waive any defects or technicalities or advertise for new RFP responses where the acceptance, rejection, waiving, or advertising of such would be in the best interest of the City of Kingston. The RFP process may be terminated or modified without notice at any time.

**Notice of Acceptance or Rejection:** Notice by the City of Kingston regarding either acceptance or rejection of a response to this RFP will be deemed to have been sufficiently given when mailed to the Respondent, or his or her duly authorized representative, at the address indicated in the cover letter accompanying Respondent's submission of a response to this RFP.

**Postponement or Cancellation:** The City of Kingston reserves the right to postpone or cancel this RFP, or reject all responses if, in its judgment, it deems such action to be in the best interest of the City.

In the event of a postponement or cancellation of this RFP, the City of Kingston will not be liable for any costs incurred by the Respondent in the preparation of their response or for any work performed in connection therein.

## **14.0 INTERVIEWS**

If the Evaluation Committee determines necessary, interviews may be scheduled with selected Respondents as soon as possible after the initial evaluation. This will permit further evaluation and allow

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the Evaluation Committee to inquire further into the experience the Respondent has had on similar projects, willingness and ability to work closely with City of Kingston Staff and others, understanding of the various aspects of the requirements, ability to maintain a schedule and complete the services on time, and other matters deemed pertinent.

### **15.0 ALTERNATE PROPOSALS**

The City of Kingston reserves the right to consider alternatives that are submitted by Respondents and that provide enhancements beyond the RFP requirements. Proposal alternatives may be considered if deemed to be in the best interest of the City. Respondents will clearly identify and explain in detail where such alternatives deviate from, or qualify the terms of, the proposal and specifications as issued.

### **16.0 COMPLIANCE WITH LAWS, LICENSES AND PERMITS**

The Respondent(s) agree that they will fully comply with all applicable Federal, State and City policies, procedures, standards and laws, rules and regulations.

### **17.0 PERSONNEL IDENTIFICATION**

All personnel must carry on their person photo identification (*e.g.*, City of Kingston Municipal Identification Card, New York State driver's license, employee identification badge, etc.) while on City of Kingston property, and must promptly show such identification when requested to do so by any City employee. Representatives of the City reserve the right to reject and bar from the facility, for good and sufficient reason, in the sole discretion of the City, any employee hired by the Legal Consultant.

### **18.0 INSURANCE**

The successful Respondent will bear sole liability for any claims of legal malpractice, professional misconduct or ethics charges arising out of its performance of duties specified herein.

The successful Respondent will agree to indemnify and hold the City of Kingston, its elected officials, and employees harmless against all loss, cost, or damage, on account of injury to person or damage to property as a result of any action or inaction of the successful Respondent or its representatives or agents or subcontractors in performance of this contract and against all fines, penalties or any other losses which the City will be obliged to pay or incur in connection with the performance of the work under the contract.

In addition, the successful Respondent will procure and maintain at his/her own expense and without expense to the City, insurance for liability for damages imposed by law, of the kinds and amounts hereinafter provided, in insurance companies authorized to do business in the State of New York covering all operations under the contract whether performed by the successful Professional or his/her subcontractors. Before the inception of this contract, the successful Respondent will furnish to the City a Certificate of Insurance form(s) satisfactory to the City exhibiting compliance with this paragraph, providing that the policies will not be changed or canceled until thirty (30) days written notice has been

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given to the City, and granting "Additional Insured" status to the City The types and limits of insurance will be as follows:

- a) Workers Compensation as required by Law
- b) Disability Benefits as required by Law
- c) Commercial General Liability Insurance \$1,000,000.00 each occurrence/\$2,000,000.00 general aggregate
- d) Professional Liability \$2,000,000.00 (identified as a claim made or an occurrence policy)

### **19.0 DISQUALIFICATION**

The City reserves the right to refuse to issue an award to Respondents that fail to comply with any pre-qualification regulations of the City, if any such regulations or requirements are cited, or otherwise included in the Request for Proposal.

Proposals received from Respondents who have previously failed to complete contracts within the time required, or who have previously performed similar work in an unsatisfactory manner, may be rejected. A proposal may be rejected if the Respondent cannot show that it has the necessary ability, resources, and qualified employees to commence the work at the time prescribed and thereafter to perform and complete the work at the rate or within the time specified. A proposal may be rejected if the Respondent is already obligated for the performance of other work that would delay the commencement, performance, or completion of the work described in this RFP.

### **20.0 FREEDOM OF INFORMATION**

The Respondent agrees that the contents of any client file and all work product generated in performance of the duties specified herein shall be made available to the City upon request.

The Respondent further agrees to comply with the Freedom of Information Law (FOIL) and such rules and regulations as the City and the State may from time to time make, including, but not limited to, such rules as may be devised governing access to public documents pursuant to Article 6 of the Public Officers Law, popularly known as the Freedom of Information Law.

Proposals submitted in response to this RFP will be considered public documents and, with limited exceptions, all proposals, including proposals that are recommended for award, will be available for inspection and copying by the public.

All RFP submission materials become the property of the City of Kingston. Proposal submission material will generally be made available for inspection and copying by interested parties upon written request, except when exempted from disclosure under the New York State Freedom of Information Law. The City of Kingston is subject to the New York State Freedom of Information Law, which governs the process for the public disclosure of certain records maintained by the City of Kingston. Individuals or firms that submit proposals to the City of Kingston may request that the City except all or part of such a proposal from public disclosure, on the grounds that the proposal contains trade secrets, proprietary information, or that the information, if disclosed, would cause substantial injury to the competitive position of the individual or firm submitting the information. Such exception may extend to information contained in the

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request itself, if public disclosure would defeat the purpose for which the exception is sought. The request for exception must be in writing and state, in detail, the specific reasons for the requested exception. It also must specify the proposal or portions thereof for which the exception is requested. If the City of Kingston grants the request for exception from disclosure, the City will keep such proposal or portions thereof in secure facilities.

### **21.0 AFFIDAVIT OF NON-COLLUSION**

The completion AND submission of the Affidavit of Non-Collusion, which is included with this RFP and is required with the submittal, certifies that the prices in the submitted proposal 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 Respondent or competitor.

### **22.0 SUSPENSION AND DEBARMENT**

By submitting a proposal in response to this RFP, each Respondent warrants that neither it nor any of its officers, employees, subcontractors, or agents is excluded or in any other manner barred from doing business with any federal, state, or local agency, municipality, or department. Any misrepresentation or false statement related to a Respondent's status in this regard will result in rejection of such Respondent's submission.

In addition, if the successful Respondent or any of its officers, employees, subcontractors, or agents become excluded or barred in any manner from doing business with any federal, state, or local agency, municipality, or department, during the period in which goods and/or services are provided pursuant to this RFP, the successful Respondent agrees to immediately notify the City's Corporation Counsel of such status. Any misrepresentation or false statement related to the successful Respondent's status in this regard, or any failure by the successful Respondent to immediately notify the City's Corporation Counsel of any change in such status, will result in immediate termination of the City's business relationship with the successful Respondent in addition to such other remedies as may be provided by law, in equity, pursuant to the terms and conditions of this RFP document, or the conditions of the contract, if any, resulting from this RFP.

### **23.0 IMPLIED REQUIREMENTS**

Products and services which are not specifically requested in this RFP, but which are necessary to provide a complete program/project as described herein, will be included in the submitted proposal.

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**SCHEDULE A**



(Rev. 12.2022)  
City Contract No. \_\_\_\_\_

**AGREEMENT FOR  
PROFESSIONAL SERVICES**

**THIS AGREEMENT** is entered into by and between the is entered into by and between the **CITY OF KINGSTON**, a municipal corporation and a City of the State of New York with principal offices at City Hall, 420 Broadway, Kingston, New York 12401 (the “City”), and **[ENTER FIRM NAME]**, a [to be completed by Corporation Counsel] with principal offices at [Enter Firm’s business address] (the “Firm”), (each, a “Party;” together, the “Parties”).

