



George Latimer
County Executive

September 20, 2024

Westchester County Board of Legislators
800 Michaelian Office Building
White Plains, New York 10601

Dear Honorable Members of the Board of Legislators:

Transmitted herewith is a proposed Act which would authorize the County of Westchester (the "County") to enter into an intermunicipal agreement (the "IMA") with the City of New York, acting by and through its New York City Department of Health and Mental Hygiene (the "City") pursuant to which the County, through its Department of Laboratories and Research (the "Department"), will provide water testing services on water samples provided by the City.

The City has asked the Department for assistance in performing these services as the Department has an accredited laboratory that has the requisite skills and capability to perform these services. The term of the IMA will be for a period of five years. In consideration for these services, the City will pay the County an aggregate fee not to exceed \$158,100.00, to be billed at the Department's current fee schedule.

Under terms of the IMA prepared by the City, the County as the City's contractor, will provide the following indemnification: "To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law."

Office of the County Executive

Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

Email: CE@westchestergov.com
Telephone: (914) 995-2900

westchestergov.com

As the County is able to provide the services requested by the City necessary to maintain the City water supply distribution system, I respectfully recommend approval of the attached Act.

Sincerely,

A handwritten signature in black ink, appearing to read "George Latimer". The signature is written in a cursive style with a large initial "G".

George Latimer
County Executive

Attachments

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER, NEW YORK**

Your Committee is in receipt of a communication from the County Executive that proposes an Act which would authorize the County of Westchester (the "County") to enter into an intermunicipal agreement (the "IMA") with the City of New York, acting by and through its New York City Department of Health and Mental Hygiene (the "City") pursuant to which the County, through its Department of Laboratories and Research (the "Department"), will provide water testing services on water samples provided by the City.

The City has asked the Department for assistance in performing these services as the Department has an accredited laboratory that has the requisite skills and capability to perform these services. The term of the IMA will be for a period of five years. In consideration for these services, the City will pay the County an aggregate fee not to exceed \$158,100.00, to be billed at the Department's current fee schedule.

Under terms of the IMA prepared by the City, the County as the City's contractor, will provide the following indemnification: "To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law."

The County Planning Department has advised that that based on its review, the above project is a "Type II" action under the State Environmental Quality Review Act, 6 NYCRR Part 617.5(c)(20). Type II actions are those actions determined not to have a significant effect on the

environment and therefore do not require further environmental review. Your Committee concurs with this conclusion.


Your Committee believes that this IMA is in the best interest of the County, while also assisting the City to maintain the City's water distribution system, and therefore, recommends your favorable action on the annexed proposed legislation. An affirmative vote of a majority of the voting strength of your Honorable Board is required to adopt the attached Act.

Dated: _____, 2024
White Plains, New York

COMMITTEE ON

C:DLV 9-17-24

TO: David Vutera, Associate County Attorney
Department of Law

FROM: David S. Kvinge, AICP, RLA, CFM 
Assistant Commissioner

DATE: September 18, 2024

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR:
NEW YORK CITY WATER TESTING**

PROJECT/ACTION: A five-year agreement with the City of New York, whereby the County of Westchester, acting by and through its Department of Laboratories and Research, will provide water testing services on water samples provided by the City.

With respect to the State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617, the Planning Department recommends that no environmental review is required because the project/action may be classified as a TYPE II action pursuant to section(s):

- **617.5(c)(26):** routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment.
-

COMMENTS: None.

DSK/cnm

cc: Andrew Ferris, Chief of Staff
Paula Friedman, Assistant to the County Executive
Tami Altschiller, Assistant Chief Deputy County Attorney
Claudia Maxwell, Principal Environmental Planner

ACT NO. 2024 -

AN ACT to authorize an intermunicipal agreement with the City of New York pursuant to which Westchester County, through its Department of Laboratories and Research, will provide water testing services for the City.

BE IT ENACTED by the Board of Legislators of the County of Westchester, State of New York, as follows:

Section 1. The County of Westchester (the “County”) is hereby authorized to enter into an intermunicipal agreement (“IMA”) with the with the City of New York, acting by and through its New York City Department of Health and Mental Hygiene (the “City”) pursuant to which the County, through its Department of Laboratories and Research (the “Department”), will provide water testing services on water samples provided by the City.

§2. In consideration for services rendered, the City shall pay the County an aggregate fee not to exceed \$158,100.00, to be billed at the Department’s current fee schedule.

