

TOWN OF CLIFTON PARK TOWN BOARD MEETING

Tuesday, January 18, 2022

The Town Board meeting can be viewed live by visiting www.cliftonpark.org Scroll down to click



- I. Call to Order/7:00 P. M. – Wood Room, Town Hall**
- II. Pledge to Flag**
- III. Roll Call**
- IV. Approval of Town Board Minutes**
- V. Communications/Announcements**
- VI. Business**
 - **Resolutions for Consideration**
 - **Other Business**
- VII. Open Public Privilege**

NOTE:

At this time, the Town Board meeting will be open to the public following CDC and New York State Guidelines for COVID-19. Please check www.cliftonpark.org for final agenda and updates. Each speaker shall state name and address prior to addressing the Board and shall be granted the floor for a single time frame of up to five minutes. The Board asks that members of the public respect the opportunity of the speaker at the podium to be heard, and asks that the public refrain from conducting side meetings within the meeting room. In an effort to ensure that the widest number of community viewpoints are heard, the Board asks members of groups or the public to withhold comment, if their viewpoints have already been presented. The Board thanks everyone in attendance for their understanding and also for their desire to actively participate in the Town decision making process.

- VIII. Adjournment**

Resolutions for Consideration
Clifton Park Town Board Meeting
January 18, 2022

<u>SOURCE</u>	<u>RESOLUTION</u>	<u>CONTACT</u>
1. Planning	Authorize the Supervisor to sign a grant contract with New York State Department of Environmental Conservation for the Route 146 multi-use trail	P. Barrett
2. Planning	Authorize the Supervisor to sign a grant contract with New York State Department of Environmental Conservation for the Hubbs Road multi-use trail	P. Barrett
3. Supervisor	Appoint Mark Freiberger as a member of the Emergency Services Advisory Board	P. Barrett
4. Buildings & Grounds	Authorize the hiring of Michael Woerner as MEO Light at the Transfer Station	P. Barrett
5. Buildings & Grounds	Authorize the promotions of Jacob Palmateer and Todd Kirchofer in the Department of Buildings & Grounds	P. Barrett
6. Senior Community Center	Issue an alcohol use permit to Anil Bisht for a gathering at the Senior Community Center on March 19, 2022	P. Barrett
7. Highway	Authorize the Highway Superintendent to sign an agreement with Spectrum Environmental Associates, Inc. for asbestos inspections services	D. Bull

Resolution No. _____ of 2022, a resolution authorizing the Supervisor to sign a grant contract for a project to construct a sidewalk to provide pedestrian access on the north side of State Route 146 to connect the Tallow Wood neighborhood with the Town Center.

Introduced by _____, who moved its adoption, seconded by _____.

WHEREAS, by Resolution No. 202 of 2017, the Town Board authorized the Planning Department to begin a grant application process to seek funding assistance for a sidewalk project on the northern side of Route 146 in the Town Center area, and

WHEREAS, the Town has been advised that the project has been awarded grant funding under the NYS DEC Climate Smart Communities Program, in the amount of \$220,000, and

WHEREAS, the project will require a 50% local match, as well as first instance funding by the Town in the amount of \$440,000, and

WHEREAS, the project will provide pedestrian access to the Town Center area from the Northcrest, Robinwood, and Tallow Wood neighborhoods, as well as connections to existing multi-use trail networks within the Town, and

WHEREAS, the Town Board supports the project and wishes to commit to local funding in order to proceed; now, therefore be it

RESOLVED, that the Supervisor is authorized to sign the attached master grant contract for the Clifton Park Route 146 Sidewalk Project, and be it further

RESOLVED, that the Town Board commits to funding in the first instance of up to \$440,000 to plan, design and construct the project, as well as the local match commitment of \$220,000.

Meg Springli

From: Town of Clifton Park <noreply@cliftonpark.org>
Sent: Thursday, January 6, 2022 2:53 PM
To: Meg Springli
Cc: Jean, Spiegel; Mark Heggen
Subject: Resolution Request for TB Meeting: 01-18-2022
Attachments: 61d748885f907-ContractDocumentsU-DEC01-C00592GG-3350000-P1-010522.pdf

An item has been submitted to the Resolution Request form for review.

Department: **Planning**
Your email: **jviggiani@cliftonpark.org**

Sponsor/Contact as shown on the agenda (i.e. P. Barrett, A. Standaert, D. Bull, etc.): **P. Barrett**

Requested Meeting Date: **01-18-2022**

Brief Description: Request for town board authorization of a NYS Department of Environmental Conservation (NYS DEC) Climate Smart Communities Grant of \$220,000 for the Town of Clifton Park Route 146 Sidewalk Extension project. The Town of Clifton Park will construct approximately 0.3 miles of new 5-foot concrete sidewalks for pedestrian travel on the north side of NY Route 146, connecting the Northcrest, Robinwood Estates, and Tallowood neighborhoods to the nearby Town Center area. The project also includes two pedestrian crosswalks at unsignalized intersections at Crestmont Drive and Tallow Wood Drive. This new sidewalk will connect to other currently existing sidewalks and multi-use trails within Town and provide a larger, non-motorized transportation network within the town, supporting the reduction of vehicle miles traveled.

Budget #: \$220,000
Budget Description: state grant amount is \$220,000; and the town will need to match with local share of \$220,000
\$ Amount: project commitment is first instance funding for \$440,000; and ultimately the town will be reimbursed \$220,000

Additional Comments/Details: This grant contract needs to be completed by March 2023.

COMPTROLLER APPROVAL or Comments:

ATTORNEY APPROVAL or Comments:

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

<p>STATE AGENCY (Name & Address): Department of Environmental Conservation 625 Broadway Albany, NY 12233-1080</p>	<p>BUSINESS UNIT/DEPT. ID: DEC01 CONTRACT NUMBER: DEC01-C00592GG-3350000 CONTRACT TYPE: <input type="checkbox"/> Multi-Year Agreement <input type="checkbox"/> Simplified Renewal Agreement <input checked="" type="checkbox"/> Fixed Term Agreement</p>
<p>CONTRACTOR SFS PAYEE NAME: CLIFTON PARK TOWN OF</p>	<p>TRANSACTION TYPE: <input checked="" type="checkbox"/> New <input type="checkbox"/> Renewal <input type="checkbox"/> Amendment</p>
<p>CONTRACTOR DOS INCORPORATED NAME: Town of Clifton Park</p>	<p>PROJECT NAME: Town of Clifton Park Route 146 Sidewalk Extension</p>
<p>CONTRACTOR IDENTIFICATION NUMBERS: NYS Vendor ID Number: 1000002122 Federal Tax ID Number: 146002129 DUNS Number (if applicable):</p>	<p>AGENCY IDENTIFIER: CFDA NUMBER (Federally Funded Grants Only):</p>
<p>CONTRACTOR PRIMARY MAILING ADDRESS: 1 TOWN HALL PLZ CLIFTON PARK, NY 12065-3610</p> <p>CONTRACTOR PAYMENT ADDRESS: <input checked="" type="checkbox"/> Check if same as primary mailing address</p> <p>CONTRACT MAILING ADDRESS: <input checked="" type="checkbox"/> Check if same as primary mailing address</p>	<p>CONTRACTOR STATUS: <input type="checkbox"/> For Profit <input checked="" type="checkbox"/> Municipality, Code: <input type="checkbox"/> Tribal Nation <input type="checkbox"/> Individual <input type="checkbox"/> Not-for-Profit</p> <p>Charities Registration Number:</p> <p>Exemption State/Code:</p> <p><input type="checkbox"/> Sectarian Entity</p>

Contract Number: # DEC01-C00592GG-3350000

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

<p>CURRENT CONTRACT TERM: From: 03/15/2018 To: 03/14/2023</p> <p>CURRENT CONTRACT PERIOD: From: 03/15/2018 To: 03/14/2023</p> <p>AMENDED TERM: From: To:</p> <p>AMENDED PERIOD: From: To:</p>	<p>CONTRACT FUNDING AMOUNT (Multi-year - enter total projected amount of the contract; Fixed Term/Simplified Renewal - enter current period amount):</p> <p>CURRENT: \$220,000.00</p> <p>AMENDED:</p> <p>FUNDING SOURCE(S)</p> <p><input checked="" type="checkbox"/> State <input type="checkbox"/> Federal <input type="checkbox"/> Other</p>
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FOR MULTI-YEAR AGREEMENTS ONLY - CONTRACT AND FUNDING AMOUNT:
(Out years represents projected funding amounts)

#	CURRENT PERIOD	CURRENT AMOUNT	AMENDED PERIOD	AMENDED AMOUNT
1				
2				
3				
4				
5				

Contract Number: # DEC01-C00592GG-3350000

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

ATTACHMENTS PART OF THIS AGREEMENT:

- Attachment A: A-1 Program Specific Terms and Conditions
 A-2 Federally Funded Grants
- Attachment B: B-1 Expenditure Based Budget
 B-2 Performance Based Budget
 B-3 Capital Budget
 B-4 Net Deficit Budget
 B-1 (A) Expenditure Based Budget (Amendment)
 B-2 (A) Performance Based Budget (Amendment)
 B-3 (A) Capital Budget (Amendment)
 B-4 (A) Net Deficit Budget (Amendment)

Attachment C: Work Plan

Attachment D: Payment and Reporting Schedule

Other:

Contract Number: # DEC01-C00592GG-3350000

IN WITNESS THEREOF, the parties hereto have electronically executed or approved this Master Contract on the dates below their signature.

In addition, I, acting in the capacity as Contractor, certify that I am the signing authority, or have been delegated or designated formally as the signing authority by the appropriate authority or officials, and as such I do agree, and I have the authority to agree, to all of the terms and conditions set forth in the Master Contract, including all appendices and attachments. I understand that (i) payment of a claim on this Master Contract is conditioned upon the Contractor's compliance with all applicable conditions of participation in this program and (if I am acting in the capacity as a not-for profit Contractor) the accuracy and completeness of information submitted to the State of New York through the Gateway vendor prequalification process and (ii) by electronically indicating my acceptance of the terms and conditions of the Master Contract, I certify that (a) to the extent that the Contractor is required to register and/or file reports with the Office of Attorney General's Charities Bureau ("Charities Bureau"), the Contractor's registration is current, all applicable reports have been filed, and the Contractor has no outstanding requests from the Charities Bureau relating to its filings and (b) all data and responses in the application submitted by the Contractor are true, complete and accurate. I also understand that use of my assigned User ID and Password on the State's contract management system is equivalent to having placed my signature on the Master Contract and that I am responsible for any activity attributable to the use of my User ID and Password. Additionally, any information entered will be considered to have been entered and provided at my direction. I further certify and agree that the Contractor agrees to waive any claim that this electronic record or signature is inadmissible in court, notwithstanding the choice of law provisions.

CONTRACTOR:

CLIFTON PARK TOWN OF

By: _____

Printed Name

Title: _____

Date: _____

In addition, the party below certifies that it has verified the electronic signature of the Contractor to this Master Contract.

STATE AGENCY:

Department of Environmental Conservation

By: _____

Printed Name

Title: _____

Date: _____

**ATTORNEY GENERAL'S SIGNATURE
APPROVED AS TO FORM**

By: _____

Printed Name

Title: _____

Date: _____

STATE COMPTROLLER'S SIGNATURE

By: _____

Printed Name

Title: _____

Date: _____

Contract Number: # DEC01-C00592GG-3350000

**STATE OF NEW YORK
MASTER CONTRACT FOR GRANTS**

This State of New York Master Contract for Grants (Master Contract) is hereby made by and between the State of New York acting by and through the applicable State Agency (State) and the public or private entity (Contractor) identified on the face page hereof (Face Page).

WITNESSETH:

WHEREAS, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

WHEREAS, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Master Contract;

NOW THEREFORE, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree as follows:

STANDARD TERMS AND CONDITIONS

I. GENERAL PROVISIONS

A. Executory Clause: In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Master Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Master Contract.

B. Required Approvals: In accordance with Section 112 of the State Finance Law (or, if the Master Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Master Contract exceeds \$50,000 (or \$85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Master Contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the AG and OSC.

Budget Changes: An amendment that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the AG and OSC where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than

five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment D (Payment and Reporting Schedule).

C. Order of Precedence:

In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as follows:

1. Standard Terms and Conditions
2. Modifications to the Face Page
3. Modifications to Attachment A-2¹, Attachment B, Attachment C and Attachment D
4. The Face Page
5. Attachment A-2², Attachment B, Attachment C and Attachment D
6. Modification to Attachment A-1
7. Attachment A-1
8. Other attachments, including, but not limited to, the request for proposal or program application

D. Funding: Funding for the term of the Master Contract shall not exceed the amount specified as "Contract Funding Amount" on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Master Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

E. Contract Performance: The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Master Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Master Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program.

F. Modifications: To modify the Attachments or Face Page, the parties mutually agree to record, in writing, the terms of such modification and to revise or complete the Face Page and all the appropriate attachments in conjunction therewith. In addition, to the extent that such modification meets the criteria set forth in Section I.B herein, it shall be subject to the approval of the AG and

¹ To the extent that the modifications to Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the modifications to Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

² To the extent that the terms of Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the Federal requirements of Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).
Contract Number: # DEC01-C00592GG-3350000

OSC before it shall become valid, effective and binding upon the State. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Master Contract.

G. Governing Law: The Master Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

H. Severability: Any provision of the Master Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Master Contract shall attempt in good faith to reform the Master Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

I. Interpretation: The headings in the Master Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Master Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

J. Notice:

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:
 - a) by certified or registered United States mail, return receipt requested;
 - b) by facsimile transmission;
 - c) by personal delivery;
 - d) by expedited delivery service; or
 - e) by e-mail.
2. Notices to the State shall be addressed to the Program Office designated in Attachment A-1 (Program Specific Terms and Conditions).
3. Notices to the Contractor shall be addressed to the Contractor's designee as designated in Attachment A-1 (Program Specific Terms and Conditions).
4. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.
5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the

Master Contract by giving fifteen (15) calendar days prior written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

K. Service of Process: In addition to the methods of service allowed by the State Civil Practice Law & Rules (CPLR), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. The Contractor shall have thirty (30) calendar days after service hereunder is complete in which to respond.

L. Set-Off Rights: The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold, for the purposes of set-off, any moneys due to the Contractor under the Master Contract up to any amounts due and owing to the State with regard to the Master Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Master Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State Agency, its representatives, or OSC.

M. Indemnification: The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Master Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Master Contract.

N. Non-Assignment Clause: In accordance with Section 138 of the State Finance Law, the Master Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the State's previous written consent, and attempts to do so shall be considered to be null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract, let pursuant to Article XI of the State Finance Law, may be waived at the discretion of the State Agency and with the concurrence of OSC, where the original contract was subject to OSC's approval, where the assignment is due to a reorganization, merger, or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that the merged contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless the Master Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

O. Legal Action: No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Master Contract. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from

any of the State of New York, the State Agency, or any county, or other local government entity. The term "regulatory action" shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

P. No Arbitration: Disputes involving the Master Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

Q. Secular Purpose: Services performed pursuant to the Master Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

R. Partisan Political Activity and Lobbying: Funds provided pursuant to the Master Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

S. Reciprocity and Sanctions Provisions: The Contractor is hereby notified that if its principal place of business is located in a country, nation, province, state, or political subdivision that penalizes New York State vendors, and if the goods or services it offers shall be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that it be denied contracts which it would otherwise obtain.³

T. Reporting Fraud and Abuse: Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the Federal False Claims Act, the New York State False Claims Act, and whistleblower protections.

U. Non-Collusive Bidding: By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor's behalf.

V. Federally Funded Grants and Requirements Mandated by Federal Laws: All of the Specific Federal requirements that are applicable to the Master Contract are identified in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto. To the extent that the Master Contract is funded in whole or part with Federal funds or mandated by Federal laws, (i) the provisions of the Master Contract that conflict with Federal rules, Federal regulations, or Federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable Federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto.

³As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

II. TERM, TERMINATION AND SUSPENSION

A. Term: The term of the Master Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

B. Renewal:

1. General Renewal: The Master Contract may consist of successive periods on the same terms and conditions, as specified within the Master Contract (a "Simplified Renewal Contract"). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Master Contract.

2. Renewal Notice to Not-for-Profit Contractors:

a) Pursuant to State Finance Law §179-t, if the Master Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract no later than ninety (90) calendar days prior to the end of the term of the Master Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Master Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State ("Unusual Circumstances"), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, "Unusual Circumstances" shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

b) Notification to the not-for-profit Contractor of the State's intent to not renew the Master Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Master Contract as required in this Section and State Finance Law §179-t, the Master Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Master Contract.

C. Termination:

1. Grounds:

a) Mutual Consent: The Master Contract may be terminated at any time upon mutual written consent of the State and the Contractor.

b) Cause: The State may terminate the Master Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Master Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Master Contract.

c) Non-Responsibility: In accordance with the provisions of Sections IV(N)(6) and (7) herein, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Master Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.

d) Convenience: The State may terminate the Master Contract in its sole discretion upon thirty (30) calendar days prior written notice.

e) Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Master Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Master Contract, the Master Contract may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Master Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Master Contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.

f) Force Majeure: The State may terminate or suspend its performance under the Master Contract immediately upon the occurrence of a "force majeure." For purposes of the Master Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

2. Notice of Termination:

a) Service of notice: Written notice of termination shall be sent by:

(i) personal messenger service; or

(ii) certified mail, return receipt requested and first class mail.

b) Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:

(i) if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or

(ii) if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

3. *Effect of Notice and Termination on State's Payment Obligations:*

a) Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.

b) The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Master Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Master Contract after its termination date.

4. *Effect of Termination Based on Misuse or Conversion of State or Federal Property:*

Where the Master Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Master Contract for the purposes set forth herein, the State may, at its option, require:

a) the repayment to the State of any monies previously paid to the Contractor; or

b) the return of any real property or equipment purchased under the terms of the Master Contract; or

c) an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

D. Suspension: The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time as the State issues a formal written notice authorizing a resumption of performance under the Master Contract.

III. PAYMENT AND REPORTING

A. Terms and Conditions:

1. In full consideration of contract services to be performed, the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.
2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Master Contract shall not be reimbursed.
3. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Attachment D (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.
4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of the State Agency, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments.
5. If travel expenses are an approved expenditure under the Master Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.
6. Timeliness of advance payments or other claims for reimbursement, and any interest to be paid to Contractor for late payment, shall be governed by Article 11-A of the State Finance Law to the extent required by law.
7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, "Full Execution" shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

B. Advance Payment and Recoupment:

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Attachment D (Payment and Reporting Schedule).
2. Initial advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page. Subsequent advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the dates specified in Attachment D (Payment and Reporting Schedule).
3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Attachment D) will be modified as part of the renewal process.
4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Attachment D (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.
5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.

C. Claims for Reimbursement:

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Master Contract in accordance with this Section and the applicable claiming schedule in Attachment D (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Attachment B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:

- a) Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

b) Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

c) Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

d) Milestone/Performance Reimbursement:⁴ Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event.

Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Attachment D (Payment and Reporting Schedule). The State Agency shall make milestone payments subject to the Contractor's satisfactory performance.

e) Fee for Service Reimbursement:⁵ Payment shall be limited to only those fees specifically agreed upon in the Master Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f) Rate Based Reimbursement:⁶ Payment shall be limited to rate(s) established in the Master Contract. Payment may be requested no more frequently than monthly.

g) Scheduled Reimbursement:⁷ The State Agency shall generate vouchers at the frequencies and amounts as set forth in Attachment D (Payment and Reporting Schedule), and service reports shall be used to determine funding levels appropriate to the next annual contract period.

⁴ A milestone/ performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Master Contract effort.

⁵ Fee for Service is a rate established by the Contractor for a service or services rendered.

⁶ Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.

⁷ Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Master Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

h) Interim Reimbursement: The State Agency shall generate vouchers on an interim basis and at the amounts requested by the Contractor as set forth in Attachment D (Payment and Reporting Schedule).

i) Fifth Quarter Payments:⁸ Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall use a written directive for fifth quarter financing. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.
4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Master Contract as security for the faithful completion of services or work, as applicable, under the Master Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Master Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.
5. The State shall not be liable for payments on the Master Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.
6. All vouchers submitted by the Contractor pursuant to the Master Contract shall be submitted to the State Agency no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency to the Contractor shall not exceed the amount of actual expenditures.
7. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Master Contract is funded, in whole or in part, with Federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures.

D. Identifying Information and Privacy Notification:

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property, must include the Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number,

⁸ Fifth Quarter Payments occurs where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract.

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(ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.

2. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. The personal information is requested by the purchasing unit of the State Agency contracting to purchase the goods or services or lease the real or personal property covered by the Master Contract. This information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York, 12236.

E. Refunds:

1. In the event that the Contractor must make a refund to the State for Master Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in Attachment A-1 (Program Specific Terms and Conditions). The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Refund Office at the address specified in Attachment A-1 (Program Specific Terms and Conditions).

2. If at the end or termination of the Master Contract, there remains any unexpended balance of the monies advanced under the Master Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Master Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

F. Outstanding Amounts Owed to the State: Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Master Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

G. Program and Fiscal Reporting Requirements:

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Attachment D (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Master Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.

2. Consistent with the selected reporting options in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:

a) If the Expenditure Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with one or more of the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

- (i) *Narrative/Qualitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Attachment C (Work Plan). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.
- (ii) *Statistical/Quantitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)
- (iii) *Expenditure Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.
- (iv) *Final Report*: The Contractor shall submit a final report as required by the Master Contract, not later than the time period listed in Attachment D (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Attachment C (Work Plan).
- (v) *Consolidated Fiscal Report (CFR)*: The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Attachment D (Payment and Reporting Schedule).

b) If the Performance-Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

- (i) *Progress Report*: The Contractor shall provide the State Agency with a written progress report using the forms and formats as provided by the State Agency, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Attachment C (Work Plan). Progress reports shall be submitted in a format prescribed in the Master Contract.

- (ii) *Final Progress Report*: Final scheduled payment is due during the time period set forth in Attachment D (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Attachment D (Payment and Reporting Schedule). The State Agency shall complete its audit and notify the Contractor of the results no later than the date set forth in Attachment D (Payment and Reporting Schedule). Payment shall be adjusted by the State Agency to reflect only those services/expenditures that were made in accordance with the Master Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Attachment D (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.

3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Attachment D (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Master Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Attachment D (Payment and Reporting Schedule).

H. Notification of Significant Occurrences:

1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to the State Agency within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.

2. The Contractor shall immediately notify in writing the program manager assigned to the Master Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Master Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

A. Contractor as an Independent Contractor/Employees:

1. The State and the Contractor agree that the Contractor is an independent contractor, and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. Notwithstanding the foregoing, the State and the Contractor agree that if the Contractor is a New York State municipality, the Contractor shall be permitted to hold itself out, and claim, to be a subdivision of the State.

The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Master Contract, and all applicable Federal and State laws and regulations.

2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Master Contract and/or any subcontract entered into under the Master Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Master Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Master Contract, Contractor shall immediately notify the State.

B. Subcontractors:

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Master Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Master Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.

2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of \$100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of \$100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Master Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the subcontract, nor under the Master Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.

3. If requested by the State, prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.

4. If requested by the State, when a subcontract equals or exceeds \$100,000, the subcontractor shall submit a Vendor Responsibility Questionnaire (Questionnaire).

5. If requested by the State, upon the execution of a subcontract, the Contractor shall provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.

6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting

Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

C. Use Of Material, Equipment, Or Personnel:

1. The Contractor shall not use materials, equipment, or personnel paid for under the Master Contract for any activity other than those provided for under the Master Contract, except with the State's prior written permission.
2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Master Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Master Contract.

D. Property:

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.
 - a) If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.
 - b) If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Master Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Master Contract.
 - c) In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.
 - d) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Master Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to the State Agency, naming the State Agency as an additional insured, covering the loss, theft or destruction of such equipment.
 - e) A rental charge to the Master Contract for a piece of Property owned by the Contractor shall not be allowed.
 - f) The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Master Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any

Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.

g) No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Master Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.

2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Master Contract:

a) For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.

b) For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.

3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Master Contract shall be governed by the terms and conditions of Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.

5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

E. Records and Audits:

1. General:

a) The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Master Contract (collectively, Records).

b) The Contractor agrees to produce and retain for the balance of the term of the Master Contract, and for a period of six years from the later of the date of (i) the Master Contract and (ii) the most recent renewal of the Master Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Master Contract. Such Records may include, but not be limited to, original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

(i) personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders,

detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(ii) payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(iii) non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.

(iv) receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.

c) The OSC, AG and any other person or entity authorized to conduct an examination, as well as the State Agency or State Agencies involved in the Master Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

d) The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records, as exempt under Section 87 of the Public Officers Law, is reasonable.

e) Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

2. Cost Allocation:

a) For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of OMB Circulars A-87, A-122, and/or A-21. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.

b) For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

3. Federal Funds: For records and audit provisions governing Federal funds, please see Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

F. Confidentiality: The Contractor agrees that it shall use and maintain personally identifiable information relating to individuals who may receive services, and their families pursuant to the Master Contract, or any other information, data or records marked as, or reasonably deemed, confidential by the State (Confidential Information) only for the limited purposes of the Master Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

G. Publicity:

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.

2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Master Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:

a) Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and

b) State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.

3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Master Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Master Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) day period in which to review each manuscript for compliance with Confidential Information requirements; or (ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section IV(G)(2) (Publicity) hereof.

H. Web-Based Applications-Accessibility: Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Master Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility

Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by the State Agency and the results of such testing must be satisfactory to the State Agency before web content shall be considered a qualified deliverable under the Master Contract or procurement.

I. Non-Discrimination Requirements: Pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that the Master Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors 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 the Master Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (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 the Master Contract. The Contractor shall be subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises: In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Master Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting State Agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State Agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting State Agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;

2. The Contractor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts;
3. The Contractor shall 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, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
4. At the request of the State, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative shall not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and
5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of subclauses 1 – 5 of this Section (IV)(J), in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Master Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law and if such duplication or conflict exists, the State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

K. Omnibus Procurement Act of 1992: It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises, as bidders, subcontractors and suppliers on its procurement contracts.