**RECITALS**

**WHEREAS**, the City, by and through its Department of [Enter City’s Dept. Name], desires to enter into an agreement for [state basic description of services to be performed]; and

**WHEREAS**, the City solicited, through its RFP No. \_\_\_\_\_, proposals for [state brief description of RFP services]; and

**WHEREAS**, the Firm was a successful proposer; and

**WHEREAS**, the City has agreed to engage the Firm, and the Firm has agreed to contract with the City, to [state brief description of services to be provided] [pursuant to RFP No. \_\_\_\_\_ and the Firm’s Response to RFP No. \_\_\_\_\_] in accordance with the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the promises and covenants set forth below, the Parties hereby agree as follows:

**ARTICLE 1 - SCOPE OF SERVICES**

The Firm agrees to perform the services identified in Schedule A, the Scope of Services (the “Services”), which is attached to and made a part of this Agreement. The Firm agrees to perform the Services in accordance with the terms and conditions of this Agreement. It is specifically agreed to by the Firm that the City will not compensate the Firm for any services not included in Schedule A without prior authorization, evidenced only by a written Change Order, Amendment, or Addendum to this Agreement, which is executed by the Mayor of the City of Kingston (the “Mayor”) after consultation with the head of the City Department responsible for the oversight of this Agreement (the “Department Head”), and upon review by the City’s Corporation Counsel.

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**ARTICLE 2 - TERM OF AGREEMENT**

The Firm agrees to perform the Services beginning **[Enter Start Date]**, 20\_\_ and ending **[Enter Completion Date]**, 20\_\_\_\_. In accordance with the RFP and with written notice to the Firm, the City may extend the Term of this Agreement at its sole discretion for up to [\_\_\_\_\_] additional **[one (1) year]** periods.

**ARTICLE 3 – COMPENSATION**

A **[CHOOSE ONE- fixed fee OR not-to-exceed]** amount of **[WRITE OUT DOLLAR AMOUNT IN CAPS] AND \_\_\_/100 (\$ . ) DOLLARS** has been established for the Services to be rendered by the Firm. Costs in excess of the above amount may not be incurred without the prior written authorization of the Mayor, after consultation with the Department Head, and evidenced only by a written Change Order, Amendment, or Addendum to this Agreement. It is specifically agreed to by the Firm that the City will not be responsible for any additional costs, or costs in excess of the above cost, if authorization by the Mayor is not given in writing prior to the performance of any services giving rise to such excess or additional costs. The City shall be invoiced and make payments as described in Schedule B, “Fees, Expenses, and Submissions for Payment.”

In the event that the Firm receives payments, from any source whatsoever, in consideration for the same Services provided to the City under this Agreement, the monetary obligation of the City under this Agreement will be reduced by an equivalent amount, provided, however, that nothing contained herein will require such reimbursement where additional similar services are provided and no duplicative payments are received.

If this is an Agreement for which the Firm will, in whole or in part, be compensated with New York State funds, the Firm agrees to comply with Executive Order Number 38, which sets limits on state-funded administrative costs and executive compensation contracts. Executive Order Number 38 can be found at the following website address: <https://opwdd.ny.gov/regulations-guidance/executive-order-38>.

**ARTICLE 4 - EXECUTORY CLAUSE**

The City will have no liability under this Agreement to the Firm or to anyone else beyond funds appropriated and available for this Agreement. The City may terminate this Agreement if funds are not appropriated, available, or are reduced for this Agreement.

**The Firm understands and agrees that the dollar amounts identified in this Agreement are based upon funding allocations from the State of New York and/or the Federal Government, which are the basis for any payments made by the City under this Agreement. In the event that the anticipated amount of funding changes, or is reduced or denied, in part or in full, the City, where appropriate, will not be liable to the Firm for the difference. If the full state and/or federal funding to the City for any payment to be made or which has been made under this Agreement, by the City to the Firm, is reduced for any reason whatsoever, then the City may (i) deduct and withhold from any future payment(s) an amount equal to the reduction in funding, or (ii) otherwise recover from the Firm the amount of the reduction. It is understood that based upon changes in the state and/or federal funding process, the actual amounts in this Agreement may change throughout the Term. The amounts in this Agreement will be amended to reflect the actual amounts to be paid upon notification to the City by the state and/or Federal Government, as necessary.**

**ARTICLE 5 – PROCUREMENT OF AGREEMENT**

The Firm represents and warrants that no person or selling agent has been employed or retained by the Firm to solicit or secure this Agreement upon a separate agreement, or upon an understanding for a commission, percentage, brokerage fee, contingent fee, or any other compensation. The Firm 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 Firm makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution hereof.

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For a breach or violation of such representations or warranties, the City will have the right to annul this Agreement without liability, entitling the City to recover all monies paid under this Agreement, and the Firm shall neither make claim for, nor be entitled to recover any sum or sums otherwise due under this Agreement. This remedy, if effected, will not constitute the sole remedy afforded to the City for such breach or violation, nor will it constitute a waiver of the City's right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity, or pursuant to this Agreement.

**ARTICLE 6 - CONFLICT OF INTEREST**

The Firm represents and warrants that neither it, nor any of its directors, officers, members, partners, or employees, have any interest, nor will 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 to be provided pursuant to this Agreement. The Firm further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest will be employed by it, and that no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, by the City, or any corporation, partnership, or association in which such official, officer, or employee is directly or indirectly interested, will have any such interest, direct or indirect, in this Agreement, or in the proceeds thereof, unless such person (i) is required by the Code of the City of Kingston, as amended from time to time, to submit a disclosure form to the City's Board of Ethics, and amends such disclosure form to include their interest in this Agreement, or (ii) if not required to complete and submit such a disclosure form, either voluntarily completes and submits said disclosure form, disclosing their interest in this Agreement, or seeks a formal opinion from the City's Board of Ethics, as to whether or not a conflict of interest exists.

For a breach or violation of such representations or warranties, the City will have the right to annul this Agreement without liability, entitling the City to recover all monies paid hereunder, and the Firm must not make claim for, nor be entitled to recover any sum or sums otherwise due under this Agreement. This remedy, if effected, will not constitute the sole remedy afforded to the City for such breach or violation, nor will it constitute a waiver of the City's right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity, or pursuant to this Agreement.

**ARTICLE 7 – REPRESENTATIONS BY THE FIRM**

The Firm represents that it is fully licensed (to the extent required by law), experienced, and properly qualified to perform the Services to be provided under this Agreement, and that it is properly permitted, equipped, organized, and financed to perform such Services.

The Firm understands that it may become necessary for the City to submit to governmental agencies and/or authorities, or to a court of law, part or all of the data, analyses, and/or conclusions developed as a result of its performance of these Services. The Firm is aware that there are significant penalties for submitting false information to governmental agencies, including the possibility of fines and imprisonment. The Firm shall be responsible for such penalties resulting from false information submitted to the City by the Firm.

By signing this Agreement, the Firm is attesting to that fact that neither it nor any of its employees, agents, representatives, officers, subcontractors, or any other entity or individual providing Services pursuant to this Agreement has been sanctioned, excluded, or in any other manner barred from doing business with any federal, state, or local agency, municipality, or department. If the Firm or any of its officers, employees, subcontractors, or agents become excluded or barred in any manner from doing business with any federal, state, or local agency, municipality, or department during the Term of this Agreement, the Firm agrees to provide immediate and detailed notice to the City's Corporation Counsel regarding such status. Any misrepresentation or false statement related to the Firm's status in this regard, or any failure by the Firm to immediately notify the City's Corporation Counsel of any change in such status will result in immediate termination of this Agreement, in addition to such other remedies as may be provided by law, in equity, or pursuant to this Agreement.