§3. The term of the IMA shall be for a period of five years.

§4. Under terms of the IMA prepared by the City, the County as the City’s contractor, shall provide the following indemnification: “To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the City or its officials or

employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.”

§5. The County Executive or his authorized designee is further authorized to execute and deliver all documents as are necessary and appropriate to carry out the purposes of this Act.

§6. This Act shall take effect immediately.

AGREEMENT

BETWEEN

**THE CITY OF NEW YORK ACTING BY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

And

WESTCHESTER COUNTY

Pin: 24ET041201R0X00

AGREEMENT dated as of March 1, 2024 between the CITY OF NEW YORK ("CITY") acting by and through its Department of Health and Mental Hygiene having its principal office located at Gotham Center, 42-09 28th Street, Long Island City, New York 11101 ("Department" or "DOHMH"), and Westchester County ("Contractor"), having its principal office located at 148 Martine Avenue, White Plains, New York 10601.

WITNESSETH

WHEREAS, the New York City Department of Health and Mental Hygiene ("DOHMH" or "Department") is charged with the authority to supervise and regulate the public health aspects of the NYC water supply; and

WHEREAS, as part of the Department's efforts to regulate the NYC water supply, the Department's Office of Public Health Engineering ("PHE") routinely takes samples of the NYC drinking water to be analyzed for metals, nitrates, volatile organic chemicals and trihalomethanes by a laboratory that is accredited by the New York State Environmental Laboratory Approval Program; and

WHEREAS, Westchester County's Department of Laboratories and Research, a NYS ELAP accredited laboratory, has the requisite skills and capability to perform drinking water analysis; and

WHEREAS, Westchester County is ready, willing and able of providing the services described herein.

NOW, THEREFORE, in consideration of the mutual promises herein set forth, the parties agree as follows:

I. TERM, RENEWALS and BUDGET MODIFICATIONS

- A. The term of this Agreement shall be from March 1, 2024 through February 28, 2029.
- B. To further the purpose of this Agreement, the Contractor may request a budget modification in writing to the Department provided that it is submitted to the Department

no later than three (3) months prior to the expiration of the applicable budget period, and further provided that the written approval of the Department is received prior to any line item being overexpended. However, the Department, at its sole discretion may agree to a budget modification at any time. In no case shall a budget modification request increase the Maximum Reimbursable Amount of the contract. This provision shall survive the expiration of this Agreement.

II. SCOPE OF SERVICES

The Contractor shall provide services in the manner and at the levels set forth in the Scope of Services, annexed hereto and incorporated herein as Annex A.

III. FINANCIAL PROVISIONS:

A. Maximum Reimbursable Amount

The Maximum Reimbursable Amount for the term of this Agreement shall not exceed **\$158,100.00** inclusive of out-of-pocket expenses, in accord with the deliverable fee schedule contained in Annex **B** of this Agreement. The Contractor's fees may be increased during the term of this Agreement and the Department will be given written notice of any increase. The Department shall be responsible for monitoring the funds spent under this Agreement. To the extent the Department requests services exceeding the Maximum Reimbursable Amount, the Department shall be responsible for any excess.

B. Schedule of Payment

Upon receipt and approval of each of the Contractor's periodic invoices, the Department shall remit to the Contractor a payment of its approved charges in accord with the budget contained in Annex **B**. Invoices shall be submitted no later than 30 days after the period for which the invoice pertains. The Department may disqualify from payment any invoice received after that time. Invoices shall identify the task or product being invoiced and the overall total charges. The invoices shall be in a form established by the Commissioner or Designate, and shall be accompanied by supporting schedules, documentation, and any other information deemed necessary by the Department. If a final program report is required by the Scope of Services, payment for the last month of the contract shall be contingent upon approval of the final report and bill by the Department.

1. Invoicing and Payment

To do business with the City, vendors must register and create an account in the City's **Payee Information Portal (PIP)**. In PIP, vendors can view financial transactions with the City of New York, register for Electronic Funds Transfer payments, report their subcontractors and subcontractor payments.

PIP - <https://a127-pip.nyc.gov/webapp/PRDPCW/SelfService>

The **Vendor Invoice Processing System (VIPS)** is a payment request submission and tracking application. It is designed for NYC Health Department

vendors to upload their invoices and all supportive documents, enter payment requests and track payment requests' statuses. All invoices and supporting documentation to request payment will have to be submitted via VIPS. The Vendor Administrator should complete the activation process or create a new payee/vendor code account on the Payee Information Portal.

