

RFP 2012-HRI EO - 01

Health Research, Inc. (HRI)

Request for Proposals

*Fundraising Feasibility Study and Creation of a Comprehensive
Fundraising Development Plan*

**Proposals Due: April 20, 2012
Close of Business**

Contact Name & Address:

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I. Introduction

DESCRIPTION OF PROGRAM

Health Research, Incorporated (HRI) seeks to identify and engage a fundraising firm(s) that will strategically guide development efforts to establish a new foundation to exist as an affiliate of HRI. This foundation will focus on conducting comprehensive fundraising efforts to support existing or new public health and research programs in New York State. HRI currently seeks grant funding from public and private institutions to sponsor public health program activities and conduct health care services research, but does not actively pursue fundraising activities that target individual donors. HRI seeks consulting services to:

- 1) Conduct a fundraising feasibility study to determine the portfolio of activities that should be pursued by the new foundation.
- 2) Develop a comprehensive Fundraising Development Plan (FDP) that supports and extends public health and research programs in New York State.
- 3) Determine the infrastructure needed by the Foundation to implement the FDP.

As part of a fundraising development plan, fundraising services may include, but are not limited to: solicitation of individual, corporate, employee, and alumni donors through online donations and annual appeals; planned giving program; endowments; capital campaign; major gifts; special events; partnership development; donor management, including a donor database management system; board development; and donor and prospect research. HRI may also seek a longer-term relationship with the selected consultant(s) to assist HRI staff in implementing the FDP.

HRI's intent is to continue its mission, to provide a vehicle to effectively solicit, accept, and administer financial support for New York State Department of Health (NYSDOH) research programs, to extend public health programs through other means, such as technology transfer, and to seek collaboration from other state agencies, as well as public and private entities, to supplement future activities of specific New York State's public health programs.

BACKGROUND

Health Research, Incorporated is a 501(c)(3) not-for-profit corporation that was established in 1953 primarily to serve the research programs of the Roswell Park Cancer Institute in Buffalo, a National Cancer Institute-designated comprehensive cancer center, which at the time was an institution operated by the New York State Department of Health. Since that time, the organization has grown and has public and private entities as clients.

HRI's mission is to assist the New York State Department of Health, Roswell Park Cancer Institute, and other public and private entities to effectively evaluate, solicit, and administer external financial support for research and health care delivery projects that benefit the public health of New York State's residents, and to disseminate the benefits of scientific expertise through programs such as technology transfer. In its long history, HRI has sought, received, and administered \$7.5 billion in funding to supplement New York State's public health programs. Sources of funding include Federal and State agencies, not-for-profit foundations, and business corporations. In addition, HRI administers funds from individual donor, estate bequests, and court settlements. HRI employees currently total 2,279. In 2011, HRI had total revenues of \$665.2 million.

PROBLEM ISSUES/SOLUTION

Description of the Problem: As a 501(c)(3) nonprofit organization, HRI has historically sought financial support for the public health programs it supports through federal, state, and private foundation, focusing on funding for medical and health services research. The organization, however, has not aggressively pursued other aspects of fundraising that are consistent with the activities of a charitable foundation and that could further its mission of providing financial support to worthy public health and research projects. Solicitation of individual donors is not actively pursued by the Corporation, though individual donations are made and accepted by HRI, primarily from grateful patients or family members receiving services from a state-operated health care institution, such as the Roswell Park Cancer Institute or the Helen Hayes Hospital.

Examples of potential fundraising activities that HRI would like to consider include:

- Annual giving campaign
- Planned giving
- Major gifts
- Direct marketing
- Event fundraising
- Online fundraising
- Employee and alumni donation program
- Donor and prospect research
- Donor management
- Donor database management system

Proposed Solutions:

To identify and engage a fundraising firm that will strategically guide development efforts for a new foundation to exist as an affiliate of HRI. This foundation will focus on health care and public health concerns. Significant advancement or fundraising expertise currently not found within HRI is required to guide the exploration of the issues associated with the creation of a new not-for-profit entity.