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**ARTICLE 8 – CORPORATE COMPLIANCE**

The Firm agrees to comply with all federal, state, and local laws, rules, and regulations governing the provision of Services under this Agreement. In particular, the Firm agrees to comply with the laws, rules and regulations of the City of Kingston. The City strongly encourages all healthcare providers contracting with the City to implement their own compliance programs that address each of the elements of compliance recommended by the Office of the Inspector General, as well as the elements as recommended and/or mandated by the New York State Office of the Medicaid Inspector General.

The City will conduct appropriate screening of providers, independent contractors, vendors, and agents to ensure and verify that they have not been sanctioned and/or excluded by any federal or state law enforcement, regulatory, or licensing authority. The City will also verify that entities and businesses that provide and/or perform the Services have not been the subject of adverse governmental actions and/or excluded from the federal healthcare programs.

**ARTICLE 9 - FAIR PRACTICES**

The Firm, and each person signing on behalf of the Firm, represents, warrants and certifies under penalty of perjury, that to the best of their knowledge and belief:

A. The prices in this Agreement have been arrived at independently by the Firm without collusion, consultation, communication, or agreement with any other bidder, proposer, or with any competitor, as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition; and

B. Unless otherwise required by law, the prices that have been quoted in this Agreement and on the proposal or quote submitted by the Firm have not been knowingly disclosed by the Firm prior to the communication of such quote to the City, or prior to the proposal opening, directly or indirectly, to any other bidder, proposer, or to any competitor; and

C. No attempt has been made or will be made by the Firm to induce any other person, partnership, corporation, or other entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that the Firm (i) published price lists, rates, or tariffs covering the Services and/or items being procured, (ii) informed prospective customers of proposed or pending publication of new or revised price lists for such Services and/or items, or (iii) provided the same Services and/or items to other customers at the same prices being bid or quoted, does not constitute, without more, a disclosure within the meaning of this Article 9.

**ARTICLE 10 - INDEPENDENT CONTRACTOR**

In performing the Services and incurring expenses under this Agreement, the Firm shall operate as and have the status of an independent contractor, and shall not act as agent for or on behalf of the City, nor will the Firm represent the City, or bind the City in any manner. As an independent contractor, the Firm shall be solely responsible for determining the means and methods of performing the Services, and shall have complete charge and responsibility for the Firm's personnel engaged in the performance of the same.

In accordance with such status as independent contractor, the Firm covenants and agrees that neither it, nor its employees or agents, will proclaim themselves to be officers or employees of the City, or of any department, agency, or unit thereof, by reason hereof, and that the Firm's employees or agents 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 City including, but not limited to, Workers' Compensation coverage, health insurance coverage, Unemployment Insurance benefits, Social Security benefits, or employee retirement membership or credit.

Nothing contained in this Agreement will be construed to create the relationship of employer and employee, principal and agent, partnership, or joint venture, or any other fiduciary relationship.



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**ARTICLE 11 - ASSIGNMENT**

The Firm shall not assign any of its rights, interests, or obligations under this Agreement, or assign any of the Services to be performed by it under this Agreement, without the prior express written consent of the Mayor, upon review by the City's Corporation Counsel. Any such assignment, transfer, conveyance, or other disposition without such prior consent will be void, and any Services provided thereunder will not be compensated. Any assignment properly consented to by the Mayor will be subject to all of the terms and conditions of this Agreement.

Failure of the Firm to obtain any required consent to any assignment will be grounds for termination for cause at the option of the City, and if this Agreement be so terminated, the City will thereupon be relieved and discharged from any further liability and obligation to the Firm, its assignees, or transferees; and all monies that may become due under this Agreement shall be forfeited to the City, except so much thereof as may be necessary to pay the Firm's employees for past Services.

The provisions of this clause shall not hinder, prevent, or affect any assignment by the Firm for the benefit of its creditors made pursuant to Article 2 of Chapter 12 of the New York Debtor and Creditor Law, except where the Federal Supremacy Clause requires otherwise.

This Agreement may be assigned by the City to any corporation, agency, municipality, or instrumentality having authority to accept such assignment.

**ARTICLE 12 – SUBCONTRACTING**

The Firm agrees to include the following provisions in any and all subcontract agreements for Services to be performed pursuant to this Agreement:

- A. That the work performed by the subcontractor must be in accordance with the terms and conditions of this Agreement between the City and the Firm, including, but not limited to, the insurance requirements set forth in Schedule C; and
- B. That nothing contained in the subcontractor agreement will impair the rights of the City; and
- C. That nothing contained in the subcontractor agreement, or under this Agreement between the City and the Firm, will create any contractual relation in law or equity, between the subcontractor and the City; and
- D. That the subcontractor specifically agrees to be bound by the confidentiality provision as set forth in Article 15 of this Agreement between the City and the Firm.

Upon signing this Agreement, the Firm shall provide the Department Head with the name and scope of work of any and all subcontractors to be used in the performance of the Firm's obligations pursuant to this Agreement. Furthermore, upon the City's request, the Firm shall provide copies of any and all subcontract agreements for Services to be performed pursuant to this Agreement.

The Firm agrees that it is fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them to the same extent as it is for the acts and omissions of persons employed by the Firm. The Firm will not in any way be relieved of any responsibility under this Agreement by any subcontract.

[The Firm shall not subcontract any of its obligations under this Agreement.]

[Corp Counsel use only: if Firm is not using subs, remove references to Firm's subs in other articles]

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**ARTICLE 13 - PERFORMANCE**

The Firm shall perform the Services using its own equipment and facilities wherever and whenever possible. In performing the Services, the Firm shall assign qualified personnel and perform such Services in accordance with the professional standards and with the skill, diligence and quality control/quality assurance measures expected of a reputable company performing Services of a similar nature. The Firm is hereby given notice that the City will be relying upon the accuracy, competence, and completeness of the Firm's performance in using the results achieved by the Firm's performance of these Services. The Firm shall at all times comply with all applicable federal, New York State, and local laws, ordinances, statutes, rules, and regulations.

**ARTICLE 14 – PRIVACY AND SECURITY**

Health Insurance Portability & Accountability Act of 1996 ("HIPAA"). Under certain circumstances, federal law and regulations governing the privacy of certain health information requires a "Business Associate Agreement" (a "BAA") between the City and the Firm [45 C.F.R. Section 164.504(e)]. If HIPAA is applicable to this Agreement, the City and the Firm agree to enter into a separate BAA that complies with HIPAA, as that law may be amended from time to time. Unless the Firm has previously executed a compliant BAA that is in effect and on file with the City, the BAA referenced in this provision must be executed simultaneously with this Agreement.

**ARTICLE 15 - CONFIDENTIALITY**

For purposes of this Article:

A. The term "Confidential Information" as used herein, means all material and information, whether written or oral, received by the Firm from or through the City or any other person connected with the City, or developed, produced, or obtained by the Firm in connection with its performance of Services under this Agreement. Confidential Information will include, but not be limited to: samples, substances and other materials, conversations, correspondence, records, notes, reports, plans, drawings, specifications and other documents in draft or final form, including any documentation or data relating to the results of any investigation, testing, sampling in laboratory or other analysis, and all conclusions, interpretations, recommendations, and/or comments relating thereto.

B. The term "Firm" as used herein includes all officers, directors, employees, agents, subcontractors, assignees, or representatives of the Firm.

The Firm shall keep all Confidential Information in a secure location within the Firm's offices. The City will have the right, but not the obligation, to enter the Firm's offices in order to inspect the arrangements of the Firm for keeping Confidential Information secure. The City's inspection, or its failure to inspect, will not relieve the Firm of its responsibilities pursuant to this Article 15.