VIPS - <https://www1.nyc.gov/site/doh/business/opportunities/vendor-invoice-processing-system.page>

C. Disallowances

The City may disallow for payment any expenses or charges which were not authorized or documented in accord with the terms of this Agreement, or for failure to deliver any required service or work product to the satisfaction of the Department. The MRA is inclusive of all amounts to be paid for the services and for the tangible products of such services, including, without limitation, reproduction costs of the reproduction of any documents for training and other purposes.

IV. PROGRAM MONITORING AND EVALUATION

The Contractor's performance will be evaluated based on the Contractor's compliance with this Agreement, the Scope of Services attached hereto as Annex A. The evaluation criteria include, but are not be limited to: timeliness of deliverables and any applicable reports, timeliness of services, achievement of level of services, applicable program procedures and methods, program record keeping and reporting, timeliness and accuracy of fiscal reports and payment requisitions. The Contractor shall cooperate fully with the Department regarding the evaluation of the Project. "Project" refers to the Scope of Services in Annex A.

V. MISCELLANEOUS

A. Non-Assignment/Subcontractor

This contract shall neither be assigned nor subcontracted by the Contractor in whole or in part without the prior express written consent of the Department.

B. Legal Compliance

Notwithstanding any other provision in this Agreement, the Contractor remains responsible for ensuring that any service provided pursuant to this contract, complies with all pertinent provisions of federal, state or local statutes, rules and regulations, and that all necessary approvals thereunder have been obtained.

C. Equipment

1. Department Property

All equipment (including furniture) which is provided by the Department or paid for under this Agreement shall be deemed to be property of the City and shall be

used as far as practicable by the Contractor for the purpose of carrying out the intent of this Contract and shall not be available for the general use of the Contractor. The Contractor shall label each piece of equipment with the legend "Property of the City of New York, Department of Health and Mental Hygiene." A complete inventory of all such equipment shall be maintained by the Contractor who shall report to the Department acquisitions of equipment no later than ten (10) days after receipt. All such equipment shall be submitted to the Department within thirty (30) days after the expiration or termination of the Agreement. Disposition of the property will be made in accordance with applicable provisions of law.

2. Purchase

The Contractor must obtain the express written consent of the Department prior to the purchase of any equipment that exceeds \$150.00 in purchase price. In addition, for the purchase of any equipment that exceeds \$5,000.00 in purchase price, the Contractor shall obtain five (5) bids for the equipment sought, and provide documentation of said bids to the Department, in a manner acceptable to the Department.

D. NYC Earned Safe and Sick time Act Contract Rider

The Earned Sick Time Act, also known as the Paid Sick Leave Law ("PSLL"), requires covered employees to be provided with paid safe and sick time. The attached rider supersedes Section 4.06 of Appendix A.

E. Health Services Addendum

The Contractor shall comply with the United States Office of the Inspector General ("OIG") "Exclusionary Rule" outlined in the Health Services Addendum annexed hereto and hereby made a part of the Agreement.

F. Addendum to Appendix A

The addendum attached modifies Appendix A's Subsection B of Section 5.08 (Confidentiality).

G. Notices

All notices and requests hereunder by either party shall be in writing and directed to the address of the parties as follows:

New York City Department of Health
and Mental Hygiene
42-09 28th Street
Long Island City, New York 11101

Westchester County
148 Martine Avenue
White Plains, New York 10601

Attn.: Kevin Anderson
Title: Director of Grants & Contracts
Division: Environmental Health

Attn: Peggy Schmidt
Title: Assistant Director of
Administration

H. Conflict of Terms of Agreement

During the term of the Agreement, conflicts between the various documents shall be resolved in the following order of precedence, such documents constituting the entire Agreement between the parties:

- Appendix A – General Provisions Governing Contracts for Consultants, Professional, Technical, Human, and Client Services
- This Agreement, including the Scope of Services (Annex A) and Budget (Annex B), and all Attachments, Addendums, and Riders
-

I. Insurance

The Contractor shall maintain the types of insurance as indicated in Article 7 and Schedule A of the attached Appendix A.

