

City of Kingston Purchasing Department  
RFP#: K19-22  
Consulting Service to Replace Municipal Zoning Code with a Land Use Plan  
Tuesday, November 26, 2019  
11:00am

## Request for Proposals

### CONSULTING SERVICE TO REPLACE MUNICIPAL ZONING CODE WITH A LAND USE PLAN KINGSTON, NY



**RFP Release Date:** **Thursday, October 31, 2019**

**Proposals Due:** **Tuesday, November 26, 2019 at 11:00 A.M. local time.**

**It is recommended that proposals be submitted in advance, at least one day prior to the specified date and time to allow for a timely receipt. LATE PROPOSALS will NOT be considered.**

**Send a clearly marked original and three (3) photocopies, and one electronic copy (CD or thumb drive) of the proposal.**

**Please use the above RFP number on all correspondence.**

**REQUEST FOR PROPOSAL DEFINITION:**

*An RFP defines 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 in a cost-effective manner. The proposed solutions are evaluated against a predetermined set of criteria of which price may not be the primary consideration.*

**Steven T. Noble  
John R. Tuey  
Brian J. Woltman**

**Mayor of the City of Kingston  
Comptroller  
Purchasing Agent**

**City of Kingston Purchasing Department**  
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**RECEIPT CONFIRMATION FORM**

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

Brian J. Woltman; Purchasing Agent  
City of Kingston Purchasing Department  
420 Broadway, City Hall  
Kingston, NY 12401  
Telephone: (845) 334-3943 Fax: (845) 334-3944  
[bwoltman@kingston-ny.gov](mailto:bwoltman@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 Number: \_\_\_\_\_

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

I have received a copy of the above noted RFP Specification.

We will be submitting a PROPOSAL

We will NOT be submitting a PROPOSAL – (please indicate reason)

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

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

A Pre-Proposal Conference has **NOT** been scheduled for this RFP.

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**1.0 INTRODUCTION**

The City of Kingston, New York is issuing a request for proposals (RFP) from qualified consultants to replace the City's land use and planning regulations. This project will result in a complete replacement and modernization of the code to provide clarity, improve overall functionality, and achieve greater sensitivity to the fabric and character of Kingston.

**RFP Contact Person:**

The Contact person for this project is Brian J. Woltman. All RFP questions and/or inquiries should be directed to him. He may be reached at:

**Telephone: (845) 334-3943**

**Email: [bwoltman@kingston-ny.gov](mailto:bwoltman@kingston-ny.gov)**

**Proposals Due Date:**

All proposals must be delivered to the office of the City of Kingston Purchasing Department by **Tuesday, November 26, 2019 at 11:00 A.M.** after which they will be publicly opened. No proposals shall be accepted or considered after that time. It is the responsibility of each offeror to ensure that their proposal arrives on time.

RFP submissions shall be in a sealed envelope addressed to:  
City of Kingston Purchasing Department  
420 Broadway  
Kingston, NY 12401

On face of said envelope the following information shall be included:

- 1) NAME AND ADDRESS OF OFFEROR:
- 2) NAME OF RFP:

**Background:**

The City of Kingston, Kingston, New York is governed by its charter, City of Kingston local laws and general laws of the State of New York.

**Project Goals**

The primary goals of this project are as follows:

(Citations refer to the City of Kingston's 2025 Comprehensive Plan, unless otherwise noted below)

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Promote and encourage historic preservation through supporting the goals of the Landmarks Commission and Kingston Heritage Area Commission through their work with the National Historic Register, State and Local (NHR) historic districts, individually listed structures, structures and sites deemed eligible for the NHR as well as with respect to neighborhood character, including incorporating Certified Local Government model law and key aspects of historic preservation.

Provide a straightforward and easy-to-interact-with land use planning process from application to certificate of occupancy.

Encourage development of mixed-use structures and adaptive reuse of existing structures; (Objective 4.4)

Promote use of mass transit and other low-carbon-impact methods of transportation, especially walkable and bikeable communities; (Goal 5, Objective 5.5)

Incentivize housing production for all income levels throughout the City; (Goal 2)

Incentivize affordable housing production (low, moderate and workforce) in all housing projects throughout the City; (Goal 2)

Encouraging rental use as permanent housing by implementing special use regulation on short term rentals;

Strongly discourage vacant commercial space. Use the code to promote the use of space over vacancy including the use of HTCs for commercial structures (Strategies 4.1.7, 4.10.5);

Encourage urban agriculture; (Objective 1.3, Objective 2.5, Strategy 2.5.1)

Require low-impact development:

Ensure storm water runoff and erosion protection; (Strategies 3.3.1, 7.1.3)

Promote daylighting of waterways where applicable;

Discourage the use of impervious surfaces (Strategies 3.1.1, 5.2.)