1. If the total dollar amount of the Master Contract is greater than \$1 million, the Omnibus Procurement Act of 1992 requires that by signing the Master Contract, the Contractor certifies the following:
 - a) The Contractor has made reasonable efforts to encourage the participation of State business enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

c) The Contractor agrees to make reasonable efforts to provide notification to State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of the Master Contract and agrees to cooperate with the State in these efforts.

L. Workers' Compensation Benefits:

1. In accordance with Section 142 of the State Finance Law, the Master Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of the Master Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

M. Unemployment Insurance Compliance: The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to the State Agency staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;
2. any debts owed for UI contributions, interest, and/or penalties;
3. the history and results of any audit or investigation; and
4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Master Contract.

N. Vendor Responsibility:

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may

obtain a paper form from the OSC prior to execution of the Master Contract. The Contractor further covenants and represents that as of the date of execution of the Master Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.

2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.

3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.

4. The State reserves the right, in its sole discretion, at any time during the term of the Master Contract:

- a) to require updates or clarifications to the Questionnaire upon written request;
- b) to inquire about information included in or required information omitted from the Questionnaire;
- c) to require the Contractor to provide such information to the State within a reasonable timeframe; and
- d) to require as a condition precedent to entering into the Master Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and
- e) to require the Contractor to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. By signing the Master Contract, the Contractor agrees to comply with any such additional conditions that have been made a part of the Master Contract.

5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Master Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Master Contract.

6. The State, in its sole discretion, reserves the right to make a final Determination of Non-Responsibility at any time during the term of the Master Contract based on:

a) any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or

b) the State's discovery of any material information which pertains to the Contractor's responsibility.

7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non-responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

O. Charities Registration: If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish the State Agency with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Master Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Master Contract.

P. Consultant Disclosure Law:⁹ If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services, then in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

Q. Wage and Hours Provisions: If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

⁹ Not applicable to not-for-profit entities.

**ATTACHMENT A-1
PROGRAM SPECIFIC TERMS AND CONDITIONS**

**Standard Clauses for All New York State
Department of Environmental Conservation Contracts**

The parties to the attached contract, license, lease, grant, amendment or other agreement of any kind (hereinafter "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract. The word "Contractor" herein refers to any party to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

A) AGENCY SPECIFIC TERMS AND CONDITIONS

I. Postponement, suspension, abandonment or termination by the Department: Within 15 days of receipt of notice, the Contractor shall deliver to the Department all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to source codes and specifications, guarantees, warranties, as-built plans and shop drawings. In any of these events, the Department shall make settlement with the Contractor upon an equitable basis as determined by the Department which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions applicable to postponement, suspension or termination of the contract.

II. Conflict of Interest

(a) Organizational Conflict of Interest - To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the Department.

(1) An organizational conflict of interest exists when the nature of the work to be performed under this contract may, without some restriction on future activities, impair or appear to impair the Contractor's objectivity in performing the work for the Department.

(2) The Contractor agrees that if an actual, or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to the Department. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Department, to avoid, mitigate, or minimize the actual or potential conflict.

(3) To the extent that the work under this contract requires access to personal, proprietary or confidential business or financial data of persons or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(b) Personal Conflict of Interest - The following provisions with regard to management or professional level employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

(1) A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Contractor agrees to notify the Department immediately of any actual or potential personal conflict of interest with regard to any such person working on or having access to information regarding this contract, as soon as Contractor becomes aware of such conflict. The Department will notify the Contractor of the appropriate action to be taken.

(2) The Contractor agrees to advise all management or professional level employees involved in the work of this contract, that they must report any personal conflicts of interest to the Contractor. The Contractor must then advise the Department which will advise the Contractor of the appropriate action to be taken.

(3) Unless waived by the Department, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, as defined herein, have been reported to the Department. Such certification must be signed by a senior executive of the Contractor and submitted in accordance with instructions provided by the Department. Along with the annual certification, the Contractor shall also submit an update of any changes in any conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.

(4) In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) Remedies - The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be permitted by the terms of Clause I of this Attachment or other applicable provisions of this contract regarding termination.

(d) The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has developed the statement of work or the solicitation package

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Department.

III. Dispute Resolution

The parties agree to the following steps, or as many as are necessary to resolve disputes between the Department and the Contractor.

- (a) The Contractor specifically agrees to submit, in the first instance, any dispute relating to this contract to the designated individual, who shall render a written decision and furnish a copy thereof to the Contractor.
- (1) The Contractor must request such decision in writing no more than fifteen days after it knew or should have known of the facts which are the basis of the dispute.
 - (2) The decision of the designated individual shall be the final DEC determination, unless the Contractor files a written appeal of that decision with the designated appeal individual ("DAI") within twenty days of receipt of that decision.
- (b) Upon receipt of the written appeal, the DAI, will review the record and decision. Following divisional procedures in effect at that time, the DAI will take one of the following actions, with written notice to the Contractor.
- (1) Remand the matter to the program staff for further negotiation or information if it is determined that the matter is not ripe for review; or
 - (2) Determine that there is no need for further action, and that the determination of the designated individual is confirmed; or
 - (3) Make a determination on the record as it exists.

- (c) The decision of the DAI shall be the final DEC decision unless the Contractor files a written appeal of that decision with the Chair of the Contract Review Committee ("CRC") within twenty days of receipt of that decision.

The designated individual to hear disputes is:

Lois New
Director, Office of Climate Change
NYS Department of Environmental Conservation
625 Broadway, 9th Floor
Albany, NY 12233-1030
(518) 402-8448

The designated appeal individual to review decisions is:

Jonathan Binder, Office of General Counsel
NYS Department of Environmental Conservation
625 Broadway, 14 Floor
Albany, NY 12233-1500
(518) 402-9188

The Chair of the Contract Review Committee is:

Department of Environmental Conservation
Nancy W. Lussier, Chair
Contract Review Committee
625 Broadway
Albany, NY 12233-5010
Telephone: (518) 402-9228

- (d) Upon receipt of the written appeal, the Chair of the CRC, in consultation with the members of the CRC and the Office of General Counsel, will take one of the following actions, or a combination thereof, with written notice to the Contractor.
- (1) Remand the matter to program staff for additional fact finding, negotiation, or other appropriate action; or
 - (2) Adopt the decision of the DAI; or
 - (3) Consider the matter for review by the CRC in accordance with its procedures.
- (e) Following a decision to proceed pursuant to (d) 3, above, the Chair of the CRC shall convene a proceeding in accordance with the CRC's established contract dispute resolution guidelines. The proceeding will provide the Contractor with an opportunity to be heard.
- (f) Following a decision pursuant to (d) 2 or (d) 3, the CRC shall make a written recommendation to the Deputy Commissioner for Administration who shall render the final DEC determination.
- (g) At any time during the dispute resolution process, and upon mutual agreement of the parties, the Office of Hearings and Mediation Services (OHMS) may be requested to provide mediation services or other appropriate means to assist in resolving the dispute. Any findings or recommendations made by the OHMS will not be binding on either party.
- (h) Final DEC determinations shall be subject to review only pursuant to Article 78 of the Civil Practice Law and Rules.
- (i) Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the designated individual. Nothing in this Contract shall be construed as making final the decision of any administrative officer upon a question of law.
- (j)(1) Notwithstanding the foregoing, at the option of the Contractor, the following shall be subject to review by the CRC:

Disputes arising under Article 15-A of the Executive Law (Minority and Women Owned Business participation), the Department's determination with respect to the adequacy of the Contractor's Utilization Plan, or the Contractor's showing of good faith efforts to comply therewith. A request for a review before the CRC should be made, in writing, within twenty days of receipt of the Department's determination.

- (2) The CRC will promptly convene a review in accordance with Article 15-A of the Executive Law and the regulations promulgated thereunder.

IV. Tax Exemption

Pursuant to Tax Law Section 1116, the State is exempt from sales and use taxes. A standard state voucher is sufficient evidence thereof. For federal excise taxes, New York's registration Number 14740026K covers tax-free transactions under the Internal Revenue Code.

V. Litigation Support

In the event the Department becomes involved in litigation related to the subject matter of this contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Any compensation paid to the Contractor under this paragraph will be negotiated and based on the rates established in the contract, or as may otherwise be provided in the contract. No compensation for such support will be paid if the litigation is the result of the Contractor's misconduct, negligence or omissions.

VI. Inventions or Discoveries

The Scope of work of this agreement shall not include any inventions. If however, an invention results from this project it shall be owned as follows:

Any invention or discovery first made or conceived and reduced to practice in the performance of this Contract solely by the Contractor shall remain with the Contractor; provided that the Contractor shall grant to the Department and the State a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for on behalf of the Department and the State the subject copyright throughout the world, where the Contractor is able to do so.

Any invention or discovery made or conceived and reduced to practice in the performance of this Contract solely by Department or State shall remain with the State; provided that the Department or State shall grant to the Contractor a nonexclusive, nontransferable, irrevocable, paid-up license to use for non-commercial research, educational, and public service purposes.

Any invention or discovery made or conceived and reduced to practice in the performance of this Contract jointly by Contractor and Department or State in the performance of this work shall be jointly held by the Contractor and Department or State.

VII. Intellectual Property and Copyright Materials

- (a) Title to, and the right to determine the disposition of any copyrights, or copyrightable material, first produced or created solely by Contractor in the performance of this work shall remain with the Contractor; provided that the Contractor shall grant to the Department and the State a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for on behalf of the Department and the State the subject copyright throughout the world, where the Contractor is able to do so.

Title to, and the right to determine the disposition of any copyrights, or copyrightable material, first produced or created solely by Department or State in the performance of this work shall remain with the State; provided that the Department or State shall grant to the Contractor a nonexclusive, nontransferable, irrevocable, paid-up license to use for non-commercial research, educational, and public service purposes.

Title to, and the right to determine the disposition of any copyrights, or copyrightable material, first produced or created jointly by Contractor and Department or State in the performance of this work shall be jointly held by the Contractor and Department or State.

VIII. Patent and Copyright Protection

If any patented or copyrighted material is involved in or results from the performance of this Contract, this Article shall apply.

- (a) The Contractor shall, at its expense, defend any suit instituted against the Department and indemnify the Department against any award of damages and costs made against the Department by a final judgment of a court of last resort based on the claim that any of the products, services or consumable supplies furnished by the Contractor under this Contract infringes any patent, copyright or other proprietary right; provided the Department gives the Contractor:
- (1) prompt written notice of any action, claim or threat of infringement suit, or other suit, and
 - (2) the opportunity to take over, settle or defend such action at the Contractor's sole expense, and
 - (3) all available information, assistance and authority necessary to the action, at the Contractor's sole expense.
- The Contractor shall control the defense of any such suit, including appeals, and all negotiations to effect settlement, but shall keep the Department fully informed concerning the progress of the litigation.
- (b) If the use of any item(s) or parts thereof is held to infringe a patent or copyright and its use is enjoined, or Contractor believes it will be enjoined, the Contractor shall have the right, at its election and expense to take action in the following order of precedence:
- (1) procure for the Department the right to continue using the same item or parts thereof;
 - (2) modify the same so that it becomes non-infringing and of at least the same quality and performance;
 - (3) replace the item(s) or parts thereof with noninfringing items of at least the same quality and performance;
 - (4) if none of the above remedies are available, discontinue its use and eliminate any future charges or royalties pertaining thereto. The Contractor will buy back the infringing product(s) at the State's book value, or in the event of a lease, the parties shall terminate the lease. If discontinuation or elimination results in the Contractor not being able to perform the Contract, the Contract shall be terminated.
- (c) In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any item or material pursuant to or resulting from this Contract infringes any patent, copyright or proprietary right, and such action is forwarded by the Department to the Contractor for defense and indemnification pursuant to this Article, the Department shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence and a copy of this Contract to the Office of the Attorney General of the State of New York. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth in this Article, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York in writing and shall specify to what extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of this Contract. The Contractor shall in such event protect the interests of the Department and State of New York and secure a continuance to permit the State of New York to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses which the Department and State shall have.
- (d) The Contractor shall, however, have no liability to the Department under this Article if any infringement is based upon or arises out of:
- (1) compliance with designs, plans, or specifications furnished by or on behalf of the Department as to the items;
 - (2) alterations of the items by the Department;
 - (3) failure of the Department to use updated items provided by the Contractor for avoiding infringement;
 - (4) use of items in combination with apparatus or devices not delivered by the Contractor;
 - (5) use of items in a manner for which the same were neither designed nor contemplated; or
 - (6) a patent or copyright in which the Department or any affiliate or subsidiary of the Department has any direct or indirect interest by license or otherwise.

- (e) The foregoing states the Contractor's entire liability for, or resulting from, patent or copyright infringement or claim thereof.

IX. Freedom of Information Requests

In response to a Freedom of Information Law (FOIL) request received by the Department, the Contractor agrees to provide to the Department records generated by the Contractor as a result of this contract's scope of work that are responsive to the FOIL request. The contractor may request that the Department except from disclosure records on the basis that they contain trade secrets or confidential commercial information in accordance with FOIL (Public Officers Law Section 87 and 6 NYCRR Part 616).

X. Article 15-Requirements

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

(a) General Provisions

- (1) The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- (2) The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department (the "Department"), to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- (3) Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Article or enforcement proceedings as allowed by the Contract.

(b) Contract Goals

- (1) For purposes of this procurement, the Department hereby establishes an overall goal of **0%** for Minority and Women-Owned Business Enterprises ("MWBE") participation, (based on the current availability of qualified MBEs and WBEs).
- (2) For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address; <https://ny.newnycontracts.com>

Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- (3) Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the Department for liquidated or other appropriate damages, as set forth herein.
- (c) Equal Employment Opportunity (EEO)**
- (1) Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the State of Economic Development (the "Division"). If

any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements. Contractor shall comply with the following provisions of Article 15-A:

- (i) Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- (ii) The Contractor shall submit an EEO policy statement to the Department within seventy two (72) hours after the date of the notice by Department to award the Contract to the Contractor.
- (iii) If Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement. This statement can be found at the link provided in Section 8.
- (iv) The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employer Department, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employer Department, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
 - e. **EEO Contract Goals** for the purposes of this procurement, the Department hereby establishes a goal of 0% Minority Labor Force Participation, 0% Female Labor Force Participation.

(2) Staffing Plan Form

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan as part of the MWBE Utilization Plan and submit at the time of award of the contract.

(3) Workforce Employment Utilization Report Form ("Workforce Report")

- (i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
- (ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

- (iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.
- (4) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (d) MWBE Utilization Plan**
- (1) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.
- (2) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section X-B-1 of this Attachment.
- (3) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.
- (e) Waivers**
- (1) For Waiver Requests Contractor should use Waiver Request Form.
- (2) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- (3) If the Department, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.
- (f) Quarterly MWBE Contractor Compliance Report**
- Contractor is required to submit a Quarterly MWBE Contractor Compliance Report Form to the Department by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.
- (g) Liquidated Damages - MWBE Participation**
- (1) Where Department determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department liquidated damages.
- (2) Such liquidated damages shall be calculated as an amount equaling the difference between:
- (i) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - (ii) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- (3) In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Department.

(h) Forms

Forms referenced in this Article can be found at <http://www.dec.ny.gov/about/48854.html>

XI. Iran Divestment Act Requirements

By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

XII. Americans With Disabilities Act

In the event the monies defined herein are to be used for the development of facilities, outdoor recreation areas, transportation or written or spoken communication with the public, the Contractor shall comply with all requirements for providing access for individuals with disabilities as established by Article 4A of the New York State Public Buildings Law, Americans with Disabilities Act, and relevant sections of the New York State Uniform Fire Prevention and Building Code. Standards for certain Recreation Facilities are found in the 2010 ADA Standards for Accessible Design while others are found in the Architectural Barriers Act Accessibility Guidelines for Outdoor Recreation Areas, <https://www.access-board.gov/guidelines-and-standards>

XIII. Public Access to Facilities

If applicable to the project, the Contractor agrees to allow public access to any facilities developed with monies defined herein on the same basis to all residents of New York State for a period not less than five (5) years after the date of final payment under this Contract or five (5) years after the date that the final payment was due. Failure to comply with the provisions of this clause shall be considered an abandonment of the Project.

XIV. Project Insurance Considerations

Refer to project insurance requirements as set forth in A-1 (B) Program Specific Terms and Conditions.

XV. Amendment/Extensions

The Contract may be amended and/or extended by mutual written consent of all parties. Amendment forms will be incorporated into this Contract and will not take effect until approved by all applicable State agencies and final approval by the Office of the State Comptroller, if applicable. Contract amendments may be conditioned upon funds being re-appropriated in the State Budget each state fiscal year to the Department.

XVI. Environmental Protection Fund Acknowledgement

If applicable, in recognition of a portion of the Department funds utilized for any work completed under this Contract, the Contractor agrees to acknowledge in any communication to the public, that such funding was provided from the Environmental Protection Fund as administered by the New York State Department of Environmental Conservation.

XVII. Vendor Responsibility

- A. The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- B. The Department recommends that vendors file a required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.
- C. Vendors must provide their New York State Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us. Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Department of the Office of the State Comptroller's Help Desk for a copy of the paper form.
- D. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Department officials or staff, the Contract may be terminated by the Commissioner or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

XVIII. Permits

- A. If applicable, the Contractor agrees to obtain all required permits, including but not limited to, local, state and federal permits prior to the commencement of any project related work. The Contractor agrees that all work performed in relation to the project by the Contractor or its agents, representatives, or contractors will comply with all relevant federal, state and local laws, rules, regulations and standards, zoning and building codes, ordinances, operating certificates for facilities, or licenses for an activity.
- B. With respect to the project, the contractor certifies that is has complied, and shall continue to comply with all requirements of the State Environmental Quality Review Act (SEQRA). The Contractor agrees to provide all environmental documents as may be required by the Department. The Contractor has notified, and shall continue to notify, the Department of all actions proposed for complying with the environmental review requirements imposed by SEQRA.

XIX. Approvals

The Contractor agrees that the project will be performed in accordance with the condition of any applicable administrative, judicial or governmental orders or approvals.

XX. Site Access

If applicable, the Contractor represents it has or will obtain title to or sufficient interest in the project site, including rights-of-way and necessary easements, before the start of the project to ensure undisturbed use and possession for purposes of construction and completion of the project, as well as operation of the project throughout its useful life.

XXI. Cost Overruns

If applicable, any cost overruns will not be paid by the Department and the Department is not committed to seeking additional appropriations or re-appropriation of funds and will not be responsible for the maintenance and operation of any facility which may be developed or equipment which may be purchased with the funds herein identified.

XXII. Construction Plans

It is the Contractor's responsibility (if applicable to the Project) to have all construction contract plans, specifications and cost estimates certified by a professional engineer licensed to practice in the State of New York. All certified plans and specifications shall become part of this Contract and shall be kept on the project site at all times.

XXIII. Payment and Reporting

- A. The Contractor agrees to fully fund the Project and then seek reimbursement from the Department for eligible project costs. The Department will not process final payment for this Contract, until the Department determines that the project

was completed satisfactorily and upon receipt of all required final close-out payment documentation in accordance with the direction and requirements described in Attachment D.

- B. The Contractor will be entitled to receive reimbursement payments for work, projects, and/or services rendered as detailed and described in Attachment C and Attachment D of this Contract. Claims for reimbursement must be accompanied by such receipts and documents verifying expenditures as may be required by the Department and by the Comptroller. Satisfactory documentation shall include, but is not limited to, signed copies of payment vouchers or invoices, canceled checks/or the latest cumulative work-in-place estimate for each construction Contract, and any further documentation as may be required by the Department and/or the Comptroller. The Department reserves the right, in its sole discretion, to determine if the reimbursement request and accompanying documentation submitted by the Contractor is in satisfactory form and substance. A final payment determination will be based upon the Department's review of the Contractor's final voucher submission and reporting as described in Attachment D.

XXIV. On-Site Inspections

The State, Department or authorized representatives will conduct a review of the Project funded from this Contract, which may include on-site inspections, at a time that is satisfactory to the Department.

XXV. Prohibition on Purchase of Tropical Hardwoods

The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State of any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

B) PROGRAM SPECIFIC TERMS AND CONDITIONS Climate Smart Communities

I. Local Share Requirements

For all Climate Smart Communities Projects, including Climate Protection Implementation Projects and Climate Smart Communities Certification Projects, the Department share will not exceed fifty percent (50%) of the approved project costs, up to the Contract Funding Amount identified on the Face Page, and the Contractor must provide fifty percent (50%) of required eligible share with eligible costs not paid with state grant funds nor federal funds. This percentage will be specified in the Attachment B-1 (Expenditure Budget).

II. Construction

(a) The Contractor agrees to proceed expeditiously with the Project and shall complete the Project in accordance with the performance measures set forth in Attachment C (Work Plan) or any amendments to such Work Plan which are approved by the Department in writing.

(b) The Contractor agrees that it shall notify the Department in writing thirty (30) calendar days prior to the start of construction or, if the start of construction began on or after May 1, 2017, upon approval of the Contract the Contractor shall notify the Department in writing within thirty (30) calendar days as to the status of any construction.

(c) The Contractor agrees that it shall notify the Department in writing thirty (30) days following initial start-up operation of the Project.

(d) The Contractor agrees that it shall cause the Project to be designed and constructed in accordance with the engineering report or facilities plan, and if applicable to the project, the plans and specifications for the Project shall be stamped with the seal of a licensed professional engineer and shall be signed with the personal signature of such engineer in compliance

with Education Law §7209(1) and (2), and which have been delivered to and approved by the Department, as well as any amendments thereto.

(e) The Contractor agrees that it shall permit the Department to participate in all its meetings and conferences with respect to the Project. Upon request from the Department, the Contractor must submit to the Department reports, documents, data, contractual documents, administrative records, and other information pertinent to the Project.

(f) The Contractor agrees to permit representatives of the Department to have unrestricted access to the Project at all reasonable times, and all contracts of the Contractor for construction or operation of all or a portion of the Project shall contain provisions that permit such access to the Project or work relating to the Project, wherever it is in preparation or progress, and that contractors or subcontractors shall provide proper facilities for such access and inspection and shall permit extracts and copies of Project records to be made by the representatives of the Department.

III. Engineering Certification/As-built Plans

Within sixty (60) calendar days after the end of the Contract Term, or upon final completion of the Project, the Contractor agrees that it will deliver the following to the Department:

(a) A certification stating that the Project has been completed in accordance with this Contract, and constructed per the approved plans and specifications, and any approved amendments thereto.

(b) The certified "as built" plans and specifications for the Project. Any work not in accordance with the approved plans and specifications shall be remedied, unless such non-compliance is agreed to be waived by the Department.

(c) The Contractor shall retain all as-built plans and specifications for the Project for the useful life of the Project.

IV. Useful Life of Project

The Contractor agrees that it is fully responsible for ensuring the proper and efficient monitoring, operation and maintenance of the Project satisfactory to the Department, including, but not limited, to retaining a sufficient number of qualified staff and ensuring performance of required tests and requirements. After completion of the Project, the Contractor shall, for a period of thirty (30) years unless another period of time is specified in the attached Work Plan (the useful life of the Project as provided in the State Finance Law §61]), operate the Project or otherwise cause the Project to be operated properly in a sound and economical manner and shall maintain, preserve and keep the Project, or cause the Project to be maintained, preserved and kept, in good repair, working order and condition and shall make, or cause to be made, all necessary and proper repairs, replacements and renewals from time to time, so that at all times the Project may be operated properly in a manner consistent with the Project performance standards contained in the engineering report of facilities plan for the Project, with this Contract and with the requirements of any related permit or other governmental approval of the Project.

V. Notifications

The Department's authorized representative for the implementation of this Contract and for approval, direction, and receipt of all Project reports called for in this Contract is identified below. Whenever it is provided in this Contract that notice must be given or other communications sent to the Department, the notices or communications must be in writing and delivered or sent to the Department's authorized representative at:

Address: Office of Climate Change
New York State Department of Environmental Conservation
625 Broadway – 9th Floor
Albany, New York, 12233-1030
Tel. No.: (518) 402-8448

A copy of all legal notices shall be sent to:
General Counsel
New York State Department of Environmental Conservation
625 Broadway - 14th Floor
Albany, New York, 12233-1500

The Contractor's authorized representative for the implementation of this Contract is the person authorized in the Resolution of Support for the contract submitted by the Contractor. Notices or communications regarding this Contract should be in writing and delivered or sent to the Contractor's authorized representative at the address identified on the Face Page, with copies sent to the Contractor's contract administrator as identified in the contract application. Notices delivered or sent shall be deemed for all purposes as notice to all persons who are Parties to this Contract as Department or Contractor.

VI. Eligible Costs

Only those eligible project related costs incurred on or after May 1, 2017 will be eligible for reimbursement of grant funding.

VII. Climate Smart Communities Program Requirements

(a) If the Contractor is not already a registered Climate Smart Community, the Contractor shall take the Climate Smart

Communities Pledge within the term of this Contract.

(b) For climate mitigation projects, including the Clean Transportation and/or Reduction and Recycling of Food Waste categories, the Contractor shall provide a report of estimates of emissions reduction as required by the Department.

(c) For certification actions funded in the Climate Smart Communities Certification Project category, the Contractor shall adhere to the requirements and standards described in the Climate Smart Communities Certification Manual. The Climate Smart Communities Certification Manual is available on the Office of Climate Change web site at <http://www.dec.ny.gov/energy/96511.html>.

(d) If the Contractor develops, improves, restores or rehabilitates real property that is not owned by the Contractor as part of the work of this Contract, the Contractor shall obtain a climate change mitigation easement from the owner of the real property. Climate change mitigation easements shall be enforced as conservation easements are enforced in ECL section 49-0305.