II. Who May Apply

ELIGIBILITY REQUIREMENTS

Consultants who have:

1. A track record of success in campaign planning and management, particularly in the nonprofit and government sectors and those who have significant experience in helping organizations conduct their first ever major gift campaign.
2. Experience with organizations and institutions of similar sizes and complexity.
3. Experience in the public health and research sectors.
4. A full-service fundraising firm.
5. An experienced executive management team with sufficient depth and breadth of consultant talent and expertise.
6. In-house benchmarking and trend analysis services.
7. A comprehensive methodology for meeting the goals and objectives of this project.
8. The ability to align with HRI's culture and mode of operation.
9. The capacity to provide hands on guidance throughout every stage of the process.
10. Potential for long-term support.

III. Project Narrative

PROJECT EXPECTATIONS

Interested parties should submit a proposal and estimated fees and expenses based upon the following project scope. Applicants may submit a proposal for Phase I: Feasibility Study, Phase 2: Creation of Comprehensive Fundraising Development Plan, or both. A separate, complete application is required for each phase. Applicants must respond to all questions and instructions except where explicitly indicated. HRI's intention is to select one contractor to conduct Phase 1 and Phase 2, but it reserves the right to make separate awards for each phase of the project.

Phase 1: Feasibility Study

- Identify areas of program expertise that are marketable.
- Determine feasibility of a fundraising plan for these areas.
- Conduct donor research.
- Provide an objective view of the organization's fundraising needs and opportunities.
- Analyze opportunities to maximize fundraising growth.
- Outline ways to build on organizational strengths and minimize weaknesses.

Phase 2: Creation of a comprehensive Fundraising Development Plan that will distinguish this foundation from others and allow the foundation to build strong relationships with donors.

- Develop the infrastructure and formal systems that will ensure that Health Research, Inc. maximizes fundraising opportunities. This includes facilitating the development of a foundation board and guiding the Corporation through any legal requirements.
- Help to establish fundraising priorities, focus the board, staff, and volunteer energies on a limited number of agreed-upon goals.
- Help to demonstrate sound management to constituents and donors.
- Provide potential supporters with a clear and compelling definition of HRI, its vision for the future, and the resources necessary to fulfill that vision.
- Determine staff necessary to meet plan goals.
- Establish an effective donor database management system.
- Develop the fundraising pipeline and strategies to identify, engage, and cultivate prospective donors in a sustainable and cost-effective manner.
- Conduct research on prospective donors to assess interests and potential inclination.
- Develop all necessary office infrastructure needs and documentation.

APPLICATION

The application should include the following components:

- Cover page.
- Project Narrative – detailed description of consulting approach based on expectations contained in the Phase 1 or Phase 2 project scope.
- Project budget.
- Background on the firm, including year business was established, names of principals, and list of current clients. Identify clients from the public health and research sectors.
- References, with contact information.

Cover Letter

Provide a cover letter for the application, specifying for which component of the RFP you are applying:

- Phase 1: Fundraising feasibility study
- Phase 2: Creation of a comprehensive fundraising development program

The letter should be signed by the firm's authorized business official. Please supply contact information.

Narrative

Include the following in your Narrative:

Project Summary

For Phase 1 ONLY:

- Describe the process for determining fundraising feasibility, including assessment of fundraising needs and opportunities, data requirements, resources required from HRI, and staffing required to meet project goals.
- Provide relevant and concise examples of previous fundraising feasibility experience and success.

For Phase 2 ONLY:

- Describe the process for creating a comprehensive Fundraising Development Plan, including development of a vision, goals, development of a foundation board, board involvement, data requirements, resources required from HRI, and staffing required to meet project goals.
- Describe experience in identifying, engaging, and cultivating prospective donors.
- Describe experience in establishment of donor database management systems.
- Provide relevant and concise examples of previous development plan projects.