The Firm shall hold Confidential Information in trust and confidence, and must not disclose Confidential Information, or any portion thereof, to anyone other than the City without the prior written consent of the Mayor, and must not use Confidential Information, or any portion thereof, for any purpose whatsoever except in connection with its performance of the Services under this Agreement.

The Firm shall notify the City immediately upon its receipt of any request by anyone other than the City for, or any inquiry related to, Confidential Information. The Firm is not prohibited from disclosing portions of Confidential Information if and to the extent that: (i) such portions have become generally available to the public other than by an act or omission of the Firm, or (ii) disclosure of such portions is required by subpoena, warrant, or court order; provided, however, that in the event anyone other than the City requests all or a portion of Confidential Information, the Firm shall oppose such request and cooperate with the City in obtaining a protective order or other appropriate remedy, unless and until the Mayor, upon consultation with the City's Corporation Counsel, in writing, waives compliance with the provisions of this Article 15, or determines that disclosure is legally required. In the event that such protective order or other remedy is not obtained, or the City waives compliance with this Article 15, or determines that such disclosure is legally required, the Firm shall disclose only such portions of Confidential Information that, in

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the opinion of the City, the Firm is legally required to disclose, and the Firm shall use its best efforts to obtain from the party to whom Confidential Information is disclosed, written assurance that confidential treatment will be given to any such Confidential Information disclosed, to the extent permitted by law.

Prior to the performance of any of the Services in connection with this Agreement, the Firm shall obtain from each of its subcontractors, a confidentiality agreement running to the benefit of the City that is substantively identical to this Article 15. Further, at any time, if requested by the City, the Firm shall obtain such an agreement from the officers, directors, agents, representatives, or employees of the Firm and/or any of its subcontractors.

**ARTICLE 16 – OWNERSHIP OF CONFIDENTIAL INFORMATION**

Notwithstanding any other provision herein to the contrary:

A. All Confidential Information, as defined in Article 15, including all copies thereof, is the exclusive property of the City regardless of whether or not it is delivered to the City. The Firm shall deliver Confidential Information and all copies thereof to the City upon request.

B. To the extent that copies of Confidential Information are authorized by the City to be retained by the Firm, such information shall be retained in a secure location in the Firm’s office for a period of six (6) years after completion of the Services, or termination of this Agreement, whichever occurs later, and thereafter disposed of at the City’s direction.

**ARTICLE 17 – [INTELLECTUAL PROPERTY] INTENTIONALLY LEFT BLANK**  
**[if not using this article, delete red text]**

All “Intellectual Property,” meaning all graphics, fonts, computer code (with the exception of open source code), photographs, brochures, videos, web pages, trademarks, databases, names and logos, or the copyright in any portion of the works issued by the City or developed or produced for the City shall at all times be proprietary to the City, and shall be the exclusive property of the City. Upon termination of this Agreement, Firm’s right or license to use the intellectual property shall terminate.

The Firm warrants it has full authority to sell, assign and transfer the rights to all graphics, fonts, computer code (with the exception of open source code), photographs, brochures, videos, web pages, trademarks, databases, names and logos, or the copyright in any portion of the works, developed or produced for the City free and clear of any material encumbrances, liens, or claims.

The Firm agrees, at its own expense, to defend, indemnify and hold harmless the City from and against any losses, damages, expenses, liabilities and costs (including, without limitation, legal fees) incurred by the City as a result of any claims brought against the City by third parties arising from any infringement or misappropriation of any Intellectual Property right arising out of or relating to the City’s use of the Firm’s services.

**ARTICLE 18 – PUBLICITY**

The prior written approval of the City is required before the Firm or any of its employees, representatives, servants, agents, assignees, or subcontractors may, at any time either during or after completion or termination of this Agreement, make any statement to the media or issue any material for publication bearing on the Services performed or data collected in connection with this Agreement.

If the Firm, or any of its employees, representatives, servants, agents, assignees, or subcontractors desires to publish a work dealing with any aspect of this Agreement, or of the results or accomplishments attained by its performance, they must first obtain the prior written permission of the Mayor which, unless otherwise agreed to in said written permission, will entitle the City to a royalty fee and a non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, such publication.

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**ARTICLE 19 - RETENTION OF RECORDS**

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

The Firm agrees to retain all books, records, and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever occurs later. The City, any New York State and/or federal auditors, and any other persons duly authorized by the City, will have full access and the right to examine any of said materials during said period.

**ARTICLE 20 – AUDITING AND REPORTS**

All forms or invoices presented for payment to be made under this Agreement, and the books, records, and accounts upon which said forms or invoices are based, are subject to audit by the City. The Firm shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the City so that it may evaluate the reasonableness of the charges, and the Firm shall make its records available to the City upon request. All books, forms, records, reports, cancelled checks, and any and all similar material may be subject to periodic inspection, review, and audit by the City, the State of New York, the Federal Government and/or other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds, whether from the City, the State of New York, the Federal Government, private sources, or otherwise. The Firm will not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

**ARTICLE 21 – NO DISCRIMINATION**

As required by Article 15 of the New York State Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, including the Civil Rights Act, the Firm must not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition, carrier status, military status, domestic violence victim status, or marital status.

If this Agreement provides for a total expenditure in excess of \$25,000.00, the Firm shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on City contracts, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action will mean recruitment, employment, job assignment, promotion, upgrade, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation.

Furthermore, in accordance with New York State Labor Law Section 220-e, if this is an Agreement for the construction or alteration of any public building or public work, or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement will be performed within the State of New York, the Firm agrees that neither it, nor its subcontractors, will, by reason of race, creed, color, disability, sex, or national origin: (i) discriminate in hiring against any New York State citizen who is qualified and available to perform the Services, or (ii) discriminate against or intimidate any employee hired for the performance of Services under this Agreement. If this is a building service agreement as defined in the New York State Labor Law Section 230, then in accordance with New York State Labor Law Section 239, the Firm agrees that neither it, nor its subcontractors, will by reason of race, creed, color, national origin, age, sex or disability: (i) discriminate in hiring against any New York State citizen who is qualified and available to perform the Services, or (ii) discriminate against or intimidate any employee hired for the performance of Services under this Agreement. The Firm is subject to (i) a fine of Fifty and 00/100 (\$50.00) Dollars per person, per day, for any violation of the New York State Labor Law Sections 220-e or 239, and/or (ii) possible termination of this Agreement and forfeiture of all moneys due hereunder for a second or subsequent violation.

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The Firm understands that the City has established a Policy Regarding Discrimination and Harassment, and represents that it has read and agrees to comply with the requirements therein.

**ARTICLE 22 – PREVAILING WAGE**

In accordance with New York State Labor Law Section 220-d, if this is an Agreement for the construction, reconstruction, maintenance and/or repair of any public work, the Firm agrees that all laborers, workers, or mechanics employed by the Firm and/or its subcontractors in contemplation of the performance of this Agreement shall be paid not less than such hourly minimum rate of wage and shall be provided supplements not less than the prevailing supplements as designated by the New York State Commissioner of Labor.

**ARTICLE 23 – INTENTIONALLY LEFT BLANK**

**ARTICLE 24 - INSURANCE**

For provision of the Services set forth herein and as may be hereinafter amended, the Firm shall maintain or cause to be maintained in full force and effect during the term of this Agreement, at its expense, insurance with stated minimum coverage as set forth in Schedule C, which is attached hereto and is hereby made a part of this Agreement. Such policies are to be in the broadest form available on usual commercial terms and must be written by insurers who have been fully informed as to the nature of Services to be performed by the Firm pursuant to this Agreement. Such insurers shall be of recognized financial standing, satisfactory to the City. The City shall be named as an additional insured on all commercial general liability policies with the understanding that any obligations imposed upon the insured (including, without limitation, the obligation to pay premiums) will be the sole obligation of the Firm and not those of the City. Notwithstanding anything to the contrary in this Agreement, the Firm irrevocably waives all claims against the City for all losses, damages, claims, or expenses resulting from risks commercially insurable under the insurance described in Schedule C and this Article 24. The provision of insurance by the Firm will not in any way limit the Firm's liability under this Agreement.