VIII. Lead Applicant Self-Certification

For projects that involve more than one municipality or partner, the lead applicant must certify that an agreement or a signed commitment exists between the Lead Applicant and each participating partner stating the participating partner's commitment and willingness to deliver each output attributed to them in the contract work plan.

IX. Project Insurance Considerations

The Contractor agrees to procure and maintain at its own expense and without expense to the Department until final acceptance by the Department of the services covered by this Contract, insurance of the kinds and amounts as determined by the Department and based upon the project work plan. The insurance policies should be provided by insurance companies licensed to do business in the State of New York. Any delay or time lost as a result of the Contractor not having insurance required by the Contract shall not give rise to a delay claim or any other claim against the Department. Upon execution of this Contract, the Contractor shall furnish to the Department a certificate or certificates, satisfactory to the Department, showing that it has complied with this Article. The insurance documentation shall provide that: Liability and protective liability insurance policies shall provide primary and non-contributory coverage to the NYS Department of Environmental Conservation for any claims arising from the Contractor's Work under this contract, or as a result of Contractor's activities. The State of New York, NYS Department of Environmental Conservation, its officers, agents and employees, 625 Broadway Albany, New York 12233-1030 shall be listed as Certificate Holder on all liability insurance certificate(s), as additional insureds on endorsements(s) and on additional supporting documentation.

The policies shall include a waiver of subrogation endorsement in favor of the Department as an additional insured. The endorsement shall be on ISO Form Number CG 24 04 or a similar form with same modification to the policy. Policies shall not be changed or canceled until thirty (30) days prior written notice has been given to the Department; as evidenced by an endorsement or declarations page.

Insurance documentation shall disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the Contract.

Endorsements in writing must be added to and made part of the insurance contract for the purpose of changing the original terms to reflect the revisions and additions as described. A copy of these endorsements must be provided to the Department within a reasonable amount of time.

Applicable insurance policy number(s) reference on the ACORD form must be referenced in the supporting documentation requested by the Department and supplied by the insurance company (e.g. endorsement page, declarations page, etc.).

This Contract shall be void and of no effect unless the Contractor procures the required insurance policies and maintains them until completion of the work or acceptance by the Department, whichever event is later.

The kinds and amounts of insurance required are as follows:

A. Workers' Compensation coverage must be provided for work to be performed in New York State. The Contractor shall provide and maintain full New York State coverage during the life of this contract for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law.

Evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

FORM #	FORM TITLE
C-105.2	Certificate of Workers' Compensation Insurance
U-26.3	State Insurance Fund Version of the C-105.2 form
SI-12/ GSI-105.2	Certificate of Workers' Compensation Self-Insurance
CE-200	Certificate of Attestation of Exemption – (no employees)

B. Disability Benefits coverage must be provided for work to be performed in New York State. The Contractor shall provide and maintain coverage during the life of the contract for the benefit of such employees as are required to be covered by the New York State Disability Benefits Law. Any waiver of this requirement must be approved by the Department of Environmental Conservation and will only be granted in unique or unusual circumstances.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

FORM #	FORM TITLE
DB-120.1	Certificate of Disability Benefit Insurance
DB-155	Certificate of Disability Benefit Self-Insurance
CE-200	Certificate of Attestation of Exemption – (no employees)

An ACORD form is NOT an acceptable proof of Workers' Compensation coverage. **ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME** The State of New York and The New York State Department of Environmental Conservation, Office of Climate Change, 625 Broadway, Albany, NY 12233-1030 as the Entity Requesting Proof of Coverage.

Additional information can be obtained at the Worker's Compensation website:
<http://www.wcb.ny.gov/content/main/Employers/Employers.jsp>

Upon review of the scope of work outlined in the Grant Application by the Department, the following types of liability insurance may be required:

C. Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence, and \$5,000,000 General aggregate. Such insurance shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability assumed in a contract (including tort liability of another assumed in a contract). Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.

D. Business Automobile Liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any registered motor vehicle including owned, leased, hired and non-owned vehicles. If the Contractor does not own, rent or lease any registered vehicles and will not be using any vehicles on State Land proof of Business Automobile Liability Insurance shall not be required for this Contract. The Contractor shall assume full responsibility and liability that owners and operators of any registered vehicles entering State Land to conduct work under this contract carry the same Business Automobile Liability Insurance of the kinds and amounts listed above. NYS Department of Environmental Conservation reserves the right to request proof of the same.

E. Environmental Liability with a limit of not less than \$1,000,000 providing primary coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against the Department of Environmental Conservation arising from the Contractor's Work.

F. Professional Liability Insurance includes coverage for its negligent act, error or omission in rendering or failing to render professional services required by this contract arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants. The Contractor, any subcontractor or supplier retained by the Contractor to work on the contract shall procure and maintain during and for a period of three (3) years after completion of

this contract, Professional Liability Insurance in the amount of \$1,000,000. The professional liability insurance may be issued on a claims-made policy form, in which case the Contractor shall purchase at its sole expense, extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.

G. Marine Protection & Indemnity: Anytime the activity involves work on navigable water or the work is connected to water related activities, the Contractor shall procure Marine Protection & Indemnity and Hull and Machinery coverage, if available. Hull and Machinery coverage shall be provided for the total value of the watercraft or equipment. The Contractor shall obtain Protective and Indemnity Liability insurance for all marine operations under the contract, with a minimum \$2,000,000 limit.

Should the Contractor engage a subcontractor, the Contractor shall impose the insurance requirements of this document on the subcontractor. Contractor shall determine the required insurance types and limits, commensurate with the work of the Subcontractor. The Contractor will maintain the certificate or certificates and endorsements for all subcontractors hired as part of the Contractor's records.

**ATTACHMENT B-1 EXPENDITURE BASED BUDGET
SUMMARY**

PROJECT NAME: Town of Clifton Park Route 146 Sidewalk Extension

CONTRACTOR SFS PAYEE NAME: CLIFTON PARK TOWN OF

CONTRACT PERIOD: From: 03/15/2018

To: 03/14/2023

CATEGORY OF EXPENSE	GRANT FUNDS	MATCH FUNDS	MATCH %	OTHER FUNDS	TOTAL
1. Personal Services					
a) Salary	\$0.00	\$0.00	0 %	\$0.00	\$0.00
b) Fringe	\$0.00	\$0.00	0 %	\$0.00	\$0.00
Subtotal	\$0.00	\$0.00	0 %	\$0.00	\$0.00
2. Non Personal Services					
a) Contractual Services	\$220,000.00	\$220,000.00	100 %	\$0.00	\$440,000.00
b) Travel	\$0.00	\$0.00	0 %	\$0.00	\$0.00
c) Equipment	\$0.00	\$0.00	0 %	\$0.00	\$0.00
d) Space/Property & Utilities	\$0.00	\$0.00	0 %	\$0.00	\$0.00
e) Operating Expenses	\$0.00	\$0.00	0 %	\$0.00	\$0.00
f) Other	\$0.00	\$0.00	0 %	\$0.00	\$0.00
Subtotal	\$220,000.00	\$220,000.00	100 %	\$0.00	\$440,000.00
TOTAL	\$220,000.00	\$220,000.00	100 %	\$0.00	\$440,000.00

ATTACHMENT B-1 EXPENDITURE BASED BUDGET
PERSONAL SERVICES DETAIL

SALARY					
POSITION TITLE	ANNUALIZED SALARY PER POSITION	STANDARD WORK WEEK (HOURS)	PERCENT OF EFFORT FUNDED	NUMBER OF MONTHS FUNDED	TOTAL
Not applicable	\$0.00			Subtotal	\$0.00
TOTAL FRINGE					
PERSONAL SERVICES TOTAL					\$0.00

ATTACHMENT B-1 - EXPENDITURE BASED BUDGET
NON-PERSONAL SERVICES DETAIL

CONTRACTUAL SERVICES - TYPE/DESCRIPTION	TOTAL
Engineering Design Services, TBD - Preliminary Design; Surveying; Permitting; Detailed Design; Bid Documents	\$33,000.00
Right-of-Way Incidentals and Acquisition (Match)	\$47,000.00
Construction and inspection (TBD)	\$360,000.00
TOTAL	\$440,000.00

ATTACHMENT B-1 - EXPENDITURE BASED BUDGET
 NON-PERSONAL SERVICES DETAIL

TRAVEL - TYPE/DESCRIPTION	TOTAL
not applicable	\$0.00
TOTAL	\$0.00

EQUIPMENT - TYPE/DESCRIPTION	TOTAL
TOTAL	

OTHER - TYPE/DESCRIPTION	TOTAL
TOTAL	

ATTACHMENT C - WORK PLAN
SUMMARY

PROJECT NAME: Town of Clifton Park Route 146 Sidewalk Extension

CONTRACTOR SFS PAYEE NAME: CLIFTON PARK TOWN OF

CONTRACT PERIOD: From: 03/15/2018

To: 03/14/2023

Project Summary: A high-level overview of the project, including the overall goal and desired outcomes.

OVERVIEW/ Project Summary:

The Town of Clifton Park will construct approximately 0.3 miles of new 5-foot-wide concrete sidewalks for pedestrian travel on the north side of NY Route 146, connecting the Northcrest and Robinwood Estates and Tallowood Apartments to the nearby Town Center area of the Town of Clifton Park.

The project also includes two pedestrian crosswalks at unsignalized intersections at Crestmont Drive and Tallow Wood Drive.

This project will greatly improve pedestrian safety along this corridor as well as access for people from the residential neighborhoods of Northcrest, Robinwood Estates and Tallowood Apartments to the Town Center commercial area, including shopping plazas, the mall, restaurants, offices, the Public Safety Building, and essential services. This new sidewalk will also connect to other, currently existing sidewalks and multi-use trails within the Town of Clifton Park and provide a larger, non-motorized transportation network within the town, supporting the reduction of vehicle miles traveled and therefore, greenhouse gas emissions from vehicular traffic.

ATTACHMENT C - WORK PLAN

DETAIL

Objective

1 1. Project Administration

Tasks

1.1 Conduct initial grant contract meeting - between Town and NYS DEC to discuss grant contract and draft monitoring and metrics data collection plan (see objective 8).

Performance Measures

1.1.1 Meeting summary submitted to DEC OCC - .

Tasks

1.2 Grant contract reporting and reimbursements - .

Performance Measures

1.2.1 Quarterly progress reports submitted to DEC within 30 days of the close of the quarter. - .

1.2.2 Reimbursement requests submitted as needed, but only at the end of a quarter. Final reimbursement request due to DEC within - 120 days of the contract end date.

1.2.3 Final project summary report and all deliverables submitted to DEC within 60 days of the contract end date. - .

Tasks

1.3 Public Relations - .

Performance Measures

1.3.1 Notify DEC OCC about press events, releases and ceremonies at least one month before the event. - .

1.3.2 Attribution of DEC funding - The following attribution statement acknowledging DEC funding for the project must be included in any press releases or other public announcement, including newspaper articles and website posting, as well as documents, brochures, reports, signage, maps, and exhibits: "This project has been funded in part by the Climate Smart Communities Grant Program, Title 15 of the Environmental Protection Fund through the New York State Department of Environmental Conservation."

ATTACHMENT C - WORK PLAN

DETAIL

Objective

2. Procure Engineering Consultant

Tasks

2.1 Draft Request for Qualifications (RFQ) for engineering services. - .

Performance Measures

2.1.1 Submit draft RFQ to DEC OCC for review. - .

Tasks

2.2 Release RFQ for Engineering Services - The NYS DOT RFQ process provides the Town with the County Highway Superintendents Association (CHSA)'s Local Design Services Agreement (LDSA) to choose from for consultant procurement.

Performance Measures

2.2.1 Send out RFQ to firms on Local Design Services Agreement list; and submit copy to DEC OCC. - .

Tasks

2.3 Select Engineering Consultant - .

Performance Measures

2.3.1 Submit list of applicants to DEC OCC. - .

2.3.2 Submit "intent to hire" letter to DEC OCC. - .

Tasks

2.4 Town to execute agreement with engineering consultant - .

Performance Measures

2.4.1 Submit copy of executed consultant contract to DEC OCC. - .

Tasks

2.5 Project Meeting with Town and Consultant. Invite DEC OCC to attend. - .

Performance Measures

2.5.1 Summary of project meeting showing plan for completing scope of work, submitted to DEC OCC. - .

ATTACHMENT C - WORK PLAN

DETAIL

Objective	
3	3. Complete engineering design
Tasks	
3.1	3.a.Design and engineering consultant prepares preliminary design
<u>Performance Measures</u>	
3.1.1	Preliminary design plan is complete and copy of design is submitted to DEC OCC. - .
Tasks	
3.2	3.b. Consultant presents preliminary design for public input through a presentation to the public
<u>Performance Measures</u>	
3.2.1	Copies of outreach materials and public input summary is prepared and provided to DEC OCC. - .
Tasks	
3.3	3.c. Final design, specifications and construction documents - .
<u>Performance Measures</u>	
3.3.1	Final designs, specifications and construction documents are prepared, certified by consultant engineer, and provided to DEC - OCC.

ATTACHMENT C - WORK PLAN

DETAIL

Objective

4 4. ROW Acquisition, as needed

Tasks

4.1 Engineering consultant prepares draft and final mapping of any right-of-way (ROW) needs for construction. - .

Performance Measures

4.1.1 4.a.i. Copies of Draft ROW Maps submitted to DEC OCC. - .

Tasks

4.2 4.b. ROW Acquisition Phase completed.

Performance Measures

4.2.1 4.b.i. Copies of Final ROW Maps submitted to DEC OCC. - .

ATTACHMENT C - WORK PLAN

DETAIL

Objective

5 5. Permitting and Preparation of Bid Documents

Tasks

5.1 5.a. Obtain all required permits, - including but not limited to NYS DOT, NYS DEC, US Army Corps of Engineers, Town of Clifton Park Highway Department, as is applicable.

Performance Measures

5.1.1 5.a.i. Copies of all required permits submitted to DEC OCC. - .

Tasks

5.2 5.b. Finalize all public bid documents - including specifications, construction plans, and budget estimates.

Performance Measures

5.2.1 Copies of final bid documents prepared and provided to DEC OCC. - .

Tasks

5.3 Conduct SEQOR Review - .

Performance Measures

5.3.1 SEQOR documents prepared and provided to DEC OCC. - .

ATTACHMENT C - WORK PLAN

DETAIL

Objective

6 Procure construction contractor

Tasks

6.1 6.a. Release public bid, advertised through Town's official newspaper and NYS Contract Reporter - .

Performance Measures

6.1.1 6.a.i. Copy of bid solicitation and public announcements submitted to DEC OCC - .

6.1.2 List of applicants, intent to hire letter, and executed contract submitted to DEC OCC - .

Tasks

6.2 Select Construction contractor - .

Performance Measures

6.2.1 Submit bidders list and responses to DEC OCC - .

6.2.2 Submit "Intent to Hire" letter to DEC OCC - .

Tasks

6.3 Town to execute agreement with construction contractor - .

Performance Measures

6.3.1 Submit copy of executed consultant contract to DEC OCC. - .

Tasks

6.4 Pre-construction project Meeting with Town and contractor and other parties as needed. Invite DEC OCC to attend. - .

Performance Measures

6.4.1 Summary of project kick-off construction meeting submitted to DEC OCC. - .

Tasks

6.5 Notify OCC, in writing, 30 calendar days prior to the start of construction that work is about to begin and provide an update - of progress 30 days following the initial startup. If construction had begun prior to contract execution, provide to OCC, in writing, the status of any construction underway at the time of contract execution. Provide an update of progress 30 days following initial project startup.

Performance Measures

6.5.1 Submit 30-day notice letter and 30-day progress update to OCC. - .

ATTACHMENT C - WORK PLAN

DETAIL

Tasks

6.6 Install Environmental Protection Fund (EPF) Sign on project site. - .

Performance Measures

6.6.1 Submit photos of EPF sign as installed to DEC OCC. Photographs will include, but not be limited to: 1. Close-up with legible - text; 2. Wide, in-situ shot showing location and situation.

Objective

7 Complete project construction

Tasks

7.1 7.a. Site Construction Oversight by Town and construction inspection consultants

Performance Measures

- 7.1.1 7.a.i. Extensive photo-documentation of the project site pre-construction, provided to DEC OCC - .
- 7.1.2 7.a.ii. Site inspection reports during construction prepared and provided to DEC OCC. - .
- 7.1.3 7.a.iii. Extensive photo-documentation during construction provided to DEC OCC. - .

Tasks

7.2 Construction completion - .

Performance Measures

- 7.2.1 Final inspection report of the completed construction work signed by supervising engineer submitted to DEC. - .
- 7.2.2 Certificate of completion stating that all portions of the project funded by this grant have been completed in accordance - with this contract and constructed per the approved plans and specifications (and any approved amendments) submitted and/or certified "as-built" plans and specifications for any portions of the project funded by this grant, stamped with the seal of a licensed professional engineer, and signed with the personal signature of such engineer in compliance with Education Law §7209(1) and (2) submitted to DEC.
- 7.2.3 Photo-documentation of the project site after construction, submitted to DEC OCC - .

ATTACHMENT C - WORK PLAN

DETAIL

Objective

8 Monitor and Report on Project-Appropriate Metrics

Tasks

8.1 8.a. Draft and finalize a data collection plan and scope - to implement the collection of project-appropriate metrics on number of users, user types and evaluations from users.

Performance Measures

8.1.1 8.a.i. Draft data collection plan submitted to DEC OCC for review and discussion - at project meeting per objective 1, task 1.

8.1.2 8.a.ii. Final data collection and monitoring plan submitted to DEC OCC. - .

Tasks

8.2 Collect data on sidewalk use such as weekday/weekend use, number of users; types of users; and evaluations from via - questionnaires and interviews of pedestrians and analyze data and estimate GHG emission reductions using interviews and traffic incident reports. Data to include number of users; types of users; and evaluations from users.

Performance Measures

8.2.1 Final analysis report and GHG mitigation estimates submitted to DEC OCC. - .

II. REPORTING PROVISIONS

A. Expenditure-Based Reports (select the applicable report type):

Narrative/Qualitative Report

The Contractor will submit, on a quarterly basis, not later than 30 days from the end of the quarter, the report described in Section III(G)(2)(a)(i) of the Master Contract

Statistical/Quantitative Report

The Contractor will submit, on a quarterly basis, not later than ___ days from the end of the quarter, the report described in Section III(G)(2)(a)(ii) of the Master Contract.

Expenditure Report

The Contractor will submit, on a quarterly basis, not later than 30 days after the end date for which reimbursement is being claimed, the report described in Section III(G)(2)(a)(iii) of the Master Contract.

Final Report

The Contractor will submit the final report as described in Section III(G)(2)(a)(iv) of the Master Contract, no later than 60 days after the end of the contract period.

Consolidated Fiscal Report (CFR)

The Contractor will submit the CFR on an annual basis, in accordance with the time frames designated in the CFR manual. For New York City contractors, the due date shall be May 1 of each year; for Upstate and Long Island contractors, the due date shall be November 1 of each year.

1

The Consolidated Fiscal Reporting System is a standardized electronic reporting method accepted by Office of Alcoholism & Substance Services, Office of Mental Health, Office of Persons with Developmental Disabilities and the State Education Department, consisting of schedules which, in different combinations, capture financial information for budgets, quarterly and/or mid-year claims, an annual cost report, and a final claim. The CFR, which must be submitted annually, is both a year-end cost report and a year-end claiming document.

Contract Number: # DEC01-C00592GG-3350000

B. Progress-Based Reports

1. Progress Reports

The Contractor shall provide the report described in Section III(G)(2)(b)(i) of the Master Contract in accordance with the forms and in the format provided by the State Agency, summarizing the work performed during the contract period (See Table 1 below for the annual schedule).

2. Final Progress Report

Final scheduled payment will not be due until ___ days after completion of agency's audit of the final expenditures report/documentation showing total grant expenses submitted by vendor with its final invoice. Deadline for submission of the final report is ___. The agency shall complete its audit and notify vendor of the results no later than ___. The Contractor shall submit the report not later than ___ days from the end of the contract.

C. Other Reports

The Contractor shall provide reports in accordance with the form, content and schedule as set forth in Table I.

TABLE 1 - REPORTING SCHEDULE

PROGRESS REPORT #	PERIOD COVERED		Due Date
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			

III. SPECIAL PAYMENT AND REPORTING PROVISIONS

Resolution No. _____ of 2022, a resolution authorizing the Supervisor to sign a grant contract for a project to construct a multi-use path along Hubbs Road .

Introduced by _____, who moved its adoption, seconded by _____.

WHEREAS, the Town has been awarded grant funding for a multi-use trail along the south side of Hubbs Road, to connect the Dutch Meadows and Country Knolls neighborhoods with Jonesville, including pedestrian access and high visibility crossing signs under the NYS DEC Climate Smart Communities Program, in the amount of \$278,271, and

WHEREAS, the project will require a 50% local match, as well as first instance funding by the Town in the amount of \$556,542.00, and

WHEREAS, the project will provide pedestrian access to the hamlet of Jonesville from Dutch Meadows and Country Knolls neighborhoods, as well as pedestrian and non-motorized access to Hatlee, Main Street and MacElroy Roads, and connections to existing multi-use trail networks within the Town, and

WHEREAS, the Town Board supports the project and wishes to commit to local funding in order to proceed; now, therefore be it

RESOLVED, that the Supervisor is authorized to sign the attached master grant contract for the Hubbs Road Multi-use path, and be it further

RESOLVED, that the Town Board commits to funding in the first instance of up to \$556,542.00, to plan, design and construct the project, as well as the local match commitment of \$278,271.00.

Meg Springli

From: Town of Clifton Park <noreply@cliftonpark.org>
Sent: Friday, January 7, 2022 8:22 AM
To: Meg Springli
Cc: Jean, Spiegel; Mark Heggen
Subject: Resolution Request for TB Meeting: 01-18-2022
Attachments: 61d83e7fa4b53-ContractDocumentsU-DEC01-C01085GG-3350000-P1-010522.pdf

An item has been submitted to the Resolution Request form for review.

Department: **Planning**
Your email: **jviggiani@cliftonpark.org**

Sponsor/Contact as shown on the agenda (i.e. P. Barrett, A. Standaert, D. Bull, etc.): **P. Barrett**

Requested Meeting Date: **01-18-2022**

Brief Description: **Town was awarded \$278,271 state Climate Smart Communities grant towards the construction of approximately 0.6 miles of new, 10-foot wide, asphalt, multi-use trail for bicycle and pedestrian travel, on the south side of Hubbs Road, following the west side of Hatlee Road to the 4-way intersection with Main Street / Long Kill Rd / MacElroy Rd, connecting Dutch Meadows and Country Knolls neighborhoods to nearby hamlet of Jonesville. Project also includes high-visibility crossings and new, Rapid Rectangular Flashing Beacons and signage at the 4-way intersection to connect to the existing Long Kill Road sidewalks across Hatlee Rd /Main St; and Hatlee Road and MacElroy Road (across MacElroy Road). The new multi-use path will help connect to existing network of sidewalks and multi-use paths, and contributes to a larger, non-motorized transportation network within the town, supporting the reduction of vehicle miles and therefore, greenhouse gas emissions from vehicular traffic.**

Budget #:
Budget Description: **NYS DEC state grant value of \$278,271 with town local match of \$278,271 for grant project budget of \$556,542**
\$ Amount: **project commitment is first instance funding for \$556,542; and town to be reimbursed grant of \$278,271**

Additional Comments/Details: **This grant contract must be completed by March 2025.**

COMPTROLLER APPROVAL or Comments:

ATTORNEY APPROVAL or Comments:

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

<p>STATE AGENCY (Name & Address): Department of Environmental Conservation 625 Broadway Albany, NY 12233-1080</p>	<p>BUSINESS UNIT/DEPT. ID: DEC01 CONTRACT NUMBER: DEC01-C01085GG-3350000 CONTRACT TYPE: <input type="checkbox"/> Multi-Year Agreement <input type="checkbox"/> Simplified Renewal Agreement <input checked="" type="checkbox"/> Fixed Term Agreement</p>
<p>CONTRACTOR SFS PAYEE NAME: CLIFTON PARK TOWN OF</p>	<p>TRANSACTION TYPE: <input checked="" type="checkbox"/> New <input type="checkbox"/> Renewal <input type="checkbox"/> Amendment</p>
<p>CONTRACTOR DOS INCORPORATED NAME: Town of Clifton Park</p>	<p>PROJECT NAME: Hubbs Road Multi-Use Path</p>
<p>CONTRACTOR IDENTIFICATION NUMBERS: NYS Vendor ID Number: 1000002122 Federal Tax ID Number: 146002129 DUNS Number (if applicable):</p>	<p>AGENCY IDENTIFIER: CFDA NUMBER (Federally Funded Grants Only):</p>
<p>CONTRACTOR PRIMARY MAILING ADDRESS: 1 TOWN HALL PLZ CLIFTON PARK, NY 12065-3610</p> <p>CONTRACTOR PAYMENT ADDRESS: <input checked="" type="checkbox"/> Check if same as primary mailing address</p> <p>CONTRACT MAILING ADDRESS: <input checked="" type="checkbox"/> Check if same as primary mailing address</p>	<p>CONTRACTOR STATUS: <input type="checkbox"/> For Profit <input checked="" type="checkbox"/> Municipality, Code: <input type="checkbox"/> Tribal Nation <input type="checkbox"/> Individual <input type="checkbox"/> Not-for-Profit</p> <p>Charities Registration Number: Exemption State/Code: <input type="checkbox"/> Sectarian Entity</p>

Contract Number: # DEC01-C01085GG-3350000

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

<p>CURRENT CONTRACT TERM:</p> <p>From: 03/15/2020 To: 03/14/2025</p> <p>CURRENT CONTRACT PERIOD:</p> <p>From: 03/15/2020 To: 03/14/2025</p> <p>AMENDED TERM:</p> <p>From: To:</p> <p>AMENDED PERIOD:</p> <p>From: To:</p>	<p>CONTRACT FUNDING AMOUNT</p> <p>(Multi-year - enter total projected amount of the contract; Fixed Term/Simplified Renewal - enter current period amount):</p> <p>CURRENT: \$278,271.00</p> <p>AMENDED:</p> <p>FUNDING SOURCE(S)</p> <p align="center"> <input checked="" type="checkbox"/> State <input type="checkbox"/> Federal <input type="checkbox"/> Other </p>
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FOR MULTI-YEAR AGREEMENTS ONLY - CONTRACT AND FUNDING AMOUNT:
(Out years represents projected funding amounts)

#	CURRENT PERIOD	CURRENT AMOUNT	AMENDED PERIOD	AMENDED AMOUNT
1				
2				
3				
4				
5				

Contract Number: # DEC01-C01085GG-3350000

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

ATTACHMENTS PART OF THIS AGREEMENT:

Attachment A: A-1 Program Specific Terms and Conditions
 A-2 Federally Funded Grants

Attachment B: B-1 Expenditure Based Budget
 B-2 Performance Based Budget
 B-3 Capital Budget
 B-4 Net Deficit Budget
 B-1 (A) Expenditure Based Budget (Amendment)
 B-2 (A) Performance Based Budget (Amendment)
 B-3 (A) Capital Budget (Amendment)
 B-4 (A) Net Deficit Budget (Amendment)

Attachment C: Work Plan

Attachment D: Payment and Reporting Schedule

Other:

Contract Number: # DEC01-C01085GG-3350000

IN WITNESS THEREOF, the parties hereto have electronically executed or approved this Master Contract on the dates below their signature.

