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**INVITATION TO SUBMIT PROPOSALS
FOR THE PROVISION OF
GRANTS MANAGEMENT AND COMPLIANCE CONSULTING SERVICES
FOR
WESTCHESTER COMMUNITY COLLEGE
75 GRASSLANDS ROAD
VALHALLA, NEW YORK 10595**

PROPOSAL DUE DATE: October 29, 2024

Contact:

Westchester Community College
Purchasing, Admin Bldg – Room 226
75 Grasslands Road
Valhalla, New York 10595
Email: laurie.millermcneill@sunywcc.edu
Email: laura.barrett@sunywcc.edu@sunywcc.edu
Email: stewart.glass@sunywcc.edu

Please be advised that all matters concerning this RFP, from the date of issuance until the contract awards are made, are to be directed in writing to the above named contact individuals.

**An original completed copy of the proposal MUST be received no later than
October 29, 2024 at 4pm EST at the following address:**

**Westchester Community College
Purchasing Department
Administration Building, Room 226
75 Grasslands Road
Valhalla, New York 10595**

With courtesy copies by email to:

Email: laurie.millermcneill@sunywcc.edu
Email: laura.barrett@sunywcc.edu
Email: stewart.glass@sunywcc.edu

REQUEST FOR PROPOSALS

**GRANTS MANAGEMENT AND COMPLIANCE CONSULTING SERVICES
FOR
WESTCHESTER COMMUNITY COLLEGE**

I INTRODUCTION:

- a. The County of Westchester, acting by and through Westchester Community College (hereinafter collectively the “College”) invites proposals from qualified firms (“Firms”) Grants Management And Compliance Consulting Services.
- b. It is the College's intent to select the Firm that provides the best solution for the College's needs.
- c. The College reserves the right to amend this RFP. The College reserves the right to reject any or all of the proposals, or any part thereof, submitted in response to this RFP, and reserves the right to waive formalities, if such action is deemed to be in the best interest of the College. The College reserves the right to request additional information from any proposer. The College reserves the right to award negotiated contracts to one or more Firms.
- d. This RFP is not intended and shall not be construed to commit the College to pay any costs incurred in connection with any proposal or to procure or contract with any proposer.

II OVERVIEW OF WESTCHESTER COUNTY

- a. Westchester County, with a population of 998,000, is 450 square miles with six cities, 18 towns and 22 villages and is less than 30 minutes from New York City.
- b. The County of Westchester is a municipal corporation of the State of New York, having its principal place of business at the Michaelian Office 148 Martine Avenue, White Plains, New York 10601.

III. OVERVIEW OF WESTCHESTER COMMUNITY COLLEGE

Westchester Community College was founded in 1946. It is sponsored locally by the County of Westchester pursuant to the provisions of the New York State Education Law. Westchester Community College operates under the policies of the Board of Regents and the supervision of the State University of New York. The College is governed by a ten-member Board of Trustees and is accredited by the Middle States Association.

The College has one main campus located at 75 Grasslands Road, Valhalla, New York. In addition, the College has extension sites in various locations throughout the county such as Peekskill, Ossining, White Plains, Mt. Vernon and Yonkers. The College also offers extensive credit and non-credit programs in various high schools and through cooperative agreements with agencies throughout the county. The College has also been offering classes remotely.

Westchester Community College is a two-year institution serving more than 10,000 students annually. Its mission is to provide accessible, high-quality and affordable education to meet the needs of our diverse community. We are committed to student success, academic excellence, workforce development, economic development, and lifelong learning. As part of our commitment to continuous improvement, we are seeking an external consultant to evaluate our current business practices across various departments, including finance, human resources, procurement, student services, and other administrative functions

IV. SCOPE OF WORK:

1. Grants Management and Compliance Services:

The services shall include but not be limited to the provision of:

Assistance to the College in documenting its pre and post award grant policies and procedures and to serve as a resource to the college in the on-going implementation of strong internal controls related to college grants.

The consultant will

- (1) serve as a resource to the Office of Institutional Advancement and the College in updating its grant policies and procedures to support compliance with federal, state and local requirements;
- (2) provide a supportive review of internal controls related to current grant operations, reporting and compliance objectives with pro-active recommendations for mitigating risk in any areas of finding;
- (3) provide guidance and serve as a resource as needed as periodic questions or need for clarification around federal guidelines arises; and
- (4) provide periodic professional briefings and professional development for college grant and management staff around grant policies and procedures. The primary objective of this agreement is to support the college in maintaining its strong stewardship and compliance in administering grants.

The Office of Institutional Advancement is seeking to establish a positive, proactive relationship with its Grant Management and Compliance Consultant centered on continuous improvement and capacity building of the college's overall managerial effectiveness and control environment related to grants. Within the multi-year renewal context of this contract, the College will look to update policies and procedures in the

first year of the contract as well as identify any high priority areas for review of internal controls related to current operations, reporting and compliance for immediate redress with corresponding briefings and professional development for college staff on same. Each subsequent year of the contract, if renewed, the college is looking to undertake additional reviews of other priority areas for risk and compliance, with the consultant providing guidance and recommendations for the continuous improvement of WCC's grant policies and procedures.

WCC will only consider proposers that have a minimum of ten (10) years' experience assisting higher education institutions with grant compliance. Consultants should have an advanced degree, which may be a JD, MBA, PhD, EdD or other related degree with a significant record of accomplishment in grant compliance in higher education (and public community college) settings.