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary, without right of contribution of any other insurance carried by or on behalf of the City, with respect to its interests, (ii) it shall not be cancelled or materially amended without thirty (30) days prior written notice to the City, except in the case of cancellation for non-payment of premium which requires ten (10) days prior written notice, directed to the Mayor and the Department Head, and (iii) the City will have the option to pay any necessary premiums to keep such insurance in effect, and charge the cost back to the Firm.

To the extent it is commercially available, each policy of insurance must be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis it must be provided on a "claims made" basis, and all such "claims made" policies must provide that:

- A. Policy retroactive dates coincide with or precede the Firm's start of the performance of Services (including subsequent policies purchased as renewals or replacements); and
- B. If the insurance is terminated for any reason, the Firm agrees to purchase for the City an unlimited, extended reporting provision to report claims arising from the Services performed under this Agreement; and
- C. The Firm must give immediate notice to the Mayor and the City's Corporation Counsel of circumstances or incidents that might give rise to future claims with respect to the Services performed under this Agreement.

**ARTICLE 25 - INDEMNIFICATION**

The Firm agrees to defend, indemnify, and hold harmless the City, including its officials, employees, and agents, against all claims, losses, damages, liabilities, costs, or expenses (including without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other

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person or entity, arising out of the Services performed by the Firm, its employees, representatives, subcontractors, assignees, or agents pursuant to this Agreement, which the City, or its officials, employees, or agents may suffer by reason of any negligence, fault, act, or omission of the Firm, its employees, representatives, subcontractors, assignees, or agents. The Firm agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demands, or suits at its sole expense, and agrees to bear all other costs and expenses related thereto, even if such claims, demands, or suits are groundless, false, or fraudulent.

In the event that any claim is made or any action is brought against the City arising out of the negligence, fault, act, or omission of the Firm or an employee, representative, subcontractor, assignee, or agent of the Firm, either within or without the scope of the respective employment, representation, subcontract, assignment, or agency, or arising out of the Firm's negligence, fault, act, or omission, then the City will have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover said claim or action. The rights and remedies of the City provided for in this clause will not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or pursuant to this Agreement.

**ARTICLE 26 - RESPONSIBILITY TO CORRECT DEFICIENCIES**

The Firm shall be responsible to correct, in a timely fashion and at the Firm's sole expense, any deficiencies in its Services resulting from the Firm's failure to act in accordance with the standards set forth in Article 13 (Performance) and Schedule A, provided such deficiencies are reported to the Firm within one hundred-twenty (120) days after completion and final acceptance of the Services. If the Firm fails to correct such deficiencies in a timely and proper manner, the City may elect to have others perform such corrections, and the City may charge any related cost of such corrections to the Firm and/or set-off such amount against any sums otherwise due to the Firm. These remedies, if effected, will not constitute the sole or exclusive remedies afforded to the City for such deficiencies, nor will they constitute a waiver of the City's right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity, or pursuant to this Agreement.

**ARTICLE 27 - CURRENT OR FORMER CITY EMPLOYEES**

The Firm represents and warrants that during the Term of this Agreement and for a period of one (1) year after its expiration or termination, it shall not retain the services of any City employee or former City employee in connection with this Agreement, or any other agreement that said Firm has or may have with the City, without the express written permission of the Mayor.

For a breach or violation of such representations or warranties, the City will have the right to annul this Agreement without liability, entitling the City to recover all monies paid hereunder, and the Firm must neither make claim for, nor be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, will not constitute the sole remedy afforded to the City for such breach or violation, nor will it constitute a waiver of the City's right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity or pursuant to this Agreement.

**ARTICLE 28 - PROTECTION OF CITY PROPERTY**

The Firm assumes the risk of and shall be responsible for any loss or damage to the City's property and equipment, whether owned, leased, or otherwise possessed by the City, used in the performance of this Agreement. Any such loss or damage caused, either directly or indirectly, by the acts, conduct, omissions, or lack of good faith of the Firm, its officers, directors, members, partners, employees, representatives, or assignees, or any person, firm, company, agent, or others engaged by the Firm as an expert, consultant, specialist, or subcontractor hereunder, will be the responsibility of the Firm.

In the event that any such City property is lost or damaged, except for normal wear and tear, then the City will have the right to withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.

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The Firm agrees to defend, indemnify, and hold the City harmless from any and all liability or claim for loss, cost, damage, or expense (including without limitation, reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such City property described in this Article 28.

The rights and remedies of the City provided herein will not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or pursuant to this Agreement.

**ARTICLE 29 – EXTENSIONS AND DELAYS**

If, owing to the actions or neglect of the City, the Firm is prevented from completing the Services within the Term of this Agreement, then the Firm's sole and exclusive remedy will be to request that a Change Order, Amendment, or an Addendum to this Agreement be issued by the Mayor, permitting an extension of time to perform the Services, equal to the time lost due to such delay. Such request shall be based upon written notice only, delivered to the Mayor and the Department Head promptly, but not later than thirty (30) days after the initial occurrence of the event giving rise to such claim, and stating the specific nature of the claim. An extension of time to perform the Services may only be granted by a written Change Order, Amendment, or Addendum to this Agreement, signed by the Mayor. In no event will the City be liable to the Firm, its subcontractors, agents, assignees, or any other person or entity, for damages arising out of or resulting from any such delays.

**ARTICLE 30 - TERMINATION**

The City may, by written notice to the Firm, effective upon mailing, terminate this Agreement in whole or in part at any time (i) for the City's convenience, (ii) upon the failure of the Firm to comply with any of the terms or conditions of this Agreement, or (iii) upon the Firm becoming insolvent or bankrupt.

In the event that this Agreement is terminated for the convenience of the City, the Firm will be paid for all Services rendered through the date of termination in accordance with Schedule B.

Upon termination of this Agreement, the Firm shall comply with any and all City closeout procedures, including but not limited to:

A. Accounting for and refunding to the City within ten (10) days, any unearned and/or unexpended funds that have been paid to the Firm pursuant to this Agreement; and

B. Furnishing to the City within ten (10) days, an inventory of all equipment, appurtenances, and property purchased by the Firm through, or provided under this Agreement, and carrying out any City directive concerning the disposition thereof.

In the event the City terminates this Agreement, in whole or in part, as provided in this Article 30, the City may procure upon such terms and in such manner as deemed appropriate, Services similar to those so terminated, and the Firm shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for reasons other than the convenience of the City, the cost and expense of any Services procured by the City to complete the Services herein will be charged to the Firm and/or set off against any sums due to the Firm.

Notwithstanding any other provisions of this Agreement, the Firm will not be relieved of liability to the City for damages sustained by the City by virtue of the Firm's breach of this Agreement, or failure to perform in accordance with applicable standards. The City may withhold payments due to the Firm for the purposes of set-off until such time as the exact amount of damages due to the City from the Firm is determined.

The rights and remedies of the City provided herein will not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or pursuant to this Agreement.

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**ARTICLE 31 - SET-OFF RIGHTS**

The City will have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but are not limited to, the City's right to withhold for the purposes of set-off any monies otherwise due to the Firm (i) under this Agreement, (ii) under any other agreement or contract with the City, including any agreement or contract for a term commencing prior to or after the Term of this Agreement, or (iii) from the City by operation of law. The City will also have the right to withhold any monies otherwise due under this Agreement for the purposes of set-off against any amounts due and owing to the City for any reason whatsoever, including without limitation, tax delinquencies, fee delinquencies and/or monetary penalties or interest relative thereto.