Maintain, preserve and promote scenic views; (Strategy 3.2.1)

When developing previously undeveloped land, promote cluster development and preservation of continuous tracts of land; (Objective 3.1)

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Promote public/private partnerships to create spaces for public use; (Strategy 4.1.2)

Require the use of energy-efficient building techniques and promote the use of renewable sources of energy; (Strategy 4.2.2)

Ensure that development in flood prone areas is constructed in a way that it is resilient to the damages of flooding and minimizes adverse environmental impacts in the event of a flood without discouraging building in these economically stimulating areas. (Kingston Climate Action Plan, p.10-13, Objective 7.1)

Promote a more environmentally responsible, green community as described in:  
Proposed Open Space Plan (Goal 3, Strategy 3.3.5)  
Kingston Climate Action Plan (p 10-13, Goal 1, Objective 1.2, Strategy 1.2.2)

## PROJECT IMPLEMENTATION

The City envisions the Project Implementation to follow the structure detailed below. Project schedules submitted with the RFP should conform to this structure, or, propose and justify an alternative structure.

### TASK 1: PROJECT INITIATION

Subtask 1.1: Initial Meeting. The Consultant will meet with the Zoning Task Force & City staff to confirm all goals, expectations, and timetables for the project, as well as identify data and information needs. The Consultant will provide meeting minutes of the meeting.

### TASK 2: INITIAL REVIEW AND ANALYSIS

Subtask 2.1: Review Existing Materials. The Consultant will become familiar with the existing materials related to City planning. A complete list of documents to review is listed in the Appendix section of this document. Specifically the consultant should be familiar with the City's current Zoning Code and 2025 Comprehensive plan; but also recently completed and ongoing studies and community developed language to influence land use planning.

Subtask 2.2: Community Character Analysis. The Consultant will become familiar with the physical details of the City through a comprehensive study of the historical and current patterns of urbanism, the physical attributes and architecture in Kingston paying particular note to the City's rich history. The consultant will provide synoptic studies of each neighborhood in terms of City design and form.

Subtask 2.3: Identify Stakeholders. The Consultant will work with the City to identify the appropriate stakeholders for this project, which could include developers, property owners, neighborhood representatives, business organizations, and others. Specific efforts must be made to actively engage a diverse cross-section of the community which represents the demographic found within the City.

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Subtask 2.4: Interviews. The Consultant will interview appropriate stakeholders involved with the current land use code; including, but not limited to: residents, City staff and elected officials, board members, property owners, neighborhood representatives, local design and engineering professionals, developers, business organizations, nonprofit organizations and other interested parties.

### **TASK 3: PUBLIC DESIGN PROCESS**

Subtask 3.1: Background Maps. The City will provide all necessary base map information as needed by the Consultant. These documents will be used to produce the maps that will be used during the preparation of the form-based code. At the conclusion of the project, the Consultant will provide to the City all generated maps and any information created in electronic format compatible with software platform.

Subtask 3.2: Public Workshops and/or Design Charrettes. The Consultant will organize and lead design workshops or a full planning charrette to engage the community, gather ideas and goals, and formulate implementation strategies. The Consultant will tailor the workshop or charrette to obtain maximum community input so as to produce the best possible master plan on which to base the new code. The charrette format will also take into consideration the findings of the initial analysis, input from staff, and information obtained at previous meetings, and interviews. While the end result will be new land development regulations, the public process will include discussions of alternatives for street design, street connectivity, and City planning strategies that create vital City centers, corridors, and livable neighborhoods. At the conclusion of the workshop(s), the Consultant will present the work generated to-date to the project advisory committee. Plans, renderings, and initial coding ideas that reflect ideas articulated in the workshops will be publicly presented and further feedback solicited from the community. It is essential that local government officials attend this presentation along with citizens, stakeholders and technicians. The Consultant will prepare a written summary of the workshop/charrette, including any agreements/understanding reached and steps proposed going forward. Please note that these community engagement strategies should be conducted by presenters who can read, write, and speak Spanish as well as provide all written materials/hand-outs/deliverables from these forums in both English and Spanish.

### **TASK 4: DRAFTING THE FORM-BASED CODE**

Subtask 4.1: Design Parameters for the Form-Based Code. The new code will regulate land use and development to ensure high-quality public spaces defined by a variety of building types and uses including housing, retail, and office space. The new code will incorporate a regulating plan, building form standards, street standards, use regulations as needed, descriptive building or lot types, and other elements needed to implement the principles of functional and vital urbanism and practical management of growth. Sections of this document should include the following: (Citations refer to Kingston 2025 Comprehensive Plan)

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- Overview, including definitions, principles, and intent; and explanation of the regulations and process in clear user-friendly language.
- Regulating plan(s) illustrating the location of streets, blocks, public spaces (such as greens, squares, and parks), and other special features. Regulating plan(s) should also include aspects of Building Form Standards such as “build-to-lines” or “required building lines” and building type or form designations.
- Building Form Standards governing basic building form, placement, and fundamental urban and architectural elements to ensure that all buildings complement neighboring structures and the street. These standards should be based upon study of building types appropriate for the region, climate, and neighborhood vitality.
- Public Space/Street Standards defining design attributes and geometries that balance the needs of motorists, pedestrians, bicyclists, and transit riders while promoting a vital public realm. These standards should include design specifications for sidewalks, travel lane widths, parking, curb geometry, trees, and lighting.
- Administration requirements for project application and review process to generate a streamlined development process with predictable outcomes. This regulatory approval and oversight process should be transparent and efficient. Such a framework should include processes for historic form review (currently performed by the Heritage Area Commission and Historic Landmark Preservation Commission). The process should allow a simple procedure for users to submit site plans, apply for change of permitted uses within an existing structure (4.12.3) or apply for variances where needed. The framework should include a process to allow staff approval of site plans below a minimum impact threshold (4.12.5).
- The approval process should be aided by the development of a local Type 2 List as permitted by the State Environmental Quality Review Act (4.12.1).
- Create a web-based interface for the City’s regulating plan(s) and planning activities which can be easily navigated by both public officials and citizens.
- The proposed regulatory process should be transparent and provide a mechanism for public interaction with the process through technology. This includes an internet enabled method of checking site uses approved by right as well as by approval, submittal of site plans and interactive overview of the approval process, and submission and status lookup of special use permits.
- Any technology implementation must be based on an open platform with a sustainable going concern in terms of security and stability as well as be adaptable to new hosting technologies and user interfaces.