V. PROPOSAL REQUIREMENTS:

1) The proposal must include the following information:

a. Scope of work to be performed. Provide a detailed narrative of how the College's Scope of Work would be performed including proposed strategies for working with the College in the specified areas and ensuring the College's grant policies and procedures are aligned with federal requirements.

b. Identification of Key Personnel. Identify and provide background information on the key personnel who would provide services to the College. The proposal must include the professional qualifications and experience of these individuals.

c. Proposed Fee. The Hourly Rate proposed to be charged for these services shall be indicated as part of the proposal. NOTE: the total fee should not exceed \$10,000 annually.

d. Experience: The Proposal should list the proposer's:

Evidence of their expertise and record of success in assisting public institutions of higher education (with community college experience preferred) in updating grant policies and procedures, reviewing internal controls, providing recommendations for mitigating risk, providing professional development for staff, and providing guidance as needed on compliance related concerns and;

Describe the formal training, expertise and experience with grant compliance related 2 CFR Part 200; US Department of Education (EDGAR); National Science Foundation; US Department of Labor and NYS Education Department and other agency grants common to public community colleges;

e. Other information. List the information that is not provided in the RFP that is necessary for the College to provide to you in order for you to complete the Scope of Work.

- 2) Proposals must be submitted on the proposer's letterhead or standard proposal form and signed by an authorized representative of the proposer. Telephone or facsimile proposals will not be accepted.
- 3) **The Proposer Certification And Non-Collusion document must be signed and included with the proposal.**
- 4) The proposal cover letter signed by a person authorized by the proposer to make a binding proposal should set forth that that "this proposal constitutes a valid, binding and continuing offer at the prices set forth in the proposal for a period of sixty (60) days from the deadline for acceptance of proposals as set forth herein."
- 5) Proposal must be typed or printed in black ink. All corrections made by the proposer prior to the opening must be initialed and dated by the proposer. No changes will be allowed after proposals are opened.
- 6) Proposals delivered prior to the deadline shall be secured unopened so long as the package is properly marked as set forth above. Late proposals will not be accepted.
- 7) **Proposals MUST be signed.** Unsigned proposals may be rejected.
- 8) Proposers may be required to give an oral presentation to the County to clarify or elaborate on the written proposal.
- 9) No proposal will be accepted from, nor any agreement awarded to any proposer that is in arrears upon any debt or in default of any obligation owed to the County. Additionally, no agreement will be awarded to any proposer that has failed to satisfactorily perform pursuant to any prior agreement with the County.

VI. TERM:

It is anticipated that the term of the agreement will be for a period of a year commencing on or about December 1, 2024 and terminating on or about November 30, 2025. The College, in its sole discretion, may extend the agreement beyond its initial term for up to three additional one (1) year periods at the same hourly rate, fee, terms and conditions. The College also reserves the right to terminate the agreement if it deems it to be in its best interest to do so.

VII. STATEMENT OF RIGHTS:

The proposing entity understands and agrees that the College reserves and may, in its sole discretion, exercise the following rights and options with respect to this Request for Proposals (RFP):

- a) to reject any or all proposals;
- b) to issue additional solicitations for proposals and/or addenda to this RFP;

- c) to waive any irregularities in proposals received after notification to proposers affected;
- d) to select any proposal as the basis for negotiations of a contract, and to negotiate with one or more of the proposers for amendments or other modifications to their proposals;
- e) to conduct investigations with respect to the qualification of each proposer;
- f) to exercise its discretion and apply its judgment with respect to any aspect of this RFP, the evaluation of proposals, and the negotiation and award of any contract;
- g) to select the proposal that best satisfies the interests of the College and not necessarily on the basis of price or any other single factor.
- h) to enter into an agreement for only portions (or not enter into an agreement for any) of the services contemplated by the proposal with one or more of the proposers.
- i) to enter into similar agreements with other consultant on an “as needed” basis” thus, an award of an agreement to a proposer does not grant the Consultant the exclusive right to perform the Work for the County.
- j) While this is a Request For Proposals and not a bid, the College reserves the right to apply the case law under General Municipal Law § 103 regarding bidder responsibility in determining whether a proposer is a responsible vendor for the purpose of this RFP process;
- k) The College assumes no responsibility or liability of any kind for costs incurred in the preparation or submission of any proposal;
- l) The College is not responsible for any internal or external delivery delays which may cause any proposal to arrive beyond the stated deadline. To be considered, proposals MUST arrive at the place specified herein and be time stamped prior to the deadline. Late proposals will be rejected.
- m) The College shall apply the following evaluation criteria in selecting a proposer with whom to commence contract negotiations. Such criteria are not necessarily listed in order of importance. The College reserves the right to weigh its evaluation criteria in any manner it deems appropriate.

VIII. PROPOSAL EVALUATION CRITERIA:

Proposals will be evaluated using the following and other relevant criteria in selecting a proposer with whom to commence contract negotiations. Such criteria are not necessarily listed in order of importance. The College reserves the right to consider other evaluation criteria and weigh its evaluation criteria in any manner it deems appropriate.

- Professional qualifications and experience of assigned team on similar projects
- Experience in college and university actuarial services.
- Relevant experience of staff to be assigned to this project.
- Cost of services.
- Breadth of advisory services including training, consulting, publications, and familiarity with applicable regulations.
- Responsiveness to the proposal in clearly stating an understanding of the scope of services.
- Implementation timeline.
- Client references.

IX. LEGAL UNDERSTANDINGS:

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

- that any proposal, attachments, additional information, etc. submitted pursuant to this Request for Proposals constitute merely a suggestion to negotiate with the County of Westchester and is not a bid under Section 103 of the New York State General Municipal Law;
- submission of a proposal, attachments, and additional information shall not entitle the proposing entity to enter into a service agreement with the County of Westchester for the required services;
- by submitting a proposal, the proposing entity agrees and understands that the County of Westchester is not obligated to respond to the proposal, nor is it legally bound in any manner whatsoever by submission of same;
- That the College may enter into similar agreements with other consultants on an “as needed” basis” thus, an award of an agreement to a proposer does not grant the Consultant the exclusive right to perform the Work for the County.
- that except with regard to formal written responses to Requests for Clarification as described in Paragraph X below, any and all counter-proposals, negotiations or any communications received by a proposing entity, its officers, employees or agents from the County, its elected officials, officers, employees or agents, shall not be binding

against the County of Westchester, its elected officials, officers, employees or agents unless and until a formal written agreement for the services sought by this RFP is duly executed by both parties and approved by either the Westchester County Board of Acquisition & Contract or the College's Board of Trustees.