**ARTICLE 32 - NO ARBITRATION**

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed to in writing by the Mayor, after consultation with the City's Corporation Counsel, but must instead only be heard in the Supreme Court of the State of New York, with venue in Ulster County, or if appropriate, in the Federal District Court, with venue in the Northern District of New York, Albany Division.

**ARTICLE 33 – DISPUTES**

Should any controversy or claim arise out of this Agreement, the Parties shall first attempt to settle their dispute by mediation, facilitated by the American Arbitration Association. If a Party fails to respond to a written request for mediation within 30 days after service, or fails to participate in any scheduled mediation conference, that Party shall be deemed to have waived its right to mediate the issues in dispute.

If the above-referenced mediation does not result in settlement of the entire controversy or dispute within 30 days after the initial mediation conference or if a Party has waived its right to mediate any issues in dispute, any unresolved controversy or claim arising out of or relating to this Agreement will be settled by arbitration administered by the American Arbitration Association and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Notwithstanding the foregoing, the Parties may mutually agree, in writing, to litigate disputes, unresolved controversies or claims not resolved through the above-referenced mediation process if, due to other pending litigation or similar circumstances, litigation would more expeditiously resolve the issues. The Parties agree that any claims related to or arising out of this Contract shall be resolved in Supreme Court of the State of New York, Ulster County.

The Parties further agree that that this entire Agreement is governed by and should be construed in accordance with New York Law, including New York's choice of law rules and New York's arbitration law, Article 75 of New York's Civil Practice Law and Rules.

In the event of a dispute arising from this Agreement, the Firm shall be liable to the City for reasonable attorney's fees, costs, expenses and disbursements incurred by the City in enforcing its legal and/or equitable rights pursuant to this Agreement by reason of the failure of the Firm to comply with any of the terms, conditions or warranties of this Agreement, express or implied, and/or the exercise of City's remedies with respect thereto, and/or any error, omission and/or professional negligence of the Firm or its subcontractors, including but not limited to all attorney's fees, costs, expenses and disbursements incurred by the City in prosecuting a lawsuit against the Firm, seeking Indemnification pursuant to Article 25, obtaining Correction of Deficiencies pursuant to Article 26, Termination pursuant to Article 30, and/or Set-Off Rights pursuant to Article 31. The Firm shall further be liable to the City for all prejudgment interest on any award of attorney's fees, costs, expenses and disbursements so awarded. This provision shall survive completion of the Services and/or the expiration or termination of this Agreement.



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**ARTICLE 34 - GOVERNING LAW**

This Agreement is governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

**ARTICLE 35 - WAIVER AND SEVERABILITY**

The failure of either Party to enforce at any time, any provision of this Agreement, does not constitute a waiver of such provision in any way or waive the right of either Party at any time to avail itself of such remedies as it may have for any breach or breaches of such provision. None of the conditions of this Agreement will be considered waived by the City unless such waiver is explicitly given in writing by the Mayor. No such waiver shall be a waiver of any past or future default, breach, or modification of any of the terms or conditions of this Agreement, unless expressly stipulated in such waiver as executed by the Mayor.

The invalidity or invalid application of any provision of this Agreement will not affect the validity of any other provision, or the application of any other provision of this Agreement.

**ARTICLE 36 - GENERAL RELEASE**

Acceptance by the Firm or its assignees of the final payment under this Agreement, whether by voucher, judgment of any court of competent jurisdiction, administrative, or other means, will constitute and operate as a general release to the City from any and all claims of the Firm arising out of the performance of this Agreement.

**ARTICLE 37 - NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES**

No claim whatsoever shall be made by the Firm against any officer, agent, or employee of the City, for or on account of any act or omission in connection with this Agreement.

**ARTICLE 38 - ENTIRE AGREEMENT**

The rights and obligations of the Parties and their respective agents, successors and assignees will be subject to and governed by this Agreement, including Schedules A, B, and C, which supersedes any other understandings or writings between or among the Parties to this Agreement.

**ARTICLE 39 - SURVIVING OBLIGATIONS**

The Firm's obligations and those of the Firm's employees, representatives, agents, subcontractors, successors, and assignees, assumed pursuant to Article 7 (Representations by the Firm), Article 8 (Corporate Compliance), Article 13 (Performance), Article 15 (Confidentiality), Article 16 (Ownership of Confidential Information), Article 17 (Intellectual Property), Article 18 (Publicity), Article 19 (Retention of Records), Article 25 (Indemnification), Article 26 (Responsibility to Correct Deficiencies), Article 28 (Protection of City Property), and Article 31 (Set-Off Rights) will survive completion of the Services and/or the expiration or termination of this Agreement.

**ARTICLE 40 - NOTICES**

Except as expressly provided otherwise in this Agreement, all notices given to any of the Parties pursuant to or in connection with this Agreement will be in writing, will be delivered by hand, by certified or registered mail, return receipt requested, or by Federal Express, Express Mail, or other nationally recognized overnight carrier. Except where otherwise specifically defined within this Agreement, notices will be effective when received. Notice addresses are as follows:

Firm:

[Insert Firm Name]

City:

City of Kingston [Insert Department Name]

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Attention: [Insert Appropriate Information]                      Attention: [Insert Department Head Title]  
[Insert Firm Address]    [Insert Department's Physical Address]  
[Insert Firm City, State & Zip Code]    Kingston, New York 12401

Any communication or notice regarding indemnification, termination, litigation, or proposed changes to the terms and conditions of this Agreement will be deemed to have been duly made upon receipt by both the Kingston City Clerk and the City's Corporation Counsel at the addresses set forth herein, or such other addresses as may have been specified in writing by the City:

Mailing Address:	Physical Address:
City of Kingston	City of Kingston
Attention: City Clerk/Corporation Counsel	Attention: City Clerk/Corporation Counsel
420 Broadway	420 Broadway
Kingston, New York 12401	Kingston, New York 12401

Either Party may, by written notice to the other Party given in accordance with the foregoing, change its address for notices.

#### **ARTICLE 41 - MODIFICATION**

No changes, amendments, or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties to this Agreement, and no payment will be due in connection therewith, unless prior to the performance of any such Work, the Mayor, after consultation with the Department Head, executes an Addendum, Amendment, or Change Order to this Agreement. The aforesaid Addendum, Amendment, or Change Order must specifically set forth the scope of such extra or additional services, the amount of compensation, and the extension of time for performance, if any, for any such extra or additional services. Unless otherwise specifically provided for therein, the provisions of this Agreement will apply with full force and effect to the terms and conditions contained in such Addendum, Amendment, or Change Order.

#### **ARTICLE 42 – FORCE MAJEURE**

Neither Party to this Agreement will be considered in default in the performance of its obligations under this Agreement, to the extent that performance of any such obligation is prevented and/or delayed by any cause, existing or future, beyond the control of such Party, and which by that Party's exercise of due diligence and foresight could not reasonably have been avoided ("Impacted Party") including, without limitation, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, other potential disaster(s) or catastrophe(s), such as epidemics or pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not); (d) national or regional emergencies; and (c) other similar events beyond the reasonable control of the Impacted Party.

The Impacted Party shall give written notice within thirty (30) days of the Force Majeure Event to the other Party and the Impacted Party shall use diligent efforts to end the failure or delay and to minimize the effects of such Force Majeure Event.