For Phase 1 and Phase 2:

- Provide a tentative professional meeting schedule, including meeting objectives, length, and proposed participants.
- Specify contract deliverables.
- Describe firm's project management capabilities and information management systems.
- Discuss how performance will be assessed.

Work Plan

Summarize the goals, objectives, activities, person responsible, measurable time frames, and desired outcomes for the proposed contracted services. Use a chart or table format.

Project Budget

Provide a line-item budget detailing the estimated fees and expenses associated with the proposed contract, including:

- Required personnel – identify specific staff positions, hours of work, hourly rates.
- Travel.
- Supplies.
- Contractual.
- Other expenses.

Provide a concise narrative budget justification for these expenses by category. The justification should explain the amounts requested for each line item in the budget. The budget justification should specifically describe how each item will support the achievement of the proposed project.

Firm Background

Provide information on the firm's background and credentials including:

- Year business was established.
- Organizational mission and values.
- Names of principals and brief biographical sketches.
- Financial viability, as evidenced by recent operating statement.
- List of current clients, including clients from the public health and research sectors.
- Staffing resources that will be dedicated to the project.
- Availability for long-term consulting relationship.

References

Provide at least three (3) client references with names, titles, and contact information.

REVIEW CRITERIA

Proposals will be reviewed based on the Organizational Strength of the applicant and the applicant's Consulting Approach. Equal weight will be assigned to each set of criteria.

Phase 1: Feasibility Study

ORGANIZATIONAL STRENGTH (50%)

Does the Consultant have:

1. A track record of success in campaign planning and management, particularly those who have significant experience in helping organizations conduct their first ever major gift campaign?
2. Experience with organizations and institutions of similar sizes and complexity?
3. Experience in the public health and research sectors?

4. A full-service fundraising firm?
5. An experienced executive management team with sufficient depth and breadth of consultant talent and expertise?
6. In-house benchmarking and trend analysis services?
7. A comprehensive methodology for meeting the goals and objectives of this project?
8. The ability to align with HRI's culture and mode of operation?
9. The capacity to provide hands on guidance throughout every stage of the process?
10. Potential for long term support?

CONSULTING APPROACH (50%)

1. Did the consultant map out an optimal approach for Phase 1?
2. Did the plan design clearly define:
 - a. Project organization, roles and responsibilities, HRI's involvement?
 - b. Deliverables, resource allocations, desired outcomes?
 - c. An interactive process to gather information across the corporation?
 - d. Timeframe for implementation?
 - e. Measurement or metrics to gauge fundraising potential?
3. Do the fees provide outstanding service at a reasonable cost to generate significant value in the form of meaningful business advice?

Phase 2: Creation of a Comprehensive Fundraising Development Plan that will distinguish this foundation from others and allow the foundation to build strong relationships with donors.

ORGANIZATIONAL STRENGTH (50%)

Does the Consultant have:

1. A track record of success in campaign planning and management, particularly those who have significant experience in helping organizations conduct their first ever major gift campaign?
2. Experience with organizations and institutions of similar sizes and complexity?
3. Experience in the public health and research sectors?
4. A full-service fundraising firm?
5. An experienced executive management team with sufficient depth and breadth of consultant talent and expertise?
6. In-house benchmarking and trend analysis services?
7. A comprehensive methodology for meeting the goals and objectives of this project?
8. The ability to align with HRI's culture and mode of operation?
9. The capacity to provide hands on guidance throughout every stage of the process?
10. Potential for long term support?

CONSULTING APPROACH (50%)

1. Did the consultant map out an optimal approach for Phase 2?
2. Did the plan design include components to:
 - a. Develop the infrastructure and formal systems that will ensure that HRI maximizes funding opportunities? This includes facilitating the development of a foundation board and guiding the Corporation through any legal requirements.
 - b. Help to establish fundraising priorities, focus the planned board, staff, and volunteer energies on a limited number of agreed-upon goals?
 - c. Help to demonstrate sound management to constituents and donors?