X. QUESTIONS OR REQUESTS FOR CLARIFICATION

REQUESTS FOR CLARIFICATION OF THIS RFP MUST BE WRITTEN AND SUBMITTED TO laurie.millermcneill@sunywcc.edu and laura.barrett@sunywcc.edu NO LATER THAN October 16, 2024. NO COMMUNICATIONS OF ANY KIND WILL BE BINDING AGAINST THE COUNTY, EXCEPT FOR THE FORMAL WRITTEN RESPONSES TO ANY REQUEST FOR CLARIFICATION OR AMENDMENTS TO THIS RFP. ANSWERS TO WRITTEN QUESTIONS or REQUESTS FOR CLARIFICATION WILL BE POSTED ON THE COUNTY'S RFP WEBSITE AND ON BIDNET WITHIN APPROXIMATELY FIVE DAYS AFTER THE DEADLINE TO SUBMIT REQUESTS FOR CLARIFICATION. Answers will also be provided at the same time to entities that submitted requests for clarification.

XI. PROPOSER CERTIFICATION AND NON-COLLUSION

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

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

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

The proposer, by signing the proposal, does hereby warrant and represent that any ensuing agreement has not been solicited, secured or prepared directly or indirectly, in a manner contrary to the laws of the State of New York and the County of Westchester, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the agreement by any conduct, including the paying or the giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly or indirectly, to any County employee, officer or official.

Proposer Name

By: _____
Name and Title

The above document should be submitted with the proposer’s proposal and no proposal can be considered without the submission of this certification.

XII. CONFLICT OF INTEREST:

The award of a contract is subject to provisions of all Federal, State and County laws. All agencies must disclose with their proposals the name of any officer, director or agent who is also an employee of the County of Westchester. Further, all agencies must disclose the name of any County employee who owns, directly or indirectly, an interest of ten percent or more in the Firm or any of its subsidiaries or affiliates.

XIII. CONTRACT:

After selection of the successful proposer and following contract negotiations acceptable to the College, a formal written contract will be prepared by the College Westchester and will be substantially and materially in the form as the sample contract that is attached hereto as EXHIBIT "A" and the contract will not be binding unless and until signed by both parties and approved by the Westchester County Board of Acquisition & Contract or the Westchester Community College Board of Trustees as applicable. NO RIGHTS SHALL ACCRUE TO ANY PROPOSER BY THE FACT THAT A PROPOSAL HAS BEEN SELECTED BY THE COUNTY FOR SUBMISSION TO THE BOARD OF ACQUISITION & CONTRACT OR THE COLLEGE'S BOARD OF TRUSTEES FOR CONTRACT APPROVAL. SAID BOARDS HAVE THE RIGHT TO REJECT ANY RECOMMENDATION AND THE APPROVAL OF SAID BOARD(S) ARE NECESSARY BEFORE A VALID AND BINDING CONTRACT MAY BE EXECUTED BY THE COUNTY.

XIV. INFORMATION ABOUT PROPOSER & REFERENCES:

The Proposer shall provide a profile which, at a minimum, includes the following items:

- a. Name of Proposer
- b. Address
- c. Year Firm was founded
- d. Total Number of Employees in Firm
- e. Size of staff to be dedicated to this project
- f. List of Individuals proposed to be assigned to this project with their experience/credentials
- g. References: Indicate five (5) current client references for similar services, include
 - 1) Client Name
 - 2) Client Address
 - 3) Contact Name, Title, Telephone Number and email address
 - 4) Description of Services
 - 5) When services were provided
- h. Experience on similar type projects
- i. Implementation timeline
- j. Years of experience
- k. Any other information that you deem relevant to allow the College to better judge your capability to successfully complete the Scope of Work.

XV. INDEMNIFICATION AND INSURANCE:

THE FIRM AGREES AND SHALL BE SUBJECT TO THE INSURANCE REQUIREMENTS CONTAINED IN **SCHEDULE "C"**, which schedule is attached to and forms a part of **Exhibit A**. IN ADDITION TO, AND NOT IN LIMITATION OF the insurance provisions contained in Schedule "C", the FIRM agrees:

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

- (a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the sole negligence of the County, the Consultant shall indemnify and hold harmless the County, its officers, employees, agents, and elected officials, and the College, its officers, employees, and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Consultant or third parties under the direction or control of the Consultant; and
- (b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto; and
- (c) In the event the Consultant does not provide the above defense and indemnification to the County, and such refusal or denial to provide the above defense and indemnification is found to be in breach of his provision, then the Consultant shall reimburse the County's reasonable attorney's fees incurred in connection with the defense of any action, and in connection with enforcing this provision of the Agreement.

If the proposer is selected, the County of Westchester and the proposer shall be named as insured on all policies obtained by the Proposer and Certificates of Insurance shall be furnished to the County of Westchester by the proposer and an indemnity provision similar to that recited above will be included on all such insurance policies.

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

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

XVI. PROPOSALS SUBJECT TO FREEDOM OF INFORMATION LAW:

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

A) *insert the following notice in the front of its proposal:*

"NOTICE

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

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

and

B) *Clearly identify the pages of the proposal containing such information by typing in bold face on the top of each page -*

"*The proposer believes that this information is protected from disclosure under the State Freedom of Information Law."

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

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

XVII. MACBRIDE PRINCIPLES:

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

XVIII. MBE/WBE POLICY:

Pursuant to Local Law No. 27-1997, it is the goal of the County to encourage, promote and increase participation of business enterprises which are owned and controlled by persons of color or women in contracts and projects funded by the County, and to monitor such participation.

The following documents are not to be completed at this time.
They will be completed by the Selected Proposer.
However, you should review these documents to satisfy yourself that you can
comply with and sign the documents if you are the Successful Proposer.