J. Independent Annual Audit Report

In the event that this Agreement is subject to 2 Code of Federal Regulations (“CFR”) part 200, then the Contractor shall comply with the provisions of 2 CFR Part 200, including subpart (F) entitled Audit Requirements. Such audit(s) shall be submitted to the Department's Director of Financial and Contract Audits in final form no later than nine (9) months after the expiration of each of the Contractor's audit years that fall within the term of this contract.

NO MORE TEXT ON THIS PAGE

IN WITNESS WHEREOF, the City has caused these presents to be executed in triplicate by the Agency Chief Contracting Officer and the Contractor has done the same.

THE CITY OF NEW YORK, ACTING THROUGH ITS DEPARTMENT OF HEALTH AND MENTAL HYGIENE

WESTCHESTER COUNTY

BY: _____
Judi Rich Soehren
Agency Chief Contracting Officer

BY: _____
[Signature]

[Name]

[Title]

Subscribed and sworn to before me
this _____ day of _____, 20__

Subscribed and sworn to before me
this _____ day of _____, 20__

**Notary Public or
Commissioner of Deeds**

**Notary Public or
Commissioner of Deeds**

**Approved as to Form:
Certified as to Legal Authority**

By: _____
Acting Corporation Counsel

Approved by the Board of Legislators of the County of Westchester on _____, 20__ by Act No. _____

Approved:

Associate County Attorney
The County of Westchester

**Annex A
(Attached Separately)**

ANNEX A
Scope of Work
Westchester County
Term: March 1, 2024 – February 28, 2029

PIN#: 24ET041201R0X00

Scope of Work

Analyzing the Office of Public Health Engineering (PHE) Water Samples

The Contractor will provide the following services to PHE:

1. The Contractor will analyze drinking water samples taken by PHE. Seventy-Three (73) priority sample sites are sampled every month for Standard Water Quality Parameters (WQP) and Microbiology (BACT).
2. The Contractor will analyze a subset of monthly samples for Metals and nitrates at 5 entry point sampling locations and 5 distal sites that are monitored for Volatile Organic Chemicals (VOC) and Total Trihalomethanes (TTHM).
3. The Contractor will provide a full service laboratory that performs analytical tests on drinking, bottled, surface and ground water, wastewater, soils, solids, hazardous waste and other items.
4. All routine samples are tested and delivered to the Contractor for analysis once a month. The turnaround time for testing is two weeks to receive the results. The turnaround time may be extended due to extraneous circumstances which could include, but are not limited to, non-functionality of equipment, unavailability of laboratory supplies, absence of key staff, the excessive number of samples submitted by the Department within a relative time period, the total number of samples currently in the Contractor's laboratory and the priority of these samples, weather conditions, loss of utility services, other unforeseen, emergency or catastrophic events, etc. Should any of these situations occur, the Contractor will advise the Department of the delay in turnaround time.
5. The samples used for the analysis are disposed of accordingly by the Contractor.
6. The estimated number and types of routine samples are listed in the table below. If necessary for non-routine PHE or ESE Bureau partner operations, additional samples of the same or different parameters may be analyzed by the Contractor and charged according to the most current published schedule of prices.

Annual Water Quality Surveillance Samples Taken by PHE			
Parameter	Description	Estimated Samples (Per Year)	Estimated Samples (6 Years)
Bacteria	Samples tested by the Public Health Lab	876	5,256
Water Quality Parameters (hardness, conductivity, fluoride, pH, temp. etc.)	Samples tested by the Public Health Lab	876	5,256

Nitrate, Sulfate	Samples tested by the Public Health Lab	876	5,256
*VOC	Haloacetic Acids	60	360
*VOC	Base Neutrals – EPA 625	60	360
*VOC	Volatile Organic Compounds	60	360
*VOC	Purgeable Organic Compounds	60	360
*TTHM	Trihalomethanes	60	360
*Metals I	ICPMS Metals	60	360
*Metals II	Potable Metals Digestion	60	360
*Metals II	Iron	60	360
*Metals II	Sodium	60	360
Estimated Total		2,352	19,008

* Water samples sent to the Contractor for testing.