In addition, I, acting in the capacity as Contractor, certify that I am the signing authority, or have been delegated or designated formally as the signing authority by the appropriate authority or officials, and as such I do agree, and I have the authority to agree, to all of the terms and conditions set forth in the Master Contract, including all appendices and attachments. I understand that (i) payment of a claim on this Master Contract is conditioned upon the Contractor's compliance with all applicable conditions of participation in this program and (if I am acting in the capacity as a not-for profit Contractor) the accuracy and completeness of information submitted to the State of New York through the Gateway vendor prequalification process and (ii) by electronically indicating my acceptance of the terms and conditions of the Master Contract, I certify that (a) to the extent that the Contractor is required to register and/or file reports with the Office of Attorney General's Charities Bureau ("Charities Bureau"), the Contractor's registration is current, all applicable reports have been filed, and the Contractor has no outstanding requests from the Charities Bureau relating to its filings and (b) all data and responses in the application submitted by the Contractor are true, complete and accurate. I also understand that use of my assigned User ID and Password on the State's contract management system is equivalent to having placed my signature on the Master Contract and that I am responsible for any activity attributable to the use of my User ID and Password. Additionally, any information entered will be considered to have been entered and provided at my direction. I further certify and agree that the Contractor agrees to waive any claim that this electronic record or signature is inadmissible in court, notwithstanding the choice of law provisions.

CONTRACTOR:

CLIFTON PARK TOWN OF

By: _____

Printed Name

Title: _____

Date: _____

In addition, the party below certifies that it has verified the electronic signature of the Contractor to this Master Contract.

STATE AGENCY:

Department of Environmental Conservation

By: _____

Printed Name

Title: _____

Date: _____

**ATTORNEY GENERAL'S SIGNATURE
APPROVED AS TO FORM**

By: _____

Printed Name

Title: _____

Date: _____

STATE COMPTROLLER'S SIGNATURE

By: _____

Printed Name

Title: _____

Date: _____

Contract Number: # DEC01-C01085GG-3350000

**STATE OF NEW YORK
MASTER CONTRACT FOR GRANTS**

This State of New York Master Contract for Grants (Master Contract) is hereby made by and between the State of New York acting by and through the applicable State Agency (State) and the public or private entity (Contractor) identified on the face page hereof (Face Page).

WITNESSETH:

WHEREAS, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

WHEREAS, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Master Contract;

NOW THEREFORE, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree as follows:

STANDARD TERMS AND CONDITIONS

I. GENERAL PROVISIONS

A. Executory Clause: In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Master Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Master Contract.

B. Required Approvals: In accordance with Section 112 of the State Finance Law (or, if the Master Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Master Contract exceeds \$50,000 (or \$85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Master Contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the AG and OSC.

Budget Changes: An amendment that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the AG and OSC where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than

five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment D (Payment and Reporting Schedule).

C. Order of Precedence:

In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as follows:

1. Standard Terms and Conditions
2. Modifications to the Face Page
3. Modifications to Attachment A-2¹, Attachment B, Attachment C and Attachment D
4. The Face Page
5. Attachment A-2², Attachment B, Attachment C and Attachment D
6. Modification to Attachment A-1
7. Attachment A-1
8. Other attachments, including, but not limited to, the request for proposal or program application

D. Funding: Funding for the term of the Master Contract shall not exceed the amount specified as "Contract Funding Amount" on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Master Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

E. Contract Performance: The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Master Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Master Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program.

F. Modifications: To modify the Attachments or Face Page, the parties mutually agree to record, in writing, the terms of such modification and to revise or complete the Face Page and all the appropriate attachments in conjunction therewith. In addition, to the extent that such modification meets the criteria set forth in Section I.B herein, it shall be subject to the approval of the AG and

¹ To the extent that the modifications to Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the modifications to Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

² To the extent that the terms of Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the Federal requirements of Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V), Contract Number: # DEC01-C01085GG-3350000
Page 2 of 25, Master Contract for Grants - Standard Terms and Conditions (August 2014)

OSC before it shall become valid, effective and binding upon the State. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Master Contract.

G. Governing Law: The Master Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

H. Severability: Any provision of the Master Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Master Contract shall attempt in good faith to reform the Master Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

I. Interpretation: The headings in the Master Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Master Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

J. Notice:

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:
 - a) by certified or registered United States mail, return receipt requested;
 - b) by facsimile transmission;
 - c) by personal delivery;
 - d) by expedited delivery service; or
 - e) by e-mail.
2. Notices to the State shall be addressed to the Program Office designated in Attachment A-1 (Program Specific Terms and Conditions).
3. Notices to the Contractor shall be addressed to the Contractor's designee as designated in Attachment A-1 (Program Specific Terms and Conditions).
4. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.
5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the

Master Contract by giving fifteen (15) calendar days prior written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

K. Service of Process: In addition to the methods of service allowed by the State Civil Practice Law & Rules (CPLR), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. The Contractor shall have thirty (30) calendar days after service hereunder is complete in which to respond.

L. Set-Off Rights: The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold, for the purposes of set-off, any moneys due to the Contractor under the Master Contract up to any amounts due and owing to the State with regard to the Master Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Master Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State Agency, its representatives, or OSC.

M. Indemnification: The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Master Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Master Contract.

N. Non-Assignment Clause: In accordance with Section 138 of the State Finance Law, the Master Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the State's previous written consent, and attempts to do so shall be considered to be null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract, let pursuant to Article XI of the State Finance Law, may be waived at the discretion of the State Agency and with the concurrence of OSC, where the original contract was subject to OSC's approval, where the assignment is due to a reorganization, merger, or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that the merged contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless the Master Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

O. Legal Action: No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Master Contract. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from

any of the State of New York, the State Agency, or any county, or other local government entity. The term "regulatory action" shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

P. No Arbitration: Disputes involving the Master Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

Q. Secular Purpose: Services performed pursuant to the Master Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

R. Partisan Political Activity and Lobbying: Funds provided pursuant to the Master Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

S. Reciprocity and Sanctions Provisions: The Contractor is hereby notified that if its principal place of business is located in a country, nation, province, state, or political subdivision that penalizes New York State vendors, and if the goods or services it offers shall be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that it be denied contracts which it would otherwise obtain.³

T. Reporting Fraud and Abuse: Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the Federal False Claims Act, the New York State False Claims Act, and whistleblower protections.

U. Non-Collusive Bidding: By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor's behalf.

V. Federally Funded Grants and Requirements Mandated by Federal Laws: All of the Specific Federal requirements that are applicable to the Master Contract are identified in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto. To the extent that the Master Contract is funded in whole or part with Federal funds or mandated by Federal laws, (i) the provisions of the Master Contract that conflict with Federal rules, Federal regulations, or Federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable Federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto.

³As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

II. TERM, TERMINATION AND SUSPENSION

A. Term: The term of the Master Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

B. Renewal:

1. General Renewal: The Master Contract may consist of successive periods on the same terms and conditions, as specified within the Master Contract (a "Simplified Renewal Contract"). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Master Contract.

2. Renewal Notice to Not-for-Profit Contractors:

a) Pursuant to State Finance Law §179-t, if the Master Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract no later than ninety (90) calendar days prior to the end of the term of the Master Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Master Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State ("Unusual Circumstances"), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, "Unusual Circumstances" shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

b) Notification to the not-for-profit Contractor of the State's intent to not renew the Master Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Master Contract as required in this Section and State Finance Law §179-t, the Master Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Master Contract.

C. Termination:

1. Grounds:

- a) Mutual Consent: The Master Contract may be terminated at any time upon mutual written consent of the State and the Contractor.
- b) Cause: The State may terminate the Master Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Master Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Master Contract.
- c) Non-Responsibility: In accordance with the provisions of Sections IV(N)(6) and (7) herein, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Master Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.
- d) Convenience: The State may terminate the Master Contract in its sole discretion upon thirty (30) calendar days prior written notice.
- e) Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Master Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Master Contract, the Master Contract may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Master Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Master Contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.
- f) Force Majeure: The State may terminate or suspend its performance under the Master Contract immediately upon the occurrence of a "force majeure." For purposes of the Master Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

2. Notice of Termination:

- a) Service of notice: Written notice of termination shall be sent by:
 - (i) personal messenger service; or
 - (ii) certified mail, return receipt requested and first class mail.

b) Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:

(i) if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or

(ii) if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

3. *Effect of Notice and Termination on State's Payment Obligations:*

a) Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.

b) The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Master Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Master Contract after its termination date.

4. *Effect of Termination Based on Misuse or Conversion of State or Federal Property:*

Where the Master Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Master Contract for the purposes set forth herein, the State may, at its option, require:

a) the repayment to the State of any monies previously paid to the Contractor; or

b) the return of any real property or equipment purchased under the terms of the Master Contract; or

c) an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

D. Suspension: The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time as the State issues a formal written notice authorizing a resumption of performance under the Master Contract.

III. PAYMENT AND REPORTING

A. Terms and Conditions:

1. In full consideration of contract services to be performed, the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.
2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Master Contract shall not be reimbursed.
3. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Attachment D (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.
4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of the State Agency, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments.
5. If travel expenses are an approved expenditure under the Master Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.
6. Timeliness of advance payments or other claims for reimbursement, and any interest to be paid to Contractor for late payment, shall be governed by Article 11-A of the State Finance Law to the extent required by law.
7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, "Full Execution" shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

B. Advance Payment and Recoupment:

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Attachment D (Payment and Reporting Schedule).
2. Initial advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page. Subsequent advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the dates specified in Attachment D (Payment and Reporting Schedule).
3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Attachment D) will be modified as part of the renewal process.
4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Attachment D (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.
5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.

C. Claims for Reimbursement:

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Master Contract in accordance with this Section and the applicable claiming schedule in Attachment D (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Attachment B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:
 - a) Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

b) Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

c) Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

d) Milestone/Performance Reimbursement:⁴ Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event.

Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Attachment D (Payment and Reporting Schedule). The State Agency shall make milestone payments subject to the Contractor's satisfactory performance.

e) Fee for Service Reimbursement:⁵ Payment shall be limited to only those fees specifically agreed upon in the Master Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f) Rate Based Reimbursement:⁶ Payment shall be limited to rate(s) established in the Master Contract. Payment may be requested no more frequently than monthly.

g) Scheduled Reimbursement:⁷ The State Agency shall generate vouchers at the frequencies and amounts as set forth in Attachment D (Payment and Reporting Schedule), and service reports shall be used to determine funding levels appropriate to the next annual contract period.

⁴ A milestone/ performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Master Contract effort.

⁵ Fee for Service is a rate established by the Contractor for a service or services rendered.

⁶ Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.

⁷ Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Master Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

h) Interim Reimbursement: The State Agency shall generate vouchers on an interim basis and at the amounts requested by the Contractor as set forth in Attachment D (Payment and Reporting Schedule).

i) Fifth Quarter Payments:⁸ Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall use a written directive for fifth quarter financing. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.
4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Master Contract as security for the faithful completion of services or work, as applicable, under the Master Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Master Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.
5. The State shall not be liable for payments on the Master Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.
6. All vouchers submitted by the Contractor pursuant to the Master Contract shall be submitted to the State Agency no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency to the Contractor shall not exceed the amount of actual expenditures.
7. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Master Contract is funded, in whole or in part, with Federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures.

D. Identifying Information and Privacy Notification:

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property, must include the Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number,

⁸ Fifth Quarter Payments occurs where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract.

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(ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.

2. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. The personal information is requested by the purchasing unit of the State Agency contracting to purchase the goods or services or lease the real or personal property covered by the Master Contract. This information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York, 12236.

E. Refunds:

1. In the event that the Contractor must make a refund to the State for Master Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in Attachment A-1 (Program Specific Terms and Conditions). The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Refund Office at the address specified in Attachment A-1 (Program Specific Terms and Conditions).

2. If at the end or termination of the Master Contract, there remains any unexpended balance of the monies advanced under the Master Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Master Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

F. Outstanding Amounts Owed to the State: Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Master Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

G. Program and Fiscal Reporting Requirements:

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Attachment D (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Master Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.

2. Consistent with the selected reporting options in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:

a) If the Expenditure Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with one or more of the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

- (i) *Narrative/Qualitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Attachment C (Work Plan). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.
- (ii) *Statistical/Quantitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)
- (iii) *Expenditure Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.
- (iv) *Final Report*: The Contractor shall submit a final report as required by the Master Contract, not later than the time period listed in Attachment D (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Attachment C (Work Plan).
- (v) *Consolidated Fiscal Report (CFR)*: The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Attachment D (Payment and Reporting Schedule).

b) If the Performance-Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

- (i) *Progress Report*: The Contractor shall provide the State Agency with a written progress report using the forms and formats as provided by the State Agency, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Attachment C (Work Plan). Progress reports shall be submitted in a format prescribed in the Master Contract.

- (ii) *Final Progress Report*: Final scheduled payment is due during the time period set forth in Attachment D (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Attachment D (Payment and Reporting Schedule). The State Agency shall complete its audit and notify the Contractor of the results no later than the date set forth in Attachment D (Payment and Reporting Schedule). Payment shall be adjusted by the State Agency to reflect only those services/expenditures that were made in accordance with the Master Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Attachment D (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.

3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Attachment D (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Master Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Attachment D (Payment and Reporting Schedule).

H. Notification of Significant Occurrences:

1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to the State Agency within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.
2. The Contractor shall immediately notify in writing the program manager assigned to the Master Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Master Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

A. Contractor as an Independent Contractor/Employees:

1. The State and the Contractor agree that the Contractor is an independent contractor, and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. Notwithstanding the foregoing, the State and the Contractor agree that if the Contractor is a New York State municipality, the Contractor shall be permitted to hold itself out, and claim, to be a subdivision of the State.

The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Master Contract, and all applicable Federal and State laws and regulations.

2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Master Contract and/or any subcontract entered into under the Master Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Master Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Master Contract, Contractor shall immediately notify the State.

B. Subcontractors:

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Master Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Master Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.
2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of \$100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of \$100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Master Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the subcontract, nor under the Master Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.
3. If requested by the State, prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.
4. If requested by the State, when a subcontract equals or exceeds \$100,000, the subcontractor shall submit a Vendor Responsibility Questionnaire (Questionnaire).
5. If requested by the State, upon the execution of a subcontract, the Contractor shall provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.
6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting

Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

C. Use Of Material, Equipment, Or Personnel:

1. The Contractor shall not use materials, equipment, or personnel paid for under the Master Contract for any activity other than those provided for under the Master Contract, except with the State's prior written permission.
2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Master Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Master Contract.

D. Property:

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.
 - a) If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.
 - b) If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Master Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Master Contract.
 - c) In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.
 - d) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Master Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to the State Agency, naming the State Agency as an additional insured, covering the loss, theft or destruction of such equipment.
 - e) A rental charge to the Master Contract for a piece of Property owned by the Contractor shall not be allowed.
 - f) The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Master Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any

Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.

- g) No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Master Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.
2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Master Contract:
- a) For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.
- b) For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.
3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Master Contract shall be governed by the terms and conditions of Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).
4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.
5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

E. Records and Audits:

1. General:

- a) The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Master Contract (collectively, Records).
- b) The Contractor agrees to produce and retain for the balance of the term of the Master Contract, and for a period of six years from the later of the date of (i) the Master Contract and (ii) the most recent renewal of the Master Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Master Contract. Such Records may include, but not be limited to, original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:
- (i) personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders,

detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(ii) payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(iii) non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.

(iv) receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.

c) The OSC, AG and any other person or entity authorized to conduct an examination, as well as the State Agency or State Agencies involved in the Master Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

d) The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records, as exempt under Section 87 of the Public Officers Law, is reasonable.

e) Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

2. Cost Allocation:

a) For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of OMB Circulars A-87, A-122, and/or A-21. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.

b) For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

3. Federal Funds: For records and audit provisions governing Federal funds, please see Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

F. Confidentiality: The Contractor agrees that it shall use and maintain personally identifiable information relating to individuals who may receive services, and their families pursuant to the Master Contract, or any other information, data or records marked as, or reasonably deemed, confidential by the State (Confidential Information) only for the limited purposes of the Master Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

G. Publicity:

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.

2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Master Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:

a) Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and

b) State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.

3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Master Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Master Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) day period in which to review each manuscript for compliance with Confidential Information requirements; or (ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section IV(G)(2) (Publicity) hereof.

H. Web-Based Applications-Accessibility: Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Master Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility

Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by the State Agency and the results of such testing must be satisfactory to the State Agency before web content shall be considered a qualified deliverable under the Master Contract or procurement.

I. Non-Discrimination Requirements: Pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that the Master Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors 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 the Master Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (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 the Master Contract. The Contractor shall be subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises: In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Master Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting State Agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State Agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting State Agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;

2. The Contractor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts;
3. The Contractor shall 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, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
4. At the request of the State, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative shall not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and
5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of subclauses 1 – 5 of this Section (IV)(J), in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Master Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law and if such duplication or conflict exists, the State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

K. Omnibus Procurement Act of 1992: It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises, as bidders, subcontractors and suppliers on its procurement contracts.

1. If the total dollar amount of the Master Contract is greater than \$1 million, the Omnibus Procurement Act of 1992 requires that by signing the Master Contract, the Contractor certifies the following:
 - a) The Contractor has made reasonable efforts to encourage the participation of State business enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

c) The Contractor agrees to make reasonable efforts to provide notification to State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of the Master Contract and agrees to cooperate with the State in these efforts.

L. Workers' Compensation Benefits:

1. In accordance with Section 142 of the State Finance Law, the Master Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of the Master Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

M. Unemployment Insurance Compliance: The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to the State Agency staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;
2. any debts owed for UI contributions, interest, and/or penalties;
3. the history and results of any audit or investigation; and
4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Master Contract.

N. Vendor Responsibility:

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may

obtain a paper form from the OSC prior to execution of the Master Contract. The Contractor further covenants and represents that as of the date of execution of the Master Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.

2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.

3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.

4. The State reserves the right, in its sole discretion, at any time during the term of the Master Contract:

- a) to require updates or clarifications to the Questionnaire upon written request;
- b) to inquire about information included in or required information omitted from the Questionnaire;
- c) to require the Contractor to provide such information to the State within a reasonable timeframe; and
- d) to require as a condition precedent to entering into the Master Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and
- e) to require the Contractor to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. By signing the Master Contract, the Contractor agrees to comply with any such additional conditions that have been made a part of the Master Contract.

5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Master Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Master Contract.

6. The State, in its sole discretion, reserves the right to make a final Determination of Non-Responsibility at any time during the term of the Master Contract based on:

a) any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or

b) the State's discovery of any material information which pertains to the Contractor's responsibility.

7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non-responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

O. Charities Registration: If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish the State Agency with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Master Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Master Contract.

P. Consultant Disclosure Law:⁹ If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services, then in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

Q. Wage and Hours Provisions: If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

⁹ Not applicable to not-for-profit entities.

ATTACHMENT A-1
PROGRAM SPECIFIC TERMS AND CONDITIONS
Standard Clauses for All New York
State Department of Environmental Conservation Contracts

The parties to the attached contract, license, lease, grant, amendment or other agreement of any kind (hereinafter "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract. The word "Contractor" herein refers to any party to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

A) AGENCY SPECIFIC TERMS AND CONDITIONS

- I. **Postponement, suspension, abandonment or termination by the Department:** Within 15 days of receipt of notice, the Contractor shall deliver to the Department all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to source codes and specifications, guarantees, warranties, as-built plans and shop drawings. In any of these events, the Department shall make settlement with the Contractor upon an equitable basis as determined by the Department which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions applicable to postponement, suspension or termination of the contract.

- II. **Conflict of Interest**
 - A. Organizational Conflict of Interest - To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the Department.
 - 1) An organizational conflict of interest exists when the nature of the work to be performed under this contract may, without some restriction on future activities, impair or appear to impair the Contractor's objectivity in performing the work for the Department.
 - 2) The Contractor agrees that if an actual, or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to the Department. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Department, to avoid, mitigate, or minimize the actual or potential conflict.
 - 3) To the extent that the work under this contract requires access to personal, proprietary or confidential business or financial data of persons or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.
 - B. Personal Conflict of Interest - The following provisions with regard to management or professional level employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

- 1) A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Contractor agrees to notify the Department immediately of any actual or potential personal conflict of interest with regard to any such person working on or having access to information regarding this contract, as soon as Contractor becomes aware of such conflict. The Department will notify the Contractor of the appropriate action to be taken.
 - 2) The Contractor agrees to advise all management or professional level employees involved in the work of this contract, that they must report any personal conflicts of interest to the Contractor. The Contractor must then advise the Department which will advise the Contractor of the appropriate action to be taken.
 - 3) Unless waived by the Department, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, as defined herein, have been reported to the Department. Such certification must be signed by a senior executive of the Contractor and submitted in accordance with instructions provided by the Department. Along with the annual certification, the Contractor shall also submit an update of any changes in any conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.
 - 4) In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.
- C. Remedies - The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an

unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be permitted by the terms of Clause I of this Attachment or other applicable provisions of this contract regarding termination.

- D. The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has developed the statement of work or the solicitation package
- E. The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Department.

III. Dispute Resolution

The parties agree to the following steps, or as many as are necessary to resolve disputes between the Department and the Contractor.

- A. The Contractor specifically agrees to submit, in the first instance, any dispute relating to this contract to the designated individual, who shall render a written decision and furnish a copy thereof to the Contractor.
 - 1) The Contractor must request such decision in writing no more than fifteen days after it knew or should have known of the facts which are the basis of the dispute.
 - 2) The decision of the designated individual shall be the final DEC determination, unless the Contractor files a written appeal of that decision with the designated appeal individual (DAI) within twenty days of receipt of that decision.
- B. Upon receipt of the written appeal, the DAI, will review the record and decision. Following divisional procedures in effect at that time, the DAI will take one of the following actions, with written notice to the Contractor.
 - 1) Remand the matter to the program staff for further negotiation or information if it is determined that the matter is not ripe for review; or
 - 2) Determine that there is no need for further action, and that the determination of the designated individual is confirmed; or
 - 3) Make a determination on the record as it exists.
- C. The decision of the DAI shall be the final DEC decision unless the Contractor files a written appeal of that decision with the Chair of the Contract Review Committee (CRC) within twenty days of receipt of that decision.

The designated individual to hear disputes is:

Mark Lowery,
Assistant Director, Office of Climate Change
NYS Department of Environmental Conservation
625 Broadway, 9th Floor
Albany, NY 12233-1030
(518) 402-8448

The designated appeal individual to review decisions is:

Jonathan Binder
Office of General Counsel
NYS Department of Environmental Conservation
625 Broadway, 14 Floor
Albany, NY 12233-1500
(518) 402-9188

The Chair of the Contract Review Committee (CRC) is:

Nancy W. Lussier, Chair
NYS Department of Environmental Conservation
Contract Review Committee
625 Broadway
Albany, NY 12233-5010
Telephone: (518) 402-9228

- D. Upon receipt of the written appeal, the Chair of the CRC, in consultation with the members of the CRC and the Office of General Counsel, will take one of the following actions, or a combination thereof, with written notice to the Contractor.
- 1) Remand the matter to program staff for additional fact finding, negotiation, or other appropriate action; or
 - 2) Adopt the decision of the DAI; or
 - 3) Consider the matter for review by the CRC in accordance with its procedures.
- E. Following a decision to proceed pursuant to (d) 3, above, the Chair of the CRC shall convene a proceeding in accordance with the CRC's established contract dispute resolution guidelines. The proceeding will provide the Contractor with an opportunity to be heard.
- F. Following a decision pursuant to (d) 2 or (d) 3, the CRC shall make a written recommendation to the Deputy Commissioner for Administration who shall render the final DEC determination.
- G. At any time during the dispute resolution process, and upon mutual agreement of the parties, the Office of Hearings and Mediation Services (OHMS) may be requested to provide mediation services or other appropriate means to assist in resolving the dispute. Any findings or recommendations made by the OHMS will not be binding on either party.
- H. Final DEC determinations shall be subject to review only pursuant to Article 78 of the Civil Practice Law and Rules.
- I. Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the designated individual. Nothing in this Contract shall be construed as making final the decision of any administrative officer upon a question of law.
- J. Notwithstanding the foregoing, at the option of the Contractor, the following shall be subject to review by the CRC:
- 1) Disputes arising under Article 15-A of the Executive Law (Minority and Women Owned Business participation), the Department's determination with respect to the adequacy of the Contractor's Utilization Plan, or the Contractor's showing of good faith efforts to

comply therewith. A request for a review before the CRC should be made, in writing, within twenty days of receipt of the Department's determination.