EXHIBIT "A"

THIS AGREEMENT, made the day of , 2024 by and between

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601, acting by and through Westchester Community College, 75 Grasslands Road, Valhalla, New York 10595
(hereinafter referred to as the "County" or the "College")

and

(hereinafter referred to as the "Consultant")

W I T N E S S E T H:

WHEREAS, the County desires to obtain a Grants Management and Compliance Consulting Services for Westchester Community College; and

WHEREAS, the Consultant desires to develop Grants Management and Compliance Consulting Services for the College for the compensation and on the terms herein provided.

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

FIRST: The Consultant shall, for the term of this Agreement, provide Grants Management and Consulting Services to Westchester Community College (the "College"), as

more fully set forth in the Scope of Services attached hereto and made a part hereof as Schedule “A” (the “Work”).

If there is a conflict among the terms of this Agreement, the Request for Proposals and Consultant’s proposal, the following order or precedence shall apply:

1. This Agreement;
2. The Request for Proposals; and
3. The Consultant’s Proposal.

A list of key personnel of the Consultant, who shall be responsible for the implementation of this Agreement, is set forth in Schedule ["A-2"]. The Consultant shall provide the College’s Personnel Director (“Director”) with prior written notice of any proposed changes in key personnel, and the Director or his/her duly authorized designee shall have sole discretion to approve or disapprove of any such personnel changes.

SECOND: For the provision of Grants Management and Consulting Services provided pursuant to Paragraph "FIRST", the Consultant shall be paid as follows: _____ (See Schedule “B”, attached hereto and made a part hereof). Payment of fees is subject to _____ and shall be inclusive of all out-of-pocket costs, expenses and disbursements.

Any and all requests for payment to be made, including requests for partial payment made in proportion to the Work completed, shall be made by submission of duly executed payment vouchers of the College, and paid only after approval by the President of the College or her authorized designee (the “President”). All payment vouchers must be accompanied by a numbered invoice. All invoices submitted during a calendar year shall utilize consecutive numbering and be non-repeating.

THIRD: The services to be performed pursuant to the terms of this Agreement shall commence on or about _____ 1, 2024 as directed by the Director and continue through _____30, 2029, regardless of the actual date of execution of this instrument, unless terminated sooner as provided herein, which shall be the term of this Agreement.

In accordance with County policy, the County shall periodically monitor and record the Consultant's performance during the term of the contract in accordance with its established evaluation measures.

FOURTH: The Consultant shall provide the College with detailed written reports, in a form to be specified by the Director, outlining the Consultant's progress in achieving the Targets/Outcomes set forth in the Scope of Work. The Consultant shall immediately inform the President in writing of any cause for delay in the performance of his obligations under this Agreement.

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

It is recognized and understood by the Consultant that as part of the County's right to audit the Consultant to substantiate the basis for payment, the County has the right to audit the performance of the terms of this contract by the Consultant. Towards this end, the County may request documentation from the Consultant to verify performance of the terms of this Agreement, which the Consultant shall provide. The County may also make site visits to the location(s) where the work is being performed to both review the Consultants' records and observe the performance of the contract.

SIXTH: The parties recognize and acknowledge that the obligations of the County under this Agreement are subject to annual appropriations by its Board of Legislators pursuant to the Laws of Westchester County. Therefore, this Agreement shall be deemed executory only to the extent of the monies appropriated and available. The County shall have no

liability under this Agreement beyond funds appropriated and available for payment pursuant to this Agreement. The parties understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. The County shall retain the right, upon the occurrence of the adoption of any County Budget by its Board of Legislators during the term of this Agreement or any amendments thereto, and for a reasonable period of time after such adoption(s), to conduct an analysis of the impacts of any such County Budget on County or College finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates set forth herein. If the County subsequently offers to pay a reduced amount to the Consultant, then the Consultant shall have the right to terminate this Agreement upon reasonable prior written notice.

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

SEVENTH: (a) The County, upon thirty (30) days' notice to the Consultant may terminate this Agreement in whole or in part when the County deems it to be in its best interest to do so. In such event, the Consultant shall be compensated, and the County shall be liable only for payment for services already rendered under this Agreement prior to the effective date of termination at the rates specified in Schedule "B". Upon receipt of notice that the County is

terminating this Agreement in its best interests, the Consultant shall stop Work immediately and incur no further costs in furtherance of this Agreement without the express approval of the President, and the Consultant shall direct any approved subconsultants to do the same.

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

(b) In the event the County determines that there has been a material breach by the Consultant of any of the terms of the Agreement and such breach remains uncured for ten (10) days after service on the Consultant of written notice thereof, the County, in addition to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power and authority to complete the Work provided for in this Agreement, or contract for its completion. Without limiting the foregoing, upon written notice to the Consultant, repeated breaches by the Consultant of duties or obligations under this Agreement shall be deemed a material breach of this Agreement justifying termination for cause hereunder without requirement for further opportunity to cure.

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

NINTH: The Consultant shall not knowingly engage any client that would create conflicts of interest or adverse publicity for the County. The Consultant agrees to exercise due diligence to ensure that no such conflicts of interest exist.

TENTH: The Consultant recognizes that this Agreement does not grant it the exclusive right to perform these services for the County, and that the County may enter into similar agreements with other Consultants on an “as needed” basis.

ELEVENTH: The Consultant represents and warrants that it has not employed or retained any person to solicit or secure this Agreement, and that it/he/she has not paid or agreed to pay any person any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, without limiting any other rights or remedies to which the County may be entitled or any civil or criminal penalty to which any violator may be liable, the County shall have the right, in its discretion, to terminate this Agreement without liability, and to deduct from the contract price, or otherwise to recover, the full amount of such fee, commission, percentage, gift or consideration.

TWELFTH: The Consultant shall comply, at its own expense, with the provisions of all applicable state and municipal requirements and with all state and federal laws applicable to the Consultant and the services being performed hereunder. The Consultant shall further comply with all rules, regulations and licensing requirements pertaining to its professional status.