- d. Provide potential supporters with a clear and compelling definition of health research, its vision for the future, and the resources necessary to fulfill that vision?
 - e. Determine staff necessary to meet plan goals?
 - f. Establish an effective donor database management system?
 - g. Develop the fundraising pipeline and strategies to identify, engage, and cultivate prospective donors in a sustainable and cost-effective manner?
 - h. Conduct research on prospective donors to assess interests and potential inclination?
 - i. Develop all necessary office infrastructure needs and documentation?
3. Do the fees provide outstanding service at a reasonable cost to generate significant value in the form of meaningful business advice?

IV. Administrative Requirements

A. Issuing Corporation

This RFP is issued by Health Research, Inc. (HRI), with funding provided by Health Research, Inc. HRI is responsible for the requirements specified herein, evaluation of all proposals, and contractor selection.

B. How to file a proposal

Proposals must be **received** at the contact's address by close of business April 20, 2012.

Applicants shall submit (3) original, signed proposals and (5) copies. Proposals may be bound or unbound. Proposal packages should be clearly labeled with the name and number of the RFP as listed on the cover of this RFP document. Proposals should also be submitted via e-mail to the contact.

C. Contact Information

Marianne Castelot, MPA
Human Resource Manager Compensation
Health Research, Incorporated
150 Broadway, Suite 560
Menands, NY 12204
(518) 431-1240
Email: mtc06@healthresearch.org

D. Applicant Selection

HRI will establish an ad hoc selection committee to review all applications received and evaluate competitively each application based on the defined review criteria. Applicants whose proposals are favorably rated on Organizational Strength and Consulting Approach may be invited to the HRI business offices in Menands, NY to meet with the selection committee and make a formal presentation describing the proposed consulting services to be offered in response to this RFP. Applicants should be prepared to answer questions related to their proposal and the firm they represent. *Any cost related to this meeting is the obligation of the applicant and not the responsibility of HRI.*

HRI is a private not-for-profit corporation not a governmental entity. All materials submitted in response to this request will be considered proprietary and confidential in nature.

E. HRI's Reserved Rights

1. Reject any or all applications received in response to this RFP.
2. Withdraw the RFP at any time, at HRI's sole discretion.
3. Make an award under the RFP in whole or in part.
4. Disqualify any applicant whose conduct and/or proposal fails to conform to the requirements of the RFP.
5. Seek clarifications and revisions of applications.
6. Prior to application opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available.
7. Prior to application opening, direct applicants to submit proposal modifications addressing subsequent RFP amendments.
8. Change any of the scheduled dates.
9. Waive any requirements that are not material.
10. Award more than one contract resulting from this RFP.
11. Conduct contract negotiations with another applicant, should HRI be unsuccessful in negotiating with the selected applicant.
12. Utilize any and all ideas submitted with the applications received.
13. Unless otherwise specified in the RFP, every offer is firm and not revocable for a period of 60 days from the bid opening.
14. Waive or modify minor irregularities in applications received after prior notification to the applicant.
15. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's application and/or to determine an offerer's compliance with the requirements of the RFP.
16. Negotiate with successful applicants within the scope of the RFP in the best interests of HRI.
17. Eliminate any mandatory, non-material specifications that cannot be complied with by all applicants.
18. Award contracts based on geographic or regional considerations to serve the best interests of HRI.

F. General Specifications

1. By signing the "Proposal Form" each applicant attests to its express authority to sign on behalf of the applicant.
2. Contractor will possess, at no cost to HRI, all qualifications, licenses, and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this contract will possess the qualifications, training, licenses, and permits as may be required within such jurisdiction.
3. Submission of a proposal indicates the applicant's acceptance of all conditions and terms contained in this RFP. If this applicant does not accept a certain condition or term, this must be clearly noted in a cover letter to the proposal.
4. An applicant may be disqualified from receiving awards if such applicant or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.