Upon removal of such cause, the Impacted Party affected shall resume its performance as soon as reasonably possible. The Firm's financial inability to perform will not be deemed to be a Force Majeure Event regardless of the source causing such financial inability. If the Firm is so delayed in the timely performance of the Work, the Firm's sole and exclusive remedy is to request that a Change Order, Amendment, or Addendum to this Agreement be issued by the City and signed by the Mayor permitting an extension of time to perform the Work in an amount equal to the time lost due to such delay. Such request shall be based upon written notice only, stating the specific nature of the claim, delivered to the Department Head and the Kingston City Clerk promptly, but not later than thirty (30) days after the initial occurrence of the event giving rise to such claim. An extension of time to perform the Work may only be granted by a written Change Order, Amendment, or Addendum to this Agreement, signed by the Mayor. In no event will the City be liable to the Firm or to its subcontractors, agents, assignees, or any other person or entity for damages arising out of, or resulting from, any such delays.

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**ARTICLE 43 - HEADINGS AND DEFINED TERMS**

The Article headings used in this Agreement are for reference and convenience only, and will not in any way limit or amplify the terms, conditions, and/or provisions hereof. All capitalized terms, acronyms, and/or abbreviations will have the meanings ascribed to them by this Agreement.

**ARTICLE 44 – COUNTERPARTS**

The Parties may execute this Agreement in counterparts, each of which shall be deemed an original, and all of which taken together constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile, email in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document has the same effect as delivery of an executed original of this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused their duly authorized representatives to enter into this Agreement as of the dates set forth below, effective as of the beginning date set forth in Article 2 above.

**[INSERT DEPARTMENT NAME]**

(Approved as to content)  
By: \_\_\_\_\_  
NAME: [Department Head]  
TITLE: [Department Head]  
DATE: \_\_\_\_\_

**CITY OF KINGSTON**

By: \_\_\_\_\_  
NAME: Steven T. Noble  
TITLE: Mayor  
DATE: \_\_\_\_\_

**[INSERT FIRM NAME]**

By: \_\_\_\_\_  
NAME: [If known]  
TITLE: [If known]  
DATE: \_\_\_\_\_

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**SCHEDULE A**  
**SCOPE OF SERVICES**

[to be drafted]

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**SCHEDULE B**  
**FEEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT**

1. The Firm's fee for Services shall not exceed the amount of **[ENTER WRITTEN DOLLAR AMOUNT] AND \_\_\_/100 (\$ .00) DOLLARS** for the Term of this Agreement.
2. The Firm shall invoice the City's **[Enter Department Name here]** on a **[weekly/monthly/quarterly]** basis for the Services provided, at a rate of **[ENTER WRITTEN DOLLAR AMOUNT] AND \_\_\_/100 (\$ .00) DOLLARS** per **[hour/day/week/month]**, which shall not exceed the amount of **[ENTER WRITTEN DOLLAR AMOUNT] AND \_\_\_/100 (\$ .00) DOLLARS** per **[week/month/quarter]**.
3. The Firm shall submit original invoices to the City for payment.
4. The Firm shall submit its invoices by the **[write out: first, tenth, etc.]** (**\_\_**th) day of each **[month/quarter]**, for the Services provided during the previous **[month/quarter]**.
5. The Firm's invoices must contain, or have attached, sufficient supporting detail, as reasonably required by the City, to verify the claim.
6. In no event shall claims be submitted in advance or accrued prior to expenditure.
7. The Firm's final invoice under this Agreement shall be submitted by the (**\_\_**th) day of the month following the ending date contained in Article 2 (Term of Agreement).
8. The City will remit payment to the Firm within sixty (60) days of approval of the invoice by the **[Department Head Title]** of the City's Department of **[Department Name]** and the City Comptroller.
9. Notwithstanding any other term or provision of this Agreement, including this Schedule B, the Firm's invoices, together with all documentation required, must be promptly and timely submitted. The City reserves the right to reject payment of invoices that are submitted more than one hundred twenty (120) days after the required submission date set forth above, regardless of whether the service, work, or delivery was rendered.
10. The Firm agrees to meet any additional invoicing requirements that the City may from time to time require, with reasonable notice to the Firm.

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**PLEASE BRING THESE INSURANCE REQUIREMENTS TO YOUR INSURANCE AGENT TO ENSURE PROPER COVERAGE AND LIMITS ARE IN PLACE. FAILURE TO PROVIDE CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIREMENTS BELOW SHALL DELAY CONTRACT EXECUTION.**

**SCHEDULE C**  
**CITY OF KINGSTON CONTRACT INSURANCE REQUIREMENTS**

**I. CONDITIONS OF INSURANCE**

Unless otherwise authorized by the Mayor, strict adherence to this schedule is required. Any deviation without prior authorization from the Mayor will result in a delay in the finalization of this Agreement.

The Firm shall submit copies of any or all required insurance documents as and when requested by the City. Upon policy renewal, the Firm shall submit updated insurance policy information.

**II. CERTIFICATES OF INSURANCE**

Prior to commencing work under this Agreement, the Firm shall file all proper Certificates of Insurance with the City.

The Certificates of Insurance shall include:

- a. Name and address of Insured
- b. Issue date of certificate
- c. Insurance company name
- d. Type of coverage in effect
- e. Policy number
- f. Inception and expiration dates of policies included on the certificate
- g. Limits of liability for all policies included on the certificate
- h. **“Certificate Holder” for all certificates shall be the City of Kingston, 420 Broadway, Kingston, New York 12401.**

If the Firm’s insurance policies should be non-renewed or canceled, or should expire during the life of this Agreement, the City shall be provided with a new certificate indicating the replacement policy information as requested above. The City requires thirty (30) days prior written notice of cancellation [ten (10) days for non-payment of premium] from the Insurer, its agents or representatives.

**The Firm agrees to indemnify the City of Kingston for any applicable deductibles and self-insured retentions.**

**III. WORKERS’ COMPENSATION AND DISABILITY INSURANCE**

The Firm shall take out and maintain during the life of this Agreement, Workers’ Compensation (WC) Insurance and Disability Benefits (DB) Insurance, for all of its employees employed at the site of the project, and shall provide Certificates of Insurance evidencing this coverage to the City.

If the Firm is not required to carry such insurance, the Firm must submit form CE-200 attesting to the fact that it is exempt from providing WC and/or DB Insurance coverage for all of its employees. The manner of proof related to WC and DB Insurance is controlled by New York State Laws, Rules and Regulations. “ACORD” forms are not acceptable proof of WC and/or DB Insurance.

**IV. WORKERS’ COMPENSATION REQUIREMENTS**

To assist the State of New York and municipal entities in enforcing WCL Section 57, a business entity (the Firm) seeking to enter into a contract with a municipality (the City) must provide one of the following forms to the municipal entity it is entering into a contract with. The Firm should contact their insurance agent to obtain acceptable proof of WC coverage:

- Form C-105.2 – “Certificate of NYS Workers’ Compensation Insurance” **or**
- Form U-26.3 – “Certificate of Workers’ Compensation Insurance” issued by the New York State Insurance Fund **or**
- Form SI-12 – “Affidavit Certifying that Compensation has Been Secured” issued by the Self-Insurance Office of the Workers’ Compensation Board if the Firm is self-insured **or**

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- Form GSI-105.2 – “Certificate of Participation in Workers’ Compensation Group Self-Insurance” issued by the Self-Insurance administrator of the group **or**
- Form GSI-12 – “Certificate of Group Workers’ Compensation Group Self-Insurance” issued by the Self-Insurance Office of the Workers’ Compensation Board if the Firm is self-insured.

If the Firm is not required to carry WC coverage, it must submit Form CE-200, “Certificate of Attestation of Exemption” from New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

**V. DISABILITY BENEFITS REQUIREMENTS**

To assist the State of New York and municipal entities in enforcing WCL Section 220(8), a business entity (the Firm) seeking to enter into a contract with a municipality (the City) must provide one of the following forms to the municipal entity it is entering into a contract with. The Firm should contact their insurance agent to obtain acceptable proof of DB Insurance Coverage:

- Form DB-120.1 – “Certificate of Insurance Coverage Under the NYS Disability Benefits Law” **or**
- Form DB-155 – “Compliance with Disability Benefits Law” issued by the Self-Insurance Office of the Workers’ Compensation Board if the Firm is self-insured.