**Annex B
(Attached Separately)**

Department of Health and Mental Hygiene

Contract Details	Vendor : WESTCHESTER COUNTY Service : This service is for analyzing the Office of Public Health Engineering water sample. Term From : 03/01/2024 To : 02/28/2029 CID/PIN : 77081/24ET041201R0X00 SetName : Westchester County
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ANNEX B DELIVERY BASED BUDGET

Fiscal Year: 2024

Section : FY24 - Annual Water Quality Samples

Description	Due Date	Total
Annual Water Quality Surveillance Samples Taken by PHE	06/30/2024	\$10,540.00
TOTAL		\$10,540.00

Total for Fiscal Year : \$10,540.00

Fiscal Year: 2025

Section : FY25 - Annual Water Quality Samples

Description	Due Date	Total
Annual Water Quality Surveillance Samples Taken by PHE	06/30/2025	\$31,620.00
TOTAL		\$31,620.00

Total for Fiscal Year : \$31,620.00

Fiscal Year: 2026

Section : FY26 - Annual Water Quality Samples

Description	Due Date	Total
Annual Water Quality Surveillance Samples Taken by PHE	06/30/2026	\$31,620.00
TOTAL		\$31,620.00

Total for Fiscal Year : \$31,620.00

Fiscal Year: 2027

Section : FY27 - Annual Water Quality Samples

Description	Due Date	Total
Annual Water Quality Surveillance Samples Taken by PHE	06/30/2027	\$31,620.00
TOTAL		\$31,620.00

Total for Fiscal Year : \$31,620.00

Fiscal Year: 2028

Section : FY28 - Annual Water Quality Samples

Description	Due Date	Total
Annual Water Quality Surveillance Samples Taken by PHE	06/30/2028	\$31,620.00
TOTAL		\$31,620.00

Total for Fiscal Year : \$31,620.00

Fiscal Year: 2029

Section : FY29 - Annual Water Quality Samples

Description	Due Date	Total
Annual Water Quality Surveillance Samples Taken by PHE	06/30/2029	\$21,080.00
TOTAL		\$21,080.00

Total for Fiscal Year : \$21,080.00

Summary Budget

Fiscal Year	Amount
2024	\$10,540.00
2025	\$31,620.00
2026	\$31,620.00
2027	\$31,620.00
2028	\$31,620.00
2029	\$21,080.00
Total for all Fiscal Years	\$158,100.00

Department of Health and Mental Hygiene

Contract Details

Vendor : WESTCHESTER COUNTY
Service : This service is for analyzing the Office of Public Health Engineering water sample.
Term From : 03/01/2024 **To :** 02/28/2029
CID/PIN : 77081/24ET041201R0X00
SetName : Westchester County

COMBINATION WITH SUMMARY

Fiscal Year: 2024	
Line Item Total	\$0.00
Deliverable Based Total	\$10,540.00
Unit Cost Total	\$0.00
<hr/>	
Total for all Fiscal Years	\$10,540.00
Fiscal Year: 2025	
Line Item Total	\$0.00
Deliverable Based Total	\$31,620.00
Unit Cost Total	\$0.00
<hr/>	
Total for all Fiscal Years	\$31,620.00
Fiscal Year: 2026	
Line Item Total	\$0.00
Deliverable Based Total	\$31,620.00
Unit Cost Total	\$0.00
<hr/>	
Total for all Fiscal Years	\$31,620.00
Fiscal Year: 2027	
Line Item Total	\$0.00
Deliverable Based Total	\$31,620.00
Unit Cost Total	\$0.00
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Total for all Fiscal Years	\$31,620.00
Fiscal Year: 2028	
Line Item Total	\$0.00
Deliverable Based Total	\$31,620.00
Unit Cost Total	\$0.00
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Total for all Fiscal Years	\$31,620.00
Fiscal Year: 2029	
Line Item Total	\$0.00
Deliverable Based Total	\$21,080.00
Unit Cost Total	\$0.00
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Total for all Fiscal Years	\$21,080.00

SUMMARY:

Line Item Total	\$0.00
Deliverable Based Total	\$158,100.00
Unit Cost Total	\$0.00
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GRAND TOTAL	\$158,100.00



**NYC Earned Safe and Sick time Act Contract Rider
(Attached Separately)**

NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

(To supersede Section 4.06 of the January 2018 Appendix A and Section 35.5 of the March 2017 Standard Construction Contract and to be attached to other City contracts and solicitations)

A. *Introduction and General Provisions.*

1. The Earned Safe and Sick Time Act (“ESSTA”), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the “Paid Safe and Sick Leave Law,” requires covered employees (as defined in Admin. Code § 20-912) in New York City (“City”) to be provided with paid safe and sick time. Contractors of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City’s Department of Consumer and Worker Protection (“DCWP”), which has promulgated 6 RCNY §§ 7-101 and 201 *et seq.* (“DCWP Rules”).