G. HRI General Terms and Conditions

Selected contractor will be expected to sign the attached Contractor Agreement.

Contractor Agreement with HRI

THIS AGREEMENT, made as of «Start_Date» (the “Effective Date”), by and between **HEALTH RESEARCH, INC.**, a not for profit corporation organized and existing under the laws of the State of New York, with principal offices located at Riverview Center, 150 Broadway, Ste. 560, Menands, NY 12204, hereinafter referred to as **HRI**, and «CONSULTANT_NAME», located at «Address_One», «Address_Two»«City», «STATE», «Zip», herein after referred to as the **CONSULTANT**.

WITNESSETH

WHEREAS, HRI has been awarded a grant from «Sponsor_Name» for the conduct of a project entitled "«Project_Title»"; and,

WHEREAS, HRI desires the Consultant's performance of certain services for HRI in connection with such project; and,

WHEREAS, Consultant has represented to HRI that "he/she/it" is competent, willing and able to perform such services for HRI.

NOW THEREFORE, in consideration of the promises, mutual covenants, and agreements contained herein, it is mutually agreed by and between the respective parties as follows:

1. Consultant agrees to perform, as an independent contractor and not as an employee or agent of HRI, all the services set forth in Exhibit "A", appended hereto and made a part hereof, to the satisfaction of HRI's Principal Investigator, «PI_Name».
2. The Agreement shall be effective and allowable costs may be incurred by the Consultant from the Effective Date and shall continue until «End_Date» (the “Term”) unless terminated sooner as hereinafter provided or extended by written agreement of the parties.
3. In full and complete consideration of Consultant's performance hereunder, HRI agrees to compensate Consultant pursuant to the breakdown in Exhibit "A" attached. Final invoices are due within 60 days of the termination date of this Agreement. Requests received after this 60-day period may not be honored. Any reimbursement payable hereunder by HRI to the Consultant shall be subject to retroactive reductions and/or repayment for amounts included therein which are identified by HRI, on the basis of any review or audit, to not constitute an allowable cost or charge hereunder.
4. The Scope of Work and Budget in Exhibit "A" may be modified as conditions warrant by mutual agreement between HRI and Consultant, and confirmed in writing. In no event shall the total consideration under this Agreement exceed «Total Contract Amount Typed Out» Dollars (\$«Total_Contract_Amt_In_Numbers»).
5. Consultant acknowledges and agrees that all work products, deliverables, designs, writings, inventions, discoveries, and related materials, (collectively “Works”) made, produced or delivered by Consultant in the performance of its obligations hereunder will be owned exclusively by HRI. All copyrightable Works are "works made for hire." Consultant will assign, and hereby assigns and transfers, to HRI all intellectual property rights in and to Works, including without limitation, copyrights, patent rights, trademark rights, and trade secret rights. Consultant further agrees that "he/she/it" shall not claim or assert any proprietary

interest in any of the data or materials required to be produced or delivered by Consultant in the performance of its obligation hereunder. Consultant warrants that all Works shall be original except for such portion from copyrighted works as may be included with Consultant's advance permission of the copyright owner(s) thereof, that it shall contain no libelous or unlawful statements or materials, and will not infringe upon any copyright, trademark or patent, statutory or other proprietary rights of others. Consultant further agrees that "he/she/it" will not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to this Agreement without the prior written consent of HRI.

6. Neither party shall use the name of the other or any adaptation, abbreviation or derivative of any of them, whether oral or written, without the prior written permission of the other party.
7. It is understood and agreed that the services to be rendered by Consultant are unique and that Consultant shall not assign, transfer, subcontract or otherwise dispose of its rights or duties hereunder, in whole or in part, to any other person, firm or corporation, without the advance written consent of HRI.
8. The nature of the relationship which the Consultant shall have to HRI pursuant to this Agreement shall be that of an independent contractor. Under no circumstance shall the Consultant be considered an employee or agent of HRI. This Agreement shall not be construed to contain any authority, either express or implied, enabling the Consultant to incur any expense or perform any act on behalf of HRI.
9. Consultant is solely responsible for complying with all applicable laws and obtaining, at Consultant's sole expense, any and all licenses, permits, or authorizations necessary to perform services hereunder. Without limiting the generality of the foregoing, Consultant acknowledges and agrees, to the extent 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, that Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, Consultant agrees that neither it nor its authorized subcontractors, if any, shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. Consultant is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all moneys due hereunder for a second or subsequent violation. Consultant further agrees to the related terms and conditions set forth in Appendix A.
10. This Agreement shall be void and no force and effect unless Consultant shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the provisions of Workers' Compensation Law.
11. Unless otherwise agreed by HRI, Consultant shall maintain, or cause to be maintained, during the Term of this Agreement, insurance or self-insurance equivalents of the following types and amounts: a) Commercial General Liability (CGL) with limits of insurance of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate: b) HRI shall be included as Additional Insureds on the Consultant's CGL, using ISO Additional Insured Endorsement CG 20 10 11 85 or an endorsement providing equivalent coverage to the Additional Insureds. The CGL insurance for the Additional Insureds shall be as broad as the coverage provided for the Named Insured Consultant. It shall apply as primary and non-contributing

insurance before any insurance maintained by the Additional Insureds; c) other such insurance as may be specified by HRI, depending on the project and services provided by Consultant.

12. Consultant shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance of the services under this Agreement (collectively, "Records"). The Records must be kept for the balance of the calendar year in which they are created and for six years thereafter. HRI shall have reasonable access to such records as necessary for the purposes of inspection, audit, and copying. Records shall be maintained as Confidential Information and protected from public disclosure.
13. This Agreement, including all applicable attachments and appendices thereto, represents the entire Agreement and understanding of the parties hereto and no prior writings, conversations or representations of any nature shall be deemed to vary the provisions hereof. This Agreement may not be amended in any way except by a writing duly executed by both parties hereto.
14. HRI may terminate this Agreement with or without cause at any time by giving advance notice, when, in its sole discretion, HRI determines that it is in the best interests of HRI to do so, or as directed by the project sponsor. Such termination shall not affect any commitments which, in the judgment of HRI, have become legally binding prior to the effective date of termination. Upon termination of the Agreement by either party for any reason, Consultant shall immediately turn over to HRI any works in progress, materials, and deliverables (whether completed or not) related to the services performed up to the date of termination. It is understood and agreed, however, that in the event that Consultant is in default upon any of its obligations hereunder at the time of such termination, such right of termination on the part of HRI shall expressly be in addition to any other rights or remedies which HRI may have against Consultant by reason of such default.
15. Consultant acknowledges and agrees that, during the course of performing services for HRI, it may receive information of a confidential nature, whether marked or unmarked ("Confidential Information"). Consultant agrees to protect such Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Consultant will not use Confidential Information for any purpose other than to facilitate the provision of services under this Agreement, and Consultant will not disclose Confidential Information to any third party without HRI's advance written consent.
16. Consultant represents and warrants that: a) it has the full right and authority to enter into and perform under this Agreement; b) it will perform the services set forth in Exhibit A in a workmanlike manner consistent with applicable industry practices; c) the services, work products, and deliverables provided by Consultant will conform to the specifications in Exhibit A; d) there is no pending or threatened claim or litigation that would have a material adverse impact on its ability to perform as required by this Agreement.
17. Consultant shall have no interest, financial or otherwise, direct or indirect, or engage in any business, transaction, or professional activity, that may create a conflict with the proper discharge of Consultant's duties under this Agreement. In the event any actual or potential conflict arises, Consultant agrees to notify HRI in writing within ten (10) days to allow HRI to evaluate any potential impact on Consultant's performance under this Agreement.
18. Consultant agrees to defend, indemnify and hold HRI, its agents and employees, harmless from any losses, claims, damages, expenses, and liabilities (including reasonable attorneys' fees arising out of: (i) any act or omission by Consultant in connection with the performance of services constituting negligence, willful misconduct, or fraud; (ii) the breach of the confidentiality obligations set forth herein; (iii) any claim for

compensation or payment asserted by any employee or agent of Consultant; (iv) Consultant's failure to carry out Consultant's responsibilities under this Agreement; (v) any intellectual property infringement or misappropriation by Consultant in connection with the services provided under this Agreement.

19. Should any provision of this Agreement be proven to be invalid or legally ineffective, the overall validity of this Agreement shall not be affected. Unless the parties agree on an amended provision, the invalid provision shall be deemed to be replaced by a valid provision accomplishing as far as possible the purpose and intent of the parties at the date of the Agreement.
20. The failure of HRI to assert a right hereunder or to insist on compliance with any term or condition of this Agreement shall not constitute a waiver of that right of HRI, or other rights of HRI under the Agreement, or excuse a subsequent failure to perform any such term or condition by Consultant.
21. This Agreement shall be governed and construed in accordance with the laws of the State of New York. The jurisdictional venue for any legal proceedings involving this Agreement shall be in the State of New York. Disputes involving this Agreement may not be submitted to binding arbitration.
22. In addition to the methods of process allowed by the State Civil Practice Law & Rules (CPLR), in any litigation arising under or with respect to this Agreement, Consultant hereby consents to the service of process upon it by registered or certified mail, return receipt requested, and will promptly notify HRI in writing in the event there is any change of address to which service of process can be made.
23. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed signature page to the Agreement by facsimile transmission or PDF shall be as effective as delivery of a manually signed counterpart.

Consultant agrees to abide by the terms and conditions of Appendix "A" attached hereto and made a part hereof, including the provisions required for federally funded projects, if applicable.

APPENDIX A to CONSULTANT AGREEMENT

The parties to the attached Agreement further agree to be bound by the following terms, which are hereby made a part of said Agreement:

1. During the performance of the Agreement, the Consultant agrees as follows:

- (a) The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.
- (b) If directed to do so by the Commissioner of Human Rights, the Consultant will send to each labor union or representative of workers within which the Consultant has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner of Human Rights, advising such labor union or representative of the Consultant's agreement under clauses (a) through (g) (hereinafter called "non-discrimination clauses"). If the Consultant was directed to do so by the contracting agency as part of the bid or negotiation of this Agreement, the Consultant shall request such labor union or representative to furnish a written statement that such labor union or representative will not discriminate because of race, creed, color, sex, national origin, age, disability or marital status and that such labor union or representative will cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses and that it consents and agrees that recruitment, employment, and the terms and conditions of employment under this Agreement shall be in accordance with the purposes and provisions of these nondiscrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnishes such a statement, the Consultant shall promptly notify the State Commissioner of Human Rights of such failure or refusal.
- (c) If directed to do so by the Commissioner of Human Rights, the Consultant will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of Clauses (a) and (b) and such provisions of the State's laws against discrimination as the State Commissioner of Human Rights shall determine.
- (d) The Consultant will state, in all solicitations or advertisement for employees placed by or on behalf of the Consultant, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability or marital status.
- (e) The Consultant will comply with the provisions of Sections 290-299 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these non-discriminatory clauses and such actions of the Executive Law, and will permit access to the Consultant's books, records, and accounts by the State Commissioner of Human Rights, the Attorney General, and the Industrial Commissioner for the purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.
- (f) This Agreement may be forthwith canceled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding made by the State Commissioner of Human Rights that the Consultant has not complied with these non-discrimination clauses, and the Consultant may be

declared ineligible for future agreements made by or on behalf of HRI, the State or a public authority or agency of the State, until the Consultant satisfies the State Commissioner of Human Rights that the Consultant has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereof has been afforded to the Consultant, and an opportunity has been afforded to the Consultant to be heard publicly in accordance with the Executive Law. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

- (g) The Consultant will include the provisions of clause (a) through (f) in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The Consultant will take such action in enforcing such provisions of such subcontract or purchase order as the State Commissioner of Human Rights or the contracting agency may direct, including sanctions or remedies for non-compliance. If the Consultant becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the State Commissioner of Human Rights or the contracting agency, the Consultant shall promptly notify HRI.