If the Firm is not required to carry DB Insurance coverage, it must submit Form CE-200, “Certificate of Attestation of Exemption” from New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

**VI. COMMERCIAL GENERAL LIABILITY INSURANCE**

The Firm shall take out and maintain during the life of this Agreement, such bodily injury liability and property damage liability insurance as shall protect it and the City from claims for damages for bodily injury including accidental death, as well as from claims for property damage that may arise from operations under this Agreement, whether such operations be by the Firm, by any subcontractor, or by anyone directly or indirectly employed by either of them.

It shall be the responsibility of the Firm to maintain such insurance in amounts sufficient to fully protect itself and the City, but in no instance shall amounts be less than the minimum acceptable levels of coverage set forth below:

- Bodily Injury Liability and Property Damage Liability Insurance in an amount not less than **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS** for each occurrence, and in an amount not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** general aggregate.

**Other Conditions of Commercial General Liability Insurance:**

- a. Coverage shall be written on Commercial General Liability form.
- b. Coverage shall include:
  1. Contractual Liability
  2. Independent Contractors
  3. Products and Completed Operations
- c. “Additional Insured” status shall be granted to “City of Kingston, 420 Broadway, Kingston, New York, 12401”, shown on the Commercial General Liability policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.

**VII. UMBRELLA LIABILITY OR EXCESS LIABILITY INSURANCE**

Umbrella Liability or Excess Liability Insurance shall be provided by the Firm in an amount not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS**.

**NOTE: As long as all minimum underlying limits have been met, insurance limits may be a total combined limit of the Umbrella/Excess Liability limits and the underlying liability insurance limits. The Umbrella/Excess Liability coverage MUST be written on a follow-form (drop down) basis to the underlying insurance coverage with no additional exclusions.**

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“Additional Insured” status shall be granted to “City of Kingston, 420 Broadway, Kingston, New York, 12401”, shown on the Umbrella policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.

**VIII. AUTOMOBILE LIABILITY INSURANCE**

Automobile Bodily Injury Liability and Property Damage Liability Insurance shall be provided by the Firm, with a minimum Combined Single Limit (CSL) of **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS**.

Coverage shall include:

- a. All owned vehicles
- b. Any hired automobile
- c. Any non-owned automobile
- d. “Additional Insured” status shall be granted to “City of Kingston, 420 Broadway, Kingston, New York, 12401”, shown on the Auto Liability policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.

**IX. PROFESSIONAL LIABILITY INSURANCE (e.g. MALPRACTICE, MEDIA LIABILITY, ERRORS & OMISSIONS INSURANCE)**

If this box is checked, Professional Liability Insurance shall be provided by the Firm in an amount not less than **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS** for each occurrence and in an amount of not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** general aggregate.

**X. CYBER LIABILITY INSURANCE**

If this box is checked, Cyber Liability Insurance shall be provided by the Firm in an amount not less than **FIVE MILLION AND 00/100 (\$5,000,000.00) DOLLARS** for each occurrence and in an amount of not less than **FIVE MILLION AND 00/100 (\$5,000,000.00) DOLLARS** general aggregate. **Copies of policy must be submitted with certificate of insurance.**

**XI. SEXUAL ABUSE & MOLESTATION COVERAGE**

If this box is checked, Sexual Abuse & Molestation Coverage shall be provided by the Firm in an amount not less than **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS** for each occurrence and in an amount of not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** general aggregate.



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**SCHEDULE B**

Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

- (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) **Equal Employment Opportunity**. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” ([30 FR 12319, 12935, 3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)**. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (E) **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)**. Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (F) **Rights to Inventions Made Under a Contract or Agreement**. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended**. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-

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Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- (H) **Debarment and Suspension (Executive Orders 12549 and 12689)**. A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- (J) **Procurement of Recovered Materials**. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- (K) **Prohibition on certain telecommunications and video surveillance services or equipment**.
- (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
- (1) Procure or obtain;
  - (2) Extend or renew a contract to procure or obtain; or
  - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
    - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
    - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (b) In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

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**(L) Domestic preferences for procurements.**

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**(M) Energy Efficiency in Energy Consuming Products.**

(a) Definition. As used in this clause – Energy efficient product

(1) Means a product that –

(i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star ® trademark Label; or

(ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

(2) The term "product" does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).

(b) The Contractor shall ensure that energy-consuming products are energy efficient products (i.e. Energy Star ® products or FEMP-designated products) at the time of contract award, for products that are-

(1) Delivered;

(2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(3) Furnished by the Contractor for use by the Government; or

(4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless-

(1) The energy-consuming product is not listed in the Energy Star ® Program or FEMP; or

(2) Otherwise approved in writing by the Contracting Officer.

(d) Information about these products is available for –

(1) Energy Star @ <http://www.energystar.gov/products>; and

(2) FEMP at <https://www.energy.gov/eere/femp/energy-efficient-products-and-energy-saving-technologies>.



**City of Kingston, NY**  
**RFP # K23-01: Affordable Housing Program Design**

**PLEASE RETURN THE FOLLOWING SHEETS**  
**WITH YOUR PROPOSAL**

City of Kingston, NY  
RFP # K23-01: Affordable Housing Program Design

**INFORMATION SHEET**

**NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

**TYPE OF ENTITY:** Corp. \_\_\_\_\_ Partnership \_\_\_\_\_ Individual \_\_\_\_\_ LLC \_\_\_\_\_

***If a non-publicly owned Corporation:***

**NAME OF FIRM:** \_\_\_\_\_

**DATE OF ORGANIZATION:** \_\_\_\_\_

***If an LP, LLP, or LLLP:***

**PARTNERS:** \_\_\_\_\_

\_\_\_\_\_

**NAME OF PARTNERSHIP:** \_\_\_\_\_

**DATE OF ORGANIZATION:** \_\_\_\_\_

*\* If the business is conducted under an assumed name, a copy of the certificate required to be filed under the New York General Business Law must be attached.*

**AFFIDAVIT OF NON-COLLUSION**

**NAME OF RESPONDENT:** \_\_\_\_\_  
\_\_\_\_\_

**BUSINESS ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby attest that I am the person responsible within my firm for the final decision as to the prices(s) and amount of this proposal or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on behalf of my firm.

I further attest that:

1. The price(s) and amount of this proposal have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition with any other contractor, Respondent or potential Respondent.
2. Neither the price(s), nor the amount of this proposal, have been disclosed to any other firm or person who is a Respondent or potential Respondent on this project, and will not be so disclosed prior to proposal opening.
3. No attempt has been made or will be made to solicit, cause or induce any firm or person to refrain from responding to this RFP, or to submit a proposal higher than the proposal of this firm, or any intentionally high or non-competitive proposal or other form of complementary proposal.
4. The proposal of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from any firm or person to submit a complementary proposal.
5. My firm has not offered or entered into a subcontract or agreement regarding the purchase of materials or services from any other firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by an firm or person to refrain from responding to this RFP or to submit a complementary proposal on this project.
6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any project, in consideration for my firm's submitting a complementary proposal, or agreeing to do so, on this project.
7. I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's proposal on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in this affidavit.

**City of Kingston, NY**  
**RFP # K23-01: Affordable Housing Program Design**

**8. By submission of this proposal, I certify that I have read, am familiar with, and will comply with any and all segments of these specifications.**

The person signing this proposal, under the penalties of perjury, affirms the truth thereof.

\_\_\_\_\_  
Signature & Title

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Company Name

Date Signed \_\_\_\_\_ Federal ID \_\_\_\_\_