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- Address pre-existing nonconforming sites. Developing language to meet the updated land use code to address pre-existing, nonconforming properties.

Other components may also include block standards, building or lot type standards, architectural standards, green building standards, landscaping and lighting standards, parking location and management standards, along with other elements needed to fully implement the code and create a vital community.

Note that responding consultant organizations are encouraged to suggest any alternative land use planning strategies and/or frameworks.

Subtask 4.2: Integration of the Form-Based Code. With the assistance of the Consultant, City staff will undertake the integration of the form-based code into the City's existing regulatory framework in a manner that ensures procedural consistency, meshes with both State and local legal requirements, provides clarity as to applicability of existing regulations, and maximizes the effectiveness of the code. It is imperative that the Consultant include a local land use and zoning attorney familiar with the laws of the State of New York and the City in order to ensure that the form-based code is properly integrated into the City of Kingston Code.

#### TASK 5: REFINING THE FORM-BASED CODE

Subtask 5.1: Presentation of First Draft and Code-Testing Charrette. The Consultant will present the first draft of the form-based code to the project advisory committee for the purpose of gathering comments. Copies of the first draft will need to be in hardcopy and digital form and posted on a City designated website. The Consultants will then organize and conduct a Code-Testing Charrette and/or Working Session with City staff, developers and stakeholders to trial run the newly-developed code and understand how well it can function and where gaps/needs remain.

Subtask 5.2: Presentation of the Second Draft. After making revisions in response to comments on the first draft and the Code-Testing Charrette, the Consultant will present the second draft of the form based code at another meeting convened by the City.

Subtask 5.3: Post-Charrette Public Outreach. The Consultant will attend and participate in up to three (3) additional meetings with key stakeholders to explain the details of the new code and obtain further input and comments. All public outreach must be conducted in both English and Spanish and provide written materials in bilingual format.

Subtask 5.4: Final Draft Presentation. Once all revisions are integrated into the code, the Consultant will provide a final version of the code in Adobe PDF as well as in an editable, digital format. Consultant will also provide an interactive internet enabled platform for all users to navigate and process any application of the code.

#### TASK 6: APPROVAL PROCESS AND PUBLIC OUTREACH



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The Consultant shall advise and assist the City with informing the public about the project. It is important that the selected Consultant have experience in and ability to engage both English- and

Spanish-Speaking Populations: The Consultant will provide technical assistance as needed during the adoption process for the new land use and planning regulations. In particular, the Consultant will be responsible for attending meetings of the Common Council, Zoning Board and Planning Board, collecting comments, questions, and suggestions for any refinements from various sources and consolidating them into a series of action items for revision or responses.

#### TASK 7: TRAINING

In order to properly implement the form-based code on the local level, Consultant will provide at least two training sessions for City staff and officials who will be involved in the administration of the new land use and planning code. This should consist of a presentation at a meeting and the preparation of a procedural outline or other simple-to-understand well-illustrated and clearly defined written materials for attendees to take home. These materials should provide a framework for their administration activities. Proposals are to include rates for any additional training which may be needed; this rate will remain in effect for up to twelve months after the commencement of the contract period.

#### Selection Criteria

The City of Kingston is using a competitive bid process to select the winning RFP respondent, wherein the experience and approach of each submitted proposal is evaluated as it relates to the Scope of Work, services, and other elements outlined in this document. All proposals will be reviewed and rated by the City's Zoning Task Force according to the following criteria:

- A. Only those proposals that are complete and contain required certifications will be considered. The City may, at its sole and absolute discretion, issue a Notice to Cure to respondents who issue incomplete proposals. All proposals will be evaluated and examined by a committee of the City of Kingston representatives using multiple criteria. The project will be awarded to a qualified responder that, based on the committee's evaluation, submits the proposal that best meets the City's needs.
- B. Proposals will be evaluated in accordance with applicable City of Kingston procurement policies and procedures. In general, The Selection Committee, including the Zoning Task Force, will evaluate respondents based on the criteria outlined.
- C. Evaluation of proposals will be conducted by the City based on information provided in the Respondent's proposals and on any such other available information that the City determines to be relevant. The evaluation of proposals may include an on-site assessment, meetings with authorized personnel, and may involve the use of a third-party consultant.