- 2) The CRC will promptly convene a review in accordance with Article 15-A of the Executive Law and the regulations promulgated thereunder.

IV. Tax Exemption

Pursuant to Tax Law Section 1116, the State is exempt from sales and use taxes. A standard state voucher is sufficient evidence thereof. For federal excise taxes, New York's registration Number 14740026K covers tax-free transactions under the Internal Revenue Code.

V. Litigation Support

In the event the Department becomes involved in litigation related to the subject matter of this contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Any compensation paid to the Contractor under this paragraph will be negotiated and based on the rates established in the contract, or as may otherwise be provided in the contract. No compensation for such support will be paid if the litigation is the result of the Contractor's misconduct, negligence or omissions.

VI. Inventions or Discoveries

The Scope of work of this agreement shall not include any inventions. If however, an invention results from this project it shall be owned as follows:

Any invention or discovery first made or conceived and reduced to practice in the performance of this Contract solely by the Contractor shall remain with the Contractor; provided that the Contractor shall grant to the Department and the State a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for on behalf of the Department and the State the subject copyright throughout the world, where the Contractor is able to do so.

Any invention or discovery made or conceived and reduced to practice in the performance of this Contract solely by Department or State shall remain with the State; provided that the Department or State shall grant to the Contractor a nonexclusive, nontransferable, irrevocable, paid-up license to use for non-commercial research, educational, and public service purposes.

Any invention or discovery made or conceived and reduced to practice in the performance of this Contract jointly by Contractor and Department or State in the performance of this work shall be jointly held by the Contractor and Department or State.

VII. Intellectual Property and Copyright Materials

Title to, and the right to determine the disposition of any copyrights, or copyrightable material, first produced or created solely by Contractor in the performance of this work shall remain with the Contractor; provided that the Contractor shall grant to the Department and the State a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for on behalf of the Department and the State the subject copyright throughout the world, where the Contractor is able to do so.

Title to, and the right to determine the disposition of any copyrights, or copyrightable material, first produced or created solely by Department or State in the performance of this work shall remain with the State; provided that the Department or State shall grant to the Contractor a nonexclusive, nontransferable, irrevocable, paid-up license to use for non-commercial research, educational, and public service purposes.

Title to, and the right to determine the disposition of any copyrights, or copyrightable material, first produced or created jointly by Contractor and Department or State in the performance of this work shall be jointly held by the Contractor and Department or State.

VIII. Patent and Copyright Protection

If any patented or copyrighted material is involved in or results from the performance of this Contract, this Article shall apply.

- A. The Contractor shall, at its expense, defend any suit instituted against the Department and indemnify the Department against any award of damages and costs made against the Department by a final judgment of a court of last resort based on the claim that any of the products, services or consumable supplies furnished by the Contractor under this Contract infringes any patent, copyright or other proprietary right; provided the Department gives the Contractor:
- 1) prompt written notice of any action, claim, or threat of infringement suit, or other suit, and
 - 2) the opportunity to take over, settle or defend such action at the Contractor's sole expense, and
 - 3) all available information, assistance and authority necessary to the action, at the Contractor's sole expense.

The Contractor shall control the defense of any such suit, including appeals, and all negotiations to effect settlement, but shall keep the Department fully informed concerning the progress of the litigation.

- B. If the use of any item(s) or parts thereof is held to infringe a patent or copyright and its use is enjoined, or Contractor believes it will be enjoined, the Contractor shall have the right, at its election and expense to take action in the following order of precedence:
- 1) procure for the Department the right to continue using the same item or parts thereof;
 - 2) modify the same so that it becomes non-infringing and of at least the same quality and performance;
 - 3) replace the item(s) or parts thereof with non-infringing items of at least the same quality and performance;
 - 4) if none of the above remedies are available, discontinue its use and eliminate any future charges or royalties pertaining thereto. The Contractor will buy back the infringing product(s) at the State's book value, or in the event of a lease, the parties shall terminate the lease. If discontinuation or elimination results in the Contractor not being able to perform the Contract, the Contract shall be terminated.

- C. In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any item or material pursuant to or resulting from this Contract infringes any patent, copyright or proprietary right, and such action is forwarded by the Department to the Contractor for defense and indemnification pursuant to this Article, the Department shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence and a copy of this Contract to the Office of the Attorney General of the State of New York. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth in this Article, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York in writing and shall specify to what extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of this Contract. The Contractor shall in such event protect the interests of the Department and State of New York and secure a continuance to permit the State of New York to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses which the Department and State shall have.
- D. The Contractor shall, however, have no liability to the Department under this Article if any infringement is based upon or arises out of:
- 1) compliance with designs, plans, or specifications furnished by or on behalf of the Department as to the items;
 - 2) alterations of the items by the Department;
 - 3) failure of the Department to use updated items provided by the Contractor for avoiding infringement;
 - 4) use of items in combination with apparatus or devices not delivered by the Contractor;
 - 5) use of items in a manner for which the same were neither designed nor contemplated; or
 - 6) a patent or copyright in which the Department or any affiliate or subsidiary of the Department has any direct or indirect interest by license or otherwise.
- E. The foregoing states the Contractor's entire liability for, or resulting from, patent or copyright infringement or claim thereof.

IX. Freedom of Information Requests

In response to a Freedom of Information Law (FOIL) request received by the Department, the Contractor agrees to provide to the Department records generated by the Contractor as a result of this contract's scope of work that are responsive to the FOIL request. The contractor may request that the Department except from disclosure records on the basis that they contain trade secrets or confidential commercial information in accordance with FOIL (Public Officers Law Section 87 and 6 NYCRR Part 616).

X. Article 15-Requirements

**PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS:
REQUIREMENTS AND PROCEDURES**

A. General Provisions

- 1) The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- 2) The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department (the "Department"), to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- 3) Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Article or enforcement proceedings as allowed by the Contract.

B. Contract Goals

- 1) For purposes of this procurement, the Department hereby establishes an overall goal of 30% for Minority and Women-Owned Business Enterprises ("MWBE") participation, (based on the current availability of qualified MBEs and WBEs).
- 2) For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address; <https://ny.newnycontracts.com>

Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- 3) Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the Department for liquidated or other appropriate damages, as set forth herein.

C. Equal Employment Opportunity (EEO)

- 1) Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the State of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements. Contractor shall comply with the following provisions of Article 15-A:
 - i. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - ii. The Contractor shall submit an EEO policy statement to the Department within seventy-two (72) hours after the date of the notice by Department to award the Contract to the Contractor.
 - iii. If Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement. This statement can be found at the link provided in Section 8.
 - iv. The Contractor's EEO policy statement shall include the following language:
 - a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c) The Contractor shall request each employer Department, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employer Department, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

- d) The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- e) EEO Contract Goals for the purposes of this procurement, the Department hereby establishes a goal of 0% Minority Labor Force Participation, 0% Female Labor Force Participation.

2) Staffing Plan Form

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan as part of the MWBE Utilization Plan and submit at the time of award of the contract.

3) Workforce Employment Utilization Report Form ("Workforce Report")

- i. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
 - ii. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
 - iii. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.
- 4) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

D. MWBE Utilization Plan

- 1) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.
- 2) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section X-B-1 of this Attachment.
- 3) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

E. Waivers

- 1) For Waiver Requests Contractor should use Waiver Request Form.
- 2) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- 3) If the Department, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

F. Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report Form to the Department by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

G. Liquidated Damages - MWBE Participation

- 1) Where Department determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department liquidated damages.
- 2) Such liquidated damages shall be calculated as an amount equaling the difference between:
 - i. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - ii. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

- 3) In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Department.

H. Forms

Forms referenced in this Article can be found at <http://www.dec.ny.gov/about/48854.html>

XI. Iran Divestment Act Requirements

By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

XII. Americans With Disabilities Act

In the event the monies defined herein are to be used for the development of facilities, outdoor recreation areas, transportation or written or spoken communication with the public, the Contractor shall comply with all requirements for providing access for individuals with disabilities as established by Article 4A of the New York State Public Buildings Law, Americans with Disabilities Act, and relevant sections of the New York State Uniform Fire Prevention and Building Code. Standards for certain Recreation Facilities are found in the 2010 ADA Standards for Accessible Design while others are found in the Architectural Barriers Act Accessibility Guidelines for Outdoor Recreation Areas, <https://www.access-board.gov/guidelines-and-standards>

XIII. Public Access to Facilities

If applicable to the project, the Contractor agrees to allow public access to any facilities developed with monies defined herein on the same basis to all residents of New York State for a period not less than five (5) years after the date of final payment under this Contract or five (5) years after the date that the final payment was due. Failure to comply with the provisions of this clause shall be considered an abandonment of the Project.

XIV. Project Insurance Considerations

Refer to project insurance requirements as set forth in A-1 (B) Program Specific Terms and Conditions.

XV. Amendment/Extensions

The Contract may be amended and/or extended by mutual written consent of all parties. Amendment forms will be incorporated into this Contract and will not take effect until approved by all applicable State agencies and final approval by the Office of the State Comptroller, if applicable. Contract amendments may be conditioned upon funds being re-appropriated in the State Budget each state fiscal year to the Department.

XVI. Environmental Protection Fund Acknowledgement

If applicable, in recognition of a portion of the Department funds utilized for any work completed under this Contract, the Contractor agrees to acknowledge in any communication to the public, that such funding was provided from the Environmental Protection Fund as administered by the New York State Department of Environmental Conservation.

XVII. Vendor Responsibility

- A. The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- B. The Department recommends that vendors file a required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at <https://portal.osc.state.ny.us>
- C. Vendors must provide their New York State Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us. Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Department of the Office of the State Comptroller's Help Desk for a copy of the paper form.
- D. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Department officials or staff, the Contract may be terminated by the Commissioner or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or

his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

XVIII. Permits

A. If applicable, the Contractor agrees to obtain all required permits, including but not limited to, local, state and federal permits prior to the commencement of any project related work. The Contractor agrees that all work performed in relation to the project by the Contractor or its agents, representatives, or contractors will comply with all relevant federal, state and local laws, rules, regulations and standards, zoning and building codes, ordinances, operating certificates for facilities, or licenses for an activity.

B. With respect to the project, the contractor certifies that it has complied, and shall continue to comply with all requirements of the State Environmental Quality Review Act (SEQRA). The Contractor agrees to provide all environmental documents as may be required by the Department. The Contractor has notified, and shall continue to notify, the Department of all actions proposed for complying with the environmental review requirements imposed by SEQRA.

XIX. Approvals

The Contractor agrees that the project will be performed in accordance with the condition of any applicable administrative, judicial or governmental orders or approvals.

XX. Site Access

If applicable, the Contractor represents it has or will obtain title to or sufficient interest in the project site, including rights-of-way and necessary easements, before the start of the project to ensure undisturbed use and possession for purposes of construction and completion of the project, as well as operation of the project throughout its useful life.

XXI. Cost Overruns

If applicable, any cost overruns will not be paid by the Department and the Department is not committed to seeking additional appropriations or re-appropriation of funds and will not be responsible for the maintenance and operation of any facility which may be developed or equipment which may be purchased with the funds herein identified.

XXII. Construction Plans

It is the Contractor's responsibility (if applicable to the Project) to have all construction contract plans, specifications and cost estimates certified by a professional engineer licensed to practice in the State of New York. All certified plans and specifications shall become part of this Contract and shall be kept on the project site at all times.

XXIII. Payment and Reporting

A. The Contractor agrees to fully fund the Project and then seek reimbursement from the Department for eligible project costs. The Department will not process final payment for this Contract, until the Department determines that the project was completed satisfactorily and upon

receipt of all required final close-out payment documentation in accordance with the direction and requirements described in Attachment D.

- B. The Contractor will be entitled to receive reimbursement payments for work, projects, and/or services rendered as detailed and described in Attachment C and Attachment D of this Contract. Claims for reimbursement must be accompanied by such receipts and documents verifying expenditures as may be required by the Department and by the Comptroller. Satisfactory documentation shall include, but is not limited to, signed copies of payment vouchers or invoices, canceled checks/or the latest cumulative work-in-place estimate for each construction Contract, and any further documentation as may be required by the Department and/or the Comptroller. The Department reserves the right, in its sole discretion, to determine if the reimbursement request and accompanying documentation submitted by the Contractor is in satisfactory form and substance. A final payment determination will be based upon the Department's review of the Contractor's final voucher submission and reporting as described in Attachment D.

XXIV. On-Site Inspections

The State, Department, or authorized representatives will conduct a review of the Project funded from this Contract, which may include on-site inspections, at a time that is satisfactory to the Department.

XXV. Prohibition on Purchase of Tropical Hardwoods

The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State of any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

B) PROGRAM SPECIFIC TERMS AND CONDITIONS Climate Smart Communities

I. Local Share Requirements

For all Climate Smart Communities Projects, including Climate Protection Implementation Projects and Climate Smart Communities Certification Projects, the Department share will not exceed fifty percent (50%) of the approved project costs, up to the Contract Funding Amount identified on the Face Page, and the Contractor must provide fifty percent (50%) of required eligible share with eligible costs not paid with state grant funds nor federal funds. This percentage will be specified in the Attachment B-1 (Expenditure Budget).

II. Construction

- A. The Contractor agrees to proceed expeditiously with the Project and shall complete the Project in accordance with the performance measures set forth in Attachment C (Work Plan) or any amendments to such Work Plan which are approved by the Department in writing.
- B. The Contractor agrees that it shall notify the Department in writing thirty (30) calendar days prior to the start of construction or, if the start of construction began on or before the contract execution date, upon approval of the Contract the Contractor shall notify the Department in writing within thirty (30) calendar days as to the status of any construction.
- C. The Contractor agrees that it shall notify the Department in writing thirty (30) days following initial start-up operation of the Project.
- D. The Contractor agrees that it shall cause the Project to be designed and constructed in accordance with the engineering report or facilities plan, and if applicable to the project, the plans and specifications for the Project shall be stamped with the seal of a licensed professional engineer and shall be signed with the personal signature of such engineer in compliance with Education Law §7209(1) and (2), and which have been delivered to and approved by the Department, as well as any amendments thereto.
- E. The Contractor agrees that it shall permit the Department to participate in all its meetings and conferences with respect to the Project. Upon request from the Department, the Contractor must submit to the Department reports, documents, data, contractual documents, administrative records, and other information pertinent to the Project.
- F. The Contractor agrees to permit representatives of the Department to have unrestricted access to the Project at all reasonable times, and all contracts of the Contractor for construction or operation of all or a portion of the Project shall contain provisions that permit such access to the Project or work relating to the Project, wherever it is in preparation or progress, and that contractors or subcontractors shall provide proper facilities for such access and inspection and shall permit extracts and copies of Project records to be made by the representatives of the Department.

III. Engineering Certification/As-built Plans

Within sixty (60) calendar days after the end of the Contract Term, or upon final completion of the Project, the Contractor agrees that it will deliver the following to the Department:

- A. A certification stating that all portions of the Project funded by this award have been completed in accordance with this Contract, and constructed per the approved plans and specifications, and any approved amendments thereto.
- B. The certified "as built" plans and specifications for the Project. Any work not in accordance with the approved plans and specifications shall be remedied, unless such non-compliance is agreed to be waived by the Department.
- C. The Contractor shall retain all as-built plans and specifications for the Project for the useful life of the Project.

IV. Useful Life of Project

The Contractor agrees that it is fully responsible for ensuring the proper and efficient monitoring, operation and maintenance of the Project satisfactory to the Department, including, but not limited, to retaining a sufficient number of qualified staff and ensuring performance of required tests and requirements. After completion of the Project, the Contractor shall, for a period of thirty (30) years unless another period of time is specified in the attached Work Plan (the useful life of the Project as provided in the State Finance Law §61)), operate the Project or otherwise cause the Project to be operated properly in a sound and economical manner and shall maintain, preserve and keep the Project, or cause the Project to be maintained, preserved and kept, in good repair, working order and condition and shall make, or cause to be made, all necessary and proper repairs, replacements and renewals from time to time, so that at all times the Project may be operated properly in a manner consistent with the Project performance standards contained in the engineering report of facilities plan for the Project, with this Contract and with the requirements of any related permit or other governmental approval of the Project.

V. Notifications

The Department's authorized representative for the implementation of this Contract and for approval, direction, and receipt of all Project reports called for in this Contract is identified below. Whenever it is provided in this Contract that notice must be given or other communications sent to the Department, the notices or communications must be in writing and delivered or sent to the Department's authorized representative at:

Address: Office of Climate Change
New York State Department of Environmental Conservation
625 Broadway – 9th Floor
Albany, New York, 12233-1030
Tel. No.: (518) 402-8448

A copy of all legal notices shall be sent to:
General Counsel
New York State Department of Environmental Conservation
625 Broadway - 14th Floor
Albany, New York, 12233-1500

The Contractor's authorized representative for the implementation of this Contract is the person authorized in the Resolution of Support for the contract submitted by the Contractor. Notices or communications regarding this Contract should be in writing and delivered or sent to the Contractor's authorized representative at the address identified on the Face Page, with copies sent to the Contractor's contract administrator as identified in the contract application.

Notices delivered or sent shall be deemed for all purposes as notice to all persons who are Parties to this Contract as Department or Contractor.

VI. Eligible Costs

The contract start date for all contracts awarded through this request for application will be March 15, 2020. Only those eligible project related costs incurred between March 15, 2020 and March 14, 2025 will be eligible for reimbursement of grant funding. Payments will not be approved or processed by the Department until a MCG is fully approved by the Department and, as applicable, the Attorney General

and the State Comptroller, and work has been completed under the state contract. Advance payments are not authorized as part of the Climate Smart Communities Program.

VII. Climate Smart Communities Program Requirements

- A. The grant recipient shall provide estimates of the project's GHG emissions reductions, risk reduction, or other appropriate metrics, as approved by the program manager, through the end of the contract term, in the quarterly report, and/or final project report as applicable.
- B. For certification actions funded in the Climate Smart Communities Certification Project category, the grant recipient shall include in the work plan all deliverables required for each action as described in the Climate Smart Communities Certification Portal Actions Page at <https://www.ClimateSmart.ny.gov> under subheadings "E. How to Obtain Points for this Action" and "F. What to Submit" and provide these items as deliverables under the MCG.
- C. Work plans for certification actions funded in the climate smart communities Certification Project category must include a submittal of documentation required for certification approval through the Climate Smart Communities Certification Portal at <https://www.ClimateSmart.ny.gov>.
- D. If the grant recipient develops, improves, restores or rehabilitates real property that is not owned by the Contractor as part of the work of this Contract, the Contractor shall obtain a climate change mitigation easement from the owner of the real property. Climate change mitigation easements shall be enforced as conservation easements are enforced in ECL section 49-0305.
- E. Construction projects require the installation of an Environmental Protection Fund funding acknowledgement sign and a 30-day notice of construction commencement. An approved sign design will be provided to the grantee upon full execution of the contract. The signage must remain in place for the life of the project.
- F. Per 6 NYCRR Part 492, Climate Smart Communities Projects, a retainage of 5% will be withheld from each payment request for adaptation and mitigation projects (implementation). The retainage is held in case a project is not completed or all required match is not provided by the grantee. All accumulated retainage will be added to the final payment request upon project completion, match fulfillment, and submission of all deliverables.
- G. The following statement acknowledging DEC funding for the project must be included in any press releases or other public announcement, including newspaper articles and web posting, as well as all documents, brochures, reports, signage, maps, and exhibits: "This project has been funded in part by The Climate Smart Community Grant Program, Title 15 of the Environmental Protection Fund through the NYS Department of Environmental Conservation." If a ribbon-cutting or other promotional event is planned for the project, the event must be coordinated with the DEC Press Office.
- H. Pursuant to ECL 54-1515, all infrastructure funded through the CSC program must be owned by the grantee and cannot be transferred to another entity for the duration of the infrastructure's useful life. Through a Climate Change Mitigation Easement, the infrastructure may be placed on property not owned by the municipality.

VIII. Lead Applicant Self-Certification

For projects that involve more than one municipality or partner, the lead applicant must certify that an agreement or a signed commitment exists between the Lead Applicant and each participating partner stating the participating partner's commitment and willingness to deliver each output attributed to them in the contract work plan.

IX. Project Insurance Considerations

The Contractor agrees to procure and maintain at its own expense and without expense to the Department until final acceptance by the Department of the services covered by this Contract, insurance of the kinds and amounts as determined by the Department and based upon the project work plan. The insurance policies should be provided by insurance companies licensed to do business in the State of New York. Any delay or time lost as a result of the Contractor not having insurance required by the Contract shall not give rise to a delay claim or any other claim against the Department.

Upon execution of this Contract, the Contractor shall furnish to the Department a certificate or certificates, satisfactory to the Department, showing that it has complied with this Article. Upon execution of this contract the contractor shall furnish to the department a certificate or certificates, satisfactory to the Department, showing that it has complied with this article. The insurance documentation shall provide that:

Liability and protective liability insurance policies shall provide primary and non-contributory coverage to the NYS Department of Environmental Conservation for any claims arising from the Contractor's Work under this contract, or as a result of Contractor's activities. The State of New York, NYS Department of Environmental Conservation, its officers, agents and employees, 625 Broadway Albany, New York 12233-1030 shall be listed as Certificate Holder on all liability insurance certificate(s), as additional insureds on endorsements(s) and on additional supporting documentation.

The policies shall include a waiver of subrogation endorsement in favor of the Department as an additional insured. The endorsement shall be on ISO Form Number CG 24 04 or a similar form with same modification to the policy.

Policies shall not be changed or canceled until thirty (30) days prior written notice has been given to the Department; as evidenced by an endorsement or declarations page.

Insurance documentation shall disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the Contract.

Endorsements in writing must be added to and made part of the insurance contract for the purpose of changing the original terms to reflect the revisions and additions as described. A copy of these endorsements must be provided to the Department within a reasonable amount of time.

Applicable insurance policy number(s) reference on the ACORD form must be referenced in the supporting documentation requested by the Department and supplied by the insurance company (e.g. endorsement page, declarations page, etc.).

This Contract shall be void and of no effect unless the Contractor procures the required insurance policies and maintains them until completion of the work or acceptance by the Department, whichever event is later.

The kinds and amounts of insurance required are as follows:

- A. Workers' Compensation coverage must be provided for work to be performed in New York State. The Contractor shall provide and maintain full New York State coverage during the life of this contract for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law. Evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

FORM #	FORM TITLE
C-105.2	Certificate of Workers' Compensation Insurance
U-26.3	State Insurance Fund Version of the C-105.2 form
SI-12/ GSI-105.2	Certificate of Workers' Compensation Self-Insurance
CE-200	Certificate of Attestation of Exemption - (no employees)

- B. Disability Benefits coverage must be provided for work to be performed in New York State. The Contractor shall provide and maintain coverage during the life of the contract for the benefit of such employees as are required to be covered by the New York State Disability Benefits Law. Any waiver of this requirement must be approved by the Department of Environmental Conservation and will only be granted in unique or unusual circumstances. Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

FORM #	FORM TITLE
DB-120.1	Certificate of Disability Benefit Insurance
DB-155	Certificate of Disability Benefit Self-Insurance
CE-200	Certificate of Attestation of Exemption - (no employees)

An ACORD form is NOT an acceptable proof of Workers' Compensation coverage. ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME The State of New York and The New York State Department of Environmental Conservation, Office of Climate Change, 625 Broadway, Albany, NY 12233-1030 as the Entity Requesting Proof of Coverage.

Additional information can be obtained at the Worker's Compensation website:
<http://www.wcb.ny.gov/content/main/Employers/Employers.jsp>

Upon review of the scope of work outlined in the Grant Application by the Department, the following types of liability insurance may be required:

- C. Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence, and \$5,000,000 General aggregate. Such insurance shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability assumed in a

contract (including tort liability of another assumed in a contract). Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.

- D. Business Automobile Liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any registered motor vehicle including owned, leased, hired and non-owned vehicles. If the Contractor does not own, rent or lease any registered vehicles and will not be using any vehicles on State Land proof of Business Automobile Liability Insurance shall not be required for this Contract. The Contractor shall assume full responsibility and liability that owners and operators of any registered vehicles entering State Land to conduct work under this contract carry the same Business Automobile Liability Insurance of the kinds and amounts listed above. NYS Department of Environmental Conservation reserves the right to request proof of the same.
- E. Environmental Liability with a limit of not less than \$1,000,000 providing primary coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against the Department of Environmental Conservation arising from the Contractor's Work.
- F. Professional Liability Insurance includes coverage for its negligent act, error or omission in rendering or failing to render professional services required by this contract arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants. The Contractor, any subcontractor or supplier retained by the Contractor to work on the contract shall procure and maintain during and for a period of three (3) years after completion of this contract, Professional Liability Insurance in the amount of \$1,000,000. The professional liability insurance may be issued on a claims-made policy form, in which case the Contractor shall purchase at its sole expense, extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.
- G. Marine Protection & Indemnity: Anytime the activity involves work on navigable water or the work is connected to water related activities, the Contractor shall procure Marine Protection & Indemnity and Hull and Machinery coverage, if available. Hull and Machinery coverage shall be provided for the total value of the watercraft or equipment. The Contractor shall obtain Protective and Indemnity Liability insurance for all marine operations under the contract, with a minimum \$2,000,000 limit.

Should the Contractor engage a subcontractor, the Contractor shall impose the insurance requirements of this document on the subcontractor. Contractor shall determine the required insurance types and limits, commensurate with the work of the Subcontractor. The Contractor will maintain the certificate or certificates and endorsements for all subcontractors hired as part of the Contractor's records.