2. The Contractor agrees to comply in all respects with the ESSTA and the DCWP Rules, and as amended, if applicable, in the performance of this agreement. The Contractor further acknowledges that such compliance is a material term of this agreement and that failure to comply with the ESSTA in performance of this agreement may result in its termination.

3. The Contractor must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Contractor must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

4. Upon conclusion of a DCWP investigation, Contractor will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Contractor will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City’s administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Contractor. The Contractor is advised to review the ESSTA and the DCWP Rules in their entirety. The Contractor may go to www.nyc.gov/PaidSickLeave for resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the ESSTA and the DCWP Rules. The Contractor acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

B. Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.

1. An employee who works within the City must be provided paid safe and sick time.¹ Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

¹ Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

c. closure of such employee's place of business by order of a public official due to a public health emergency;

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or

e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;
2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;
3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;
4. to file a complaint or domestic incident report with law enforcement;
5. to meet with a district attorney's office;
6. to enroll children in a new school; or
7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an

employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

7. Safe and sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the safe and sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the ESSTA does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;

3. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

5. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

F. *Records.* An employer must retain records documenting its compliance with the ESSTA for a period of at least three years, and must allow DCWP to access such records in furtherance of an investigation related to an alleged violation of the ESSTA.

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer.

2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous safe and sick time. The ESSTA provides minimum requirements pertaining to safe and sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

**Addendum to Appendix A
(Attached Separately)**

**HEALTH SERVICES ADDENDUM
LIST OF EXCLUDED INDIVIDUALS/ENTITIES**

The CONTRACTOR hereby acknowledges that the United States Office of the Inspector General (“OIG”) has developed the “Exclusionary Rule” which prohibits payment by Federal health care programs for items or services furnished by persons and entities who or which have been excluded from participation in Federal health care programs, including, without limitation, MEDICAID, and that the OIG of the Department of Health and Human Services has developed a List of excluded Individuals/Entities that provide information to the health care industry, patients and the public, regarding individuals and entities currently excluded from participation in Medicare, Medicaid and all other Federal health care programs. A similar exclusionary list database has been developed by the New York State Office of the Medicaid Inspector.

The CONTRACTOR represents and warrants that neither it nor any of its employees, CONTRACTORS, contractors, subcontractors or agents (collectively, the “Providers”), who or which provide items or services under this Agreement is excluded, suspended or debarred from participation in any federal or state health care program or federally funded contracts and that the Providers and their employees, agents, CONTRACTORS and contractors possess all licenses required by law to perform such services.

The CONTRACTOR shall, prior to performing services pursuant to this Agreement, and periodically thereafter during the term of this Agreement, conduct searches before engaging the services of all proposed Providers to identify and exclude from participation all individuals and entities who or which have been excluded from participation in Federal health care programs. Such searches shall include searches through various federal and state sanction and exclusion databases, including, without limitation, the Federal Exclusions Database and searches offered through the Fraud section of the New York State Office of the Medicaid Inspector General in its List of Excluded Individuals/Entities (“LEIE”), and all successor websites, and after the CONTRACTOR’s initial search for all persons or entities prior to the commencement of their provision of medical services the CONTRACTOR shall update its inquiries not less often than monthly. See the following databases:

<https://www.omig.ny.gov/fraud/medicaid-exclusions>
<http://exclusions.oig.hhs.gov/>

In addition, before any new medical services provider performs medical services or provides items, such exclusionary searches of the new medical services provider shall also be conducted. CONTRACTOR agrees to immediately inform DOHMH in writing as soon as it is aware that it or any of its employees, agents, or contractors providing items or services under this Agreement, or under any subcontractor agreement with one or more medical Providers, are subject to the imposition of any such sanctions or exclusion, or if any investigation or proceeding is instituted against a Provider that may result in such sanctions or exclusion.

The requirements set forth in this Addendum are material provisions of this Agreement and failure to comply with the provisions contained herein are cause for immediate termination by DOHMH in the event CONTRACTOR, or any of its employees, agents, CONTRACTORS, contractors or subcontractors, or their employees are listed on any federal or state sanction/exclusion list as being subject to sanctions or exclusion.