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8. Project Budget:
- 8.1 Firms shall consider all costs (labor, material, overhead, administration, profit, travel, etc.) associated with providing the requested services as described in its technical proposal.
- 8.2 Firms shall clearly set forth in detail any and all additional expenses for which you expect to be reimbursed. The proposal must, however, provide a guarantee that no additional fees will be charged to the City without prior written consent by the City.
- 8.3 Firms shall provide the proposed fee for providing the services set forth in the scope of services section above as a total not to exceed flat fee for providing all of the services referenced herein.
- 8.4 Proposed costs should be itemized. The total cost to the City for performing the proposed services shall be indicated, broken down by component and work elements, showing titles, estimated man-hours and billing rates. Payment for services will be on the basis of actual hours worked multiplied by the billing rates, with a **maximum amount payable**.
- 8.5 It is not the intent of the City to limit innovative solutions by budget constraints, but rather to determine which proposal has the potential of providing the best value for the services required. The City will endeavor to make available in-kind services by providing mapping support, meeting coordination, and other support efforts to facilitate the project.
9. Project Deliverables: Describe project deliverables, including code text, graphics and any additional materials as outlined in the scope of work above;

**2.0 SUBMITTAL CONTENT AND FORMAT**

In order for the City to conduct a uniform review process of all proposals, proposals must be submitted in the format set forth below. Failure to follow this format may be cause for rejection of the proposal because adherence to this format is critical for the City's evaluation process:

**SECTION I**

**Title Page:** Showing RFP number, closing date and time, responder's name, address, telephone and fax number of the company. Responder must also clearly identify the name(s) of the contact person responsible for inquiries regarding the RFP submission and the person responsible to bind the company contractually. Along with the names of these individuals, responder must provide their phone and fax numbers and email address for each.

**Table of Contents** - The Table of Contents must indicate the material included in the proposal by section and page number.

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**SECTION II: QUALIFICATIONS AND EXPERIENCE**

Each responder will provide the history of their company; describe their professional qualifications, prior experience in similar projects.

Identify all personnel assigned to the project. (Attach resumes)

Provide a minimum of three (3) references, excluding The City of Kingston, for similar projects completed. Include contact name, telephone number, and date of contract, dollar value of contract and brief description of the program. Specific emphasis should be placed on similar work performed in the previous five years.

**SECTION III: PROPOSED PLAN**

In a narrative format, describe in detail how the program will be structured explaining how each of the requirements and other tasks will be accomplished. Include any other additional services, enhancements and/or options that will be provided to the City.

Explain what steps will be necessary to implement services.

Describe what information will be provided to the City effectively capturing required data. Attach samples of all reports to be used.

Describe the plan to work with the City.

**SECTION IV: FEE/COST PROPOSAL**

**Cost Proposal** – Two (2) total Fee/Cost Proposals will be submitted. One (1) original Cost/Fee proposal shall be submitted in a **separate envelope marked “COST PROPOSAL” with the RFP name and number and shall be included with the original version of the proposal submitted (do not include this information with any of the copies). One (1) copy of the fee/cost proposal will be submitted in a separate envelope marked “Fee/Cost Proposal Copy.”** The fee schedule supplied will include all items of labor, materials, travel, equipment and other costs necessary to fully provide the service.

The responder’s name must appear on all cost proposal sheets.

**SECTION V: RETURN DOCUMENTS**

Complete and sign all Return Sheets as indicated at the end of this RFP document.

**3.0 QUALIFICATION OF RESPONDENT**

Each responder shall provide a statement of qualifications as required by these

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specifications.

The City of Kingston may make such investigations it deems necessary to determine the ability of the responder to perform the work. The responder shall furnish to the City, within five (5) days of a request, all such information and data for this purpose as may be requested. The City reserves the right to reject any proposal if the information submitted by, or investigation of, such responder fails to satisfy the City that such responder is properly qualified to carry out the obligations set forth in this RFP and/or the resulting contract and to complete the work contemplated therein. Conditional proposals will not be accepted.

**4.0 PRE-PROPOSAL MEETING (VENDOR'S CONFERENCE)**

A pre-proposal meeting is not scheduled at this time.

**5.0 METHOD OF AWARD**

It is the intention of the City that the award of this project shall be made to the responder whose total proposal, in the opinion of The City of Kingston, best meets the established criteria listed herein. All aspects of evaluation will be taken into consideration in awarding the project.

It is understood by the parties that the contract resulting from this RFP shall be executed only to the extent of the monies available to the City of Kingston.

A notice of award shall not be binding upon the City until the contract has been fully executed by both parties.

**6.0 CONTRACT PERIOD**

The award term shall begin on or approximately **January 1, 2020** and continue through the successful completion of the project.

The successful responder shall execute a contract with the City of Kingston in substantial conformance with this RFP and the attached sample (Appendix 1) City of Kingston **AGREEMENT FOR PROFESSIONAL SERVICES**.

**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.

Responses must be submitted in a sealed envelope with the RFP number and Title along with the name and address of the respondent printed clearly on the outside of the envelope.

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Responses are due and must be received no later than **11:00am, Tuesday, November 26, 2019**. Late responses WILL NOT be accepted after the due date and time. All respondents are required to submit a clearly marked original, with five (5) photocopies, and one electronic copy (CD or thumb drive) of their response to:

Mr. Brian J. Woltman  
City of Kingston Purchasing Department  
City Hall - 420 Broadway  
Kingston, NY 12401

The respondents shall be required to complete, and include within their RFP Submission, the following forms which are supplied in this solicitation; an Information Sheet, and an Affidavit of Non-Collusion. The response submission should be typed on both sides of 8.5" x 11" paper. Pages should be paginated.