X. State Assistance Payments

After approval of the Climate Smart Community grant or rebate application, the commissioner may, in the name of the state, enter contracts with municipalities to provide state assistance payments toward the cost of climate smart community projects. Contracts shall include the following provisions:

- A. An estimate of the costs of the project, as determined by the commissioner.
- B. An agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the municipality during the progress of project development or following completion of the project as may be agreed upon by the parties, in an amount not to exceed the amounts established elsewhere in this title.
- C. An agreement by the municipality
 - i. to proceed expeditiously with and complete the project as approved by the commissioner;
 - ii. to undertake and maintain the climate smart community project in accordance with applicable law and rules and regulations;
 - iii. to provide for the payment of the municipality's share of the cost of the project;
 - iv. to assume the full cost of any additional elements or continued operation of the project;
 - v. to repay within one year of notification by the commissioner, any state assistance payments made toward the cost of the project or an equitable portion of such monies declared appropriate by the commissioner, if the municipality fails to complete the project as approved. (No repayment, however, shall be required where the commissioner determines that such failure, disposition, or change of use was immediately necessary to protect public health and safety.); and
 - vi. to apply for and make reasonable efforts to secure federal assistance for the project.

In connection with each contract, the commissioner shall keep adequate records of the amount of the payment by the state, if any, received by the municipality. Such records shall be retained by the commissioner and shall establish the basis for recalculation of the state payment as required herein.

The commissioner shall impose such contractual requirements and conditions upon any municipality that receives state assistance payments pursuant to this title as may be necessary and appropriate to ensure that a public benefit shall accrue from the use of public funds by such municipality. Such conditions shall include limitations on the right of the municipality to demolish or convey such property; provisions for public access or use where appropriate; a requirement that all plans for restoration, rehabilitation, improvement, demolition or other physical change must be subject to the commissioner's approval; and such other conditions that shall assure the preservation and protection of the project.

**ATTACHMENT B-1 EXPENDITURE BASED BUDGET
SUMMARY**

PROJECT NAME: Hubbs Road Multi-Use Path

CONTRACTOR SFS PAYEE NAME: CLIFTON PARK TOWN OF

CONTRACT PERIOD: From: 03/15/2020

To: 03/14/2025

CATEGORY OF EXPENSE	GRANT FUNDS	MATCH FUNDS	MATCH %	OTHER FUNDS	TOTAL
1. Personal Services					
a) Salary	\$0.00	\$0.00	0 %	\$0.00	\$0.00
b) Fringe	\$0.00	\$0.00	0 %	\$0.00	\$0.00
Subtotal	\$0.00	\$0.00	0 %	\$0.00	\$0.00
2. Non Personal Services					
a) Contractual Services	\$278,271.00	\$278,271.00	100 %	\$0.00	\$556,542.00
b) Travel	\$0.00	\$0.00	0 %	\$0.00	\$0.00
c) Equipment	\$0.00	\$0.00	0 %	\$0.00	\$0.00
d) Space/Property & Utilities	\$0.00	\$0.00	0 %	\$0.00	\$0.00
e) Operating Expenses	\$0.00	\$0.00	0 %	\$0.00	\$0.00
f) Other	\$0.00	\$0.00	0 %	\$0.00	\$0.00
Subtotal	\$278,271.00	\$278,271.00	100 %	\$0.00	\$556,542.00
TOTAL	\$278,271.00	\$278,271.00	100 %	\$0.00	\$556,542.00

ATTACHMENT B-1 EXPENDITURE BASED BUDGET

PERSONAL SERVICES DETAIL

SALARY					
POSITION TITLE	ANNUALIZED SALARY PER POSITION	STANDARD WORK WEEK (HOURS)	PERCENT OF EFFORT FUNDED	NUMBER OF MONTHS FUNDED	TOTAL
				Subtotal	
TOTAL FRINGE					
					PERSONAL SERVICES TOTAL

ATTACHMENT B-1 - EXPENDITURE BASED BUDGET
NON-PERSONAL SERVICES DETAIL

CONTRACTUAL SERVICES - TYPE/DESCRIPTION	TOTAL
Engineering Design Services	\$41,740.66
Right-of-Way Incidentals and Acquisition (none of state grant may be used on ROW)	\$78,000.00
Construction and inspection (TBD)	\$436,801.34
TOTAL	\$556,542.00

ATTACHMENT B-1 - EXPENDITURE BASED BUDGET
 NON-PERSONAL SERVICES DETAIL

TRAVEL - TYPE/DESCRIPTION	TOTAL
TOTAL	

EQUIPMENT - TYPE/DESCRIPTION	TOTAL
TOTAL	

SPACE/PROPERTY EXPENSES: RENT - TYPE/DESCRIPTION	TOTAL
TOTAL	

SPACE/PROPERTY EXPENSES: OWN - TYPE/DESCRIPTION	TOTAL
TOTAL	

TYPE/DESCRIPTION OF UTILITY EXPENSES	TOTAL
TOTAL	

OPERATING EXPENSES - TYPE/DESCRIPTION	TOTAL
TOTAL	

OTHER - TYPE/DESCRIPTION	TOTAL
TOTAL	

ATTACHMENT C - WORK PLAN

SUMMARY

PROJECT NAME: Hubbs Road Multi-Use Path

CONTRACTOR SFS PAYEE NAME: CLIFTON PARK TOWN OF

CONTRACT PERIOD: From: 03/15/2020

To: 03/14/2025

Project Summary: A high-level overview of the project, including the overall goal and desired outcomes.

The Town will construct approximately 0.6 miles of new, 10-foot-wide, asphalt, multi-use trail, for bicycle and pedestrian travel, on the south side of Hubbs Road, following along the west side of Hatlee Road to the 4-way intersection with Main Street/Long Kill Road/MacElroy Road, connecting the Dutch Meadows and Country Knolls neighborhoods to the nearby hamlet of Jonesville.

The project also includes: high visibility crossings with new pedestrian signals (Rectangular Rapid Flash Beacons) and signage at the following locations: Hatlee Road and Hubbs Road intersection (across Hubbs Road); Hatlee Road at the 4-way intersection with Main Street/Long Kill Road/MacElroy Road, to connect to Long Kill Road sidewalks, with signage, across Hatlee Road/Main Street, and Hatlee Road and MacElroy Road (across MacElroy Road).

This project will greatly improve pedestrian and bicyclist safety along this corridor as well as access for people from the residential neighborhoods of Dutch Meadows and Country Knolls to the Hamlet of Jonesville's commercial area, including restaurants, offices and essential services. This new multi-use path will also connect to other, currently existing, sidewalks and multi-use trails within the Town of Clifton Park, and provide a larger, non-motorized transportation network within the town, supporting the reduction of vehicle miles traveled and therefore, greenhouse gas emissions from vehicular traffic.

ATTACHMENT C - WORK PLAN

DETAIL

Objective
1 Project Administration - -
Tasks
1.1 Conduct initial grant contract meeting with Town and DEC OCC - to discuss grant contract and draft monitoring and metrics - data collection plan (see objective 8).
<u>Performance Measures</u>
1.1.1 Meeting summary submitted to DEC OCC. - -
Tasks
1.2 Grant contract reporting and reimbursements - -
<u>Performance Measures</u>
1.2.1 MWBE reports filed quarterly with MWBE office and cc'd to DEC program - manager.
1.2.2 Quarterly progress reports submitted to DEC within 30 days of the close of - the quarter.
1.2.3 Reimbursement requests submitted as needed, but only at the end of a - quarter. Final reimbursement request due to DEC within 120 days of the contract end date.
1.2.4 Final project summary report and all deliverables submitted to DEC within - 60 days of the contract end date.
Tasks
1.3 Public relations - -

Performance Measures

- 1.3.1 Notify DEC OCC of any press events, releases, or groundbreaking ceremonies - at least 1 month prior to the event.
- 1.3.2 DEC Funding Attribution Statement added to all project materials - "This project has been funded in part by the Climate Smart Communities Grant Program, Title 15 of the Environmental Protection Fund through the New York State Department of Environmental Conservation."

ATTACHMENT C - WORK PLAN

DETAIL

Objective
2 Procure engineering consultant - .
Tasks

- 2.1 Draft request for qualifications (RFQ) for Engineering Services - .
 - Performance Measures
 - 2.1.1 Submit draft and Final RFQ to DEC OCC - .
 - 2.1.2 List of applicants, intent to hire letter, MWBE compliance breakdown, copy - of executed subcontract submitted to DEC OCC.

Objective
3 Complete Engineering Design - .
Tasks

- 3.1 Design and engineering consultant prepares preliminary design. - .
 - Performance Measures
 - 3.1.1 Preliminary design plan is complete and copy of design is submitted to OCC - .

Tasks
3.2 Consultant prepares preliminary design - for public input through a presentation to the public
<u>Performance Measures</u>
3.2.1 Copies of outreach materials & public input summary is provided to DEC OCC - .

Tasks
3.3 Final design, specifications and construction documents are prepared - .
<u>Performance Measures</u>
3.3.1 Final designs, specifications and construction documents certified by - consultant engineer are submitted to DEC OCC.

ATTACHMENT C - WORK PLAN

DETAIL

Objective

4 ROW Acquisition, as needed. - Town will seek to minimize any need for any additional Right-of-Way for this construction project.

Tasks

4.1 Engineering consultant prepares draft and final mapping of ROW - .

Performance Measures

4.1.1 Copies of ROW maps submitted to DEC OCC - .

Tasks

4.2 ROW Acquisition Phase completed - .

Performance Measures

4.2.1 Copies of final ROW maps submitted to DEC OCC - .

ATTACHMENT C - WORK PLAN
DETAIL

Objective	
5	Permitting and Preparation of Bid Documents - .
Tasks	
5.1	Obtain all required permits, including but not limited to, NYS DOT, US Army - Corps of Engineers, Town of Clifton Park Highway Department, as is applicable.
	<u>Performance Measures</u>
5.1.1	Copies of required permits submitted to DEC OCC - .
Tasks	
5.2	Finalize all public bid documents, including specifications, construction - plans, and budget.
	<u>Performance Measures</u>
5.2.1	Copies of final bid documents submitted to DEC OCC - .
Tasks	
5.3	SEQRA Review - .
	<u>Performance Measures</u>
5.3.1	SEQRA documents submitted to DEC OCC - .

ATTACHMENT C - WORK PLAN
DETAIL

Objective	6 Procure Construction Contractor - .
Tasks	6.1 Release public bid, including MWBE requirements - advertised through the Town's official newspaper and the NYS Contract Reporter.
Performance Measures	6.1.1 Copy of bid solicitation and public announcement submitted - to DEC OCC..
Tasks	6.2 Compile all MWBE "good faith efforts" as described in the document entitled - MWBE Overview_CSC and provide to mwbe@dec.ny.gov with a cc to the DEC program manager if waiver is requested.
Performance Measures	6.2.1 e-mail from grantee to DEC MWBE office with all good faith effort - documentation (if needed).
Tasks	6.3 Select consultant/contractor - .
Performance Measures	6.3.1 List of applicants, intent to hire letter, MWBE compliance breakdown, copy - of executed contract submitted to DEC OCC
Tasks	6.4 Notify DEC OCC, in writing, 30 calendar days prior to the start of - construction that work is about to begin. Provide update on progress 30 days following initial startup. If it has started, tell status of construction underway at contract execution.
Performance Measures	6.4.1 Copy of 30-day notice letter, and 30-day progress letter submitted to DEC - OCC.
Tasks	6.5 Pre-construction meeting with Town, contractor and other parties as needed. - Invite DEC OCC to attend
Performance Measures	6.5.1 Summary of project kick-off construction meeting submitted to DEC OCC. - .

ATTACHMENT C - WORK PLAN

DETAIL

Objective

7 Complete project construction - .

Tasks

7.1 Site construction oversight by Town and construction inspectors - .

Performance Measures

7.1.1 Extensive photo documentation preconstruction, provided to DEC OCC - .

7.1.2 Site inspection reports during construction provided to DEC OCC - .

7.1.3 Extensive photo-documentation of the project site during construction - provided to DEC OCC.

Tasks

7.2 Install Environmental Protection Fund sign on project site - .

Performance Measures

7.2.1 Submit photos of installed EPF sign to DEC OCC. Photos will include, but - be limited to: 1) close-up with legible text; and 2) wide, in-situ shot showing location and situation

Tasks

7.3 Construction final reporting - .

Performance Measures

7.3.1 Final inspection report of the completed construction work, and sign-off by - supervising engineer, all submitted to DEC OCC.

7.3.2 Certificate of completion stating that all portions of the project funded - by this award have been completed in accordance with this contract and construction per the approved plans and specifications (and any approved amendments) provided to DEC OCC, and/or certified "as-built" plans and specifications for any portions of this project funded by this award, stamped with the seal of a licensed professional engineer and signed with the personal signature of such engineer in compliance with Education Law §7209(1) and (2) provided to DEC OCC.

7.3.3 Extensive photo-documentation of the project site after construction - provided to DEC OCC.

ATTACHMENT C - WORK PLAN

DETAIL

Objective

8 Monitor and Report on Project-Appropriate Metrics - .

Tasks

8.1 Draft and finalize a data collection plan and scope to implement the - collection of project-appropriate metrics on number of users, user types and evaluations from users.

Performance Measures

8.1.1 Draft data collection plan submitted to DEC OCC for review and discussion - at project meeting per objective 1, task 1.

8.1.2 Final data collection and monitoring plan submitted to DEC OCC - .

Tasks

8.2 Collect data on trail use such as weekday/weekend use, number of users, - and evaluations from pedestrians. Analyze data and estimate greenhouse gas emission reductions.

Performance Measures

8.2.1 Final analysis report and GHG mitigation estimates submitted to DEC - .

II. REPORTING PROVISIONS

A. Expenditure-Based Reports (select the applicable report type):

Narrative/Qualitative Report

The Contractor will submit, on a quarterly basis, not later than 30 days from the end of the quarter, the report described in Section III(G)(2)(a)(i) of the Master Contract

Statistical/Quantitative Report

The Contractor will submit, on a quarterly basis, not later than ___ days from the end of the quarter, the report described in Section III(G)(2)(a)(ii) of the Master Contract.

Expenditure Report

The Contractor will submit, on a quarterly basis, not later than 30 days after the end date for which reimbursement is being claimed, the report described in Section III(G)(2)(a)(iii) of the Master Contract.

Final Report

The Contractor will submit the final report as described in Section III(G)(2)(a)(iv) of the Master Contract, no later than 60 days after the end of the contract period.

Consolidated Fiscal Report (CFR)

The Contractor will submit the CFR on an annual basis, in accordance with the time frames designated in the CFR manual. For New York City contractors, the due date shall be May 1 of each year; for Upstate and Long Island contractors, the due date shall be November 1 of each year.

1

The Consolidated Fiscal Reporting System is a standardized electronic reporting method accepted by Office of Alcoholism & Substance Services, Office of Mental Health, Office of Persons with Developmental Disabilities and the State Education Department, consisting of schedules which, in different combinations, capture financial information for budgets, quarterly and/or mid-year claims, an annual cost report, and a final claim. The CFR, which must be submitted annually, is both a year-end cost report and a year-end claiming document.

Contract Number: # DEC01-C01085GG-3350000

B. Progress-Based Reports

1. Progress Reports

The Contractor shall provide the report described in Section III(G)(2)(b)(i) of the Master Contract in accordance with the forms and in the format provided by the State Agency, summarizing the work performed during the contract period (See Table 1 below for the annual schedule).

2. Final Progress Report

Final scheduled payment will not be due until ___ days after completion of agency's audit of the final expenditures report/documentation showing total grant expenses submitted by vendor with its final invoice. Deadline for submission of the final report is ____. The agency shall complete its audit and notify vendor of the results no later than ____. The Contractor shall submit the report not later than ___ days from the end of the contract.

C. Other Reports

The Contractor shall provide reports in accordance with the form, content and schedule as set forth in Table 1.

TABLE 1 - REPORTING SCHEDULE

PROGRESS REPORT #	PERIOD COVERED		Due Date
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			

III. SPECIAL PAYMENT AND REPORTING PROVISIONS

Resolution No. _____ of 2022, a resolution appointing a new member to the Emergency Services Advisory Board.

Introduced by _____, who moved its adoption, seconded by _____.

WHEREAS, an opening exists for a representative from the Clifton Park & Halfmoon Emergency Corps, Inc. to the Emergency Services Advisory Board, and

WHEREAS, the Clifton Park & Halfmoon Emergency Corps, Inc. recommends Mark Freiberger, 4 Battery Blvd., Mechanicville, NY, to fill the position of Member Patrick Bornt representing the Clifton Park-Halfmoon Ambulance; now therefore be it

RESOLVED, that Mark Freiberger, is hereby appointed as representative from the Clifton Park & Halfmoon Emergency Corps, Inc. to the Emergency Services Advisory Board, for a 3-year term to expire December 31, 2024.

Meg Springli

From: Jean, Spiegel <JSpiegel@cliftonpark.org>
Sent: Thursday, January 6, 2022 4:08 PM
To: Meg Springli
Subject: FW: ESAB Cp Ambulance

Mark will be appointed as the Clifton Park Halfmoon Ambulance Rep for ESAB- 3 year term

Jean Spiegel
Town Supervisor's Office
Town of Clifton Park
(518) 371-6651 ext.240
jspiegel@cliftonpark.org

From: Wade Schoenborn <wschoenborn@cliftonpark.org>
Sent: Thursday, January 6, 2022 4:03 PM
To: Jean, Spiegel <JSpiegel@cliftonpark.org>
Subject: ESAB Cp Ambulance

Mark Freiburger | Deputy Director
Clifton Park & Halfmoon Emergency Corps, Inc.
Follow us: CPHM EMS | Facebook | Twitter | LinkedIn
o: 518-371-3880 c: 518-879-7156 f: 518-371-7623
15 Crossing Blvd. | Clifton Park, NY 12065

Wade Schoenborn, Fire Marshal
Town of Clifton Park
1 Town Hall Plaza
Clifton Park, NY 12065
(518) 371-6702 ext. 223
wschoenborn@cliftonpark.org

Resolution No. _____ of 2022, a resolution appointing Michael Woerner as an MEO light in the Department of Buildings and Grounds.

Introduced by _____, who moved its adoption, seconded by _____.

WHEREAS, an opening exists for an MEO light position within the Department of Buildings and Grounds, and

WHEREAS, the position is unclassified, and

WHEREAS, Dan Clemens, Director of the Department, has interviewed Michael Woerner, and has asked for authorization to retain Mr. Woerner as an MEO Light, to fill the position, and

WHEREAS, Mr. Woerner has the background, education, training and experience necessary for the position; now, therefore be it

RESOLVED, that Michael Woerner, 33 Pinehurst Drive, Clifton Park, N.Y. is hereby appointed as MEO Light, to be compensated at a Grade 4, Step 1, (\$22.11/hr.); and be it further

RESOLVED, that the Comptroller is authorized to transfer \$41,246.00 from A-07110-3000 (Buildings & Grounds – Laborer), and to transfer \$2,454.00 from A-08160-00074 (General Fund – Transfer Station – Overtime) to A-08160-Exxxx (General Fund – Transfer Station – Employee) to fund the position.

Meg Springli

From: Mark Heggen <mheggen@cliftonpark.org>
Sent: Friday, January 7, 2022 11:04 AM
To: Meg Springli
Subject: RE: Resolution Request for TB Meeting: 01-18-2022
Attachments: Transfer Station Hire 1 10 22.xlsx

Meg,

Here is a corrected calculation for the hire. I gave him an extra week. The total for the projected wages is \$43,700 so the transfer from overtime is \$2,454.

Mark

Mark E. Heggen, CPA
Town Comptroller
Town of Clifton Park
One Town Hall Plaza
Clifton Park, NY 12065

Telephone – 518-371-6651
Fax – 518-371-1136

mheggen@cliftonpark.org

From: Town of Clifton Park <noreply@cliftonpark.org>
Sent: Friday, January 7, 2022 9:45 AM
To: Meg Springli <mspringli@cliftonpark.org>
Cc: Jean, Spiegel <JSpiegel@cliftonpark.org>; Mark Heggen <mheggen@cliftonpark.org>
Subject: Resolution Request for TB Meeting: 01-18-2022

An item has been submitted to the Resolution Request form for review.

Department: **Buildings & Grounds**
Your email: dclemens@cliftonpark.org

Sponsor/Contact as shown on the agenda (i.e. P. Barrett, A. Standaert, D. Bull, etc.): **D.Clemens**

Requested Meeting Date: **01-18-2022**

Brief Description: **Hire Michael Woerner, 33 Pinehurst Drive, Clifton Park, as MEO light, Grade 4 step 1 \$45,989, to fill the vacancy posted**

Budget #: **A8160-E0460???**
Budget Description: **Convenience Transfer Station- ??**
\$ Amount: **45,989**

Additional Comments/Details: **I am not sure on budget info, i left question marks there.**

Town of Clifton Park
Salary Allocation

		Grade	Step	Year	2021 Hourly Rate	Weeks to End of Year	Hours	Projected to End of Year
Transfer to Building & Grounds Staff effective January 31, 2022								
Michael	Woerner		4	1	22.11	49.4	40	\$ 43,689.36
Rounded to:								<u>\$ 43,700.00</u>

Transfer funds from Building & Grounds Laborer
to Transfer Station

A-07110- ³⁰⁰⁰ Exxx	<u>\$ 41,246.00</u>
Additional transfer from A-08160-00074	<u>\$ 2,454.00</u>



Town of Clifton Park

Buildings & Grounds

One Town Hall Plaza • Clifton Park, New York 12065 • (518) 371-6651 Ext. 251 • Fax: (518) 371-1136

JOB POSTING

DECEMBER 21 2021

The Town of Clifton Park has an Opening for a Position as a laborer within the Department of Building and Grounds. The primary focus of duties for this position will be at the Transfer Station during their Tuesday – Saturday operational hours. However, this position could also be scheduled during any workday that the Buildings & Grounds department is operating. The position will be a grade 3 step 1 \$41,246 - \$19.83/hr. The job description and minimum qualifications are as follows:

DISTINGUISHING FEATURES OF THE CLASS: The work involves responsibility for the performance of general laboring or construction tasks, which requires physical endurance and a willingness to perform arduous tasks at times in inclement weather. The incumbent generally uses hand and power tools to perform the work but may occasionally operate automotive equipment under close supervision of a qualified operator. The work is performed under direct supervision. Does related work as required.

TYPICAL WORK ACTIVITIES:

Performs a variety of manual labor tasks subject to inclement weather conditions and often in an unpleasant environment;
Rakes and shovels asphalt to patch potholes or assist in the paving of roads;
Assists in the installation, maintenance and repair of sidewalks or other projects by shoveling, jackhammering, laying forms, and pouring cement;
Assists in the installation, maintenance, and repair of pipeline by excavating, laying pipe, and backfilling;
Assists in patching and grading of streets and building manholes;
Works on refuse collection route;
Loads and unloads trucks;
Cuts brush, removes dead trees, plants grass, and mows lawns;
Cleans debris from parking lots and culverts;
Shovels snow and spreads salt;
Operates power tools and equipment such as saws, mixers, jackhammers and tampers;
Acts as a flag person on street jobs;
Cleans vehicles and buildings;
Operates motor equipment on a relief, emergency, or trainee basis.

FULL PERFORMANCE KNOWLEDGE, SKILLS, ABILITIES AND PERSONAL CHARACTERISTICS:

Working knowledge of the care and safe use of common hand and power tools found in construction and maintenance;
Ability to perform routine physical labor;
Ability to follow oral instructions;
Willingness to work under all weather conditions;
Physical endurance.

MINIMUM QUALIFICATIONS: None is required but some experience in heavy manual labor desired.

Applicants should send resume and expressions of interest to:

Supervisor Phil Barrett, through Jean Spiegel at Jspiegel@cliftonpark.org or contact Ms. Spiegel (518) 371-6651

1 Town Hall Plaza

Clifton Park, NY 12065

MSD-330



SARATOGA COUNTY DEPARTMENT OF HUMAN RESOURCES

APPLICATION FOR EMPLOYMENT OR CIVIL SERVICE EXAMINATION

40 MCMASTER STREET, BALLSTON SPA, NY 12020
518-885-2225 www.saratogacountyny.gov

AN EQUAL OPPORTUNITY EMPLOYER WITH AN AFFIRMATIVE ACTION PROGRAM

RECEIVED

Number OCT 13 2021
APPLICATION TOWN OF CLIFTON PARK
Approved
Office of the Supervisor
Conditional
Disapproved

APPLICATION FOR EMPLOYMENT: Title of Position Highway on PARK & Bldgs

APPLICATION FOR EXAMINATION: Title and #

This application is part of your examination. Please answer all questions completely and accurately. Attach additional sheets if necessary to provide required information. All statements are subject to verification.

1. NAME AND PERMANENT LEGAL RESIDENCE: (Please notify Saratoga County Department of Human Resources in writing of any information changes.)

WOERNER MICHAEL

Last Name First Name M.I. Social Security Number (Required for exam)
33 Parkhurst Dr Clifton Park NY 12065
Street City State Zip Code

Indicate below your actual permanent address and the length of time you have resided there continuously, up to and including date of this application.

Table with 4 columns: PROVIDE NAME, YEARS, MONTHS. Rows include School District (Shenendehowa), Village or City, Town of (Clifton Park), County of (Saratoga), and State of (NY).

NOTE: It is your permanent legal residence that will determine eligibility for examination and appointment. Specific residency requirements are stated on the exam announcement.

2. MAILING ADDRESS: (If different from above) Street City State Zip Code

3. EMAIL ADDRESS: MIWOERNER108@gmail.com

4. PHONE NUMBER: () Home () Business (518) 365-9264 Cell

5. AGE: If applying for the position of Deputy Sheriff, Police Officer, Correction Officer or any other position with minimum or maximum age limits (check exam announcement), please state date of birth:

6. SPECIAL TESTING ARRANGEMENTS: RELIGIOUS ACCOMMODATION: Most written tests are held on Saturdays. If you cannot take the test on the announced test day due to a conflict with a religious observation or practice, check the space below. [] I cannot be tested on the scheduled examination date due to a conflict with a religious observance or practice.