THIRTEENTH: The Consultant agrees and shall be subject to the insurance requirements set forth in Schedule "C" entitled "Standard Insurance Provisions", attached hereto and made a part hereof in Schedule "C" entitled "Standard Insurance Provisions", attached hereto and made a part hereof. In addition to, and not in limitation of the insurance requirements contained in Schedule "C", the Consultant agrees:

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the sole negligence of the County, including the College, the Consultant shall indemnify

and hold harmless the County, including the College, their employees, agents and officers, from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the negligent acts, errors and omissions of the Consultant or third parties under the direction or control of the Consultant;

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

(c) In the event the Consultant does not provide the above defense and indemnification to the County, and such refusal or denial to provide the above defense and indemnification is found to be in breach of his provision, then the Consultant shall reimburse the County's reasonable attorney's fees incurred in connection with the defense of any action, and in connection with enforcing this provision of the Agreement.

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

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

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

It is hereby acknowledged by the Consultant that any document, including reports and other deliverables required under this Agreement, which is produced to the County in electronic format, shall be provided to the County in a format that complies with the Americans with Disabilities Act of 1990, P.L. 101-336, 42 U.S.C. 12101, et seq. ("ADA") accessibility requirements and the recommendations set forth in the Web Content Accessibility Guidelines (WCAG) 2.0, Level AA ("WCAG Standards"). This obligation does not apply to drafts or non-final versions of such documents. Notwithstanding the foregoing to the contrary herein, in the event such drafts or non-final documents need to be shared by the County with either the general public or persons or groups requiring ADA compliant documents, the County reserves the right, on a case-by-case basis, to require that such drafts or non-final versions of Consultant documents comply with the ADA requirements and/or WCAG Standards and be made available to the County. All documents required to be ADA and/or WCAG Standards compliant must be accompanied by a signed certification from the Consultant stating the following: "I affirm that this document meets the Web Content Accessibility Guidelines (WCAG) 2.0, Level AA." In the event it is determined that a document is not ADA compliant or does not meet the WCAG Standards required thereunder, the Consultant shall, at its sole cost and expense promptly remedy any non-compliant issues or deficiencies identified by the County in connection therewith. If the Consultant does not, or is unable to, promptly remedy any such non-compliant issues or deficiencies, the County may remedy said issues or deficiencies and any costs and expenses incurred by the County in connection therewith may be offset against any amounts due to the Consultant.

FIFTEENTH: The Consultant expressly agrees that neither it nor any Consultant, subconsultant, employee, or any other person acting on its behalf shall discriminate against or

intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Consultant acknowledges and understands that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.

SIXTEENTH: All notices of any nature referred to in this Agreement shall be in writing and sent by registered or certified mail postage pre-paid, to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing:

To the County:

Dr. Belinda Miles President
Westchester Community College
75 Grasslands Road
Valhalla, New York 10595

and

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

To the Consultant:

SEVENTEENTH: This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

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

Attached hereto and forming parts hereof are the schedules listed below. Simultaneous with its

execution of this Agreement, the Consultant shall provide the County with a completed copy of each schedule. The Consultant agrees that the terms of each of these schedules has been accepted and agreed-to by the Consultant by virtue of its execution of this Agreement, and the Consultant represents and warrants that it has completed each of these schedules accurately and completely.

- 1.) Schedule “D” — “Business Enterprises Owned and Controlled by Women or Persons of Color”

Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by women or persons of color in contracts and projects funded by all departments of the County.

- 2.) Schedule “E” — “Required Disclosure of Relationships to County”

In the event that any information provided in Schedule “E” must be changed during the term of this Agreement, the Consultant agrees to notify the County in writing within ten (10) business days and provide an updated version of the schedule. The Consultant shall also have each approved subcontractor complete a separate Schedule “E” and shall advise the subcontractor of the duty to report any changes to the information contained therein to the Consultant within ten (10) business days of such event and such information shall be forwarded by the Consultant to the County in the manner described above.

- 3.) Schedule “F” — “Criminal Background Disclosure”

This schedule is required pursuant to Executive Order No. 1-2008.

- 4.) Schedule “G” — “Certification Regarding Business Dealings with Northern Ireland”

Pursuant to Section 310.01 of the Laws of Westchester County, no County procuring officer may award or recommend for award any contract not subject to

competitive bidding to a party that does not execute a certification in substantially the form contained in Schedule “G”.

- 5.) Schedule “H” — “Questionnaire Regarding Business Enterprises Owned and Controlled by Service-Disabled Veterans”

The County believes it is a laudable goal to provide business opportunities to veterans who were disabled while serving our country and wants to encourage the participation in County contracts of certified business enterprises owned and controlled by service-disabled veterans. This schedule is required as part of the County’s program to encourage the participation of such business enterprises in County contracts, and in furtherance of Article 17-B of the New York State Executive Law.

- 6.) Schedule “I” – “Consultant Affidavit”

The Consultant further represents that, as a material element of this agreement, and prior to the rendering of any services to the County, it has filed with the Westchester County Clerk an instrument in the form of the attached.

EIGHTEENTH: This Agreement shall not be enforceable until signed by all parties and approved by the Office of the County Attorney.

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

TWENTIETH: If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in

applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

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

WESTCHESTER COMMUNITY COLLEGE

By _____
By: Belinda S. Miles, President

NAME OF ENTITY

By _____
Signature _____
Print Name: _____
Title: _____

Approved by the _____ on the _____ day of _____, 2024.

Approved:

County Attorney
The County of Westchester

Print Name: _____
Date: _____

SCHEDULE "A-1"

SCOPE OF WORK

AS STATED IN RFP

SCHEDULE "A-2"

SCOPE OF WORK

AS PROVIDED BY SUCCESSFUL PROPOSER

SCHEDULE B
FEE SCHEDULE

SCHEDULE "C"

STANDARD INSURANCE PROVISIONS **(Consultant)**

1. Prior to commencing work, and throughout the term of the Agreement, the Consultant shall obtain at its own cost and expense the required insurance as delineated below from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better. Consultant shall provide evidence of such insurance to the County of Westchester ("County"), either by providing a copy of policies and/or certificates as may be required and approved by the Director of Risk Management of the County ("Director"). The policies or certificates thereof shall provide that ten (10) days prior to cancellation or material change in the policy, notices of same shall be given to the Director either by overnight mail or personal delivery for all of the following stated insurance policies. All notices shall name the Consultant and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the Director, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Director, the Consultant shall upon notice to that effect from the County, promptly obtain a new policy, and submit the policy or the certificate as requested by the Director to the Office of Risk Management of the County for approval by the Director. Upon failure of the Consultant to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated.

Failure of the Consultant to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Consultant from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Consultant concerning indemnification.

All property losses shall be made payable to the "County of Westchester" and adjusted with the appropriate County personnel.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of Consultant's negligent acts or omissions under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Consultant until such time as the Consultant shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Consultant maintains broader coverage and/or higher limits than the minimums identified herein, the County shall be entitled to the broader coverage and/or higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

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

- a) Workers' Compensation and Employer's Liability. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE- 200, available to download at: <http://www.wcb.ny.gov>.

If the employer is self-insured for Workers' Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

b) Commercial General Liability Insurance with a combined single limit of \$1,000,000 (c.s.1) per occurrence and a \$2,000,000 aggregate limit naming the "County of Westchester" as an additional insured on a primary and non-contributory basis. This insurance shall include the following coverages:

- i. Premises - Operations.
- ii. Broad Form Contractual.
- iii. Independent Contractor and Sub-Contractor.
- iv. Products and Completed Operations.

c) Commercial Umbrella/Excess Insurance: \$2,000,000 each Occurrence and Aggregate naming the "County of Westchester" as additional insured, written on a "follow the form" basis.

NOTE: Additional insured status shall be provided by standard or other endorsement that extends coverage to the County of Westchester for both on-going and completed operations.

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

- (i) Owned automobiles.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

e) Consultant's Professional Liability. The Consultant shall provide proof of such insurance. (Limits of \$1,000,000 per occurrence/\$3,000,000 aggregate).

3. All policies of the Consultant shall be endorsed to contain the following clauses:

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

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

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

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

SCHEDULE "D"

QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES OWNED AND CONTROLLED BY WOMEN OR PERSONS OF COLOR

As part of the County's program to encourage the meaningful and significant participation of business enterprises owned and controlled by persons of color or women in County contracts, and in furtherance of Section 308.01 of the Laws of Westchester County, completion of this form is required.

A "business enterprise owned and controlled by women or persons of color" means a business enterprise, including a sole proprietorship, limited liability partnership, partnership, limited liability company, or corporation, that either:

- 1.) meets the following requirements:
 - a. is at least 51% owned by one or more persons of color or women;
 - b. is an enterprise in which such ownership by persons of color or women is real, substantial and continuing;
 - c. is an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
 - d. is an enterprise authorized to do business in this state which is independently owned and operated.
- 2.) is a business enterprise certified as a minority business enterprise ("MBE") or women business enterprise ("WBE") pursuant to Article 15-a of the New York State Executive Law and the implementing regulations, 9 New York Code of Rules and Regulations subtitle N Part 540 et seq., **OR**
- 3.) is a business enterprise certified as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., and the relevant provisions of the Code of Federal Regulations as amended.

Please note that the term "persons of color", as used in this form, means a United States citizen or permanent resident alien who is and can demonstrate membership of one of the following groups:

- (a) Black persons having origins in any of the Black African racial groups;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race;
- (c) Native American or Alaskan native persons having origins in any of the original peoples of North America; or

(d) Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

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

_____ No

_____ Yes

Please note: If you answered “yes” based upon certification by New York State and/or the Federal government, official documentation of the certification must be attached.

2. If you answered “Yes” above, please check off below whether your business enterprise is owned and controlled by women, persons of color, or both.

_____ Women

_____ Persons of Color (*please check off below all that apply*)

_____ Black persons having origins in any of the Black African racial groups

_____ Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race

_____ Native American or Alaskan native persons having origins in any of the original peoples of North America

_____ Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian sub-continent or the Pacific Islands

[NO FURTHER TEXT ON THIS PAGE]

SCHEDULE "E"

REQUIRED DISCLOSURE OF RELATIONSHIPS TO COUNTY

1.) Are any of the employees that the Contractor will use to carry out this contract also a County officer or employee, or the spouse, child, or dependent of a County officer or employee?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

2.) Are any of the owners of the Contractor or their spouses a County officer or employee?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

3.) Do any County officers or employees have an **interest**¹ in the Contractor or in any approved subcontractor that will be used for this contract?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

[NO FURTHER TEXT ON THIS PAGE]

¹ "Interest" means a direct or indirect pecuniary or material benefit accruing to a County officer or employee, his/her spouse, child or dependent, whether as the result of a contract with the County or otherwise. For the purpose of this form, a County officer or employee shall be deemed to have an "interest" in the contract of:

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

SCHEDULE "F"

CRIMINAL BACKGROUND DISCLOSURE

INSTRUCTIONS

Pursuant to Executive Order 1-2008, the County is required to maintain a record of criminal background disclosure from all persons providing work or services in connection with any County contract, including leases of County-owned real property and licenses:

- a.) If any of the persons providing work or services to the County in relation to a County contract are not subject to constant monitoring by County staff while performing tasks and/or while such persons are present on County property pursuant to the County contract; and
- b.) If any of the persons providing work or services to the County in relation to a County contract may, in the course of providing those services, have access to sensitive data (for example SSNs and other personal/secure data); facilities (secure facilities and/or communication equipment); and/or vulnerable populations (for example, children, seniors, and the infirm).

In those situations, the persons who must provide a criminal background disclosure ("Persons Subject to Disclosure") include the following:

- a.) Consultants, Contractors, Licensees, Lessees of County-owned real property, their principals, agents, employees, volunteers or any other person acting on behalf of said Contractor, Consultant, Licensee, or Lessee who is at least sixteen (16) years old, including but not limited to Subconsultants, Subcontractors, Sublessees, or Sublicensees who are providing services to the County, and
- b.) Any family member or other person, who is at least sixteen (16) years old, residing in the household of a County employee who lives in housing provided by the County located on County property.

Under Executive Order 1-2008, it is the duty of every County Consultant, Contractor, Licensee, or Lessee to inquire of each and every Person Subject to Disclosure and disclose whether they have been convicted of a crime or whether they are subject to pending criminal charges, and to submit this form with that information.¹ Accordingly, the attached Criminal Background Disclosure Form and Certification must be completed and agreed-to as part of this Agreement.

Please note that under no circumstances shall the existence of a language barrier serve as a basis for the waiver of or an exception from the disclosure requirements of Executive Order 1-2008. If

¹ For these disclosures, a "crime" or "pending criminal charge" includes all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State.

translation services are required by the Consultant, Contractor, Licensee, or Lessee to fulfill this obligation, it shall be at the sole cost and expense of the Consultant, Contractor, Licensee, or Lessee.

Please also note that the conviction of a crime(s) and/or being subject to a pending criminal charge(s) will not automatically result in a denial of a person's right to work on a County contract, right to be on County property, or license, but may, if the County determines that the prior conviction(s) or pending criminal charge(s) create an unacceptable risk. However, if a person fails to list or falsifies any part of his/her conviction history or any pending criminal charge(s) for any reason, he/she may be prohibited from working or being on County property without any risk assessment. If it is later determined that a Person Subject to Disclosure failed to disclose a criminal conviction or pending criminal charge for any reason, his/her right to work on a County contract, be on County property, or license may be terminated at any time.

Please further note that, pursuant to Executive Order 1-2008, and subject to the applicable provisions of New York Correction Law §§ 752 and 753, the County has the right to bar a Person Subject to Disclosure from providing work or services to the County or from being on County property if any such person has:

- a.) A conviction of a crime(s);
- b.) A pending criminal proceeding for a crime(s); or
- c.) Refused to answer questions concerning his/her criminal background

Please finally note that any failure by a County Consultant, Contractor, Licensee, or Lessee to comply with the disclosure requirements of Executive Order 1-2008 may be considered by the County to be a material breach and shall be grounds for immediate termination by the County of the related County contract.

Exemptions

Executive Order 1-2008 exempts from the aforementioned disclosure requirements Persons Subject to Disclosure:

- a.) for whom the County has already conducted a background check and issued a security clearance that is in full force and effect; and
- b.) for whom another state or federal agency having appropriate jurisdiction has conducted a security and/or background clearance or has implemented other protocols or criteria for this purpose that apply to the subject matter of a County contract that is in full force and effect.

If you are claiming an exemption for one or more Persons Subject to Disclosure, you must notify

the Procuring Officer². The Procuring Officer will then determine whether the Person(s) Subject to Disclosure are actually exempt and provide written notification of his/her determination. If the Procuring Officer determines that a Person Subject to Disclosure is not exempt, the Procuring Officer will notify you of that determination, and you will have to include disclosures for that person on your Criminal Background Disclosure Form and Certification.

Subconsultants, Subcontractors, Sublessees, or Sublicensees

Under Executive Order 1-2008, it is your duty to ensure that any and all approved subconsultants, subcontractors, sublessees, or sublicensees complete and submit the attached Criminal Background Disclosure Form and Certification for all of their respective Persons Subject to Disclosure. This must be done before such a subconsultant, subcontractor, sublessees, or sublicensees can be approved to perform work on a contract.

New Persons Subject to Disclosure

Under Executive Order 1-2008, you have a **CONTINUING OBLIGATION** to maintain the accuracy of the Criminal Background Disclosure Form and Certification (and any accompanying documentation) for the duration of this contract, including any amendments or extensions thereto. Accordingly, it is your duty to complete and submit an updated Criminal Background Disclosure Form and Certification whenever there is a new Person Subject to Disclosure for this contract. **NO NEW PERSON SUBJECT TO DISCLOSURE SHALL PERFORM WORK OR SERVICES OR ENTER ONTO COUNTY PREMISES UNTIL THE UPDATED CRIMINAL BACKGROUND DISCLOSURE FORM AND CERTIFICATION IS FILED WITH THE PROCURING OFFICER.** You shall also provide the County with any other updates that may be necessary to comply with the disclosures required by Executive Order 1-2008.

PLEASE CONTINUE TO THE

Criminal Background Disclosure Form and Certification

BEGINNING ON THE NEXT PAGE

² Procuring Officer” shall mean the head of the department or the individual or individuals authorized by the head(s) of the department(s) undertaking the procurement and with respect to those matters delegated to the Bureau of Purchase and Supply pursuant to Section 161.11(1)(a) of the Laws of Westchester County, the Purchasing Agent.

CRIMINAL BACKGROUND DISCLOSURE

FORM AND CERTIFICATION

If this form is being completed by a subconsultant, subcontractor, sublessee, or sublicensee, please consider all references in this form to “consultant, contractor, lessee, or licensee” to mean “subconsultant, subcontractor, sublessee, or sublicensee” and check here: _____

By executing this Agreement, I, as the signatory for the Contractor, certify that I am a principal or a representative of the Consultant, Contractor, Lessee, or Licensee and I am authorized to agree to and provide this completed Criminal Background Disclosure Form and Certification. I certify that each Person Subject to Disclosure has been asked the following questions:

- **Have you or your company ever been convicted of a crime (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State) including, but not limited to, conviction for commission of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property?**

- **Are you or your company subject to any pending criminal charges (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State)?**

I certify that the names and titles of Persons Subject to Disclosure who refused to answer either of the questions above are as follows:

If none, check this box:

1. _____

2. _____

3. _____

(If more space is needed, please attach separate pages labeled “REFUSED to Answer - Continued.”)

I certify that the names and titles of Persons Subject to Disclosure who answered “Yes” to either of the questions above are as follows:

If none, check this box:

1. _____

2. _____

3. _____

(If more space is needed, please attach separate pages labeled “YES Answers - Continued”)

Each Person Subject to Disclosure listed above who has either **been convicted of a crime(s)** and/or **is subject to a pending criminal charge(s)** must answer additional questions. Those questions are below.

A Person Subject to Disclosure who has **been convicted of a crime(s)** must respond to the following (please attach separate pages with responses for each person, with their name and title):

- 1.) Describe the reason for being on County property if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the County, including but not limited to, access to sensitive data and facilities and access to vulnerable populations.
- 2.) Please list all criminal convictions along with a brief description of the crime(s) (including all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).
- 3.) Please provide the date and place of each conviction.
- 4.) Please provide your age at the time of each crime for which you were convicted.
- 5.) Please provide the legal disposition of each case.
- 6.) Please provide any information either produced by yourself or someone on your behalf in regard to your rehabilitation and good conduct.

A Person Subject to Disclosure who **is subject to a pending criminal charge(s)** must respond to the following (please attach separate pages with responses for each person, with their name and title):

- 1.) Describe the reason for being on County property and if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the County, including but not limited to, access to sensitive data and facilities and access to vulnerable populations.
- 2.) Please identify all pending criminal charges (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).
- 3.) Please briefly describe the nature of the pending charges and the

date upon which it is alleged that a crime was committed.

I hereby certify that all of the information provided herein (and in any and all attachments) is true and accurate and that all disclosures required by Executive Order 1-2008 and this Criminal Background Disclosure Form and Certification have been completed. By executing this Agreement, I hereby affirm that all of the facts, statements and answers contained herein (and in any and all attachments) are true and correct. I understand that providing false or incomplete information or withholding by omission or intention pertinent information will be cause for refusing further consideration of my being utilized under this contract.

It is understood and agreed that no Person Subject to Disclosure shall perform work or services or enter onto County property until this required Criminal Background Disclosure Form and Certification is filed with the Procuring Officer.

It is understood and agreed that to the extent that new Persons Subject to Disclosure are proposed to perform work or provide services under this contract after filing of this Criminal Background Disclosure Form and Certification with the Procuring Officer, such new Persons Subject to Disclosure shall not perform work or provide services or enter into County property until an updated Criminal Background Disclosure Form and Certification has been filed with the Procuring Officer.

It is further understood and agreed that the consultant, contractor, lessee, or licensee has a continuing obligation to maintain the accuracy of the Criminal Background Disclosure Form and Certification for the duration of this contract, including any amendments or extensions thereto, and shall provide any updates to the information to the County as necessary to comply with the requirements of Executive Order 1-2008.

[NO FURTHER TEXT ON THIS PAGE]

SCHEDULE "G"

CERTIFICATION REGARDING BUSINESS DEALINGS WITH NORTHERN IRELAND

A. The Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles.

B. For purposes of this Certification, "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

- (1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- (2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- (3) ban provocative religious or political emblems from the workplace;
- (4) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- (5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- (6) abolish all job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religion;
- (7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- (8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- (9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

C. For purposes of this Certification, "Northern Ireland" shall be understood to be the six counties partitioned from the Irish Province of Ulster and administered from London and/or from Stormont.

D. The Contractor agrees that the warranties and representation in paragraph "A" are material conditions of this Agreement. If the County receives information that the Contractor is in violation of paragraph "A", the County shall review such information and give the Contractor opportunity to respond. If the County finds that such a violation has occurred, the County may declare the Contractor in default, and/or terminate this Agreement. In the event of any such termination, the County may procure the supplies, services or work from another source in accordance with applicable law. The Contractor shall pay to the County the difference between the contract price for the uncompleted portion of this Agreement and the cost to the County of

completing performance of this Agreement either by itself or by engaging another contractor. If this is a contract other than a construction contract, the Contractor shall be liable for the difference in price if the cost of procurement from another source is greater than what the County would have paid the Contractor plus any reasonable costs the County incurs in any new procurement and if this is a construction contract, the County shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this Agreement. In addition, the Contractor may be declared not to be a responsible bidder or proposer for up to three (3) years, following written notice to the Contractor, giving the Contractor the opportunity for a hearing at which the Contractor may be represented by counsel. The rights and remedies of the County hereunder shall be in addition to, and not in lieu of, any rights and remedies the County has pursuant to this Agreement or by operation of law or in equity.

[NO FURTHER TEXT ON THIS PAGE]

SCHEDULE "H"

For Informational Purposes Only

**QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES
OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS**

The County believes it is a laudable goal to provide business opportunities to veterans who were disabled while serving our country and wants to encourage the participation in County contracts of certified business enterprises owned and controlled by service-disabled veterans. As part of the County's program to encourage the participation of such business enterprises in County contracts, and in furtherance of Article 17-B of the New York State Executive Law, we request that you answer the questions listed below.

The term "Certified Service-Disabled Veteran-Owned Business" shall mean a business that is a certified service-disabled veteran-owned business enterprise under the New York State Service-Disabled Veteran-Owned Business Act (Article 17-B of the Executive Law).

1. Are you a business enterprise that is owned and controlled by a service-disabled veteran in accordance with the standards listed above?

_____ No
_____ Yes

2. Are you certified with the State of New York as a Certified Service-Disabled Veteran-Owned Business?

_____ No
_____ Yes

If you are certified with the State of New York as a Certified Service-Disabled Veteran-Owned Business, please attach a copy of the certification.

[NO FURTHER TEXT ON THIS PAGE]