Responses may NOT be submitted in plastic sleeves or spiral binders. Illustrations may be included. All plans are subject to City of Kingston approval. Oversized drawings may be submitted, but must be accompanied by 8.5" x 11" sectionals or reductions to 8.5" x 11", telegraphic or facsimile proposals will **not** be accepted. The response will be evaluated on the basis of its content, not length.

Respondents relying upon the mail or other delivery services must allow for sufficient delivery time for their proposal to arrive by the due date and time.

Faxed or e-mailed submissions **WILL NOT BE ACCEPTED.**

**Respondents are solely responsible for ensuring that their proposals arrive by the due date and time.**

The City of Kingston shall not be liable for any costs incurred by respondents in the preparation of responses or for any work performed in connection therein.

## **9.0 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 project may be awarded to a qualified responder that, based on the committee's evaluation, submits the proposal that best meets the City's needs.

The submitted proposals will be evaluated based on the following criteria:

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- **OVERALL PLAN TO PROVIDE REQUIRED SERVICES**
  - Completeness of responder's proposed plan to provide consulting services for the City of Kingston.
  - Plan to accomplish all required tasks.
  
- **FEE/PRICING PROPOSAL**
  - Cost of proposal
  - Reasonableness of fees and budget
  - Reasonableness of optional fees
  
- **QUALIFICATIONS AND EXPERIENCE**
  - Responder's experience with projects of similar size and scope
  - Personnel qualifications and experience
  - Responder's business history and viability
  - References
  
- **UNDERSTANDING OF CITY'S GOALS AND OBJECTIVES**
  - Responder understands and proposal addresses the needs of the City and offers a proposal which will meet or exceed the City's objectives.

**10.0 INQUIRIES**

All questions pertaining to this RFP are required to be made in writing no later than **4:00pm Tuesday, November 12, 2019** and must be submitted using the questionnaire form included within this specification. All questions must be emailed to Brian Woltman at the following email address: [bwoltman@kingston-ny.gov](mailto:bwoltman@kingston-ny.gov)

All substantive questions received by the above mentioned deadline will be responded to in the form of an addendum issued no later than **Tuesday, November 19, 2019**.

The addendum will be sent to all respondents that 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.

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**11.0 SCHEDULE OF PERTINENT DATES**

Listed below are specific and estimated dates and times of actions related to this request for proposal (RFP). In the event it is necessary to change the return date for the RFP a supplemental addendum to this RFP shall be issued by the City.

Tuesday, November 12, 2019	Last day to submit written inquiries
Tuesday, November 26, 2019	Due Date for Proposals
Week of December 2, 2019	Selection Committee evaluates Proposals
Week of December 16, 2019	Notice of Intent to Award
Approximately January 1, 2020	Contract Start Date

**12.0 DEFINITIONS**

**Respondent:** The term “respondent” means any firm or individual submitting a proposal in response to this RFP.

**Response:** The term “response” means the material submitted by a “respondent” in reply to this Request for Proposals.

**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, and 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, and no legal commitment, obligation or liability of the City of Kingston or its representatives, employees, officers, agents or consultants shall arise by use of, or the information relating to any of these materials.

**Revisions, Interpretations or Corrections:** Revisions, interpretations or corrections of specifications made by the City of Kingston shall 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 shall not rely upon such revisions, interpretations, corrections or changes.

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**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 shall have any personal interest, direct or indirect, in this transaction, nor shall any such elected or appointed official, department head, agent or employee having such an interest participate in any decision, meeting, 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 shall 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 it to be in the best interest of the City to do so.

In the event of a postponement or cancellation of this RFP; the City of Kingston shall not be liable for any costs incurred by 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 responders as soon as possible after the initial evaluation. This will permit further evaluation and to allow the Evaluation Committee to inquire further into the experience the responder has had on similar projects, willingness and ability to work closely with City of Kingston staff and others, thorough understanding of the various aspects of the requirements, and 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 submitted by Responders that provide enhancements beyond the RFP requirements. Proposal alternatives may be considered if deemed to be in the best interest of the City's. Responders shall clearly identify and explain in detail where such alternatives deviate from or qualify the terms of the proposal and specifications as issued.



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

The responder(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. employee identification badge, valid driver's license, 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 Contractor.

**18.0 INSURANCE**

The successful responder shall, at their own expense, maintain in effect at all times during the performance of the work under this contract, if any, resulting from this RFP, at least the insurance coverage specified in Schedule C "Insurance Requirements" that is part of the sample Contract Agreement for Professional Services which is included in this RFP. The successful responder shall file with the City of Kingston, within ten (10) days of notice of award, evidence of insurance certifying the required coverage.

**19.0 DISQUALIFICATION**

The City reserves the right to refuse to issue an award to responders that fails 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 responder 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 responder 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 responder 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 PAYMENT**

**PAYMENT PROCESSING:** Responder will invoice the City monthly. Each invoice shall be prepared in such form and supported by such documentation as the City may

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reasonably require. Payments cannot be processed by the City until an invoice referring to the Contract Number and is mailed to the proper departmental address. The City will pay the proper amounts due the vendor within sixty (60) days of receipt by the City of the vendor's invoice with the requested supporting documentation and approval of the vendor's invoice by the Department Head and the City Comptroller.