SPECIAL ACCOMMODATIONS IN TESTING: Saratoga County provides reasonable accommodations for individuals with a disability during application, examination, interview and employment. If you need a reasonable accommodation, check the space below and attach a written description of the accommodation sought. Medical documentation is required. [] I require special accommodation to take this examination.

OTHER ACCOMMODATIONS NEEDED: If you require accommodation for reasons other than religious or disability, check the box below and attach a written description of the accommodation sought. [] I require special accommodation to take this examination.

7. CHECK APPROPRIATE BOXES:

If you answer YES to any portion of questions 7a-f, provide details on a separate sheet. Your failure to answer these questions or to provide details will significantly delay any determination concerning your qualifications and may deprive you of potential employment opportunities. None of the above circumstances represent an automatic bar to employment. Each case is considered and evaluated on individual merit in relation to the duties and responsibilities of the position for which you are applying.

- a. Were you ever discharged from employment for reasons other than lack of work or funds, disability or medical condition?
- b. Did you ever resign rather than face discharge?
- c. Have you ever been convicted of a crime (felony or misdemeanor)?
- d. Has there ever been a complaint of workplace violence or harassment against you?
- e. Are you now under charges for any crime?
- f. Did you ever receive a discharge from the Armed Forces of the United States that was other than "Honorable", or which was issued under other than honorable conditions?
- g. Are you a retiree from New York State or any civil division thereof?
- h. Are you an exempt Volunteer Fireman?

<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO
<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO
<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO
<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO
<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO
<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO
<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO
<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO

8. VETERANS CREDITS: Veteran's credits can be applied for on all examinations but may be used only once. You may not claim additional credits after the eligible list has been established. Any candidate who applies for such credit must submit a copy of DD214 with application.

Do you claim additional credits on this examination as an honorably discharged veteran?

NO - Please go to Question 9 YES - AS A NON-DISABLED WAR VETERAN

YES - AS A DISABLED WAR VETERAN

YES NO Since January 1, 1951, have you ever used additional credits as a disabled or non-disabled veteran for appointment to any position in the public employment of New York State or any of its civil divisions?

COMPLETE THE REMAINDER OF THIS SECTION IF YOU:

1. Wish to claim War Time Veterans Credits, AND
2. Have NOT used veteran's credits for appointment to a position in NY State or its civil divisions.

EXTRA CREDITS FOR WAR TIME VETERANS -- Your answers must be "YES" to be eligible for additional credits

YES NO I expect to receive or have already received a discharge which was honorable or release under honorable circumstances from the Armed Forces of the United States. "Armed Forces of the United States" means the Army, Navy, Marine Corps, Air Force and Coast Guard, including all components thereof, and the National Guard when in service of the United States pursuant to call as provided by law, on a full-time active duty other than active duty for training purposes.

YES NO I am now serving, or have served, on an active duty basis other than active duty for training purposes during one or more of the following Time of War periods:

- In the Armed Forces:**
 December 7, 1941 - December 31, 1946;
 June 27, 1950 - January 31, 1955;
 February 28, 1961 - May 7, 1975;
 August 2, 1990 to the date when the Persian Gulf hostilities end.
Or earned the Armed Forces, Navy or Marine Corps Expeditionary medal for service in:
 Granada: October 23, 1983 - November 21, 1983;
 Lebanon: June 1, 1983 - December 1, 1987;
 Panama: December 20, 1989 - January 31, 1990.
Or in the U.S. Public Health Service:
 July 29, 1945 - December 31, 1946;
 June 27, 1950 - July 3, 1952.

I am a United States citizen or an alien lawfully admitted for permanent residence.
 I am a New York resident.

<input checked="" type="checkbox"/>	YES	<input type="checkbox"/>	NO
<input type="checkbox"/>	YES	<input type="checkbox"/>	NO

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9. STUDENT LOANS:

Are you currently in default on any outstanding student loan(s) made or guaranteed by the New York State Higher Education Services Corporation? NO YES

10. YOUR EDUCATION: Read the exam announcement for educational requirements. Send a copy of your transcript only if required by the announcement.

Have you graduated from High School? NO YES

Name and Location of High School WESTWOOD High school, WESTWOOD NJ

If you have a High School Equivalency Diploma, indicate: Issuing Government Authority _____

Number _____ Date of Issue _____

College, University, Professional or Technical Schools:	Major subject or type of course	Did you graduate?	If you did not graduate, number of college credits	If graduated, type of degree received	Date degree received or expected
Name of School & City in which located <u>Fairleigh Dickinson Univ TEANECK, NJ</u>	<u>BUS.</u>	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		<u>BS</u>	Mo. Yr. <u>05 188</u>
Name of School & City in which located		YES <input type="checkbox"/> NO <input type="checkbox"/>			Mo. Yr. <u>1</u>
Name of School & City in which located <u>Fairleigh Dickinson Univ.</u>	<u>OPERATIONS</u>	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		<u>MBA</u>	Mo. Yr. <u>05 190</u>
Name of School & City in which located		YES <input type="checkbox"/> NO <input type="checkbox"/>			Mo. Yr. <u>1</u>

11. LICENSE OR CERTIFICATION:

If required on the announcement, do you have a valid license to operate a motor vehicle in New York State?

NO YES License Number XXXXXXXXXX Expiration Date: 01/27/29

Class of License: _____ Endorsements: CDL-B Restrictions: None

Complete the following if a license, certificate or other authority to practice a trade or profession is required on the announcement(s).

Trade or Profession	License Number	Date License First Issued	Registration	If you are not currently licensed, check this
		<u>10-13-21</u>	Mo. Yr. to Mo. Yr. From <u>1</u> to <u>1</u>	<input type="checkbox"/>
Specialty <u>CDL CLASS B</u>	Granted by (Licensing agency) <u>NYS DMV</u>		City/State	

The County of Saratoga does not discriminate because of age, race, creed, color, citizenship, national origin, sex, religion, marital status, criminal record, disability, limited English proficiency, low income status, political affiliation, genetic predisposition or carrier status, domestic violence victim status, pregnancy or sexual orientation.

NOTE: Federal Law requires employers to hire only U.S. citizens or aliens with the authorization to work in the U.S. Federal Law also requires that at the time of appointment, you provide to the employer certain information, including date of birth, country of origin, right to work in the U.S. and to provide for review certain documents establishing your identity and work authorization, such as birth certificates, etc.

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12. EXPERIENCE: You must complete this section whether or not you submit a resume. Describe any employment, volunteer experience or military experience that qualifies you for the position sought. Begin with your most recent experience first and work backwards consecutively to your first position. Applicants may be required to furnish satisfactory proof of experience claimed. A resume is NOT a substitute.

Length of Employment From: Mo. Yr. To: Mo. Yr. 3/20 - PRESENT	Name of Employer CONSTELLIS	Address 445 BROADWAY	City and State ALBANY, NY
Earnings: \$ 1000 per <input type="checkbox"/> Wk <input checked="" type="checkbox"/> Mo <input type="checkbox"/> Yr	Type of Business SECURITY	Your Title COURT SECURITY OFFICER	Name/Title/email or phone Information of Supervisor John Mosey 7110 518-472-5401
Ave. hours per week: Reason for leaving	Duties: PROVIDE SECURITY FOR FEDERAL JUDGES & COURT HOUSE STAFF		

Length of Employment From: Mo. Yr. To: Mo. Yr. 10/95 - 02/20	Name of Employer USDOJ US MARSHALS	Address 445 BROADWAY	City and State ALBANY NY
Earnings: \$ 137,000 per <input type="checkbox"/> Wk <input type="checkbox"/> Mo <input checked="" type="checkbox"/> Yr	Type of Business LAW ENFORCEMENT	Your Title SUPERVISORY INSPECTOR	Name/Title/email or phone Information of Supervisor CHRIS AMORIA 315-374-9224
Ave. hours per week: Reason for leaving RETIREMENT	Duties: RAN FUGITIVE TASK FORCE FOR UPSTATE NY SUPERVISED 175 STATE, LOCAL & FEDERAL LAW ENFORCEMENT		

Length of Employment From: Mo. Yr. To: Mo. Yr.	Name of Employer	Address	City and State
Earnings: \$ per <input type="checkbox"/> Wk <input type="checkbox"/> Mo <input type="checkbox"/> Yr	Type of Business	Your Title	Name/Title/email or phone Information of Supervisor
Ave. hours per week: Reason for leaving	Duties:		

13. REFERENCES: Do you have any objection to our contacting present or past employers to verify above?
 NO YES If yes, comment _____

Please print any other surnames (last names) by which you are or have been known: _____

DECLARATION: I declare, subject to the penalties of perjury, that the statements made in this application, including statements made in any accompanying papers, are true. I understand that all statements made by me in connection with this application are subject to investigation and verification and that a material misstatement or fraud may disqualify me from appointment and/or lead to revocation of my appointment.

M/W
Signature of Applicant

10/12/21
Date

Michael Woerner

33 Pinehurst Dr.

Clifton Park, NY 12065

518-365-9264

Email: mwoerner188@gmail.com

PROFILE

Retired, former career Federal Law Enforcement supervisor looking to change to a blue / green collar career. Completed Class B CDL training October 2021, and received my NY State Class B CDL. I am seeking a new hands-on career position in operations with an entity where my strong work ethic would be appreciated; in which I would be afforded opportunities for further training and advancement.

TRAINING

Class B CDL Training program
The CDL School, Menands NY

Completed October 2021

EMPLOYMENT HISTORY

Court Security Officer
Centerra Group LLC, Albany NY

2020 to Present

Supervisory Deputy U.S. Marshal
U.S. Department of Justice

Retired 2020

FORMAL EDUCATION

Graduate and undergraduate academic education

Completed 1990

Resolution No. _____ of 2022, a resolution authorizing the promotion of Jacob Palmateer and Tod Kirchoffer, currently employed in the Department of Buildings and Grounds.

Introduced by _____, who moved its adoption, seconded by _____.

WHEREAS, Director of Buildings, Parks, and Recreation, Dan Clements has recommended that Jacob Palmateer, employed as a Laborer in the Buildings and Grounds Department for two years, be promoted from Laborer, Grade 3 Step 2 to Motor Equipment Operator Light, Grade 4 Step 1, and

WHEREAS, Mr. Clemens, also recommends the advancement of Todd Kirchofer, who has been employed since 2002 from Motor Equipment Operator Grade 5 Step 7 to Senior Motor Equipment Operator Grade 6 Step 6 at the Convenience Transfer Station; now, therefore, be it

RESOLVED, that Jacob Palmateer, is hereby promoted to Motor Equipment Operator Light, Grade 4 Step 1 (\$22.11/hr) effective immediately; and be it further

RESOLVED, that Todd Kirchoffer, is hereby promoted to Sr. Motor Equipment Operator, Grade 6 Step 6 (\$30.48/hr) effective immediately; and be it further

RESOLVED, that the comptroller is authorized to transfer \$4,127.00 from A-07110-00074 (General Fund – Buildings & Grounds – Overtime) to A-07110-E0959 (General Fund – Buildings & Grounds – J. Palmateer); and be it further

RESOLVED that the comptroller is authorized to transfer \$3,108.00 from A-08160-00074 (General Fund – Transfer Station – Overtime) to A-08160-E0058 (General Fund – Transfer Station – T. Kirchoffer)

Meg Springli

From: Town of Clifton Park <noreply@cliftonpark.org>
Sent: Friday, January 7, 2022 9:50 AM
To: Meg Springli
Cc: Jean, Spiegel; Mark Heggen
Subject: Resolution Request for TB Meeting: 01-18-2022

An item has been submitted to the Resolution Request form for review.

Department: Buildings and Grounds
Your email: dclemens@cliftonpark.org

Sponsor/Contact as shown on the agenda (i.e. P. Barrett, A. Standaert, D. Bull, etc.): D.Clemens

Requested Meeting Date: 01-18-2022

Brief Description: Promote Jacob Palmateer from Laborer, Grade 3 step 2 to MEO light Grade 4 step 1, \$45,989

Budget #: A7110-E0959
Budget Description: Buildings and Grounds - Jacob Palmateer
\$ Amount: need to add approximately \$4,000

Additional Comments/Details: Jacob has worked in the department for 2 years and has shown to be a very reliable and comेतant employee. This is a standard progression promotion.

COMPTROLLER APPROVAL or Comments:

ATTORNEY APPROVAL or Comments:

Meg Springli

From: Town of Clifton Park <noreply@cliftonpark.org>
Sent: Friday, January 7, 2022 9:57 AM
To: Meg Springli
Cc: Jean, Spiegel; Mark Heggen
Subject: Resolution Request for TB Meeting: 01-18-2022

An item has been submitted to the Resolution Request form for review.

Department: **Buildings and Grounds**
Your email: **dclemens@cliftonpark.org**

Sponsor/Contact as shown on the agenda (i.e. P. Barrett, A. Standaert, D. Bull, etc.): **D.Clemens**

Requested Meeting Date: **01-18-2022**

Brief Description: **Promote Todd Kirchofer from MEO, Grade 5 step 7 to Sr. Meo Grade 6 step 6, \$63,398**

Budget #: **A8160-E0058**
Budget Description: **Convenience Transfer Station - Todd Kirchofer**
\$ Amount: **need to add approximately \$3,200**

Additional Comments/Details: **Todd has been with the Town since 2002. His responsibilities and performance have both gone up in the past year. Todd is in charge whenever Don is out, he has done an outstanding job there. He has also gone out and got his CDL permit and has been training for his road test.**

COMPTROLLER APPROVAL or Comments:

ATTORNEY APPROVAL or Comments:

Town of Clifton Park
Salary Allocation

	Grade	Step	Year	2022 Hourly Rate	Weeks to End of Year	Hours	Projected to End of Year	
Laborer Jacob	Palmateer	3	2	20.03	49.6	40	\$ 39,739.52	
Promotion to MEO Light Jacob	Palmateer	4	1	22.11	49.6	40	\$ 43,866.24	
							Difference	<u>\$ 4,126.72</u>
							Rounded to:	<u>\$ 4,127.00</u>
Transfer funds from:								
General Fund - Building & Grounds - Overtime					A-07110-00074		<u>\$ 4,127.00</u>	
to:								
General Fund - Building & Grounds - J Palmateer					A-07110-E0959		<u>\$ 4,127.00</u>	

Town of Clifton Park
Salary Allocation

		Grade	Step	Year	2022 Hourly Rate	Weeks to End of Year	Hours	Projected to End of Year
MEO Todd	Kirchofer	5	7	1	28.92	49.8	40	\$ 57,608.64
Promotion to Senior MEO Todd	Kirchofer	6	6	1	30.48	49.8	40	\$ 60,716.16

Difference \$ 3,107.52

Rounded to: \$ 3,108.00

Transfer funds from:

General Fund -Transfer Station Overtime A-08160-00074 \$ 3,108.00

to:

General Fund - Transfer Station - T. Kirchofer A-08160-E0058 \$ 3,108.00

Resolution No. _____ of 2022, a resolution authorizing Anil Bisht to serve alcoholic beverages at a gathering to be held at Clifton Park Senior Community Center on March 19, 2022.

Introduced by _____, who moved its adoption, seconded by _____.

WHEREAS, Anil Bisht, 613 Clifton Park Center Road, Clifton Park is hosting a gathering on March 19, 2022 from 6:00 P.M to 11:00 P.M., and

WHEREAS, Anil Bisht has requested permission to serve alcohol in the form of beer and wine at the event; now, therefore, be it

RESOLVED, that Anil Bisht is hereby authorized to serve beer and wine at a gathering at Clifton Park Senior Community Center on March 19, 2022 from 6:00 P.M. to 11:00 P.M.

Meg Springli

From: Town of Clifton Park <noreply@cliftonpark.org>
Sent: Monday, January 10, 2022 3:07 PM
To: Meg Springli
Cc: Jean, Spiegel; Mark Heggen
Subject: Resolution Request for TB Meeting: 01-24-2022
Attachments: 61dc91c945d34-March 19 Rental Alcohol Use Permit Request.pdf

An item has been submitted to the Resolution Request form for review.

Department: **Clifton Park Senior Community Center**
Your email: **dryan@cliftonpark.org**

Sponsor/Contact as shown on the agenda (i.e. P. Barrett, A. Standaert, D. Bull, etc.): **P. Barrett**

Requested Meeting Date: **01-24-2022**

Brief Description: **Special Alcohol Use Permit Request for Anil Bisht on March 19, 2022.**

Budget #:
Budget Description:
\$ Amount:

Additional Comments/Details:

COMPTROLLER APPROVAL or Comments:

ATTORNEY APPROVAL or Comments:



Clifton Park Senior Community Center
 6 Clifton Common Court
 Clifton Park, NY 12065
 (518) 383-1343

²⁰²²
2021 Special Alcohol Use Permit Request
(Please attach to Facility Permit Application)

Name of Organization: NIHAA

Contact Person: ANIL BISHT

Phone (home): 518 598 4573 (work) _____ (cell) _____

Email: bisht.anil.65@gmail.com

Date and Location of Event: 19 March 2022, Clifton Park Senior Community Center

Alcohol Permit is governed by the additional conditions: *(please see initial conditions listed on Facility Permit Application)*

1. The permit is not transferable.
2. Permit is valid for specified date and time of event only.
3. Only beer and wine are allowed in Town parks or facilities. Glass beverage containers are not permitted.
4. Permit holder only is allowed to bring alcoholic beverages into the park and is responsible for the conduct of all group members.
5. Permit holder must retain permit and make available upon request by proper park official or security officer.
6. Permit holder will be responsible for assuring ALL MEMBERS of his/her party that consume alcohol are of legal age to drink alcoholic beverages according to New York State law.
7. Alcoholic beverages are not permitted in parking lots or children's play areas.
8. The sale of alcoholic beverages in Town parks or facilities is strictly prohibited.
9. Alcoholic beverages are not to be consumed by team members during athletic team competition.
10. You must be at least 21 years of age to purchase an alcohol permit.
11. Permit Request must be submitted at least 30 days prior to rental date.

\$25 non-refundable fee must accompany special permit request.

I have read the Town of Clifton Park rules and the above special conditions and agree to abide by them.

SIGNED:		DATE:	6 Jan 2022
---------	---	-------	------------

For Office Use Only:

Date Sent to Town Board for Resolution: _____

Date on Town Board Agenda Date: _____

Approved: Yes/No

If Approved, Permit Issued and Mailed to Applicant: _____

need 501c3 form



Town of Clifton Park Clifton Park Senior Community Center

♦ 6 Clifton Common Court, Clifton Park, New York 12065 ♦ 518-383-1343 ♦

2021 FACILITY RENTAL AGREEMENT

General Information

Name of Organization: NIHAA Today's Date: 6 Jan 22
 Contact Person: ANIL BISHT
 Address: 613 CLIFTON PK CTR RD City: CLIFTON PARK
 Phone (home): 518 598 4573 (work) (cell) _____
 Email: bisht.anil.65@gmail.com
 Date of Rental: 19 MARCH 2022 Start Time: 6 PM End Time: 11 PM
 Purpose of Event: HOLI FESTIVAL DINNER CELEBRATION
 Number of Attendees: 100-120 Is your organization a 501 (c)(3)? YES

Rental is not guaranteed until payment and signed Agreement is received

Carry in, carry out policy in effect for all events. All checks are to be made payable to: Town of Clifton Park.

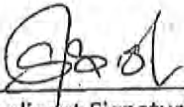
Rental Fees

Description	Regular Rate	Non-Profit *Must have a 501 (c) (3)	# of Hours	Fee
Security Deposit	\$100	\$100		100 chk #162
Community Room – Full Room (3 Hour Minimum)	\$90 per hour	\$60 per hour	5	300.00
Community Room – ½ Room	\$60 per hour	\$40 per hour		
Studio/Activity Room	\$60 per hour	\$40 per hour		
Arts & Crafts Room/ Library Room	\$35 per hour	\$25 per hour		
Kitchen	\$90 per day	\$90 per day		
Room Set-Up/Break-down Fee (may be available upon request)	\$100 (Optional)	\$100 (Optional)		25 -
Special Instructions: <u>FOOD & WINE PERMIT</u>			TOTAL DUE:	425 -
			AMOUNT PAID:	\$100 chck
			BALANCE:	\$325 Amex

Covid-19 Requirements:

- Organizations using the facilities are responsible for complying with NYS Executive Orders, mandates and NYS Department of Health Guidance issued to prevent the Spread of the Covid-19 Virus. These guidelines change frequently. It is your responsibility to check appropriate websites for the most current guidance. Information regarding these orders, mandates, and NYS DOH Guidance documents can be found at:
 - www.governor.ny.gov
 - www.health.ny.gov
 - <https://coronavirus.health.ny.gov/home>
- Rental area must be cleaned & sanitized after use. Supplies will be provided. As stated above, NYS guidelines must be met, which include but not limited to following current protocols for maximum number of attendees for indoor social gatherings, social distancing, and mask guidelines. Please wash hands frequently and use hand sanitizer.

By signing below, I agree that I have read the above Covid-19 Requirements and understand that it is my responsibility to adhere to and fully understand the most current guidelines set forth by New York State.



Permit Applicant Signature

6 Jan 2022

Date

Facility Rental Permit is governed by the following conditions:

- Permits valid for date(s), restricted to area/room, and number of participants as indicated on permit.
- All lessees must provide a \$100 security deposit to be paid in full, with a separate check from the rental fee, at the time of reservation. The security deposit will be applied to any cleaning, theft, damages upon completion of the event and will be held in escrow and refunded upon completion of the rental. In the event of misconduct or the misuse of the facility by the lessee, the Town of Clifton Park may take action and require the lessee to reimburse the Town for damages suffered or extra expenses incurred including, but not limited to, the forfeiture of a portion or the entire security deposit.
- Cancellation requests less than 2 weeks of rental date will result in forfeiture of \$100 Security Deposit.
- Area and facility must be left clean and in the same condition in which it was found. Any damage incurred is the responsibility of the permit holder.
- Lessees are not to use any rooms/areas of the building except what was rented, excluding restrooms.
- **All food/drink shall be removed at the conclusion of the event. The Town has a carry in carry out policy on garbage. All garbage shall be removed and placed in the proper receptacle located in the back of the building.** Smoking is not allowed in any part of the building. There is to be no open flames, i.e. candles, lanterns, allowed for use.
- On site supervision is required for all youth groups/events.
- At no time is the building/room occupancy to be exceeded and all fire doors and emergency exits must remain unblocked.
- Use of kitchen must be agreed upon in advance and requires an additional fee.
- Town of Clifton Park rules shall be adhered to. Immediate termination of the event and removal from the premises may occur by an authorized representative of the Town if in violation of these rules and regulations.

- Obnoxious behavior or excessive noise will not be permitted.
- Permit holder must retain permit and make available upon request by park or police official.
- Open containers of alcoholic beverages are prohibited in the building, unless a permit has been issued which allows for the consumption of alcoholic beverages on the premises for which the permit has been issued. Such permits are authorized solely by the Town Board via resolution. A separate "Special Alcohol Use Permit Request" form must be submitted with this form.
- Use of Center equipment (i.e. projectors, PA system, televisions, etc.) is strictly prohibited.
- Renters must clean up all spills and sweep debris from wooden floors. Do not touch/play musical instruments without prior permission and do not handle the shades/blinds as they are delicate.
- Permit holder may be required to obtain and show proof of insurance naming Town of Clifton Park as an "Additional Insured".

I have read the Town of Clifton Park rules and the above special conditions and agree to abide by them.

Indemnity:

ANIL BISHT (NAME) agrees to indemnify and hold the Town, it's officers, employees, representatives and/or agents harmless with respect to any and all claims, causes of action, suits, proceedings, damages, liabilities, losses, costs and expenses, including third party claims or actions and attorneys' fees, in connection with loss of life, personal injury and/or any loss of life, personal injury and/or property damage which may arise from and as a result of the negligent acts or omissions of _____ (NAME) or others associated in some way therewith, during or arising out of the use of any park facility located in the Town of Clifton Park, County of Saratoga, State of New York on 3/19/22 (DATE).

SIGNED: [Signature] APPROVED: [Signature] DATE: 1/6/22
 Permit Applicant

Resolution No. _____ of 2022, a resolution authorizing the Highway Superintendent to sign an agreement with Spectrum Environmental Associates, Inc. for asbestos inspection services relative to the demolition of the “White Building”.

Introduced by _____, who moved its adoption, seconded by _____.

WHEREAS, by Resolution No. 20 of 2022, the Town Board found that it is not economic to repair the fire damaged White Building, and that it is in the best interest of the Town to demolish and replace it, and

WHEREAS, the Town wishes to determine if there is any asbestos in the structure prior to its demolition, and

WHEREAS, Highway Superintendent Dahn Bull has received a quote for an amount not to exceed \$1790 for asbestos inspection services from Spectrum Environmental Associates, Inc. pursuant to its Albany County Contract No. 6490 of 2021, and

WHEREAS, Town Procurement Policy No. 9 allows “piggyback” contracts pursuant to GML 103(3); now, therefore be it

RESOLVED, that the comptroller is authorized to create a new Capital Projects Fund H62 (White Building Reconstruction Project); and be it further

RESOLVED, that the Town Board authorizes the Superintendent of Highways, Dahn Bull, to accept a quote for asbestos inspection services of the White Building from Spectrum Environmental Associates, Inc. for an amount not to exceed \$1790, to be paid from H62-05132-00015 (Capital Projects White Building – Garage – Other Contractual).