2. Assurances Required by DHHS--PHS (Where Applicable)

(a) Human Subjects, Derived Materials or Data

The Consultant and HRI both agree to abide by DHHS regulations concerning Human Subjects. The DHHS regulation, 45 CFR 46, provides a systematic means, based on established ethical principles, protecting the rights and welfare of individuals who may be exposed to the possibility of physical, psychological or social injury while they are participating as subjects in research, development or related activities. The regulation extends to the human fetus (either in utero or ex utero), the dead, organs, tissues, and body fluids, and graphic, written or recorded information derived from human sources.

The DHHS regulation requires institutional assurances, including the implementation of procedures for review, and the assignment of responsibilities for adequately protecting the rights and welfare of human subjects. Safeguarding these rights and welfare is, by DHHS policy, primarily the responsibility of the grantee. The Consultant is responsible for ensuring that the activity described or covered by this Agreement, and additional information relating to human subjects, derived materials or data are annually reviewed and approved by the Institutional Review Board of the Consultant. The Consultant and HRI agree to complete a HHS 596 form on an annual basis.

(b) Laboratory Animals

The Consultant agrees to abide by PHS policy requiring that laboratory animals not suffer unnecessary discomfort, pain or injury. The Consultant must assure PHS, in writing, that it is committed to following the standards established by the Animal Welfare Acts and by the documents entitled "Principles for Use of Animals" and "Guide for the Care and Use of Laboratory Animals."

(c) Recombinant DNA

The Consultant agrees to abide by the current PHS Guidelines for Research involving Recombinant DNA Molecules. All research involving recombinant DNA techniques that is supported by the Public Health Service must meet the requirements of these Guidelines, which were developed in response to the concerns of the scientific and lay communities about the possible effects of recombinant DNA research.

Their purpose is to specify practices for the construction and handling of recombinant DNA molecules and organisms or viruses containing recombinant DNA. As defined by the Guidelines, "recombinant DNA" corresponds to: (1) molecules that are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell; or (2) DNA molecules that result from the replication of a molecule described in (1).

Several types of studies involving recombinant DNA are exempt from the Guidelines while others are prohibited by the Guidelines. For the remainder, the Consultant must establish and implement policies that provide for the safe conduct of the research in full conformity with the Guidelines. This responsibility includes establishing an institutional biosafety committee to review all recombinant DNA research to be conducted at or sponsored by the Consultant and to approve those projects that are in conformity with the Guidelines. For each approved project, a valid Memorandum of Understanding and Agreement (MUA) shall be prepared for submission when solicited by an appropriate PHS staff member. The MUA is considered approved after review and acceptance by ORDA and by the Consultant.

(d) Promoting Objectivity in Research

Consultant agrees to comply with the DHHS/PHS regulatory requirements on Responsibility of Applicants for Promoting Objectivity in Research and financial conflicts of interest set forth in 42 C.F.R. Parts 50 and 94.

(e) Other DHHS-PHS Regulations

The Consultant agrees to comply with applicable DHHS regulations concerning Civil Rights and Equal Opportunity, Student Unrest Provisions, Handicapped Individuals and Sex Discrimination.

(f) Additional Assurances

Under this grant, should any additional DHHS-PHS regulations be promulgated, the Consultant and HRI will review and agree, if feasible, to include them as part of this Agreement.

On behalf of HRI:

(Signature)

Date: _____

Name: _____

Title: _____

On behalf of the Contractor:

(Signature)

Date: _____

Name: _____

Title: _____