**21.0 FREEDOM OF INFORMATION**

The responder 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 shall 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 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.

**22.0 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 responder with or any competitor.

**23.0 SUSPENSION AND DEBARMENT**

By submitting a proposal in response to this RFP, each responder warrants that neither it

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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 responder's status in this regard will result in rejection of such responder's submission.

In addition, if the successful responder 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 responder agrees to immediately notify the City's Corporation Counsel of such status. Any misrepresentation or false statement related to the successful responder's status in this regard, or any failure by the successful responder to immediately notify the City's Corporation Counsel of any change in such status, shall result in immediate termination of City's business relationship with the successful responder 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.

**24.0 PREVAILING WAGE RATES**

N/A

**25.0 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, shall be included in the submitted proposal.

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**SUBMIT ALL QUESTIONS PERTAINING TO THIS RFP**  
**IN WRITING NO LATER THAN 4:00 PM Tuesday, November 12, 2019.**

**Please use this form and email questions to Brian Woltman at [bwoltman@kingston-ny.gov](mailto:bwoltman@kingston-ny.gov) all substantive questions will be responded to in the form of an addendum no later than Tuesday, November 19, 2019.**

**Date:** \_\_\_\_\_

**Company Name:** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Fax Number:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

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**Appendix 1**

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This sample agreement may be modified as required by the City of Kingston.

City Contract No.: \_\_\_\_\_

## **AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT** is entered into by and between the **CITY OF KINGSTON**, a municipal corporation, in the county of Ulster, State of New York, with principal offices at 420 Broadway, Kingston, New York 12401 (the “**City**”), and **[ENTER FIRM NAME HERE]**, a [to be completed by contract management] with principal offices at [Enter Firm’s Business Address] (the “**Firm**”), (each, a “Party,” together, the “Parties”).

### **RECITALS**

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

**WHEREAS**, the Firm [state brief description of how the firm is qualified to provide service and was selected]; 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] 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 City and the Firm hereby agree as follows:

### **ARTICLE 1 – SCOPE OF SERVICES**

The Firm agrees to perform the services identified in “Schedule A,” the “Scope of Services” (hereinafter, the “Services”), which is attached hereto and is hereby 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 City of Kingston or the Director of Purchasing (the “Purchasing Director”), 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 Attorney’s Office.

### **ARTICLE 2 - TERM OF AGREEMENT**

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The Firm agrees to perform the Services beginning [Enter Start Date], 20\_\_, and ending [Enter Completion Date], 20\_\_\_\_\_.

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 shall be to request that a Change Order, Amendment or an Addendum to this Agreement be issued by the Executive or the Purchasing Director, 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 Department Head promptly, but in no event 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 Purchasing Director. In no event shall 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 3 - COMPENSATION**

For satisfactory performance of the Services, or as such Services may be modified mutually by a written Change Order, Amendment, or Addendum to this Agreement, the City agrees to compensate the Firm in accordance with "Schedule B, FEES, EXPENSES AND SUBMISSIONS FOR PAYMENT" which is attached hereto and is hereby made a part of this Agreement. As directed in Schedule B, the Firm shall submit to the City invoices for the Services rendered. Each invoice shall be prepared in such form and supported by such documentation as the City may reasonably require. The City will pay the proper amounts due to the Firm within sixty (60) days of receipt of the Firm's invoice with supporting documentation, and upon approval by the Department Head and the City Comptroller. The City will notify the Firm in writing of its reasons, if any, for objecting to all or any portion of the Firm's invoice and/or supporting documentation.

A [CHOOSE ONE- fixed fee OR not-to-exceed] amount of [WRITE OUT DOLLAR AMOUNT IN CAPS HERE] AND \_\_/100 (\$ . ) DOLLARS has been established for the Services to be rendered by the Firm. Costs in excess of the above-noted amount may not be incurred without the prior written authorization of the Purchasing Director, 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 shall not be responsible for any additional costs, or costs in excess of the above-noted cost, if authorization by the Purchasing Director is not given in writing prior to the performance of the services giving rise to such excess or additional costs.

In the event that the Firm receives, from any source whatsoever, payments in consideration for the same Services provided to the City under this Agreement, the monetary obligation of the City hereunder shall be reduced by an equivalent amount, provided, however, that nothing contained herein shall 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://www.governor.ny.gov/executiveorder/38>.

### **ARTICLE 4 - EXECUTORY CLAUSE**

The City shall 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 at the end of any fiscal year if funds are not appropriated and available for this Agreement for the following fiscal year.

The Firm understands and agrees that the dollar amounts identified in this Agreement are based upon funding allocations from the State of New York (the "State") and/or the Federal government, which are the basis for any payments made by the City hereunder. In the event that the anticipated amount of funding changes, or is reduced or

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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 aid in reimbursement to the City for any payment made under this Agreement, by the City to the Firm, is not approved for any reason whatsoever, then the City may (i) deduct and withhold from any future payment(s) an amount equal to the reimbursement denied, or (ii) otherwise recover from the Firm the amount denied. It is understood that based upon changes in State aid and/or the 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 approved aid amounts 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.

For a breach or violation of such representations or warranties, the City shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid hereunder, 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, shall not constitute the sole remedy afforded to the City for such breach or violation, nor shall 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 shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the Services 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 shall 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, shall have any such interest, direct or indirect, in this Agreement, *or in the proceeds thereof, unless such person (i) is required by the Ulster County Ethics Law, as amended from time to time, to submit a disclosure form to the County'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 County'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 shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid hereunder, and the Firm shall not make claim for, nor be entitled to recover any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded to the City for such breach or violation, nor shall 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.



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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 the 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 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 Attorney regarding such status. Any misrepresentation or false statement related to Firm's status in this regard, or any failure by Firm to immediately notify the City Attorney of any change in such status, shall 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.

**ARTICLE 8 – CORPORATE COMPLIANCE**

The Firm agrees to comply with all Federal, State, and local laws, rules, and regulations governing the provision of goods and/or 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 Services for the City 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 shall 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.

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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 or be an agent of the City. 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, shall hold themselves out as, nor claim 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 shall 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.

**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 Purchasing Director, upon review by the City of Kingston Attorney's Office. Any such assignment, transfer, conveyance, or other disposition without such prior consent shall be void, and any Services provided thereunder will not be compensated. Any assignment properly consented to by the Executive or the Purchasing Director shall be subject to all of the terms and conditions of this Agreement.

Failure of the Firm to obtain any required consent to any assignment, shall be grounds for termination for cause at the option of the City, and if this Agreement be so terminated, the City shall 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 the laws of the State of New York, 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 shall impair the rights of the City; and

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- C. That nothing contained in the subcontractor agreement, or under this Agreement between the City and the Firm, shall 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 14 of this Agreement between the City and the Firm.

Upon signing this Agreement, the Firm shall provide the Department Head with the names and scopes of work of any and all subcontractors to be used in the performance of the Firm's obligations pursuant to this Agreement. Furthermore, upon request by the City, 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 shall not in any way be relieved of any responsibility under this Agreement by any subcontract.

### **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 shall 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.

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 14 - 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 shall 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 shall 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, shall not relieve the Firm of

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its responsibilities pursuant to this Article 14.

The Firm shall hold Confidential Information in trust and confidence, and shall not disclose Confidential Information, or any portion thereof, to anyone other than the City, without the prior written consent of the Purchasing Director, and shall 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 Purchasing Director, upon consultation with the City of Kingston Attorney, in writing, waives compliance with the provisions of this Article 14, 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 14, or determines that such disclosure is legally required, the Firm shall disclose only such portions of Confidential Information that, in 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, Firm shall obtain from each of its subcontractors, a confidentiality agreement running to the benefit of the City, substantively identical to this Article 14. Further, at any time, if requested by the City, Firm shall obtain such an agreement from the officers, directors, agents, representatives, or employees of the Firm and/or any of its subcontractors.

## **ARTICLE 15 – OWNERSHIP OF CONFIDENTIAL INFORMATION**

Notwithstanding any other provision herein to the contrary:

- A. All Confidential Information, as defined in Article 14, 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 later occurs, and thereafter disposed of at the City's direction.

## **ARTICLE 16 – INTENTIONALLY LEFT BLANK**

## **ARTICLE 17 – 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 Purchasing Director 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

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reproduce, publish or otherwise use, and to authorize others to use such publication.

**ARTICLE 18 - BOOKS AND 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.

**ARTICLE 19 - RETENTION OF RECORDS**

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 later occurs. The City, any New York State and/or Federal auditors, and any other persons duly authorized by the City, shall 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 hereunder, 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 shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

The Firm shall, within sixty (60) days of the expiration of this Agreement, submit a report to the Department Head detailing the Services provided under this Agreement. The Firm further agrees to provide any additional information that the City may at any time request, upon reasonable notice to the Firm. Notwithstanding the foregoing, more comprehensive and/or frequent reporting requirements as may be set forth in Schedule A will take precedence over the provisions of this paragraph.

**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 will 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 shall mean recruitment, employment, job assignment, promotion, upgrade, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation

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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 shall be performed within the State of New York, the Firm agrees that neither it, nor its subcontractors, shall, 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, shall 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.

**ARTICLE 22 - 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 shall 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) shall 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 22. The provision of insurance by the Firm shall not in any way limit the Firm's liability under this Agreement.

At the time the Firm submits two (2) original executed copies of this Agreement, the Firm shall include certificates of insurance evidencing its compliance with these requirements and those set forth in Schedule C.

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 fifteen (15) days prior written notice), directed to the City's Insurance Department and the Department Head. and (iii) the City shall 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 shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis, it shall be provided on a "claims made" basis, and all such "claims made" policies shall 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. The Firm shall maintain similar insurance for a minimum of three (3) years following final acceptance of the Services; and
- C. If the insurance is terminated for any reason, the Firm agrees to purchase for the City, an unlimited,

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extended reporting provision to report claims arising from the Services performed under this Agreement;  
and

- D. Immediate notice shall be given to the City, through the Department Head, the City of Kingston Attorney's Office, and the City's Insurance Department, of circumstances or incidents that might give rise to future claims with respect to the Services performed under this Agreement.

**ARTICLE 23 - 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 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 shall 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 shall not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or pursuant to this Agreement.

**ARTICLE 24 - RESPONSIBILITY TO CORRECT DEFICIENCIES**

It shall be the Firm's responsibility 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, shall not constitute the sole or exclusive remedies afforded to the City for such deficiencies, nor shall 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 25 - 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 Purchasing Director.

For a breach or violation of such representations or warranties, the City shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid hereunder, 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, shall not constitute the sole remedy afforded to the City for such breach or violation, nor shall 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.

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**ARTICLE 26 - 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, shall 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 shall have the right to withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.

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 26.

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

**ARTICLE 27 – FORCE MAJEURE**

Neither Party hereto shall be considered in default in the performance of its obligations hereunder, 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.

Upon removal of such cause, the Party affected shall resume its performance as soon as reasonably possible. The Firm's financial inability to perform shall not be deemed to be an event of Force Majeure regardless of the source causing such financial inability. If the Firm is so delayed in the timely performance of the Services, 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 the Purchasing Director, permitting an extension of time to perform the Services 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 promptly, but in no event later than thirty (30) days after the initial occurrence of the event giving rise to such 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 Purchasing Director. In no event shall 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.

**ARTICLE 28 - 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.

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



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

In the event the City terminates this Agreement, in whole or in part, as provided in this Article 28, 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 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 shall 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 shall 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 - SET-OFF RIGHTS**

The City shall 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 shall 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 30 - 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 Executive or the Purchasing Director, after consultation with the City of Kingston Attorney, 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 31 - GOVERNING LAW**

This Agreement shall be governed by the laws of the State of New York, except where the Federal Supremacy Clause requires otherwise. The Firm shall render all Services under this Agreement in accordance with applicable provisions of all Federal, State, and local laws, rules and regulations as are in effect at the time such Services are rendered.

#### **ARTICLE 32 – 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, working men or

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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 NYS Commissioner of Labor.

**ARTICLE 33 - 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 shall be considered waived by the City unless such waiver is explicitly given in writing by the Purchasing Director. 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 the Purchasing Director.

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

**ARTICLE 34 - 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, shall 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 35 - 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 36 - ENTIRE AGREEMENT**

The rights and obligations of the Parties and their respective agents, successors and assignees shall 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 37- 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 14 (Confidentiality), Article 15 (Ownership of Confidential Information), Article 16 (Intellectual Property), Article 17 (Publicity), Article 19 (Retention of Records), Article 23 (Indemnification), Article 24 (Responsibility to Correct Deficiencies), and Article 26 (Protection of County Property), shall survive completion of the Services and/or the expiration or termination of this Agreement.

**ARTICLE 38 - 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 shall be in writing, shall 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 shall be effective when received. Notice

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addresses are as follows:

Firm:  
[Insert Firm Name Here]  
Attention: [Insert Appropriate Information]  
[Insert Firm's Address]  
[Insert Firm's City, State & Zip Code]

City:  
City of Kingston [Insert Department Name]  
Attention: [Insert Dept. Head Title Here]  
[Insert Department Address]  
Kingston, New York [12401]

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

MAILING ADDRESS:	City of Kingston Attn: 420 Broadway  Kingston, New York 12401	PHYSICAL ADDRESS: City of Kingston Attn: 420 Broadway  Kingston, New York 12401
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Either Party may, by written notice to the other Party given in accordance with the foregoing, change its address for notices.

### **ARTICLE 39 - 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. Changes to Schedule A, the Scope of Services, in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such Services, the Purchasing Agent, after consultation with the Department Head, executes an Addendum, Amendment or Change Order to this Agreement. The aforesaid Addendum, Amendment or Change Order shall 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 shall apply with full force and effect to the terms and conditions contained in such Addendum, Amendment or Change Order.

### **ARTICLE 40 - HEADINGS AND DEFINED TERMS**

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

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**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 HERE]

(Approved as to content)

By: \_\_\_\_\_  
NAME: [Dept Head]  
TITLE: [Dept Head]  
DATE: \_\_\_\_\_

CITY OF KINGSTON

By: \_\_\_\_\_  
NAME:  
TITLE: Mayor  
DATE: \_\_\_\_\_

[INSERT FIRM NAME]

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

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**PLEASE COMPLETE THE FOLLOWING SHEETS**

**AND RETURN THEM WITH YOUR PROPOSAL**

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INFORMATION SHEET

NAME OF RESPONDER: \_\_\_\_\_

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

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

If a non-publicly owned Corporation: NAME OF CORPORATION: \_\_\_\_\_

List Principal Stockholders (holding over 5% of outstanding shares) \_\_\_\_\_  
\_\_\_\_\_

LIST OFFICERS: \_\_\_\_\_  
\_\_\_\_\_

LIST DIRECTORS: \_\_\_\_\_  
\_\_\_\_\_

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

If a partnership:  
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.

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**AFFIDAVIT OF NON-COLLUSION**

NAME OF RESPONDER: \_\_\_\_\_

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, responder or potential responder.
2. Neither the price(s), nor the amount of this proposal, have been disclosed to any other firm or person who is a responder or potential responder 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.
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 & Company Position

\_\_\_\_\_  
Print Name & Company Position

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

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Federal I.D. Number