Meg Springli

From: Mark Heggen <mheggen@cliftonpark.org>
Sent: Thursday, January 13, 2022 12:07 PM
To: Meg Springli
Subject: RE: Resolution Request for TB Meeting: 01-18-2022

Meg,

If we are still doing a resolution, we should indicate that the funds will come from creation of a new Capital Projects Fund, H62 – White Building Reconstruction Project, and that the funds to pay the expenditure will be charged to H62-05132-00015, with offsetting revenue from insurance proceeds.

Mark

Mark E. Heggen, CPA
Town Comptroller
Town of Clifton Park
One Town Hall Plaza
Clifton Park, NY 12065

Telephone – 518-371-6651
Fax – 518-371-1136

mheggen@cliftonpark.org

From: Meg Springli <mspringli@cliftonpark.org>
Sent: Wednesday, January 12, 2022 10:08 AM
To: Dahn Bull <DBull@cliftonpark.org>
Cc: Jean, Spiegel <JSpiegel@cliftonpark.org>; Mark Heggen <mheggen@cliftonpark.org>
Subject: RE: Resolution Request for TB Meeting: 01-18-2022

Good morning Dahn,

In reviewing the attachments, the proposed estimate is \$1790, should I write the resolution for that amount or for the \$1606 you indicated in your resolution request?

Meg

From: Town of Clifton Park <noreply@cliftonpark.org>
Sent: Tuesday, January 11, 2022 3:49 PM
To: Meg Springli <mspringli@cliftonpark.org>
Cc: Jean, Spiegel <JSpiegel@cliftonpark.org>; Mark Heggen <mheggen@cliftonpark.org>
Subject: Resolution Request for TB Meeting: 01-18-2022

An item has been submitted to the Resolution Request form for review.

Department: **Highway Dept.**
Your email: dbull@cliftonpark.org

Sponsor/Contact as shown on the agenda (i.e. P. Barrett, A. Standaert, D. Bull, etc.):

D. Bull

Requested Meeting Date: **01-18-2022**

Brief Description: **A resolution allowing the Town of Clifton Park to piggy back off of the Albany County, NY Contract for asbestos abatement services. The vendor will be Spectrum Environmental Associates, Inc. for services at 639 Clifton Park Center Road (White Building), Clifton Park.**

Our Town Procurement policy allows us to piggy back off of other municipalities. This can be found in Policy 9 and in accordance with GML 103.

Budget #:

Budget Description:

\$ Amount: **1606**

Additional Comments/Details:

Estimated Cost: \$1,606.00.

Final cost will be based on the unit prices and the actual number of samples analyzed.

Contract & Proposal attached.

COMPTROLLER APPROVAL or Comments:

Mark Heggen

ATTORNEY APPROVAL or Comments:



SPECTRUM

Environmental Associates, Inc.
"EXCEEDING OUR CLIENTS EXPECTATIONS OF EXCELLENCE"

P. O. Box 1024
 Schenectady, NY 12301
 (518) 346-6374 (Phone)
 (518) 346-4062 (Fax)
 www.4spectrum.com

PROPOSAL FOR ASBESTOS INSPECTION SERVICES

Client:	Town of Clifton Park Highway Dept.	Date:	January 11, 2022
Contact:	Dahn Bull	Project:	Burned Garage w/ Apartment
Address:	639 Clifton Park Center Rd. Clifton Park, NY 12065		639 Clifton Park Center Rd. Clifton Park, NY 12065
Email:	dbull@cliftonpark.org	Phone:	(518) 371-7310

Spectrum Environmental Associates, Inc. (Spectrum) appreciates the opportunity to provide you with a proposal to provide asbestos related service.

SCOPE OF WORK: Spectrum shall provide an EPA and NYS DOL Certified Asbestos Inspector(s) to perform an asbestos inspection in accordance with NYS Code Rule 56-5.1. Spectrum adheres to the following sampling protocols required by EPA, OSHA, and NYSDOL. Scope of work consists of a pre-demolition survey for entire structure.

- Surfacing materials (ie. Plaster, Fireproofing) – 3, 5, 7 Rule (SF basis)
- Thermal System Insulation (ie. Piping, Fittings, Boilers) – 3 of each
- Miscellaneous (ie. Roofing, Flooring, Mastics, Caulk/Glazing, Sheetrock, Ceiling Tile, Cement Board, Debris) – Minimum 2

ESTIMATED COST: Spectrum has prepared the following cost estimate for your consideration. Final cost will be based on the unit prices and the actual number of samples analyzed.

<u>Item</u>	<u>Unit Cost</u>	<u>Total Cost</u>
NYS Certified Asbestos Inspector – Full Day	\$480.00	\$480.00
Report/Administrative Fee/Shipping/Expenses - 1	\$350.00	\$350.00
<u>ANALYSIS* (ESTIMATED NUMBER OF SAMPLES)</u>		
PLM (Friable) Analysis – 8 estimated	\$ 15.00	\$120.00
PLM-NOB Prep (ie. Roofing, Caulk, Glazing) – 12 estimated	\$ 15.00	\$180.00
PLM/PLM-NOB Analysis – 12 estimated	\$ 15.00	\$180.00
TEM Analysis (As required on NOB's) – 12 estimated	\$ 40.00	\$480.00
	ESTIMATED COST:	\$1,790.00

* Analysis costs are based on a 5 Day turnaround. All NOB samples collected will have a prep charge. All analysis is to first positive per homogeneous group. TEM analysis is required by NYSDOH if the PLM-NOB result is negative.

Site Requirements:

- Owner shall provide access and allow use of the site as needed to perform the scope of work in accordance with all state and federal regulations. All areas of the building must be accessible and free of excessive household items and debris to Spectrum's sole judgment.
- Inaccessible areas will be noted and reviewed with the client to determine if access can be made. Suspect ACM located in inaccessible areas will be assumed positive until proper sampling can be performed. Spectrum will not perform demolition activities to access suspect areas.
- In areas where building materials have deteriorated and homogeneity cannot be determined (ie. significant damage/collapse or fire damaged areas), the NYS DOL requires these areas to be assumed as asbestos containing.
- Spectrum shall provide a final written report in accordance with ICR 56-5 which will include laboratory results, locations, condition, and quantities of all identified ACM and the property owners

name and contact information. The client will be required to provide the owners name and address as required by ICR 56.

- ICR 56-5.1(g) requires the submission of survey reports to the NYS DOL Asbestos Control Bureau by the owner. Spectrum considers these reports confidential and does not submit them to third parties without written authorization.
- Spectrum may provide roof patching if needed, but does not warranty against leaks. If the client requests it, Spectrum will coordinate its roof sampling with others who can provide the appropriate roof patching.
- **Materials containing vermiculite (ie. plaster, fire proofing) may require additional testing under 198.8 (effective May 2016) to be able to call the material negative. Client approval will be required prior to submitting samples for this analysis type.**
- Quantities of identified ACM are estimates only and should be field verified prior to bid by the contractor or confirmed as part of an RFP or design specification.

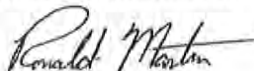
Spectrum would like to thank you for the opportunity to present our proposal for asbestos consulting services. If you have any questions regarding our proposal or pricing, please feel free to contact me at 518-346-6374 or rmartin@4spectrum.com.

PROPOSAL ACCEPTANCE AGREEMENT AND PAYMENT TERMS:

1. Proposal shall remain valid for thirty (30) days from date prepared.
2. Client agrees to pay Spectrum for all work performed, upon presentation of invoice, the sum(s) stipulated in the attached proposal. The Client's obligation to pay is in no way dependent upon the Client's ability to obtain financing, payment from third parties, approval of governmental or regulatory agencies, or on the Client's successful completion of the project.
3. Invoices not paid within thirty (30) days of invoice date are subject to a 1-1/2% per month late payment fee. In suit to collect fees under this agreement, the client agrees to pay all of Spectrum's collection costs, court costs, interest, and reasonable attorney's fee.
4. In the event any invoice is not paid within thirty (30) days, Spectrum reserves the right to suspend services under this contract.
5. Client agrees to indemnify and defend Spectrum from any liability, loss cost or expense in connection with the Services, including attorney's fees, claimed for property damage, bodily injury, including death, or other injury or loss except such as is caused solely by the negligence or willful misconduct of Spectrum, its employees, or agents.
6. Spectrum carries the appropriate insurance, including workers compensation, for the type of work it performs. A certificate of insurance is available upon request at the start of the project. Any limit or coverage changes requested will result in an additional charge billed for any cost incurred by Spectrum.
7. Spectrum shall not commence work on this project until an executed copy of this agreement has been received and approved.
8. This agreement represents the entire agreement between the parties and may not be altered except in writing signed by both parties.

Acceptance

Respectfully Submitted,



Ronald F. Martin Jr.
Operations Manager

Name:

Signature:

AGREEMENT BETWEEN
THE COUNTY OF ALBANY AND
SPECTRUM ENVIRONMENTAL ASSOCIATES, INC.
FOR ASBESTOS INSPECTION SERVICES AT COEYMANS AND KNOX BUILDINGS

Contract No. 6490 OF 2021

THIS AGREEMENT is made by and between the County of Albany, a municipal corporation organized under the laws of the State of New York, acting by and through its County Executive, with a principal located at the Albany County Office Building, 112 State Street, Albany New York 12207 (hereinafter the "County"), and Spectrum Environmental Associates, Inc., a New York corporation, with its principal office located at P.O. Box 1024, Schenectady, New York 12301 (hereinafter the "Contractor"). The County and Contractor may be referred to individually as a "[P]arty," or together as the "[P]arties."

WITNESSETH

WHEREAS, the County, on behalf of the Albany County Department of Public Works, has a need for a vendor to supply inspection services at the Coeymans building, located at 156 County Rt. 111, Alcove (Coeymans), New York 12007 and at the Knox building, located at 1296 Township Road, Knox, New York 12009; and

WHEREAS, in response thereto, Contractor has submitted a quote on July 7, 2021 to render the requested services (hereinafter called the "Quote") and the County has accepted the Quote of the Contractor as the lowest responsible bidder; and

WHEREAS, in furtherance thereof, the parties hereto desire to formalize their understanding and agreement regarding the provision of the aforementioned services, and to execute a fully-integrated agreement with respect thereto;

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY CONVENANT
AND AGREE AS FOLLOWS:

ARTICLE 1. THE CONTRACT DOCUMENTS; INTERPRETATION

- 1.1 The Contract Documents consist of the following: this Agreement and the Quote, attached hereto as Schedule A (collectively called "the Agreement" hereinafter).
- 1.2 In the event of any discrepancy, disagreement, or ambiguity among the documents which comprise this Agreement, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement, or ambiguity: 1) this Agreement; 2) the Quote.

ARTICLE 2. SCOPE OF SERVICES TO BE PERFORMED BY CONTRACTOR.

During the term of this Agreement, Contractor shall provide asbestos related services at the Coeymans building, located at 156 County Rt. 111, Alcove (Coeymans), New York 12007 and at the Knox building, located at 1296 Township Road, Knox, New York 12009. The specifications of these services are detailed in the Quote, attached hereto as Schedule A.

ARTICLE 3. COMPENSATION

In consideration of the terms and obligations of this Agreement, the County agrees to pay, and the Contractor agrees to accept, an amount not to exceed FIVE THOUSAND AND FIVE AND 00/100 DOLLARS (\$5,005.00) (US CURRENCY) as full compensation for all products and services rendered under this Agreement.

ARTICLE 4. TERM OF AGREEMENT

This contract shall commence on September 1, 2021 and continue in effect until November 30, 2021.

ARTICLE 5 TERMINATION OF AGREEMENT; REMEDY FOR BREACH

In the event of a breach by the Contractor, the Contractor shall pay to the County all direct and consequential damages caused by such breach, including, but not limited to, all sums expended

by the County to procure a substitute contractor to satisfactorily complete the work, together with the County's own costs incurred in procuring a substitute Contractor.

ARTICLE 6. PROHIBITION OF CONTRACT ASSIGNMENT

6.1 Pursuant to §109 of the General Municipal Law, the Contractor is prohibited from assigning, transferring, conveying, subcontracting or otherwise disposing of this Agreement, or of its right, title, or interest therein, to any other person or entity without the prior written consent of the County.

6.2 The Contractor shall not subcontract for any portion of the services required under this Agreement without the prior written approval of the County. Any such subcontractor shall be subject to the terms and conditions of this Agreement and any additional terms and conditions the County may deem necessary or appropriate.

ARTICLE 7. AVAILABLE DATA

All technical or other data relative to this Agreement in the possession of the County or in the possession of the Contractor shall be made available to the other party to this Agreement without expense to the other party.

ARTICLE 8. COOPERATION

Contractor shall cooperate with the agents, representatives, and employees of the County and the County shall cooperate with the agents, representatives, and employees of the Contractor to ensure that the work delineated herein proceeds and concludes as expeditiously as possible.

ARTICLE 9. NON-DISCRIMINATION

In accordance with Article 15 of the Executive Law (also known as the Human Rights Law), and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor agrees that neither it nor its County-approved subcontractors shall, by reason of age, race, creed, color, national origin, sexual orientation, military status, sex, disability,

predisposing genetic characteristics, or marital status refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions, or privileges of employment.

ARTICLE 10. COMPLIANCE WITH MACBRIDE PRINCIPLES

Contractor hereby represents that it is in compliance with the MacBride Principles of Fair Employment as set forth in Albany County Local Law No. 3 for 1993 in that Contractor (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of its compliance with such principles. In the event of a violation of this stipulation, the County reserves all rights to take remedial measures as authorized under §4 of the said Local Law No. 3 for 1993 including, but not limited to, imposing sanctions, enforcing compliance, recovering damages, declaring the Contractor in default, and/or seeking debarment or suspension of the Contractor.

ARTICLE 11. IRANIAN ENERGY SECTOR DIVESTMENT

Contractor hereby represents that Contractor is in compliance with New York State General Municipal Law Section 103-g entitled "Iranian Energy Sector Divestment," in that Contractor has not:

- (a) Provided goods or services of \$20 Million or more in the energy sector of Iran including but not limited to the provision of oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran; or
- (b) Acted as a financial institution and extended \$20 Million or more in credit to another person for forty-five days or more, if that person's intent was to use the credit to provide goods or services in the energy sector in Iran.

ARTICLE 12. RELATIONSHIP OF THE PARTIES

Contractor is, and will function as, an independent Contractor under the terms of this Agreement, and shall not be considered an agent or employee of the County for any purpose. The

agents, representatives, and employees of the Contractor shall not in any manner be, or be held out to be, the agents, representatives, or employees of the County.

ARTICLE 13 INDEMNIFICATION

Contractor shall defend, indemnify, and save harmless the County, its agents, representatives, and employees, from and against any and all claims, damages, losses, and expenses (including, but not limited to, reasonable attorney's fees) arising out of or in consequence of any negligent or intentional act or omission of the Contractor, its agents, or employees, to the extent of its or their responsibility for such third party claims, damages, losses, or expenses.

ARTICLE 14. INSURANCE COVERAGE

- 14.1 Contractor shall procure and maintain for the entire term of this Agreement, without *additional expense to the County, insurance policies of the kinds and in the amounts* provided in the Schedule B attached hereto and made a part hereof. The insurance policies shall name the County as an additional insured. Such policies may only be changed upon thirty (30) days prior written approval by the County.
- 14.2 Contractor shall, prior to commencing any of the services outlined herein, furnish the County with Certificates of Insurance showing that the requirements of this article have been met. The Contractor shall also provide the County with updated Certificates of Insurance prior to the expiration of any previously-issued Contractor. No work shall be commenced under this Agreement until the Contractor has delivered the Certificates of Insurance to the County. Upon failure of the Contractor to furnish, deliver and maintain such insurance certificates as provided above, the County may declare this Agreement suspended, discontinued or terminated.
- 14.3 As required by Section 108 of the N.Y. General Municipal Law, this Agreement shall be of no force and effect unless the Contractor shall secure compensation for the benefit of, and keep insured during the life of this Agreement, all employees engaged thereon in compliance with the provisions of the N.Y. Workers' Compensation Law. The Contractor shall require any subcontractor authorized by the County to do likewise for all of their employees engaged thereon, all in compliance with the provisions of the N.Y. Workers' Compensation Law and of Schedule B of this Agreement.

ARTICLE 15. NO WAIVER OF PERFORMANCE

Failure of the County to insist upon strict and prompt performance of the provisions of this Agreement, or any of them, and the acceptance of such performance thereafter shall not constitute or be construed as a waiver or relinquishment of the County's right thereafter to enforce the same strictly according to the tenor thereof in the event of a continuous or subsequent default on the part of the Contractor.

ARTICLE 16. ACCOUNTING RECORDS

- 16.1 Contractor shall maintain complete and proper accounting records that shall clearly identify all costs associated with and revenue derived from the work performed under this Agreement. Such records shall be subject to periodic and final audit by the County upon request.
- 16.2 Contractor shall provide the County and authorized State and/or Federal personnel access to any and all books, documents, records, charts, software, or any other information relevant to performance under this Agreement, immediately upon request.
- 16.3 Contractor shall retain all of the above information for six (6) years after final payment or the termination of this Agreement, and shall make such information available to the County and authorized State and/or Federal personnel during such period.

ARTICLE 17. CHANGE IN LEGAL STATUS OR DISSOLUTION

During the term of this Agreement, the Contractor agrees that, in the event of its reorganization or dissolution as a business entity or change in business, the Contractor shall give the County thirty (30) days written notice in advance of such event.

ARTICLE 18. LICENSES.

The Contractor shall at all times obtain and maintain all licenses required by New York State, or other relevant regulating body, to perform the services required under this Agreement.

ARTICLE 19. PARTIAL INVALIDITY

If any term, part, provision, section, subdivision, or paragraph of this Agreement shall be held to be unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to invalidate the remaining terms, parts, provisions, sections, subdivisions, or paragraphs.

ARTICLE 20. HEADINGS—CONSTRUCTION

The headings appearing in this Agreement are for the purpose of easy reference only and shall not be considered a part of the Agreement or in any way to modify, amend, or affect the provisions hereof.

ARTICLE 21. NOTICES

All notices, consents, waivers, directions, requests or other instruments or communications provided for under this Agreement shall be deemed properly given if, and only if, delivered personally, sent by registered or certified United States mail, postage prepaid, or, with the prior consent of the receiving party, dispatched via facsimile transmission.

ARTICLE 22. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

ARTICLE 23. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the parties and no representations or promises have been made except as expressly set forth herein.

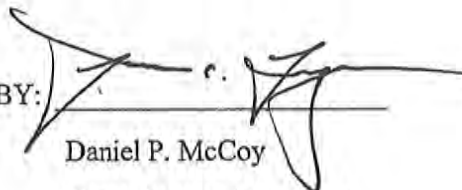
ARTICLE 24. MODIFICATION

This Agreement may only be modified by a formal written amendment executed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) hereunder set forth.

COUNTY OF ALBANY

DATED: 8/18/2021

BY: 

Daniel P. McCoy
Albany County Executive

or

Daniel C. Lynch
Deputy County Executive

SPECTRUM ENVIRONMENTAL ASSOCIATES, INC.

DATED: 8/11/21

BY: 
President

STATE OF NEW YORK)
COUNTY OF ALBANY) SS:

On the _____ day of _____, 2021, before me, the undersigned, personally appeared Daniel P. McCoy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF ALBANY) SS.:

On the 18th day of Augst, 2021, before me, the undersigned, personally appeared Daniel C. Lynch, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EUGENIA K. CONDON
Notary Public - State of New York
No. 02CO4969817
Qualified in Albany County
Commission Expires July 23, 2022

STATE OF NEW YORK)
COUNTY OF Schenectady) SS.:

On the 11 day of August, 2021, before me, the undersigned, personally appeared William L. Morrison, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Evana Burke

Notary Public

EVANA E. BURKE
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01BU6406170
Qualified in Rensselaer County
Commission Expires March 23, 2024

SCHEDULE "A"

CONTRACTOR' QUOTE



P. O. Box 1024
 Schenectady, NY 12301
 (518) 346-6374 (Phone)
 (518) 346-4062 (Fax)
 www.4spectrum.com

PROPOSAL FOR ASBESTOS INSPECTION SERVICES

Name: Mr. Martin McClune Date: July 7, 2021
 Company: Albany County DPW Project: Asbestos/Hazardous Materials Survey
 Address: 449 New Salem Rd. 156 County Rt. 111
 Voorheesville, NY 12186 Alcove (Coeymans), NY 12007
 Phone: 518-655-7919 E-Mail: Martin.mcclune@albanycountyny.gov

Spectrum Environmental Associates, Inc. (Spectrum) appreciates the opportunity to provide you with a proposal to provide asbestos related services for 1296 Township Rd. in Knox, NY.

SCOPE OF WORK: Spectrum shall provide an EPA and NYS DOL Certified Asbestos Inspector(s) to perform an asbestos inspection in accordance with NYS Code Rule 56-5.1. Spectrum adheres to the following sampling protocols required by EPA, OSHA, and NYSDOL. Scope of work is an asbestos demolition and hazardous materials (lead, PCB) survey for office structure, 1 garage, 2 sheds and canopy over salt hangers.

- Surfacing materials (ie. Plaster, Fireproofing) - 3, 5, 7 Rule (SF basis)
- Thermal System Insulation (ie. Piping, Fittings, Boilers) - 3 of each
- Miscellaneous (ie. Roofing, Flooring, Mastics, Caulk/Glazing, Sheetrock, Ceiling Tile, Cement Board, Debris) - Minimum 2

ESTIMATED COST: Spectrum has prepared the following cost estimate for your consideration. Final cost will be based on the unit prices and the actual number of samples analyzed.

<u>Item</u>	<u>Unit Cost</u>	<u>Total Cost</u>
NYS Certified Asbestos Inspector	\$480.00	\$480.00
Travel	\$75.00	\$75.00
Report/Administrative Fee/Shipping/Expenses	\$350.00	\$350.00
<u>ANALYSIS* (ESTIMATED NUMBER OF SAMPLES)</u>		
PLM (Friable) Analysis -12	\$ 15.00	\$180.00
PLM-NOB Prep (ie. Roofing, Caulk, Glazing) - 14	\$ 15.00	\$210.00
PLM/PLM-NOB Analysis - 14	\$ 15.00	\$210.00
TEM Analysis (As required on NOB's) - 14	\$ 40.00	\$560.00
AAS Lead Paint Chip - 4	\$ 25.00	\$100.00
PCB Analysis - 4	\$ 90.00	\$360.00
	ESTIMATED COST:	\$2,525.00

* Analysis costs are based on a 5 Day turnaround. All NOB samples collected will have a prep charge. All analysis is to first positive per homogeneous group. TEM analysis is required by NYSDOH if the PLM-NOB result is negative.

Site Requirements:

- Owner shall provide access and allow use of the site as needed to perform the scope of work in accordance with all state and federal regulations. All areas of the building must be accessible and free of excessive household items and debris to Spectrum's sole judgment.
- Inaccessible areas will be noted and reviewed with the client to determine if access can be made. Suspect ACM located in inaccessible areas will be assumed positive until proper sampling can be performed. Spectrum will not perform demolition activities to access suspect areas.

- In areas where building materials have deteriorated and homogeneity cannot be determined (ie. significant damage/collapse or fire damaged areas), the NYS DOL requires these areas to be assumed as asbestos containing.
- Spectrum shall provide a final written report in accordance with ICR 56-5 which will include laboratory results, locations, condition, and quantities of all identified ACM and the property owners name and contact information. The client will be required to provide the owners name and address as required by ICR 56.
- ICR 56-5.1(g) requires the submission of survey reports to the NYS DOL Asbestos Control Bureau by the owner. Spectrum considers these reports confidential and does not submit them to third parties without written authorization.
- Spectrum may provide roof patching if needed, but does not warranty against leaks. If the client requests it, Spectrum will coordinate its roof sampling with others who can provide the appropriate roof patching.
- Materials containing vermiculite (ie. plaster, fire proofing) may require additional testing under 198.8 (effective May 2016) to be able to call the material negative. Client approval will be required prior to submitting samples for this analysis type.
- Quantities of identified ACM are estimates only and should be field verified prior to bid by the contractor or confirmed as part of an RFP or design specification.

Spectrum would like to thank you for the opportunity to present our proposal for asbestos consulting services. If you have any questions regarding our proposal or pricing, please feel free to contact me at 518-346-6374 or rmartin@4spectrum.com.

PROPOSAL ACCEPTANCE AGREEMENT AND PAYMENT TERMS:

1. Proposal shall remain valid for thirty (30) days from date prepared.
2. Client agrees to pay Spectrum for all work performed, upon presentation of invoice, the sum(s) stipulated in the attached proposal. The Client's obligation to pay is in no way dependent upon the Client's ability to obtain financing, payment from third parties, approval of governmental or regulatory agencies, or on the Client's successful completion of the project.
3. Invoices not paid within thirty (30) days of invoice date are subject to a 1-1/2% per month late payment fee. In suit to collect fees under this agreement, the client agrees to pay all of Spectrum's collection costs, court costs, interest, and reasonable attorney's fee.
4. In the event any invoice is not paid within thirty (30) days, Spectrum reserves the right to suspend services under this contract.
5. Client agrees to indemnify and defend Spectrum from any liability, loss cost or expense in connection with the Services, including attorney's fees, claimed for property damage, bodily injury, including death, or other injury or loss except such as is caused solely by the negligence or willful misconduct of Spectrum, its employees, or agents.
6. Spectrum carries the appropriate insurance, including workers compensation, for the type of work it performs. A certificate of insurance is available upon request at the start of the project. Any limit or coverage changes requested will result in additional charges for any cost incurred.
7. Spectrum shall not commence work on this project until an executed copy of this agreement has been received and approved.
8. This agreement represents the entire agreement between the parties and may not be altered except in writing signed by both parties.

Acceptance

Respectfully Submitted,



Ronald F. Martin Jr.
Operations Manager

Name:

Signature: