

TOWN OF CLIFTON PARK TOWN BOARD MEETING

December 12, 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:

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
November 14, 2022

<u>SOURCE</u>	<u>RESOLUTION</u>	<u>CONTACT</u>
1. Agreement - Planning	Authorize an agreement for engineering services for design and construction inspections for the Hubbs Road Path Grant Project	P. Barrett
2. Agreement – Planning	Authorize Change Order #1 for the Route 146 Sidewalk Extension Northside Project for a no-cost time extension	P. Barrett
3. Schedule Public Hearing – Town Board	Schedule a public hearing to consider a local law for emergency lockboxes in certain multiple dwelling residential buildings without 24/7 access	P. Barrett
4. Town Code	Adopt proposed changes to Town Code related to certain Titles and Departments as discussed at a public hearing held on August 15, 2022.	P. Barrett

RESOLUTION
1

Resolution No. _____ of 2022, a resolution authorizing the Supervisor to sign an agreement for professional engineering services for the Hubbs Road Path Project, funded by the New York State Department of Environmental Conservation 2019 Climate Smart Communities Grant Program.

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

WHEREAS, Resolution No. 23 of 2022 authorized the implementation and funding in the first instance of the project of \$556,542 to cover the cost of plan, design and construction of the project as well as the local match commitment of \$278,271, and

WHEREAS, a Request for Qualifications was issued and responses returned by July 25, 2022, and

WHEREAS, a selection committee reviewed the responses and selected MJ Engineering and Land Surveying based on their highest weighted score on the group's rubric; now, therefore, be it

RESOLVED, that the Town Supervisor is authorized to sign an agreement with MJ Engineering for design and construction inspection services for the Hubbs Road Path Project in an amount not to exceed \$87,000, and be it further

RESOLVED, that the Town Board hereby authorizes the Comptroller to create a Capital Projects account H65 (Hubbs Road Path Project – Capital Projects and be it further

RESOLVED, that the Comptroller is authorized to transfer \$87,000 from A- 914 (Unassigned Fund Balance) to H65-7629-135 (Capital Project Hubbs Rd Path – Trails – Engineering).

Resolution No. 23 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 Councilman Morelli, who moved its adoption, seconded by Councilwoman Flood.

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, 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, to plan, design and construct the project, as well as the local match commitment of \$278,271.

ROLL CALL VOTE

Ayes: Councilwoman Flood, Councilwoman Standaert, Councilman Morelli,
Councilwoman Walowit, Supervisor Barrett

Noes: None

DECLARED ADOPTED

January 18, 2022

Teresa Brobston, Town Clerk

Meg Springli

From: noreply
Sent: Tuesday, November 29, 2022 8:42 AM
To: Meg Springli
Cc: Jean, Spiegel; Mark Heggen; Tom McCarthy
Subject: Resolution Request for TB Meeting: 12-05-2022 or December 12, 2022 Planning
Attachments: 63860c13d9d11-Memo to Town Board_Hubbs Rd Multi-Use Trail_MJ Engineering Proposed Agreement_10-28-22.docx; 63860c13da0bf-Hubbs Trail CSC Scoring Rubric_07-2022.xlsx; 63860c13da16e-Hubbs Road Multi-Use Path_FINAL_MJ Engineering Agreement_10-28-22.pdf

COMPTROLLER APPROVAL or Comments:

ATTORNEY APPROVAL or Comments:

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: **12-05-2022**

Alternate Date **December 12, 2022**

Brief Description: **Authorize Professional Engineering Services for Hubbs Road Path DEC01-C01085GG for the Engineering Design and Construction Inspection Services per the proposed M.J. Engineering contract documents dated October 2022**

Budget #:
Budget Description:
\$ Amount: **\$87,000**

Additional Comments/Details: **The Town conducted an RFQ procurement process to select the most qualified consultant for this project. This engineering contract is part of the Town's Hubbs Road Path Grant Project which is funded with assistance from the NYS Department of Environmental Conservation 2019 Climate Smart Communities Grant Program, through the grant contract executed in February 2022, under Town Board authorization by Resolution 23 of 2022 (January 18, 2022). This is a 50%/50% grant, and the total grant award value is \$278,271. The town pays in the first instance, and then is reimbursed by the state grant, per the terms of the grant contract and grant budget. This grant contract term is through March 14, 2025.**

Memo

To: Town of Clifton Park Town Board
Cc: Town Attorney; Town Comptroller
From: Planning Department
Re: Hubbs Road Multi-Use Path DEC01-C01085GG
Date: Oct. 28, 2022

Attached for your review please find the proposed M.J. Engineering Agreement (dated Oct. 25, 2022) for the Hubbs Road Multi-Use Trail project, for which Town Board authorization will be requested at a meeting in mid-November if found to be acceptable. MJ Engineering has provided scope of work and fee proposal for professional engineering design services (\$69,700) and for construction inspection (\$17,300), for your review, in this proposed agreement, totaling \$87,000.

The Town of Clifton Park conducted an RFQ process by contacting the list of 15 firms on the LDSA Region One Engineering Consulting Firms list through a solicitation June 30, 2022, for the Hubbs Road Multi-Use Path – DEC01-C01085GG Trail Design and Construction Engineering Services Request for Qualifications (RFQ). This project is to design and construct approximately 0.6 miles of multi-use trail along Hubbs Road (from Dutch Meadows) to Jonesville's intersection of Hatlee Road/MacElroy Road and Main Street (Saratoga County Route 82) by 2024.

Responses to the RFQ were requested to be received by July 25, 2022 at 5 p.m. A total of three (3) firms responded to the RFQ request with qualifications packages: Creighton Manning, Barton & Loguidice and M.J. Engineering.

The Town of Clifton Park formed a selection committee to review the responses utilizing a scoring rubric/matrix. The selection committee was composed of: Lenny Casper, Jim Flaherty, Anthony Morelli, Michael Hartnett, John Scavo, Jen Viggiani. Upon completion of everyone's scoring, the results were compiled as a total committee score. The highest scoring firm of all the responses scored was M.J. Engineering.

M.J. Engineering was asked to provide a scope of work and fee proposal, received by the Town of Clifton Park on Oct. 25, 2022, and please find it attached for your review.

As you may recall, this project is being advanced due to the Town's success in receiving a NYS Department of Environmental Conservation 2019 Climate Smart Communities Grant Program Award. The grant contract was executed between the Town of Clifton Park and NYS in February 2022. This is a 50/50 grant, and the total grant value is \$278,271.

Thank you for your consideration of this information for your decision making.

Engineering Consultant Agreement

Agreement made this _____ day of October 2022 by and between

The Town of Clifton Park

having its principal office at the Town Hall, One Town Hall Plaza, Clifton Park, NY
(Clifton Park)

and

M. J. Engineering and Land Surveying, P.C.

with its office at 1533 Crescent Road, Clifton Park, NY 12065
(the "Consultant")

WITNESSTH:

WHEREAS, in connection with a NYS DEC Climate Smart Communities grant identified for the purposes of this agreement as the

DEC01-C01085GG- Hubbs Road Multi-Use Path

(as described in detail in Attachment A annexed hereto, the "Project") **Clifton Park** has sought to engage the services of the **Consultant** to perform the scope of services described in Attachment B annexed hereto; and

WHEREAS, in accordance with required consultant selection procedures, **Clifton Park** has selected the Consultant to perform such services in accordance with the requirements of this Agreement; and

WHEREAS, **Philip Barrett**, Town Supervisor, is authorized to enter this Agreement on behalf of the Town of Clifton Park,

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1. DOCUMENTS FORMING THIS AGREEMENT

This agreement consists of the following:

- Agreement Form - this document titled "Architectural/Engineering Consultant Agreement";
- Attachment "A" – Project Description and Funding
- Attachment "B" – Task List;
- Attachment "C" - Cost Estimate (as applicable, Staffing Rates, Hours, Reimbursable and Fee)

ARTICLE 2. SCOPE OF SERVICES/STANDARD PRACTICES AND REQUIREMENTS

- 2.1 The CONSULTANT shall render all services and furnish all materials and equipment necessary to provide **Clifton Park** with plans, estimates and other services and deliverables more specifically described in Attachment "B".
- 2.2 The CONSULTANT shall ascertain the applicable practices of **Clifton Park**, NYSDOT and/or FHWA prior to beginning any of the work of this PROJECT. All work required under this Agreement shall be performed in accordance with these practices, sound engineering standards, practices and criteria, and any special requirements, more particularly described in Attachment "B".
- 2.3 The CONSULTANT will commence work no later than ten (10) days after receiving notice to proceed from **Clifton Park**.

ARTICLE 3. COMPENSATION METHODS, RATES AND PAYMENT

As full compensation for Consultant's work, services and expenses hereunder **Clifton Park** shall pay to the CONSULTANT, and the CONSULTANT agrees to accept compensation based the methods designated and described below. Payment of the compensation shall be in accordance with the Interim Payment procedures shown in the table and the final payment procedure in Article 6.

(Continued next page)

Lump Sum Cost Plus Reimbursable Method – Tasks 1-8 – Preliminary and Final Design			
ITEM	DESCRIPTION OF ITEMS WITHIN METHOD	APPLICABLE RATE/ AMOUNT OR PERCENTAGE	INTERIM PAYMENTS
ITEM I	A Lump Sum paid to Consultant for the scope of services hereunder, unless this Agreement is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed.	A Lump Sum of \$69,700	The CONSULTANT shall be paid in monthly progress payments based upon the percentage of work accomplished and Direct Non-Salary Costs incurred during the period.
ITEM II	Actual Direct Non-Salary Costs incurred in fulfilling the terms of this Agreement; all subject to audit.	Actual costs incurred in the performance of this agreement as identified in Attachment C or otherwise approved in writing by Clifton Park or its representative. For Reimbursable Direct Non-Salary Costs a multiple of One time shall be applied to the expenses incurred by the Consultant, the consultant's employees, or the subconsultant not to exceed \$1,384.	Progress payments are subject to approval of the Clifton Park representative.
ITEM III	Items required to be purchased for this Project not otherwise encompassed in Direct Non-salary Project-related Costs, which become the property of Clifton Park at the completion of the work or at the option of Clifton Park .	Salvage value	

Cost Plus Fixed Fee Method – Task 9 - Construction Inspection

ITEM	DESCRIPTION OF ITEMS WITHIN METHOD	APPLICABLE RATE/ AMOUNT OR PERCENTAGE	INTERIM PAYMENTS
ITEM I	Actual Direct Technical Salaries, regular time plus straight time portion of overtime compensation of all employees assigned to this PROJECT on a full-time basis for all or part of the term of this Contract, plus properly allocable partial salaries of all persons working part-time on this PROJECT.	Actual cost incurred in the performance of this contract as identified in Attachment C or otherwise approved in writing by the Sponsor or its representative. Actual overtime premium portion of Direct Technical Salaries, all subject to audit and prior approval by the Sponsor.	The CONSULTANT shall be paid in monthly progress payments based on the maximum salary rates and allowable costs incurred during the period as established in Attachment C.
ITEM II	Actual Direct Non-Salary Costs incurred in fulfilling the terms of this Agreement; all subject to audit.	Actual costs incurred in the performance of this agreement as identified in Attachment C or otherwise approved in writing by Clifton Park or its representative. For Reimbursable Direct Non-Salary Costs a multiple of One time shall be applied to the expenses incurred by the Consultant, the consultant's employees, or the subconsultant not to exceed \$2,636.	Bills are subject to approval of the Sponsor and Sponsor's Representative.
ITEM III	Items required to be purchased for this Project not otherwise encompassed in Direct Non-salary Project-related Costs, which become the property of Clifton Park at the completion of the work or at the option of Clifton Park, respectively.	Salvage value	
ITEM IV	Overhead Allowance based on actual allowable expenses incurred during the term of this Contract, subject to audit. Submitted overhead amounts will be audited based upon the Federal Acquisition Regulations (FAR), sub-part 1-31.2 as modified by sub-part 1-31.105, and applicable policies and guidelines of the Sponsor. For the purpose of this Contract, an accounting period shall be the CONSULTANT's fiscal year.	The overhead allowance shall be established as a percentage of Item IA only (Actual Direct Technical Salaries) of this ARTICLE and shall be a FAR compliant rate initially established as 143%, subject to audit.	
ITEM V	Payment of the Fixed Fee for the described scope of services is not subject to pre-audit and is not subject to review or modification based on cost information or unless this Contract is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed.	A negotiated Lump Sum Fee which in this CONTRACT shall equal One Thousand Six Hundred Dollars. (\$1,600).	
ITEM VI	The Maximum Amount Payable	Maximum Amount Payable under this Method shall be Seventeen Thousand, Three Hundred Dollars. (\$17,300).	

ARTICLE 4. INSPECTION

The duly authorized representatives of **Clifton Park** shall have the right at all times to inspect the work of the CONSULTANT.

ARTICLE 5. AUDITS

- 5.1 Payment to the Consultant is subject to the following audit rights of **Clifton Park**:
- A. For Design Lump Sum Method – Only DNSC are subject to audit.
 - B. For Construction Inspection Cost Plus Fixed Fee Method - All costs are subject to audit.
- 5.2 In order to enable **Clifton Park** to process the final payment properly and expeditiously, the CONSULTANT is advised that all of the following documents and submissions, as the same may be appropriate to this contract, are considered to be necessary to enable the commencement of the audit.
- I. Records of Direct Non-Salary Costs;
 - II. Copies of any subcontracts relating to said contract;
 - III. Location where records may be examined; and
 - IV. Name, address, telephone number of person to contact for production.

The application for final payment is not considered complete until receipt of these documents and information.

ARTICLE 6. FINAL PAYMENT

- 6.1 **Clifton Park** will make final payment within sixty (60) calendar days after receipt of an invoice which is properly prepared and submitted, and all appropriate documents and records are received.
- 6.2 The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to **Clifton Park** from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this Agreement or for any part thereof except as otherwise provided herein.

ARTICLE 7. EXTRA WORK

- 7.1 Consultant's performance of this Agreement within the compensation provided shall be continuously reviewed by the CONSULTANT. The CONSULTANT shall notify **Clifton Park** of the results of those reviews in writing by submittal of a Cost Control Report. Such Cost Control Report shall be submitted to **Clifton Park** on a monthly basis or such alternative interval as **Clifton Park** directs in writing.
- 7.2 If the CONSULTANT is of the opinion that any work the CONSULTANT has been directed to perform is beyond the scope of the PROJECT Agreement and constitutes extra work, the CONSULTANT shall promptly notify **Clifton Park**, in writing, of this fact prior to beginning any of the work. **Clifton Park** shall be the sole judge as to whether or not such work is in fact beyond the scope of this Agreement and constitutes extra work. In the event that **Clifton Park** determine that such work does constitute extra work, **Clifton Park** shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, an amendment to the PROJECT Agreement, providing the compensation and describing the work authorized, shall be prepared and issued by **Clifton Park**. In this event, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by **Clifton Park** to the CONSULTANT for

execution after approvals have been obtained from necessary **Clifton Park** officials, and, if required from the Federal Highway Administration.

- 7.3 In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render to **Clifton Park** all assistance required by **Clifton Park**. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this Agreement for the additional services above described, **Clifton Park's** direction shall be exercised by the issuance of a separate Agreement, if necessary.

ARTICLE 8. CONSULTING LIABILITY

The CONSULTANT shall be responsible for all damage to life and property due to negligent acts, errors or omissions of the CONSULTANT, his subcontractors, agents or employees in the performance of his service under this Agreement.

Further, it is expressly understood that the CONSULTANT shall indemnify and save harmless **Clifton Park** from claims, suits, actions, damages and costs of every name and description resulting from the negligent performance of the services of the CONSULTANT under this Agreement, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon the CONSULTANT'S failure to meet professional standards and resulting in obvious or patent errors in the progression of his work. Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against **Clifton Park** beyond such as may legally exist irrespective of this Article or this Agreement.

The CONSULTANT shall procure and maintain for the duration of the work for such project(s), Professional Liability Insurance in the amount of Two Million Dollars \$2,000,000 per project, issued to and covering damage for liability imposed on the CONSULTANT by this Agreement or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by the Agreement. The CONSULTANT shall supply any certificates of insurance required by **Clifton Park** and adhere to any additional requirements concerning insurance.

ARTICLE 9. WORKER'S COMPENSATION AND LIABILITY INSURANCE

The CONSULTANT shall not commence work under this Contract until he/she/it has obtained all insurance required under this paragraph and **Clifton Park** has approved such insurance. **Clifton Park** requires the following insurance coverage and amounts:

- (A) Comprehensive General Liability, including personal injury coverage of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate and property damage coverage in the amount of \$500,000.00 per occurrence and \$1,000,000.00 in the aggregate.
- (B) Automobile coverage with a combined single limit of \$1,000,000.00.
- (C) Statutory Worker's Compensation Disability Coverage.
- (D) Unemployment Insurance Benefits as required by statute.

The CONSULTANT shall submit at the time of the execution of this agreement, certificates of insurance properly executed by an authorized representative of its insurance underwrite, evidencing such insurance policies to be in full force and effect, naming **Clifton Park** and its officers, employees, agents and representatives as additional insured.

Notice of termination of any such policies must be provided to **Clifton Park** at least thirty (30) days in advance. CONSULTANT shall, on or before this 30 day period, provide **Clifton Park** with a prospective Certificate of Insurance

with the above coverage and limits for the balance of the term of this agreement.

All insurance coverage required to be purchased and maintained by the CONSULTANT under this agreement shall be primary for the defense and indemnification on any action or claim asserted against **Clifton Park** and/or CONSULTANT for work performed under this agreement, regardless of any other collectible insurance or any language in the insurance policies which may be to the contrary.

The CONSULTANT shall furnish the above insurance to **Clifton Park** and shall also name Clifton Park as an additional insured in said policies.

Any accident shall be reported to **Clifton Park** as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to **Clifton Park** as soon thereafter as possible, and not later than three (3) days after the date of such accident.

ARTICLE 10. INTERCHANGE OF DATA

All technical data in regard to the PROJECT existing in the office of **Clifton Park** or existing in the offices of the CONSULTANT shall be made available to the other party to this Agreement without expense to such other party.

ARTICLE 11. RECORDS RETENTION

The CONSULTANT shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively called the "Records"). The Records must be kept for a minimum of six (6) years or three (3) years after final payment is received, whichever is later. **Clifton Park**, State, Federal Highway Administration, or any authorized representatives of the Federal Government, shall have access to the Records during normal business hours at an office of THE CONSULTANT within the State of New York or, a mutually agreeable reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

ARTICLE 12. DAMAGES AND DELAYS

The CONSULTANT agrees that no charges or claim for damages shall be made by him for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as **Clifton Park** may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of **Clifton Park** of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising his rights under ARTICLE 7 of this agreement.

ARTICLE 13. TERMINATION

Clifton Park shall have the absolute right to terminate this Agreement, and such action shall in no event be deemed a breach of contract:

- A. for convenience of **Clifton Park** - if a termination is brought about for the convenience of **Clifton Park** and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be made based on the basis of the CONSULTANT'S compensable work delivered or completed prior to and under any continuing directions of such termination.

- B. for cause - if the termination is brought about as a result of **Clifton Park's** determination of unsatisfactory performance or breach of contract on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the percent of the amount of such work satisfactorily delivered or completed by the CONSULTANT to the point of termination and acceptable to **Clifton Park**, of the total amount of work contemplated by the PROJECT Agreement.

ARTICLE 14. DEATH OR DISABILITY OF THE CONSULTANT

In case of the death or disability of one or more but not all the persons herein referred to as CONSULTANT, the rights and duties of the CONSULTANT shall descend upon the survivor or survivors of them, who shall be obligated to perform the services required under this Agreement, and **Clifton Park** shall make all payments due to them.

In case of the death or disability of all the persons herein referred to as CONSULTANT, all data and records pertaining to the PROJECT shall be delivered within sixty (60) days to **Clifton Park** or his duly authorized representative. In case of the failure of the CONSULTANT's successors or personal representatives to make such delivery on demand, then in that event the representatives of the CONSULTANT shall be liable to **Clifton Park** for any damages it may sustain by reason thereof. Upon the delivery of all such data to **Clifton Park**, **Clifton Park** will pay to the representatives of the CONSULTANT all amounts due the CONSULTANT, including retained percentages to the date of the death of the last survivor.

ARTICLE 15. CODE OF ETHICS

The CONSULTANT specifically agrees that this Agreement may be canceled or terminated if any work under this Agreement is in conflict with the provisions of any applicable law establishing a Code of Ethics for Federal, State or Municipal officers and employees.

ARTICLE 16. INDEPENDENT CONTRACTOR

The CONSULTANT, in accordance with his status as an independent contractor, covenants and agrees that he will conduct himself consistent with such status, that he will neither hold himself out as, nor claim to be, an officer or employee of **Clifton Park** by reason hereof, and that he will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **Clifton Park**, including but not limited to Worker's Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement membership or credit.

ARTICLE 17. COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, **Clifton Park** shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 18. TRANSFER OF AGREEMENT

The CONSULTANT specifically agrees, that he is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the Agreement or of his right, title or interest therein, or his power to execute such Agreement, to any other person, company or corporation, without the previous consent in writing of **Clifton Park**.

If this provision is violated, **Clifton Park** may revoke and annul the Agreement and **Clifton Park** shall be relieved from any and all liability and obligations there under to the person, company or corporation to whom the CONSULTANT shall purport to assign, transfer, convey, sublet or otherwise dispose of the Agreement without such consent in writing of **Clifton Park**.

ARTICLE 19. PROPRIETARY RIGHTS

The CONSULTANT agrees that if patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. However, the CONSULTANT agrees to and does hereby grant to the United States Government and the State of New York and **Clifton Park** a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the world by and on behalf of the Government of the United States and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27.

ARTICLE 20. SUBCONTRACTORS/SUBCONSULTANTS

All SUBCONTRACTORS and SUBCONSULTANTS performing work on this project shall be bound by the same required contract provisions as the CONSULTANT. All agreements between the CONSULTANT and a subcontractor or other SUBCONSULTANT shall include all standard required contract provisions, and such agreements shall be subject to review by **Clifton Park**.

ARTICLE 21. CERTIFICATION REQUIRED BY 49 CFR, PART 29

The signator to this Agreement, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership)

- A. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- B. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- C. does not have a proposed debarment pending; and
- D. has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

ARTICLE 22. CERTIFICATION FOR FEDERAL-AID CONTRACTS

The prospective participant certifies, by signing this Agreement to the best of his or her knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the standard "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be, included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

ARTICLE 23. RESPONSIBILITY OF THE CONSULTANT

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications and other services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. However, **Clifton Park** may in certain circumstances, provide compensation for such work.
- B. Neither **Clifton Park's** review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the CONSULTANT shall be and remain liable to **Clifton Park** in accordance with applicable law for all damages to **Clifton Park** caused by the CONSULTANT'S negligent performance or breach of contract of any of the services furnished under this contract.
- C. The rights and remedies of **Clifton Park** provided for under this contract are in addition to any other rights and remedies provided by law.
- D. If the CONSULTANT is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

ARTICLE 24. NON-DISCRIMINATION REQUIREMENTS

The CONSULTANT agrees to comply with all applicable Federal, State and Municipality Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. 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 CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. 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 for the manufacture, sale or distribution of materials, equipment or

supplies, and to the extent that this contract shall be performed within the State of New York, CONSULTANT agrees that neither it nor its SUBCONSULTANTS shall, by reason of race, creed, color, disability, sex or national origin; (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. CONSULTANT is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second or subsequent violation.

ARTICLE 25. CERTIFICATION REQUIRED BY 40 CFR 111506.5©

If the work of the PROJECT includes the preparation of an Environmental Impact Statement (EIS), the signator to this Agreement, being duly sworn, certifies that its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership) does not have any financial or other interest in the outcome of the project including:

- A. an existing contract for the PROJECT ROW incidental work or construction engineering; or
- B. ownership of land, options to buy land, or some business enterprise which would be financially enhanced or diminished by any of the PROJECT alternatives.

This does not preclude the CONSULTANT from being awarded a future contract covering the work described in this Article or being awarded Phases V & VI Final Design after the EIS has been approved.

ARTICLE 26. BIDDING OF DIRECT NON-SALARY ITEMS

For all contracts other than personal services in excess of \$5,000, the consultant shall solicit a number of quotes from qualified subcontractors so that at least three (3) quotes will be received. For all contracts other than personal services in excess of \$20,000 except printing contracts in excess of \$10,000, the consultant shall solicit a number of sealed bids from qualified subcontractors so that at least three (3) bids will be received. The consultant shall then enter into a subcontract with the lowest bidder or entity submitting the lowest quotation who is fully responsive to the invitation to submit a quote/bid.

ARTICLE 27. 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 Consultant'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, Consultant and its subconsultants 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.

ARTICLE 28. INTERNATIONAL BOYCOTT PROHIBITION

In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Consultant agrees, as a material condition of the contract, that neither the Consultant nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Consultant, or any of the aforesaid affiliates of Consultant, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department

or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify **Clifton Park** and the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (See, 2 NYCRR 105.4).

ARTICLE 29. SERVICE OF PROCESS

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

ARTICLE 30. MISCELLANEOUS

30.1 Executory Contract. This Agreement shall be deemed only executory to the extent of the monies available, and no liability shall be incurred by **Clifton Park** beyond the monies legally available for the purposes hereof.

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective the day and year first above written.

Town of Clifton Park

M. J. Engineering and Land Surveying, P.C.

by: _____
Philip Barrett Town Supervisor

by: _____
Michael D. Panichelli, President

Date: _____

Date: _____

ACKNOWLEDGEMENT OF THE TOWN OF CLIFTON PARK

STATE OF NEW YORK

ss:

COUNTY OF SARATOGA

On this ___ day of **February, 2022** before me, the subscriber personally appeared, **Philip Barrett** to me known, who, being by me duly sworn, did depose and say; that he resides in the **Town of Clifton Park**, New York; that he is the **Town Supervisor** of the **Town of Clifton Park**, the corporation described in and which executed the foregoing instrument; that he is the authorized with the execution of the matter herein provided for, and that he signed and acknowledged the said instrument in his position as a duly authorized representative of the **Town of Clifton Park**.

Notary Public, Saratoga County, N.Y.

ACKNOWLEDGEMENT OF THE CONSULTANT

STATE OF NEW YORK

ss:

COUNTY OF SARATOGA

On this ___ day of **February, 2022** before me, the subscriber personally appeared **Michael D. Panichelli** to me known, who, being by me duly sworn, did depose and say; that he resides in the **Town of Clifton Park, New York**; that he is the **President** of **M.J. Engineering and Land Surveying, P.C.**, the corporation described in and which executed the foregoing instrument; that he is the authorized with the execution of the matter herein provided for, and that he signed and acknowledged the said instrument in his position as a duly authorized representative of **M. J. Engineering and Land Surveying, P.C.**

Notary Public, Saratoga County, N.Y.

Attachment A

Architectural/Engineering Consultant Agreement Project Description and Funding

DEC01-C01085GG – Hubbs Road Multi-Use Path

Main Agreement ___ Amendment to Agreement ___ Supplement to Agreement

Phase of Project Consultant to work on:

P.E./Design ___ ROW Incidentals ___ ROW Acquisition **Construction, C/I, & C/S**

PROJECT DESCRIPTION:

DEC01-C01085GG
Hubbs Road Multi-Use Path

Project Location:

Town of Clifton Park
Saratoga County, New York

Consultant Work Type: See Attachment B for more detailed Task List.

MAXIMUM AMOUNT OF FUNDS FOR ALL COMPENSATION PAYABLE UNDER THIS AGREEMENT FOR THE SCOPE OF WORK DESCRIBED IN ATTACHMENT B FOR THE PROJECT DESCRIBED IN THIS ATTACHMENT A:

Design – Lump Sum \$69,700
Construction Inspection – Cost Plus Fee \$17,300
Total - \$87,000

ATTACHMENT "B"

TASK LIST

Contract No. DEC01-C01085GG

Hubbs Road Multi-Use Path

Town of Clifton Park

October 2022



TABLE OF CONTENTS

Section 1	General
Section 2	Data Collection
Section 3	Preliminary Design
Section 4	Environmental
Section 5	Right-of-Way
Section 6	Detailed Design
Section 7	Advertisement, Bid Opening and Award
Section 8	Construction Support
Section 9	Construction Inspection
Section 10	Estimating & Technical Assumptions

Section 1 - General

1.01 Project Description and Location

This project is known as:

DEC Contract ID: DEC01-C01085GG
Project: Hubbs Road Multi-Use Path

Project Description: Town of Clifton is using a 2019 NYS DEC Climate Smart Communities grant to design and construct approximately 0.6 miles of a new 10-foot-wide asphalt multi-use path for pedestrian and bicycle travel on the south side of Hubbs Road (starting at Dutch Meadow Drive) and continuing along the west side of Hatlee Road, connecting the Dutch Meadows and County Knolls West neighborhoods to the hamlet of Jonesville at the intersection with MacElroy Road and Main Street/Saratoga County Route 82. Two pedestrian crosswalks will be designed at the MacElroy and Main Street intersections.

Town: Clifton Park
County: Saratoga

All work performed by the **Consultant** at the **Consultant's** initiative must be within the current project limits specified above.

1.02 Contract Administrator

The **Town's** Contract Administrator for this project is John Scavo who can be reached at 518.371.6054.

All correspondence to the **Town** should be addressed to:

John Scavo
Director of Planning
Town of Clifton Park
One Town Hall Plaza
Clifton Park, NY 12065

All further references to the **Town** in this Scope of Services shall be applicable to the **Town of Clifton Park**.

1.03 Project Classification

Classification under the New York State Environmental Quality Review Act (SEQRA) Part 617, Title 6 of the Official Compilation of Codes, Rules, and Regulations of New York State (6 NYCRR Part 617) is assumed to be Unlisted.

1.04 Categorization of Work

Project work is generally divided into the following sections:

Section 1	General
Section 2	Data Collection & Analysis
Section 3	Preliminary Design
Section 4	Environmental
Section 6	Detailed Design
Section 7	Advertisement, Bid Opening and Award
Section 8	Construction Support
Section 9	Construction Inspection

When specifically authorized in writing to begin work, the **Consultant** will render all services and furnish all materials and equipment necessary to provide the **Town** with reports, plans, estimates, and other data specifically described in Sections 1 through 8.

1.05 Project Familiarization

The **Consultant** will become familiar with the project before starting any work. This includes thorough review of all supplied project information and a site visit to become familiar with field conditions. **Consultant** will obtain the following information from the **Town** (*).

- Approved project initiation document (Initial Project Proposal or similar documentation) indicating project type, project location, cost estimate, schedule, and fund source(s)
- Transportation needs
- Plans for future related transportation improvements or development in the area of the project, including Clifton Park's plans, if any.
- Accident records and history
- Record as-built plans
- Anticipated permits and approvals (initial determination)
- Available project studies and reports
- Other relevant documents pertaining to the project

1.06 Meetings

The **Consultant** will prepare for and attend all meetings as directed by the **Town's** Contract Administrator. Meetings may be held to:

- A. Present, discuss, and receive direction on the progress and scheduling of work in this agreement.
- B. Present, discuss, and receive direction on project specifics.
- C. Discuss and resolve comments resulting from review of project documents, advisory agency review and coordination with other agencies.
- D. Prepare and preview visual aids for public meetings and facilitate and conduct public meetings.
- E. Manage **subconsultants** and/or subcontractors.

The **Consultant** will be responsible for the preparation of all meeting minutes; the minutes will be submitted to meeting attendees within 10 business days of the meeting date.

1.07 Cost and Progress Reporting

For the duration of this agreement, the **Consultant** will prepare and submit to the **Town** periodic invoices with progress reports in a format approved by the **Town**. The beginning and ending dates defining the reporting period will correspond to the beginning and ending dates for billing periods, so that this reporting process can also serve to explain billing charges. In cases where the **Town** officially suspends all work under this contract, this task will not be performed during the suspension period or as directed by the **Town**.

1.08 Policy and Procedures

The design of this project will be progressed in accordance with current New York State Department of Transportation (NYSDOT) design requirements.

A. Compliance with Documents

All work must conform to current versions of the following documents, as applicable. Where necessary, the **Consultant** will obtain either the full document or guidance extracted from it.

1. A Policy on Geometric Design of Highways and Streets, American Association of State Highway and Transportation Officials (AASHTO)
2. NYS Eminent Domain Procedure Law

3. ADA Accessibility Guidelines for Buildings and Facilities
 4. AASHTO Model Drainage Manual & NYSDOT Highway Design Manual Chapter 8
 5. AASHTO Guide for the Development of Bicycle Facilities
 6. NYSDOT Highway Design Manual
 7. FHWA Manual on Uniform Traffic Control Devices and NYS Supplement
 8. NYSDOT The Environmental Manual
- B. Compliance with Environmental Laws, Regulations and Permits

All work must comply with the requirements of all applicable state and federal environmental laws, regulations and policy.

1.09 Specifications

The project will be designed and constructed in accordance with the current edition of the NYSDOT Standard Specifications for Construction and Materials, including all applicable revisions.

1.10 Subconsultants

The **Consultant** will be responsible for:

- A. Coordinating and scheduling work, including work to be performed by subconsultants.
- B. Technical compatibility of a subconsultant's work with the prime Consultant's and other subconsultant's work.

1.11 Subcontractors

- A. For subcontracts to this **Consultant** contract exceeding \$20,000 (\$10,000 for printing contracts):
 1. The **Consultant** will prepare a contract document describing the work, schedule, and method of payment in sufficient detail for obtaining sealed bids for the work. The **Consultant** will provide the work description and will submit it to the **Town** for review. The **Consultant** will modify the work description as necessary before including it in the contract document.
 2. The **Consultant** will solicit sealed bids from a sufficient number of prospective qualified subcontractors to ensure that at least three (3) bids are received. Upon receipt of at least three bids, the **Consultant** will submit all bids to the **Town** along with a recommended choice. The **Town** will either concur with the recommendation or accept one of the other bids. The **Town** will then advise the **Consultant** in writing to proceed.

3. Upon receipt of written authorization from the **Town** to proceed, the **Consultant** will execute the contract with the subcontractor and oversee the subcontractor's operations/services to the extent of assuring that the work is performed as described in the contract and that the work performed conforms to applicable requirements.
- B. For subcontracts to this **Consultant** contract equaling or under \$20,000 (\$10,000 for printing contracts):
1. The **Consultant** will prepare a contract document describing the work, schedule, and method of payment in sufficient detail for obtaining reliable quotations (non-binding estimates) for the work. The **Consultant** will provide the work description and will submit it to the **Town** for review. The **Consultant** will modify the work description as necessary before including it in the contract document.
 2. The **Consultant** will solicit quotations from a sufficient number of prospective qualified subcontractors (typically three) to ensure that the work will be performed in the most economical manner. The **Consultant** will maintain and keep for review records of the quote solicitation process to document competition for the service. Upon receipt of the quotations, the **Consultant** will submit them to the **Town** along with a recommended choice. The **Town** will either concur or choose one of the other candidate subcontractors and advise the **Consultant** to proceed.
 3. Upon receipt of written authorization from the **Town** to proceed, the **Consultant** will execute the contract with the subcontractor and oversee the subcontractor's operations/services to the extent of assuring that the work is performed as described in the contract and that the work performed conforms to applicable requirements.

1.12 Units of Measure

- General: All documents shall use Customary (English) units as the primary system of measurement. This includes, but is not limited to, the plans, specifications and engineer's estimate. As-built drawings shall be dimensioned in Customary (English) units of measure.
- Survey: All survey data will be obtained in Customary (English) units. If acquisition maps are required, all parcel dimensioning and areas shall be Customary (English) units of measure.

Section 2 - Data Collection & Analysis

2.01 Design Survey

A. Ground Survey

The mapping for this project will be compiled from a multitude of sources, including available existing mapping, topographic databases, 3D high definition scan data locations, mobile mapping scan data locations and limited spot / tie down locations.

The **Consultant** will utilize Mobile LiDAR Mapping equipment to collect Digital Terrain Modeling of all existing roadways within the project area. The **Consultant** will develop a master Digital Terrain Model incorporating the collected and compiled GIS data, 3D static scan data and Mobile LiDAR Mapping data.

B. Photogrammetric Survey (Intentionally Left Blank)

C. Stream Survey (Intentionally Left Blank)

D. Survey of Wetland Boundaries (Intentionally Left Blank)

E. Supplemental Survey (Intentionally Left Blank)

F. Standards

Project control will conform to the following:

1. Horizontal project control

All horizontal coordinates will be State Plane Coordinate System based on North American Datum of 1983 (NAD 83). Whenever practical and economical, the survey should be tied into the NAD 83-96 Base Network.

Primary project control, established by GPS techniques, should be of at least C2-I order as defined in *Geometric Geodetic Accuracy Standards and Specifications for Using GPS Relative Positioning Techniques*, Federal Geodetic Control Committee.

Primary project control, established by conventional techniques, should be of at least second order, class II, as defined in *Standards and Specifications for Geodetic Control Networks*, Federal Geodetic Control Committee, 1984. After initial angular adjustment, all traverses should reflect a precision of at least 1 part in 20,000 parts to qualify for final adjustment and then as project control.

2. Vertical project control

Elevations will be based on the North American Vertical Datum of 1988 (NAVD 88).

To qualify for adjustment, level run error, expressed in feet, must close within $0.008s$, where s is equal to the length of the level run in feet.

Level runs should begin and end on benchmarks classified as at least second order, class II. Whenever practical and economical, use two different benchmarks to begin and end vertical surveys.

2.02 Design Mapping

- A. The **Consultant** will provide the 1"=40'-0" scale design mapping with 1'-0" contour intervals.

2.03 Determination of Existing Conditions

The **Consultant** will determine, obtain or provide:

- A. The existing highway section(s) and features within the project limits, including:
1. Number, width, type (through / turning), and location of travel lanes.
 2. Shoulder widths and types (asphalt, gravel, grass, etc.).
 3. Number, width, type, and location of utility strips.
 4. Location and percent of grades.
 5. Horizontal curve radii.
 6. Intersection geometry and conditions
 7. Parking regulations and conditions within the project limits.
 8. Right-of-way width (may be shown on a plan with references to the plan).
 9. Condition and adequacy of guiderail.
 10. Location of traffic control features and their conformity with the latest guidelines for such features.
 11. Provisions for pedestrians and bicyclists
- B. The following information within the project limits:
1. Existing future conditions (assuming the null alternative) using an anticipated deterioration rate provided by the **NYS DOT**.
 2. Existing mainline speed limit (and whether the speed limit is posted or not), and existing operating speeds (85th percentile speeds in most cases).
 3. Land use for the project area as it now exists and future land development (planned and potential), including development years.

4. Existing vehicle access control (full control, partial control, or uncontrolled) and whether existing driveway entrances comply with local standards or policies.
5. Existing pavement and shoulder conditions within the project limits.
6. A general assessment of drainage conditions within the project limits.
7. A list of all utilities, and the respective owners, within the project's existing ROW.
8. Which, if any, school buses, emergency vehicles, or farm machinery regularly uses this route.
9. Which, if any, suitable detour routes are available.

2.04 Accident Data and Analysis

The **Consultant** will provide information to the **Town** to request accident records from NYSDOT for the last 3 years for roads within the project limits. The **Consultant** will note any clusters of accidents or patterns implying inadequate pedestrian accommodations within the project limits.

2.05 Pedestrian Counts

The **Consultant** will provide pedestrian count data during the design phase (pre-construction) and again after construction is complete in support of Objective 8 in the project's Work Plan, Monitor and Report on Project-Appropriate Metrics.

Peak hour counts will be performed. It is assumed that peak usage will occur on weekends, holidays or during the summer months. Counts will be taken in the pre- and post-construction conditions.

2.06 Capacity Analysis (Intentionally Left Blank)

2.07 Future Plans for Roadway and Coordination with Other Projects

The **Town** will provide a brief written statement specifying whether or not plans exist to reconstruct or widen intersecting roadways within the project within the next twenty years.

The **Town** will determine the influence, if any, of other existing or proposed projects or proposed developments in the vicinity of this project. The **Town** will provide all necessary information pertaining to the other projects or developments.

- 2.08 Soil Investigations** (Intentionally Left Blank)
- 2.09 Hydraulic Analysis** (Intentionally Left Blank)
- 2.10 Bridge to be Rehabilitated** (Intentionally Left Blank)
- 2.11 Pavement Evaluation** (Intentionally Left Blank)

Section 3 - Preliminary Design

3.01 Design Criteria

- A. The **Consultant** will identify the applicable design standards to be used for this project and will establish project-specific design criteria.
- B. Applicable design standards will be chosen from:
 - 1) NYSDOT Highway Design Manual, Chapters 2, 5 and 18
 - 2) AASHTO Guide for Bicycle Facilities
- C. Project-specific design criteria will include: multi-use path width, grade and cross slope; separation distance and utility strip width; shoulder width; and lateral clearance (at a minimum).
- D. Based on the selected design criteria, the **Consultant** will identify all existing non-standard features that are within and immediately adjacent to the project limits. Non-standard features that correlate with a high accident rate will be noted.
- E. The **Town** will review and approve the selected project design criteria and non-standard features, if any.

3.02 Development of Alternatives

A. Selection of Design Alternative

The **Consultant** will identify and make rudimentary evaluations of potential design alternative concepts that would meet the **Town's** defined project objectives. These evaluations are not to be carried beyond the point of establishing the feasibility of each concept as a design alternative; only those significant environmental and geometric design constraints that bear on the feasibility should be identified.

For each concept, the **Consultant** will prepare rudimentary sketches of plan, profile, and typical section views, which show:

1. On plan: proposed centerlines; pavement edges; curbs and curb ramps; retaining wall(s); existing ROW limits; and ROW impacts with proposed take lines.
2. On profile: theoretical grade lines; grades; and touchdown points.
3. On typical section: multi-use path section and materials, lane and shoulder widths; gutters; curbs; and side slopes.
4. Where necessary: important existing features.

5. Where pertaining to feasibility: significant environmental and geometric design constraints, labeled as such.

These sketches will include only the minimum information needed to select design alternatives to be studied in further detail.

The **Consultant** will meet with the **Town** to discuss the concepts, using the sketches as discussion aids to describe the relative order-of-magnitude costs, advantages, disadvantages, and problem areas of each. From these concepts the **Town** will select one design alternative for further development.

B. Detailed Evaluations of Alternative

The **Consultant** will further evaluate each design alternative and the null alternative with specific engineering analyses and considerations. Analyses will be conceptual and limited to determining the relative suitability of each design alternative, and will include:

1. Design geometry, including the identification and comparison of alignment constraints and (where applicable) justification for retaining nonstandard design features, per Chapter 2, Section 2.8 of the NYSDOT Highway Design Manual
2. Environmental constraints and potential environmental impact mitigation measures (identified under Section 4 tasks)
3. Traffic flow and safety considerations, including signs
4. Drainage
5. Work zone traffic control during construction
6. Soil and foundation considerations
7. Utilities
8. Right-of-way acquisition requirements.
9. Accessibility for pedestrians, bicyclists, and the disabled; markings for pedestrian and bicycle facilities.
10. Construction cost factors
11. Pedestrian and bicycle signage and markings.

3.03 Cost Estimates

- A. The **Consultant** will develop, provide and maintain a cost estimate for each design alternative.
- B. The **Consultant** will update the estimate periodically and as necessary to incorporate significant design changes.

3.04 Preparation of Preliminary Design Scheme Review Report

- A. The **Consultant** will prepare a Preliminary Design Scheme Review Report, which will include the results of analyses and/or studies performed in other Sections of this document. The report will include easement procurement options (as necessary) to complete the Project. Conceptual design alternatives will be identified, considering optimum location and potential barriers or issues and solutions, including whether drainage pipes and/or retaining walls may be necessary in any locations, as well as estimated cost to build each alternative.
- B. The **Consultant** will submit an electronic copy and one (1) hard copy of the Draft Preliminary Design Scheme Review Report to the **Town** for review. The **Town** will review the Draft report and provide the **Consultant** with review comments. The **Consultant** will revise the Draft Report to incorporate the comments.

3.05 Advisory Agency Review

- A. The **Consultant** will assist the **Town** in evaluating and preparing individual responses to the review comments received from the advisory agency, if required.

3.06 Public Information Meetings

- A. Public Information Meetings
 - 1. The **Consultant** will assist the **Town** at public information meetings with advisory agencies, local officials, and citizens, at which the **Consultant** will provide visual aids and present a technical discussion of the alternatives.
 - 2. The **Town** will arrange for the location of public information meetings. The **Consultant** will assist the **Town** with appropriate notification.

3.07 Preparation of Final Design Scheme Review Report

- A. The **Consultant** will address comments made by the **Town** and the public (if applicable), update estimated costs as necessary, and issue the Final Design Scheme Review Report.
- B. The **Consultant** will submit an electronic copy of the Final Report to the **Town** for their records. The **Town** may request paper copies if needed.

Section 4 – Environmental

4.01 NEPA Classification (Intentionally Left Blank)

4.02 SEQRA Classification

The **Consultant** will assist the **Town** in complying with SEQRA (6 NYCRR Part 617). The **Town** is the Lead Agency. **Consultant** tasks include, but are not limited to:

- Drafting letters to involved agencies to determine the lead agency.
- Drafting Environmental Assessment Form(s).
- Drafting a negative declaration.
- Drafting a positive declaration.
- Drafting notices.

The **Consultant** will document the results of SEQRA processing in the body of the Design Scheme Review Report and will include documentation of the final SEQRA determination in the Appendix of the Report.

4.03 Smart Growth (Intentionally Left Blank)

4.04 Screenings and Preliminary Investigations

The **Consultant** will screen and perform preliminary investigations to determine potential impacts resulting from the design alternative(s) for:

- General Ecology and Endangered Species
- Ground Water
- Surface Water
- State Wetlands
- Federal Jurisdictional Wetlands
- Floodplains
- Coastal Zone Management
- Navigable Waterways
- Historic Resources
- Parks
- Hazardous Waste
- Asbestos
- Noise
- Air Quality
- Energy
- Farmlands
- Invasive Species
- Visual Impacts
- Critical Environmental Areas
- Smart Growth

- Environmental Justice

The results of these screenings and preliminary investigations will be summarized in the appropriate sections of the Design Scheme Review Report.

4.05 Detailed Studies and Analyses (Intentionally Left Blank)

4.06 Permits and Approvals

The **Consultant** will obtain all applicable permit(s) and certification(s), including but not necessarily limited to approval of the intended project elements on County Route 82 from Saratoga County.

4.07 Environmental Hearing (Intentionally Left Blank)

Section 5 - Right-of-Way (ROW)

5.01 Abstract Request Map and/or Title Search - Intentionally Left Blank

5.02 Right of Way Survey

The **Consultant** will perform survey needed to accurately determine existing ROW limits and establish side property lines. Lines so established will be incorporated into the project base mapping.

5.03 Right of Way Mapping (Intentionally Left Blank)

5.04 Right-of-Way Plan (Intentionally Left Blank)

5.05 Right of Way Cost Estimates (Intentionally Left Blank)

5.09 Public Hearings/Meetings (Intentionally Left Blank)

5.10 Property Appraisals (Intentionally Left Blank)

5.11 Appraisal Review (Intentionally Left Blank)

5.12 Negotiations and Acquisition of Property (Intentionally Left Blank)

5.29 Relocation Assistance (Intentionally Left Blank)

5.30 Property Management (Intentionally Left Blank)

Section 6 - Detailed Design

6.01 Preliminary Bridge Plans (Intentionally Left Blank)

6.02 Draft Design Plans

The **Consultant** will develop the approved design alternative. At this stage all plans, specifications, the estimate and other associated materials will be **75%** complete.

Templated cross sections will not be required.

The 75% plans will be in produced in accordance with NYSDOT design procedures.

The **Consultant** will prepare and submit two (2) copies of the Draft Design Plans and associated materials to the **Town** for review. The **Consultant** will modify the design to reflect the Town's review.

6.03 Contract Documents

The **Consultant** will prepare a complete package of bid-ready contract documents. The package will include:

- Instructions to bidders
- Bid documents
- Contract language, including prevailing wage rates
- Special notes
- Specifications
- Plans
- A list of supplemental information available to bidders (i. e., subsurface exploration logs, record as-built plans, etc.)
- Other pertinent information

The **Consultant** will submit the contract documents to the **Town** for approval.

6.04 Cost Estimate

The **Consultant** will develop, provide, and maintain the construction cost estimate for the project. The **Consultant** will update the estimate periodically and as necessary to incorporate significant design changes, and will develop and provide the final Engineers Estimate, including all quantity computations.

6.05 Utilities

It is assumed that relocation of utility poles and aerial utilities is required and will be performed by the respective utility companies. The **Consultant** will coordinate with affected utility

companies to ensure the timely relocation of utility poles and appurtenances. The **Consultant** will assist the **Town** in preparing any necessary agreements with utility companies.

6.06 Railroads (Intentionally Left Blank)

6.07 Bridge Inventory and Load Rating Forms (Intentionally Left Blank)

6.08 Information Transmittal

Upon completion of the contract documents, the **Consultant** will transmit to the **Town** all project information, including electronic files. The electronic information will be in the format requested by the **Town**.

Section 7 - Advertisement, Bid Opening and Award

7.01 Advertisement

The **Consultant** will prepare the advertisement for bids to be placed in the NYS Contract Reporter and any other newspaper or publication identified by the **Town**. The **Consultant** will submit the ad(s) to the **Town** for review and will revise the ad(s) to reflect comments generated by that review. The **Town** will place the advertisements.

The **Consultant** will provide a copy of the advertisement to NYSDEC.

The **Consultant** will provide a list of applicants, "Intent to Hire" letter, and executed contract to NYSDEC.

7.02 Bid Opening (Letting)

The **Town** will hold the public bid opening with assistance from the **Consultant**.

The **Consultant** will provide a list of bidders and "Intent to Hire" letter to NYSDEC.

7.03 Award

The **Consultant** will analyze the bid results. The analysis will include:

- Verifying the low bidder
- Ensuring receipt of all required bid documents (non-collusive bid certification, debarment history certification, etc.)
- Breaking the low bid into fiscal shares, if necessary
- Determining whether the low bid is unbalanced
- For pay items bid more than 25% over the Engineers Estimate:
 - Checking accuracy of quantity calculations
 - Determining appropriateness of price bid for work in the item
- Determining whether the low bidder is qualified to perform the work

The **Town** will award the contract and will transmit the award package a copy of the executed contract with the Contractor to NYSDEC.

The **Consultant** will schedule and attend a preconstruction meeting with the **Town** and Contractor. NYSDEC will be invited to attend.

Section 8 - Construction Support

8.01 Construction Support

The **Consultant** will provide design response to unanticipated or changed field conditions, analyze and participate in proposed design changes, and interpret design plans.

Work under this section will always be in response to a specific assignment from the **Town** under one of the tasks below:

- In response to unanticipated and/or varying field conditions or changes in construction procedures, the **Consultant** will conduct on-site field reconnaissance and, where required, prepare Field Change Sheets modifying pertinent contract plan sheets.
- The **Consultant** will analyze and make recommendations on the implementation of changes proposed by the **Town** or the construction contractor. This includes the Traffic Control Plan.
- The **Consultant** will interpret and clarify design concepts, plans and specifications.
- The **Consultant** will review and approve shop drawings for construction.

Not reimbursable under this Section are:

- Corrections of design errors and omissions
- Straightforward interpretations of plans and designer intentions

Section 9 - Construction Inspection

Construction inspection for this project is based on a part time effort to spot check the quality and progression of work being performed. The project will be bid as a lump sum value so daily quantities will not be verified. The **Consultant** will review the construction submittals for approval. The Contractor's estimate will be based on the overall percent of project completion. The **Consultant** will prepare as-built drawings at the end of the project based on any information provided during the construction process.

9.01 Equipment

The **Contractor** will furnish office space and basic office furnishings for the **Consultant**, as part of the contract.

The **Consultant** will furnish all other office, field and field laboratory supplies and equipment required to properly perform the inspection services listed below.

9.02 Inspection

The **Consultant** must provide, to the satisfaction of the **Town**, contract administration and part time construction inspection services from such time as directed to proceed until the completion of the final agreement and issuance of final payment for the contract. The **Consultant** must assume responsibility, as appropriate, for the administration of the contract including maintaining project records, processing payments, and performing inspection work.

9.03 Municipal Project Manager

This Project Manager will be the **Municipality's** official representative on the contract and the **Consultant** must report to and be directly responsible to said Project Manager.

9.04 Ethics

Prior to the start of work, the **Consultant** will submit to the **Town** a statement regarding conflicts of interest.

9.05 Health and Safety Requirements

The **Consultant** must provide all necessary health and safety related training, supervision, equipment and programs for their inspection staff assigned to the project.

9.06 Staff Qualifications and Training

The **Consultant** must provide sufficient trained personnel to adequately and competently perform the requirements of this agreement. The **Consultant** will recommend inspectors to the Sponsor for approval prior to their assignment to the project. Resumes, proof of required

certification and the proposed initial salary shall be furnished. The Sponsor may want to interview before approval, and reserves the right to disapprove any application. The employment of all consultant personnel is conditional, subject to satisfactory performance, as determined by the Sponsor.

For all construction inspection agreements, it is mandatory that all technician personnel be identified by the National Institute for Certification in Engineering Technologies (NICET) certification levels in the staffing tables. In addition, all Transportation Engineering Technicians-Construction assigned to the project at and above level III, Engineering and Senior Engineering Technicians, must be certified by NICET. Transportation Engineering Technicians-Construction below level III assigned to the project must have successfully completed the General Work Element requirements and at least those Special Work Elements which apply to their specific project assignments at the level of their rating.

In lieu of the NICET certification requirements, the Sponsor may accept evidence that the person proposed for employment (1) has satisfactorily performed similar duties as a former NYS Department of Transportation (NYSDOT) employee or (2) has a combination of education and appropriate experience commensurate with the scope of the position in question.

Technicians employed by the **consultant** that perform field inspection of Portland cement concrete shall possess a current certification from the American Concrete Institute (ACI) as a Concrete field-testing Technician-Grade 1, or have completed all of the following NICET work elements, which are equivalent to the ACI certification:

NICET LEVEL	NICET CODE	NICET WORK ELEMENT	
I	82019	Sample Fresh Concrete	
I	82020	Slump Test	
II	84068	Air Content, Pressure	
II	84069	Air Content, Gravimetric	
II	84070	Air Content, Volumetric	
II	84076	Field Prepared Test Specimens	

Inspectors designated as the responsible person in charge of work zone traffic control must have sufficient classroom training, or a combination of classroom training and experience, to develop needed knowledge and skills. Acceptable training should consist of a formal course presented by a recognized training program which includes at least two full days of classroom training. A minimum of two days classroom training is normally required, although one day of classroom training plus responsible experience may be considered. Recognized training providers include American Traffic Safety Services Association (ATSSA), National Safety Council (NSC), Federal Highway Administration's National Highway Institute (FHWA-NHI), and accredited colleges and universities with advanced degree programs in Civil/Transportation/Traffic Engineering. Former DOT employees may be considered on the basis of at least one day of formal classroom training combined with responsible M&PT experience.

Technicians employed by the **consultant** who perform field inspection of geotechnical construction (earthwork), including, but not limited to embankment construction, subbase placement, structure and culvert backfill placement, and testing of earthwork items for in-place density and/or gradation, shall possess a current certification and/or proof of training from the following organization:

North East Transportation Technician Certification Program (NETTCP) Soils and Aggregate Inspector Certification. An alternative to the certification/training listed above would be proof of previous training (within the past 5 years) of the NYSDOT Earthwork Inspectors School, given by the Department's Geotechnical Engineering Bureau.

9.07 Scope of Services/Performance Requirements

A. Quality

The Consultant will enforce the specifications and identify in a timely manner to the **Town** local conditions, methods of construction, errors on the plans or defects in the work or materials which would conflict with the quality of work, and conflict with the successful completion of the project.

B. Record Keeping & Payments to the Contractor

1) All records must be kept in accordance with the directions of the **Sponsor and must be consistent with the requirements of the NYSDOT Manual of Uniform Recordkeeping (MURK)**. The **Consultant** will create monthly and final estimates, survey notes, record plans showing all changes from contract plans, photographs of various phases of construction, and other pertinent data, records and reports for proper completion of records of the contract.

2) Any record plans, engineering data, survey notes or other data provided by the Sponsor should be returned to the Sponsor at the completion of the contract. Original tracings of record plans, maps, engineering data, the final estimate and any other engineering data produced by the Consultant will bear the endorsement of the Consultant. Any documents that require an appropriate review and approval of a Professional Engineer (P.E.) licensed and registered to practice in New York State must be signed by the P.E.

3) Unless otherwise modified by this agreement, the **Town** will check, and when acceptable, approve all structural shop drawings.

4) The **Consultant** must submit the final estimate of the contract to the **Town** within four (4) weeks after the date of acceptance of the contract. All project records must be cataloged, indexed, packaged, and delivered to the **Town** within five (5) weeks after the date of the acceptance of the contract.

C. Health & Safety/Work Zone Traffic Control

1) The **Consultant** must ensure that all inspection staff assigned to the project are knowledgeable concerning the health and safety requirements of the contract per **Town** policy, procedures and specifications and adhere to all standards. Individual inspectors must be instructed relative to the safety concerns for construction operations they are assigned to inspect to protect their personal safety, and to ensure they are prepared to recognize and address any contractor oversight or disregard of project safety requirements.

2) The **Consultant** is responsible for monitoring the Contractor's and Subcontractor's efforts to maintain traffic and protect the public from damage to person and property within the limits of, and for the duration of the contract.

Monitoring Equal Opportunity/Labor Requirements

If monitoring the Contractor's Equal Opportunity and Labor compliance is required, the **Consultant** will utilize the guidance contained in the contract, standard specifications and the **Town's** policies.

Section 10 - Estimating & Technical Assumptions

10.01 Estimating Assumptions

The following assumptions have been made for estimating purposes:

Section 1 Estimate 4 meetings during the life of this agreement, including but not limited to:

- Get Start
- Design Report Alternative Review
- Public Information (assist Town at Town Board meeting)
- Final Design Plan Review

Estimate 12 cost and progress reporting periods will occur during the life of this agreement.

Section 2 Estimate 0 soil borings will be required.

Section 3 Estimate 3 concepts will be evaluated.

Estimate 1 design alternative will be analyzed.

Estimate 1 cost estimate plus 1 update will be required.

Section 4 Estimate 2 permits will be required.

Estimate hazardous waste evaluation will be limited to a database screening only and no borings will be required.

No asbestos or lead sampling will be required.

Wetlands mitigation design will not be required.

A Phase 1A/1B Archeology study will not be required.

Biological assessments will not be required.

Section 5 Intentionally left blank.

Section 6 Estimate 1 cost estimate plus 1 update will be required.

Estimate 1 plan set plus one update will be required.

Section 7 Estimate 1 bid package will be required.

Estimate 1 bid evaluation will be required.

Section 8 Intentionally left blank.

Section 9 Intentionally left blank.

10.02 Technical Assumptions

Section 2 Data Collection

1. A Survey Control Report will not be required.
2. The horizontal control will be established by GPS.
3. The Town will obtain crash data from the County Sheriff's Department or NYSDOT for project area.
4. Crash data will be reviewed by MJ to determine the number, location, and circumstances of crashes involving pedestrians and bicyclists within the project area.
5. Task 2.05 – Pedestrian Counts. Pedestrian counts will be required on two different dates, AM and PM peaks each date.

Section 3 Preliminary Design

1. MJ will prepare a Microsoft PowerPoint presentation for public information meetings, prepare and place the advertisement and lead the public meetings.
2. The **Town** will arrange for the meeting place accommodations.
3. The **Town** will approve the Design Scheme Review Report.
4. NYSDOT and FHWA approval of the preliminary design will not be required.
5. MJ will evaluate the design of the multi-use path / sidewalks. The design and cost estimate will be developed in sections to help facilitate the review of the alternatives.

Section 4 Environmental & Permitting

- 1) A wetland delineation will not be required.
- 2) A Joint Application will be prepared and submitted to NYSDEC for review. The western project limit lies within a state wetland check zone. Assume the project will not require a state wetland permit, or will be granted coverage under the Statewide General Permit.
- 3) The project will disturb more than one (1) acre and will require a NYSDEC SPDES Permit. A SWPPP with **no** post-construction water quality or quantity treatment controls will be required.
- 4) A project review will be requested from NYS OPRHP through CRIS online.
- 5) Hazardous waste investigation is limited to a screening and review of other recent studies within the proposed project area. -Sampling and testing are not included

in this contract. -Upon conclusion of the screening, if it is determined that sampling and testing is required, the effort will be accomplished by supplemental agreement.

- 6) It is assumed detailed air and noise studies will not be required.

Section 6 Design

1. Wetland mitigation is not anticipated to be required for project activities.
2. One itemized cost estimate will be prepared and submitted with the preliminary plans. This estimate will be updated twice – once at the 75% Submission and once at the Final Plan Submission (100%).

Section 9 Construction Inspection

1. MJ will utilize a part time NICET Level III Inspector for this project.
2. Night work is not anticipated.
3. Weekend work is not anticipated.
4. Overtime is not anticipated.
5. Eight (8) hours will be estimated per week.
6. Appia Software will be utilized to produce estimates.
7. MJ will not be track quantities as this project is anticipated to be a Lump Sum construction contract.
8. MJ will conduct a Preconstruction meeting prior to the start of construction.
9. MJ will not be conducting any material testing for this project.
10. MJ will facilitate a punch list of all non-satisfactory items.
11. MJ will review all shop drawings and submittals.
12. MJ will produce As-Built Drawings, based on contractor submitted information.
13. The construction schedule used in developing the fee assumes 10 weeks of construction.
14. If the project duration exceeds the estimated 10 weeks, a supplemental agreement will be required for the additional effort.

ATTACHMENT "C"

COST ESTIMATE

Contract No. DEC01-C01085GG

Hubbs Road Multi-Use Path

Town of Clifton Park

October 2022



**DEC01-C01085GG Hubbs Road Trail
Town of Clifton Park**

**M. J. Engineering and Land Surveying, P. C.
Exhibit A, Page 1 Salary Schedule**

JOB TITLE	ASCE (A)	HOURLY RATE	OVERTIME CATEGORY
	NICET (N) GRADE		
Project Manager	VII (A)	\$ 74.00	A
Engineer V	V (A)	\$ 68.00	B
Engineer IV	IV (A)	\$ 51.00	B
Engineer III	III (A)	\$ 38.00	B
Engineer II	II (A)	\$ 32.00	B
Technician IV	IV (N)	\$ 51.00	B
Technician III	III (N)	\$ 35.00	C
Technician II	II (N)	\$ 26.00	C
Land Surveyor	IV (N)	\$ 55.00	B
Party Chief	III (N)	\$ 37.00	C
Instrument Person	II (N)	\$ 25.00	C
Inspector	III (N)	\$ 48.00	C
Inspector	II (N)	\$ 37.00	C

OVERTIME POLICY:

Category A - No overtime compensation.

Category B - Overtime compensated at straight time rate.

Category C - Overtime compensated at straight time rate x 1.50.

Overtime applies to hours worked in excess of the normal working hours of 40 hours per week.

PREVAILING WAGE RATES	Rate	Individual's		Payroll		
		Actual Rate	Diff.	Additive	Total	
Party Chief	\$47.37	\$30.86	\$16.51	\$1.49	\$18.00	
Instrument Person	\$43.51	\$22.41	\$21.10	\$1.90	\$23.00	
SUPPLEMENTAL BENEFITS:	Benefit	Normal Firm's Rate	Difference (Net)	Wage Adjust.	Payroll Additive	Total
Party Chief	\$28.05	\$10.62	\$17.43	0.00	\$1.57	\$19.00
Instrument Person	\$28.05	\$6.03	\$22.02	0.00	\$1.98	\$24.00

DEC01-C01085GG Hubbs Road Trail
Town of Clifton Park

M. J. Engineering and Land Surveying, P. C.
Exhibit A, Page 2 Staffing Table

	ASCE (A) OR NICET (N) GRADE	T A S K S								TOTAL HOURS	HOURLY RATE	LABOR
		1	2	3	4	5	6	7	8			
Project Manager	VII (A)	2	2	4	4	4	2	2	2	16	\$ 74.00	\$ 1,184.00
Engineer IV	IV (A)	8	4	12	4	16	4	16	16	64	\$ 51.00	\$ 3,264.00
Engineer III	III (A)	8	4	24	16	4	16	16	32	120	\$ 38.00	\$ 4,560.00
Engineer II	II (A)			24				32	40	96	\$ 32.00	\$ 3,072.00
Technician IV	IV (N)			4				4		8	\$ 51.00	\$ 408.00
Technician III	III (N)		4	24	4	4	24			56	\$ 35.00	\$ 1,960.00
Technician II	II (N)		12		3					15	\$ 26.00	\$ 390.00
Land Surveyor	IV (N)		2		2					4	\$ 55.00	\$ 220.00
Party Chief	III (N)		16							16	\$ 37.00	\$ 592.00
Instrument Person	II (N)		16							16	\$ 25.00	\$ 400.00
		18	60	92	20	13	96	22	90	411	\$	\$ 16,050.00

Tasks:

- 1 General / Subconsultant Mgmt
- 2 Data Collection
- 3 Preliminary Design
- 4 Environmental
- 5 Right-of-Way
- 6 Detailed Design
- 7 Advertisement, Bid Opening and Award
- 8 Construction Support

DEC01-C01085GG Hubbs Road Trail
Town of Clifton Park

M. J. Engineering and Land Surveying, P. C.
Exhibit A, Page 3 Staffing Table

Construction Support Services - Task 9

JOB TITLE	ASCE OR NICET GRADE	Task 9												(1)	(2)	(3)	(4)	(5)	(6)						
		2024																							
		0	2	5	5	2	0	0	0	0	M	J	J							A	S	O	N	D	
Inspector	III (N)	0	16	40	40	16	0	0	0	0	0	0	0	0	0	0	0	112	0	\$48.00	\$24.00	\$48.00	\$0.00	\$5,376.00	\$0.00
	Overtime	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			\$48.00	\$0.00	\$48.00	\$0.00	\$0.00	\$0.00
Inspector	II (N)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$37.00	\$18.50	\$37.00	\$0.00	\$0.00	\$0.00
	Overtime	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			\$37.00	\$0.00	\$37.00	\$0.00	\$0.00	\$0.00
														112	0			\$0.00	\$5,376.00						

Task 9 Construction Inspection

- NOTES:
 ** Overtime Hours
 (1) Total Hours (straight time)
 (2) Total Hours (overtime)
 (3) Projected Hourly Rate (straight time rate)
 (4) Projected Hourly Rate (premium rate)
 (5) Direct Technical Salaries (premium portion)
 (6) Direct Technical Salaries (straight time portion)

**DEC01-C01085GG Hubbs Road Trail
Town of Clifton Park**

**M. J. Engineering and Land Surveying, P. C.
Exhibit B, Page 1 Estimate of Direct Non-Salary Cost**

1. Travel

4	trips	16	miles/trip		
64	mi. >	\$0.625	/mile	\$	40.00

2. Survey Personnel Costs

Prevailing Wage Rates	Hours @	Rate			
Party Chief	16	\$18.00	\$	288.00	
Instrument Person	16	\$23.00	\$	368.00	
Supplemental Benefits					
Party Chief	16	\$19.00	\$	304.00	
Instrument Person	16	\$24.00	\$	384.00	
Total Design DNSC				\$	1,384.00

Construction Inspection

1. TRAVEL

a) On-Job Travel -	14	days	30	miles/day	
	420	mi. >	\$0.625	/mile	\$ 262.50

2. EXPENDABLE EQUIPMENT & MISCELLANEOUS EXPENSES

Appia License -				\$	2,373.00
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Total CI DNSC \$ 2,635.50

Subcontractor DNSC

On-Site Material Testing				\$	-
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SEIDNER CONSULTING ENGINEERING AND LAND SURVEYING, D.P.C.

Rubbs Road Multi Use Path
DO _____ PIW _____
Civil and Env
County - Saratoga

JOB TITLE	TASK #=>				SHPO Coord	DD	CD	Hours	PROJECTED HOURLY SALARY RATE	TOTAL DIRECT TECHNICAL	LABOR
	1	2	3	4							
Principal							0	\$90.00			\$0.00
Senior Managing Engineer							0	\$73.48			\$0.00
Land Surveyor III							0	\$80.33			\$0.00
Managing Engineer II							0	\$66.47			\$0.00
Managing Engineer I							0	\$61.11			\$0.00
Sr. Managing Env. Scientist VI		1	18	12			31	\$52.50			\$1,627.50
Sr. Project Engineer							0	\$48.83			\$0.00
Land Surveyor II							0	\$54.29			\$0.00
Land Surveyor I							0	\$41.00			\$0.00
Project Engineer							0	\$48.83			\$0.00
Environmental Scientist IV							0	\$45.15			\$0.00
Geologist IV							0	\$39.17			\$0.00
Resident Engineer							0	\$46.73			\$0.00
Sr. Engineering Technician IV							0	\$37.80			\$0.00
Technician IV							0	\$37.80			\$0.00
Engineer							0	\$42.68			\$0.00
Environmental Scientist III							2	\$42.16			\$84.32
Geologist III		2					2	\$39.17			\$0.00
Sr. Inspector							0	\$46.55			\$0.00
Technician III							0	\$32.68			\$0.00
Sr. Engineering Technician III							0	\$32.74			\$0.00
Environmental Scientist II							8	\$29.09			\$232.72
Assistant Engineer							85	\$30.24			\$1,663.20
Inspector			36	19			0	\$46.20			\$0.00
Engineering Technician							0	\$28.80			\$0.00
Technician II							0	\$26.16			\$0.00
Environmental Scientist I							0	\$26.95			\$0.00
Jr. Engineer				51	18		69	\$28.61			\$1,974.09
Junior Inspector							0	\$30.98			\$0.00
Technician							0	\$21.39			\$0.00
Technical Typist							0	\$19.95			\$0.00
Party Chief							0	\$33.61			\$0.00
Instrument Person							0	\$26.76			\$0.00
Rod Person							0	\$22.55			\$0.00

TOTAL

11 105 49 0 165

\$5,581.83

SHUMAKER CONSULTING ENGINEERING AND LAND SURVEYING, D.P.C.
 Hubbs Road Multi Use Path
 D0 _____ PIN _____
 Civil and Env
 County - Saratoga

Item IA, Direct Technical
 Salaries (estimated)
 subject to audit \$5,581.83

Item II, Direct Non-
 Salary Cost (estimated)
 (Direct expenses) \$18.75

Item II Direct Non-
 Salary Cost (estimated)
 subject to audit
 (Sub-Consultant and Sub-Contractor Cost) \$0.00

Item III, Overhead			
(estimated) subject	Field	Office	
to audit	1.24	1.67	\$9,321.66

Item IV, Fixed
 Fee (negotiated) \$1,937.45

Total Estimated Cost	-----
	\$16,859.69
	=====

**DEC01-C01085GG Hubbs Road Trail
Town of Clifton Park**

**M. J. Engineering and Land Surveying, P. C.
Exhibit C SUMMARY**

		Task 1-8 Design	Task 9 Construction Inspection	Total
Item IA, Direct Technical Salaries		\$16,050	\$5,376	\$21,426
Item IB, Direct Technical Salaries Premium Portion of Overtime		\$0	\$0	\$0
Item IIA, Direct Non-Salary Cost		\$1,384	\$2,636	\$4,020
Item IIB, Direct Non-Salary Cost (Sub-Contractor Cost)		\$0	\$0	\$0
Item III, Overhead CONR FYE 2021	187% 143%	\$30,007	\$7,688	\$30,007 \$7,688
Item IV Fixed Fee		\$5,400	\$1,600	\$7,000
Item IIC, Direct Non-Salary Cost Subconsultant SHUMAKER CONSULTING ENGINEERING AND LAND		\$16,859	\$0	\$16,859
Total Estimated Cost		\$69,700	\$17,300	\$87,000

Reviewer Name:

Engineering Firm Name:

M.J. Engineering

Hubbs Road Multi-Use Path (NYS DEC 01-C01085GG)

	Raw Score	Weight	Weighted Score
General Firm Information		5	0.0
Experience of Firm		10	0.0
Scope of Services		15	0.0
Expertise - Similar Transportation / Trail Projects		15	0.0
Insurance, Non-Discrimination & M/WBE (30% GOAL for this NYS DEC Climate Smart Community funded project)		5	0.0



Total Weighted Score =	0.0
------------------------	-----

RESOLUTION

2

Resolution No. _____ of 2022, a resolution authorizing Change Order #1 to the existing NYS DEC Climate Smart Communities Grant Contract for the Route 146 Sidewalk Extension Northside Project.

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

WHEREAS, the Town has an existing contract with NYSDEC authorized by Resolution No. 22 of 2022 and executed on February 8, 2022, for the New York State Route 146 Sidewalk Extension Northside Project, and

WHEREAS, the Town Board wishes to authorize Change Order #1 for a no-cost time extension until March 14, 2023; now, therefore, be it

RESOLVED, that the Town Board authorizes Change Order # 1 to amend the deadline for completion of the Route 146 Sidewalk Extension Northside Project.

Meg Springli

From: noreply
Sent: Friday, December 2, 2022 1:36 PM
To: Meg Springli
Cc: Jean, Spiegel; Mark Heggen; Tom McCarthy
Subject: Resolution Request for TB Meeting: 12-12-2022 or December 19, 2022 Planning
Attachments: 638a45877a973-Request No Cost Time Extension_DEC01-C00592GG Town_Clifton Park_Rt 146 Sidewalk Extension_9-16-22.pdf; 638a45877cc53-ContractDocumentsU-DEC01-C00592GG-3350000-P1-112522.pdf

COMPTROLLER APPROVAL or Comments:

ATTORNEY APPROVAL or Comments:

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: **12-12-2022**

Alternate Date **December 19, 2022**

Brief Description: **This request is for the Town Board to authorize the Supervisor to execute a contract amendment for the Town's requested, one-year time extension for an existing state grant contract for DEC01-C00592GG Town of Clifton Park Route 146 Sidewalk Extension. The town has made significant good faith progress with this contract and is currently in the Right-of-Way acquisition phase of the project, with construction planned for 2023. The extension was requested from a current end of contract term of 03/14/2023 to the requested contract term end date of 03/14/2024. The extension will help ensure all eligible reimbursement costs can be processed and funds received by the town.**

Budget #: **H62 Capital Project - Town of Clifton Park Route 146 Sidewalk Extension**
Budget Description: **no new budgetary request - this is regarding a request for grant contract time period extension**
\$ Amount: **not applicable**

Additional Comments/Details: **This grant contract amendment proposed is for the existing Clifton Park Route 146 Sidewalk project, authorized by TB Resolution 22 of 2022 (Jan. 18, 2022) for the master grant contract.**



Town of Clifton Park

Planning Department

One Town Hall Plaza | Clifton Park, New York 12065 | (518) 371-6054 | FAX: (518) 371-1136

September 16, 2022

Myra Fedyniak
Climate Policy Analyst 1
Office Of Climate Change
NYS Dept. of Environmental Conservation
625 Broadway, Albany NY 12233-1030

RE: Request for No Cost Time Extension
DEC01-C00592GG – Town of Clifton Park Route 146 Sidewalk Extension
2017 Climate Smart Communities Grant Contract

Dear Ms. Fedyniak:

The Town of Clifton Park is aware that its 2017 Climate Smart Communities Grant contract will expire on March 14, 2023. The Town understands that requests for extensions will be considered on a case-by-case basis, and we respectfully request the NYS DEC's understanding and support in granting the Town of Clifton Park a 1-year extension to March 14, 2024. We believe the construction will be fully completed during the 2023 construction season, but we want to ensure that there is sufficient time for the very few right-of-way strips needed and the post-construction analysis and all required reporting deliverables are able to be incorporated into the complete project schedule.

Justification for Request for Extension: The Town of Clifton Park and the NYS DEC executed the State Grant Contract on February 8, 2022, only seven (7) months ago, and the Town has made tremendous progress to advance the project deliverables. COVID-19 contributed to this project's delay in getting to the contract execution. However, since December 2021, the Town has made this project a key priority, and completed a significant number of key activities and tasks in a timely manner from 12/21 through 9/15/2022 including all of the surveying, and engineering design.

Below please find key tasks and deliverables successfully completed from December 2021 through mid-September 2022:

- Conducted an initial grant contract meeting with NYS DEC in December 2021. Submitted written meeting minutes.
- Submitted Draft and Final Engineering RFQ to NYS DEC in December 2021.
- Conducted RFQ search in December 2021.
- Selected Engineering Consultant in January 2022.
- The **State Contract Execution date for this project was February 8, 2022.**
- Submitted Executed Consultant Contract to NYS DEC.
- Held Project Meeting with Engineering Consultant and NYS DEC on March 1, 2022. Submitted Meeting Minutes to DEC.
- Engineering consultants prepared the Preliminary Draft Design Scheme Review Report, and this was submitted to NYS DEC on May 24, 2022.
- The Final Design Scope Report was submitted to NYS DEC in June 2022.
- Draft Right-Of-Way (ROW) maps were submitted to the Town of Clifton Park on August 17, 2022; and forwarded to NYS DEC on Sept. 6, 2022.
- The 75% Design Plans (designs, specifications and construction documents) were prepared and submitted to NYS DEC on 9/6/2022.

- Two (2) Quarterly Reports were submitted in 2022: in March 2022; and in July 2022. The next quarterly report will be submitted in October 2022.

Next Steps/Proposed Schedule:

- The baseline counting and GHG baseline assessment for existing pedestrian use of the corridor for the GHG assessment part of the project, will be conducted in September/October 2022; and the follow-up measurement of GHG post-project construction will be done in the Spring 2023, soon after the construction completion and opening of the new sidewalks.
- A public presentation by consultants, MJ Engineering, is scheduled for Monday, Oct. 17, 2022 at the Town of Clifton Park Town Hall, starting with an Open House at 6:30 p.m. followed by a presentation at 7 p.m. during the Town Board meeting scheduled. NYS DEC is invited to the Open House and public presentation, in addition to the entire public.
- Following public comments and any revisions, MJ Engineering will assist the town in getting to Final Design and final plans/specifications/estimates and full construction bidding documents, and this will be submitted to NYS DEC by early December 2022.
- The Town will conduct public bidding after that, with timing to be guided by engineers' recommendations, either December or January 2022.

The Town has come close to meeting its goal for a fall construction timing, but it will be too tight from a logistics and materials to realistically conduct public bidding; contract execution and get the project fully constructed this fall. The Town fully anticipates a 2023 construction season schedule to be possible however, but March 23, 2023, will be too tight to be realistic with winter weather and temperatures. It is preferable to pour concrete with warmer temperatures to achieve the best results. With the fact that the Town has gotten so close to construction it is hoped that the NYS DEC will have the confidence to trust that the Town will see this project through in the next available construction season of 2023.

Thank you for your time and kind consideration of this request for a no-cost time extension for the Town of Clifton Park for the requested end date of March 14, 2024. If you have any additional questions or require additional information in support of this request, please call me at (518) 371-6054.

Sincerely,



John P. Scavo
Director of Planning

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 type="checkbox"/> New <input type="checkbox"/> Renewal <input checked="" 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: Exemption State/Code: <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: 03/15/2018 To: 03/14/2024</p> <p>AMENDED PERIOD: From: 03/15/2018 To: 03/14/2024</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 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-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 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 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(A) - EXPENDITURE BASED BUDGET (AMENDMENT)
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: 03/14/2024

AMENDMENT VERSION NUMBER: _____

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

ATTACHMENT B-1(A) - EXPENDITURE BASED BUDGET (AMENDMENT)
NON-PERSONAL SERVICES DETAIL

CONTRACTUAL SERVICES - TYPE/DESCRIPTION	TOTAL
Engineering Design Services - M J ENGINEERING AND LAND SURVEYING P C	\$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(A) - EXPENDITURE BASED BUDGET (AMENDMENT)
 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 B-1 (A) EXPENDITURE BASED BUDGET (AMENDMENT)
JUSTIFICATION

Please provide a justification for the amendments herein:

Modification request for a no cost time extension is acceptable and approved.

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: 03/14/2024

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. - .
<u>Performance Measures</u>
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.
<u>Performance Measures</u>
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 - .
<u>Performance Measures</u>
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 - .
<u>Performance Measures</u>
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. - .
<u>Performance Measures</u>
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. Complete engineering design
Tasks
3.1 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 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 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. - .
<u>Performance Measures</u>
4.1.1 4.a.i. Copies of Draft ROW Maps submitted to DEC OCC. - .
Tasks
4.2 4.b. ROW Acquisition Phase completed.
<u>Performance Measures</u>
4.2.1 4.b.i. Copies of Final ROW Maps 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.

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

Contract Number: # DEC01-C00592GG-3350000

RESOLUTION

3

Resolution No. ____ of 2022, a resolution scheduling a public hearing to consider a local law regarding the installation of lock box entry systems for emergency Services in multiple dwelling residential buildings without 24/7 access

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

WHEREAS, Chapter 99 of the Town Code provides for key box lock box systems for the use of the Town's various Fire Companies to access multiple family residential apartments in emergency circumstances, in cases where there is no 24 hour staffing to provide such access, and

WHEREAS The Clifton Park-Halfmoon Emergency Medical Services unit has worked with the Center for Security to develop and manufacture a high security lockbox system for the use of emergency medical Service companies throughout the Town for the same purposes, and

WHEREAS, The Bureau of Fire Prevention has recommended that the Town Board consider a proposal to require these lock box systems in multiple dwelling residential buildings where the lobby or other common entrance is not staffed on a 24 hour basis, so that EMS units can achieve timely access to individual apartments or dwelling units as necessary; now, therefore, be it

RESOLVED, that the Town Board will hold a Public Hearing on January 9, 2023, at 7:05 PM, on a proposal to require a Supra max lock box system, or other approved system, in multi-family residential dwelling structures in cases where common area access is not staffed on a 24 hour basis, commencing June 30, 2023.

The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

§ 99-1 Title.

This chapter shall be known as the "Emergency Access Systems Local Law of the Town of Clifton Park."

§ 99-2 Intent.

The Town of Clifton Park has recognized the importance of providing the Town's emergency services personnel rapid entry into locked buildings in the case of an emergency. An emergency access systems local law provides for the placement, in secured locked containers, of keys to important areas within a structure and information that may be vital and necessary to the health, safety, and welfare of the occupants and responding emergency crews. The delay in gaining entry can result in substantial property damage, delays in providing lifesaving or other medical procedures, and increased danger for emergency services personnel and the building occupants. To assist the emergency service providers in gaining rapid entry, the Town of Clifton Park adopts an emergency access systems local law.

§ 99-3 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AUTOMATIC FIRE-SUPPRESSION SYSTEM

A system or assembly of piping, valves, controls and sprinklers which are designed and installed to comply with the National Fire Protection Association (NFPA) standards, which utilize water, foam, carbon dioxide or other gas to automatically react to and suppress fire.

BUREAU OF FIRE PREVENTION

The Town of Clifton Park Bureau of Fire Prevention, 1 Town Hall Plaza, Clifton Park, NY 12065.

EMERGENCY ALARM

Any device designed to alert police, fire or emergency medical personnel to an emergency condition requiring attention and to which police, fire or emergency medical service units are expected to respond. This definition shall include alarms that terminate at an answering service, as well as those that emit an audible or visible signal.

FALSE ALARM

An alarm signal from an emergency alarm or notification by an emergency alarm answering service which calls for an emergency response from the Town of Clifton Park Building Department, Fire Services or Emergency Medical Services where an emergency situation does not in fact exist. The term "false alarm" shall not include an alarm signal caused by testing or repairing of telephone or electrical lines or equipment outside of the premises, providing the responding agencies have been properly notified, an attempted illegal entry of which there is visible evidence, violent conditions of nature or other extraordinary circumstances not reasonably subject to control by the alarm user or alarm supplier.

KEY BOX

A high-security key vault of UL type approved by the Town of Clifton Park Bureau of Fire Prevention, master keyed with a Medeco Biaxial Level 7 or equivalent lock. Locks shall be keyed to the key configuration provided by the Town of Clifton Park. Such vaults shall have weatherproof gaskets, shall have a covered lock opening and shall be highly resistant to drilling or vandalism.

SUPRA MAX KEY BOX

The Supra Max lock box system is a high security key vault system, type approved by the Clifton Park Bureau of Fire Prevention to provide secure access to residences within multiple dwelling residential structures Lock box system can enable timely Emergency access to residential dwellings in cases where

Apartments, condominiums and other multi-family residential units utilize securitized common access areas.

KEY BOX DOCUMENT VAULT

A high-security steel plate vault, a minimum of 14 inches high by 12 inches wide by two inches deep, constructed to the same standards as the lock box, for the storage of documents.

§ 99-4 Applicability.

This chapter shall apply as follows:

- A. All buildings located within the Town of Clifton Park having an automatic fire alarm system or a fire sprinkler system shall be equipped with a key box or key box document vault.
- B. Any building having three or more false alarms within a six-month period shall be equipped with a key box or key box document vault.

§ 99-5 Exceptions.

One- and two-family dwellings and buildings having a twenty-four hour, seven-day-per-week guard system shall be specifically exempted from the requirements for a key box.

§ 99-6 Installation requirements.

- A. The key box shall be installed on the front of the building, near the main entry door approximately six feet above the ground, unless approved for another location or at a higher or lower level by the Bureau of Fire Prevention. That office must approve all installations.
- B. Keys within the lock box shall be labeled for easy identification either by the tenant name or indexed to a floor plan of the building and shall be kept current.
- C. The key box shall contain the following:
 - (1) Unless otherwise agreed upon with the local fire chief, key(s), fob(s) or magnetic cards for the exterior doors, the keys or magnetic cards for all the interior doors identified in Subsection **C(2)** to **(5)** below within the building, and a scaled floor plan of the building. Mixed occupancies and strip shopping center keys shall be provided only for occupancies where system control valves or fire alarm system panels exist.
 - (2) Keys, fob(s) or magnet cards to locked mechanical equipment and sprinkler control rooms.
 - (3) Keys, fob(s) or magnet cards to locked electrical rooms or panels or fire alarm control panels.
 - (4) Keys, fob(s) or magnet cards to locked elevator rooms or controls, and elevator keys, if required.
 - (5) Keys, fob(s) or magnet cards to other areas as directed by the Bureau of Fire Prevention.
 - (6) Access codes to digital fire alarm keypads.
- D. The key box document vault shall contain those items required to be stored in a key box and, unless the local fire chief otherwise agrees, the following additional items:
 - (1) A current list of facility personnel knowledgeable about safety procedures of the materials on site, complete with the telephone numbers for each person.
 - (2) A current emergency and hazardous chemical inventory form and binder containing the material safety data sheets (MSDS) or, in the event that the volume of MSDS sheets is too great to keep practically in

the document vault, the location of on-site MSDS, and those MSDS shall be readily available for use by emergency response personnel.

- (3) A facility site plan showing the location of storage and use of hazardous materials on site, and any other building floor plan deemed necessary by the Bureau of Fire Prevention.

899-7 Emergency Access to Residential facilities.

A. Effective June 30, 2023, each multiple dwelling residential structure shall install a Supra Max lock box system, as approved by the Bureau of fire Prevention, to provide Emergency Medical Services with 24 hour access to the common areas of each residential structure to provide timely access to residential units within each building, unless staffed on a 24 hour seven day per week basis for entry.

B.

§ 99-7 Time for compliance.

- A. All existing buildings covered by this chapter shall comply within 18 months of the effective date of this chapter.
- B. All new construction covered by this chapter, including buildings currently under construction as of the effective date, for which no certificate of occupancy has been issued, shall comply immediately.

§ 99-8 Tampering.

It shall be unlawful for any person to tamper, meddle, deface, vandalize or interfere in any way with an emergency access system.

§ 99-9 Penalties for offenses.

- A. Any person who shall fail to comply with any of the applicable provisions of this chapter, or any lawful order, notice, directive, permit or certificate of the Bureau of Fire Prevention or of the Town of Clifton Park Building Department made hereunder, shall be punishable by a fine of up to \$500. Each week that a violation continues shall be deemed a separate offense.
- B. In lieu of said fine, any person charged with violating the provisions of this chapter shall immediately install and maintain a key box or key box document vault subject to approval of the Bureau of Fire Prevention.
- C. Except as provided otherwise by law, such a violation shall not be a crime, and the penalty or punishment imposed therefore shall not be deemed for any purpose a penal or criminal penalty or punishment.
- D. Any person found to have violated the tampering section of this chapter, vandalized or disabled any key box, key box documents or other equipment installed in compliance with this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not to exceed \$1,000 or a term of imprisonment not to exceed 15 days, or both such fine and imprisonment.

§ 99-10 Administration and enforcement.

The Bureau of Fire Prevention and the Town of Clifton Park Building Department shall administer the provisions of this chapter. The Bureau of Fire Prevention and the Town of Clifton Park Building Department

shall enforce the provisions.

Meg Springli

From: noreply
Sent: Monday, November 28, 2022 3:52 PM
To: Meg Springli
Cc: Jean, Spiegel; Mark Heggen; Tom McCarthy
Subject: Resolution Request for TB Meeting: 12-12-2022 legal
Attachments: 63851f7ff1382-Resolution Scheduling a Public Hearing.doc; 63851f7ff1cc3-Chapter 99-emergency access.docx

COMPTROLLER APPROVAL or Comments:

ATTORNEY APPROVAL or Comments:

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

Department: **legal**
Your email: **tmccarthy@cliftonpark.org**

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

Requested Meeting Date: **12-12-2022**

Brief Description: **Lock Boxes for EMS**

Budget #: **none**
Budget Description: **none**
\$ Amount: **0**

Additional Comments/Details: **whenever convenient**

RESOLUTION

4

Resolution No. _____ of 2022, a resolution adopting a local law to amend Town Code relative to certain Titles and Departments.

Introduced by Councilman Morelli, who moved its adoption, seconded by Supervisor

WHEREAS, the Town Board reorganized the Department of Building and Development, transferred responsibility for Zoning Administration to the Planning Department, and updated job descriptions for certain titles within these departments, in August 2022, and

WHEREAS, the Town Board also updated the job description for the Director of Parks & Recreation, and

WHEREAS, on August 15, 2022, the Town Board held a public hearing on a proposal to consider a local law to amend certain Department Titles and descriptions in sections of Town Code to reflect changes made to the descriptions and assignments within each department, and

WHEREAS, members of the public were provided an opportunity to speak in favor of or against the proposal, and

WHEREAS, the Town Board wishes to make amendments to the various chapters within the Town Code to accurately reflect the titles and responsibilities within the code; now, therefore, be it

RESOLVED, that Local Law # _____ of 2022, a local law enacting the attached amendments to the chapters of the Town Code as attached, is hereby adopted, and be it further

RESOLVED, that the Town Clerk publish appropriate notice of the same.

Resolution No. 202 of 2022, a resolution scheduling a public hearing to amend the Town Code regarding department and job title changes of certain departments in the Town of Clifton Park.

Introduced by Councilwoman Standaert, who moved its adoption, seconded by Councilman Morelli.

WHEREAS, Supervisor Barrett met with the Building and the Planning Department staff to discuss the redistribution of responsibilities after the retirement of Steven Myers as Director of Building and Zoning, and recommends changes in titles, as listed in Table 1, to reflect these amendments, and

WHEREAS, the Supervisor recommends the following reorganization of the Building & Development and Planning Departments, per Table 1, to consolidate land use functions and to efficiently service residents, developers, and contractors regarding land use applications within the Town, and

WHEREAS, Supervisor Barrett also recommends a change in the title and description of the Parks & Recreation Department, also listed in Table 1, and

Table 1

	Current Title	Proposed	Code Section(s)
1.	Planning Department	Planning & Zoning Department	Chapters 1, 36, 103, 125, 171, 179, 208
2.	Director of Building & Zoning	Director of Building & Development	Chapters 5, 11, 119, 169, 171, 208
3.	Director of Planning	Director of Planning & Zoning	Chapters 36, 86, 125, 179, 208
4.	Department of Parks, Recreation, and Community Affairs	Department of Parks and Recreation	Chapters 34, 35, 153
5.	Director of Parks, Recreation, and Community Affairs	Director of Parks and Recreation	Chapter 34
6.	Stormwater Management Technician	Stormwater Management Officer	Chapter 13

WHEREAS, the Town Board wishes to schedule a public hearing to solicit the views and input from the community on the proposal; now, therefore, be it

RESOLVED, that a public hearing will be held on August 15, 2022 at 7:05 PM, on a proposal to adjust titles, per the attached draft legislation; and be it further

RESOLVED, that the Town Clerk is directed to publish appropriate notice of the same.

ROLL CALL VOTE

Ayes: Councilwoman Flood, Councilwoman Standaert, Councilman Morelli,
Councilwoman Walowit, Supervisor Barrett

Noes: None

DECLARED ADOPTED
August 1, 2022

Teresa Brobston, Town Clerk

Chapter 5 Department of Building and Development → Consistent, no change required

Director of Building and Zoning → Director of Building and Development

Need to review section on appointment and section on zoning enforcement

Chapter 5

Building and Development, Department of

[HISTORY: Adopted by the Town Board of the Town of Clifton Park 4-21-1986 by L.L. No. 2-1986. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction and fire prevention — See Ch. **73**.

Construction and design standards — See Ch. **86**.

Fire prevention — See Ch. **114**.

Flood damage prevention — See Ch. **119**.

Zoning — See Ch. **208**.

§ 5-1 Purpose.

It is the purpose of this chapter to establish, pursuant to Article 3-A of the Town Law, a new department entitled "Department of Building and Development" in order to provide effective and efficient administration and enforcement of laws relating to zoning, fire prevention and building construction.

§ 5-2 Establishment.

The Department of Building and Development of the Town of Clifton Park is hereby established.

§ 5-3 Department Director.

[Amended 9-21-1987 by L.L. No. 9-1987; 4-18-1988 by L.L. No. 4-1988; 4-6-1998 by L.L. No. 2-1998]

- A. Department head. The head of the Department of Building and Development shall be known as the "Director of Building and [Zoning] Development," hereafter in Chapter 5 referred to as "the Director", and shall be appointed by the Town Board, and serve at the pleasure of the Town Board.
- B. (Reserved)
- C. [Appointment and term of office. The Director [of Building and Zoning] shall be appointed by the Town Board and shall hold office until the first day of January next succeeding the first biannual town election held after his/her appointment, and thereafter, shall hold office for the term of two years and until his/her successor shall have qualified; provided, however, that the appointees to such office shall be removable at the pleasure of the Town Board.](Reserved)
- D. Salary. The salary of the Director [of Building and Zoning] shall be determined in the same manner as is provided in the annual budget for the salaries of other town officers.
- E. Duties and authority.
 - (1) The Director [of Building and Zoning] shall be the principal executive officer of the Department.

- (2) The Director shall have the duty to oversee the enforcement, administration of and compliance with the laws relating to zoning, fire safety, fire prevention and building construction, including but not limited to Local Law No. 2-1967, entitled "A Local Law Relating to Zoning for the Town of Clifton Park," as amended or as may be amended; Local Law No. 24-1975, entitled "A Local Law adopting a Fire Prevention Code, prescribing regulations governing conditions hazardous to life and property from fire and explosion and establishing a Bureau of Fire Prevention and providing officers therefor and defining their powers and duties," as amended or as may be amended; and the New York State Uniform Fire Prevention and Building Code Act, as amended or as may be amended.
- (3) The **Director [of Building and Zoning]** shall be subject to the supervision and direction of the Town Board and the Town Supervisor.

**§ 5-4 Bureaus within Department.
[Amended 4-6-1998 by L.L. No. 2-1998]**

The Department of Building and Development shall consist of the Bureau of Fire Prevention and[,] the Building Department[and the **Bureau of Zoning Administration and Enforcement]**.

A. Bureau of Fire Prevention. The Bureau of Fire Prevention, heretofore established pursuant to Local Law No. 24-1975, shall continue, except that the Chief of the Bureau of Fire Prevention shall be subject to the supervision and direction of the Director of Building and [Zoning] **Development** and to the Town Supervisor; and to the extent that Section 2(c) of Local Law No. 24-1975 is inconsistent herewith, it is repealed.

B. **Building and Development Department.**

(1) The [Building Department is hereby abolished and shall be reconstituted as part of the] Department of Building and Development [and] shall consist of Senior Building **Inspectors, Code Enforcement Officers,** and such deputy building **inspectors, administrative staff, and** clerks as the Town Board may appoint.

(2) The Senior Building **Inspectors, Code Enforcement Officers** and deputies, **administrative staff, and** clerks shall be subject to the supervision and direction of the **Director[of Building and Zoning] of the Department.**

C. **[Bureau of Zoning Enforcement.**

(1) **The Bureau of Zoning Enforcement is hereby created and shall consist of the Zoning Administrator and such deputy zoning enforcement officers and clerks as the Town Board may appoint.**

(2) **The Zoning Enforcement Officer and deputies and clerks shall be subject to the supervision and direction of the Director Building and Zoning.] (Reserved)**

**§ 5-5 Appointment and removal of bureau officers.
[Amended 4-18-1988 by L.L. No. 4-1988; 4-6-1998 by L.L. No. 2-1998]**

The Director [of Building and Zoning], the Chief of the Bureau of Fire Prevention, the Senior Building Inspector, **[the Zoning Enforcement Officer]** and deputies thereto and clerks thereto shall be appointed by the Town Board on the basis of a civil service competitive examination and shall not be removed except in accordance with the Civil Service Law of the State of New York.

**§ 5-6 Emergency Services Advisory Board.
[Added 3-6-1989 by L.L. No. 7-1989; amended 12-16-1996 by L.L. No. 13-1996; 4-6-1998 by L.L. No. 2-1998; 8-6-2018 by L.L. No. 4-2018]**

The Emergency Services Advisory Board (ESAB) of the Town of Clifton Park is hereby established. The Board shall consist of one member from each of the six fire districts and one member from each of the

ambulance corps in the Town of Clifton Park and a Chairman appointed at large. The members shall be appointed by the Town Board as follows upon December 31: two members shall be appointed for one year, two members shall be appointed for two years, and two members shall be appointed for three years. All reappointments or subsequent appointments shall be for three-year terms. The Town Board shall seek recommendations for appointments to the Emergency Services Advisory Board from the respective fire district officials and ambulance services. The Emergency Services Advisory Board shall consider matters concerning fire prevention and protection on a town-wide basis. It shall make recommendations concerning these matters to the Director [of Building and Zoning] and the Town Board. The Advisory Board shall meet at least every three months at the direction of the Chairman or more often, at the call of the Chair, if necessary. The Town Board may seek the advice of the Emergency Services Advisory Board when considering candidates for the position of Chief of the Bureau of Fire Prevention.

§ 5-7 Additional rules and regulations.
[Added 3-6-1989 by L.L No. 7-1989]

The Town Board may adopt such further rules and regulations as it deems necessary to carry out the provisions of this chapter. The Town Board shall consider recommendations of the Director [of of Building and Zoning] regarding such rules and regulations, and the adoption, amendment or repeal thereof, as relate to efficient administration and enforcement of the provisions of the New York State Uniform Fire Prevention and Building Code. Such proposed rules and regulations shall not conflict with the Uniform Code, any local law or any other provision of law.

Director of Building & Zoning → Director of Building and Development

§ 11-6 Powers and duties.

The Emergency Services Advisory Board shall consider matters concerning fire prevention and protection on a Town-wide basis. It shall make recommendations concerning these matters to the Director of Building and **[Zoning] Development** and the Town Board. The Advisory Board shall meet at least every three months at the direction of the Chairman or more often, at the call of the Chair, if necessary. The Town Board may seek the advice of the Emergency Services Advisory Board when considering candidates for the position of Chief of the Bureau of Fire Prevention.

§ 169-4 Defined terms; word usage.

B. As used in this chapter, the following words shall have the meanings indicated:

DESIGNATED REPRESENTATIVE

The Director of Building **and [Zoning] Development**, or his designee, shall be responsible for the enforcement of the rules and regulations herein promulgated, and to carry out the day-to-day duties as required under this Sewer Use Law as the representative of the Town Board.

§ 171-3 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

DIRECTOR

The Director of Building and **[Zoning] Development**.

§ 208-7 Definitions and word usage.

A. Certain words and terms used in this chapter are defined, for the purposes thereof, as follows:

BUILDING INSPECTOR

The Director of Building and **[Zoning] Development** of the Town of Clifton Park and/or his designee.

ZONING ENFORCEMENT OFFICER

The Director of Building and **[Zoning] Development** of the Town of Clifton Park or his designee.

§ 208-78 Historic Preservation.

[Amended 10-10-2006 by L.L. No. 10-2006; 12-1-2008 by L.L. No. 9-2008]

E. Landmarks.

(3) Upon designation by the Town Board, the Town Clerk shall record and forward notice of each property designated as a landmark to the Town of Clifton Park Assessor and the Director of Building and **[Zoning] Development**.

(4) (a) Certificate of appropriateness. Any alterations, modifications or additions to a landmark

building or structure shall be aesthetically and architecturally compatible with the existing building. No person shall carry out any exterior alteration, restoration, reconstruction, demolition or new construction or move a landmark, nor shall any person make any material changes in the appearance of such a property, its light fixtures, signs, sidewalks, fences, steps, paving or other exterior elements which affect the appearance of the landmark, without first obtaining a review by the Historic Preservation Commission and a certificate of appropriateness, unless, in the opinion of the Director of Building and [Zoning] Development, such activity is necessary to prevent the property or structure from posing a danger to the public at large. In making a recommendation to the Planning Board on an application for a certificate of appropriateness, the Historic Preservation Commission shall not consider changes to interior spaces, unless they are open to the public, or to architectural features that are not visible from a public street or alley.

(b) [4] All decisions of the Planning Board shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the Town Clerk. The Board shall state in writing the reason for its action. A copy of the Board's decision shall also be forwarded to the Director of Building and [Zoning] Development and to the Chairperson of the Zoning Board of Appeals.

F. (1) Prior to issuing any demolition permit on a building or structure more than 49 years old, the Town Department of Building and Development, hereafter referred to as "the [Building] Department," shall notify the Historic Preservation Commission, by providing 30 days' written notice, identifying the building or structure for which such permit is sought by address and name of owner or owners, unless, in the opinion of the Building Department, the structure poses an imminent danger to health and safety.

§ 208-107 Building permits; powers and duties of Building Inspector.

[Amended 12-19-2005 by L.L. No. 12-2005; 10-10-2006 by L.L. No. 8-2006; 12-18-2006 by L.L. No. 20-2006]

J. Upon project completion, the applicant shall submit a final set of as-built plans and specifications on a CD utilizing software acceptable and usable by the Town of Clifton Park. This shall apply only to those plans requiring the stamp and signature of a professional engineer or registered architect. This requirement may be waived at the sole discretion of the Director of Building and [Zoning] Development.

Chapter 34

[Parks, Recreation and Community Affairs] Parks & Recreation, Department of

[HISTORY: Adopted by the Town Board of the Town of Clifton Park 12-28-1989 by L.L. No. 29-1989. Amendments noted where applicable.]

GENERAL REFERENCES

Parks and preserves — See Ch. 152.

§ 34-1 Purpose.

[Amended 6-28-1993 by L.L. No. 10-1993]

It is the purpose of this chapter to establish, pursuant to Article 3-A of the Town Law, a Department entitled "[Department of Parks, Recreation and Community Affairs] Department of Parks & Recreation" in order to provide effective and efficient administration.

§ 34-2 Establishment.

[Amended 6-28-1993 by L.L. No. 10-1993]

The Department of Parks[, Recreation and Community Affairs] & Recreation, in this chapter to be referred to hereafter as "The Department", is hereby established.

§ 34-3 Department head.

[Amended 6-28-1993 by L.L. No. 10-1993]

- A. The head of the Department [of Parks, Recreation and Community Affairs] shall be known as the ["Department Director of the Department of Parks, Recreation and Community Affairs."] "Director of Parks & Recreation", in this chapter to be referred to hereafter as "The Director".
- B. The position of the [Department] Director [of the Department of Parks, Recreation and Community Affairs] shall be in the classified service.
- C. The salary of the Director [of the Department of Parks, Recreation and Community Affairs] shall be determined in the same manner as is provided in the annual budget for the salaries of other town officers.

§ 34-4 Organization.

[Amended 6-28-1993 by L.L. No. 10-1993; 4-6-1998 by L.L. No. 2-1998]

The Director shall have powers as shall be necessary for the proper administration of the Department, consistent with applicable provisions of law. Until such time as the same may be either amended or modified, the Department shall be divided into the following:

- A. Recreation Services.
- B. Community Affairs.

§ 34-5 Powers and duties.

[Amended 6-28-1993 by L.L. No. 10-1993; 4-6-1998 by L.L. No. 2-1998]

- A. The functions, powers and duties therein shall be under the administration, direction and control of the Director, and shall be supervised by the Director or by **an [Deputy] Assistant Director**, who shall be designated as such, upon appointment of the Town Board.
- B. The Director may, with the approval of the Town Board after a public hearing, establish, consolidate or abolish any division or subdivision now existing or hereafter created in any such Division. The provisions of any local law to the contrary notwithstanding, the functions, powers and duties of such Division shall be as follows:
- (1) (Reserved)
 - (2) **[Recreation Services. This Division shall be charged with the planning and implementation of recreational and cultural programs as a basic town service, providing worthwhile activities for all ages. This shall include but not be limited to leisure programs of all types provided to senior citizens and handicapped persons. This Division shall include the Historian's Office and town government, which shall be incorporated into the leisure programs of this Division.] To develop and administer recreational programs for all ages, and to coordinate programs across all of the Town's parks, properties and recreational assets. Administers the Town's summer cam programs, work with subcontractors as appropriate to provide additional programming for recreational and leisure activities for all ages.**
 - (3) **[Community Affairs. This Division shall be charged with the responsibility of providing special programs and services, exclusive of the traditional recreation programs, for town residents. This shall include but not be limited to service such as the Shenendehowa senior citizens and human services for the handicapped population. This shall also include service to the youth of the town under the guidance of the Town Parks and Recreation Commission.]**

§ 34-6 Duties and authority of Director.

- A. The [Department] Director [of the Department of Parks, Recreation and Community Affairs] shall be the principal executive officer of the Department. **[Amended 6-28-1993 by L.L. No. 10-1993]**
- B. The Director shall be empowered to perform such other duties and functions that are prescribed to be performed by him/her pursuant to any local law of the Town Board or lawful directive of the Supervisor. However, the Director may delegate any of his powers to or direct any of his duties to be performed by a Deputy Director. **[Amended 4-6-1998 by L.L. No. 2-1998]**
- C. The Director shall recommend to the Town Board a schedule of fees for all facilities and programs operated by the Department. Said fees shall be established upon local law of the Town Board. The fees shall be collected either by the Department [of Parks, Recreation and Community Affairs] or by the Town Clerk, as determined by the Director and Town Clerk. **[Amended 6-28-1993 by L.L. No. 10-1993]**
- D. The Director shall recommend to the Town Board plans and specifications for improvement of all town parks and recreational facilities, as needed. **[The Director shall be authorized to hire architects, engineers and other consultants to assist in the preparation of such plans, subject to prior Town Board approval.]**
- E. The Director shall have the authority to reassign personnel to particular projects or in general as he deems necessary for the benefit of the Department or to ensure that all functions of said Department are adequately fulfilled.

§ 34-7 Personnel.

In addition to all other personnel listed hereinabove and those employees hired pursuant to the Civil Service Law, the Director shall have the right to hire a secretary, in a classified position, who shall work in a confidential capacity with the Director, subject to prior Town Board approval, and shall employ other

town employees as may be provided by the Town Board and which shall be listed on the Department organization chart attached herewith as Exhibit A.

§ 34-8 Absence of Director.

In the absence of the Director, the [Deputy] Assistant Director shall be empowered to act in his behalf.

§ 34-9 Powers of Supervisor.

Nothing herein contained shall be construed to delegate or transfer any power of the Town Supervisor as outlined in the Town Law of the State of New York or any statutory or other powers which may be lawfully executed by said Supervisor.

Department of Parks, Recreation and Community Affairs → Department of Parks & Recreation

Department of Planning → Department of Planning & Zoning

Chapter 35

Community Arts and Culture Commission

[HISTORY: Adopted by the Town Board of the Town of Clifton Park 10-15-2007 by L.L. No. 11-2007. Amendments noted where applicable.]

GENERAL REFERENCES

Department of Building and Development — See Ch. 5.

Environmental Conservation Commission — See Ch. 13.

Department of [Parks, Recreation and Community Affairs] Parks & Recreation — See Ch. 34.

Department of Planning & Zoning — See Ch. 36.

§ 35-5 Powers and duties.

The powers and duties of the Commission shall be to:

- D. **Work with the Town Director of Parks and Recreation** to develop, schedule and locate Commission-supported public activities and events.

Stormwater Management Technician change to Stormwater Management Officer

§ 13-3 Membership; terms.

- C. The Town's Stormwater Management **[Technician] Officer, or his designee,** shall attend regular meetings of the Commission and provide to the Commission reports regarding proposed actions to be undertaken, funded or approved by the Town. The Stormwater Management Technician will not vote on any action considered by the Commission. **[Added 4-6-1998 by L.L. No. 2-1998; amended 9-8-2014 by L.L. No. 7-2014]**

§ 13-5 Powers and duties.

[Amended 4-6-1998 by L.L. No. 2-1998]

The powers and duties of the Commission shall be to:

- D. Work with the Town **[stormwater management technician] Stormwater Management Officer, or his designee,** to maintain a current inventory of publicly and privately owned open spaces and special environmental features within the Town of Clifton Park. This inventory should include, but not be limited to: streams, lakes and ponds; floodways; wetlands; forests; scenic vistas; unique biological communities (such as protected, rare, threatened or endangered species); and natural landmarks. **[Amended 1-12-2015 by L.L. No. 1-2015]**

Planning Department → Planning and Zoning Department

§ 103-13 Subdivision fees.

The following fees shall be collected by the Clifton Park **Planning and Zoning Department** from applicants requesting subdivision review and/or approval pursuant to Clifton Park Town Code Chapter A215:

§ 103-14 Parkland fees.

[Amended 9-15-1988 by L.L. No. 15-1988; 3-12-2012 by L.L. No. 5-2012; 5-12-2014 by L.L. No. 3-2014]

In the event that the Planning Board requests payment in lieu of parkland pursuant to § A215-7 of the Town Code, the following fees shall be collected by the Town of Clifton Park **Planning and Zoning Department** from the applicant prior to issuance of approved subdivision plans:

125- Conservation Easement

§ 125-6 Procedure for granting term easement.

[Amended 5-3-2004 by L.L. No. 1-2004; 12-1-2008 by L.L. No. 8-2008]

D. Review procedures.

- (1) Town Board referrals. The Town Board shall refer such applications to the Open Space Coordinator and the **Planning and Zoning Department**, and also to the applicable advisory committees such as the Historic Preservation Commission and/or the Open Space, Trails and Riverfront Committee, for review and comments within 45 days, if deemed necessary and/or appropriate. [Amended 5-11-2020 by L.L. No. 5-2020]

§ 125-17 Interests run with land.

[Added 12-1-2008 by L.L. No. 8-2008]

Interests secured through a deed of permanent conservation easement shall run with the land. The Town of Clifton Park Open Space Coordinator and the **Planning and Zoning Department** shall monitor the interests of the Town secured through permanent conservation easements on behalf of and report to the Town Board.

§ 171-3 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

PLANNING AND ZONING DEPARTMENT

The Town of Clifton Park **Planning and Zoning Department**.

§ 179-1 Definitions of terms.

For the purpose of these regulations, the following words and terms shall have the meanings indicated:

DEPARTMENT OF PLANNING AND ZONING

Herein referred to as the "Department" whose responsibilities and authority are vested in the Director as established in Local Law No. 9-1986.

§ 179-15.1 **Notification of proposed subdivision approval.**
[Added 4-24-1990 by L.L. No. 4-1990]

A.

(3) Proof of notification. [Amended 4-6-1998 by L.L. No. 2-1998]

(a) The applicant shall submit satisfactory proof that the property owners within 500 feet of the perimeter of the lands proposed for subdivision have been notified, in writing, of the nature (use number of lots, approximate commercial square footage) of the proposed subdivision, and such notification shall include a brief narrative of the proposal and the following written statement:

"An application for subdivision of lands within 500 feet of your property is being proposed. The subdivision application will be filed with the **Planning and Zoning** Department of the Town of Clifton Park and may be reviewed by you during normal business hours at Town Hall. Please call the Planning **and Zoning Department** at 371-6651 if you have any questions about the procedures to review this application and the process for consideration of the proposal."

§ 179-23 **Highways.**

E. The following items are required for dedication of highways to the Town of Clifton Park:
[Amended 4-6-1998 by L.L. No. 2-1998]

(1) Three sets of reproducible Mylars of the as-built drawings of the streets and utilities shall be submitted to the **Planning and Zoning** Department for distribution to Clifton Park Water Authority and Saratoga County Sewer District and one set of prints for the Highway Superintendent. These as-built drawings will serve as certification that construction has been generally performed in accordance with the final plans and shall be stamped by a licensed engineer.

§ 208-26 **Site standards.**

7. Pedestrian amenities.

A. All new development or redevelopment projects shall provide common pedestrian amenities, such as benches and bicycle racks, commensurate in quantity to the size of the project, as directed by the Planning **and Zoning** Department.

§ 208-43.14 **Community benefits or amenities.**

A.(3) (a) For total projects greater than five lots:

[1] One-third (33%) of the total payment is due at the Town Planning **and Zoning** Department within 30 days of Town Board approval by Town Board resolution. At the time of the first payment, at the first building permit, either a bond, cash, or letter of credit is required to cover the balance of the remaining amount. The bond, cash, or letter of credit instrument may be reduced as payments are received.

[2] An additional 1/3 (33%) of the total payment is due at the Town Planning **and Zoning** Department within 30 days of the date of the building permit granted upon completing 20% of the project's units.

[3] The final 1/3 (33%) of the total payment is due at the Town **Planning and Zoning** Department within 30 days of the Town engineering inspection letter verifying that the project is 80% complete or within 60 months of the original approval by the Town Board; whichever is first will trigger payment.

- (c) For projects that received Town Board approval of their open space incentive zoning proposals prior to March 15, 2010, the following payment plan shall apply:
- [3] The final 1/3 (33%) of the payment is due at the Town **Planning and Zoning** Department within 30 days of the Town engineering inspection letter verifying that the project is 80% complete.

§ 208-69.1 Location and boundaries.

- B. Each applicant for a building permit, soil disturbance permit, subdivision or site plan within or containing areas zoned L-C due to freshwater wetlands shall contact the New York State Department of Environmental Conservation to verify the exact location of the wetlands boundaries and regulated adjacent areas. A copy of the delineation must be filed with the Planning **and Zoning** Department, who will distribute it to other affected departments within the Town of Clifton Park.

§ 208-75 Preliminary and final development plan approval.

- B. Prior to final site plan and/or subdivision approval, the Planning **and Zoning** Department shall assure that said finalized plans are consistent with the original concept plans and the conditions set by the Town Board in the rezoning of the parcel to planned development district.

§ 208-95 Communications towers.

[Amended 12-9-1996 by L.L. No. 11-1996; 4-6-1998 by L.L. No. 2-1998; 2-4-2002 by L.L. No. 2002; 10-16-2006 by L.L. No. 14-2006; 8-6-2007 by L.L. No. 8-2007; 9-15-2008 by L.L. No. 5-2008]

- E. Procedure.

(1)

- (e) Application. All applications for a special use permit for the construction or installation of new communications towers, antennas and accessory communications structures shall be filed with the Town Planning **and Zoning** Department and shall be accompanied by a report containing the information hereinafter set forth, which said report shall be signed by a licensed professional engineer or qualified radio frequency consultant. Certifications required by Subsection **E(1)(e)[17]** and **[18]** of this article shall be made by a qualified radio frequency consultant. The certification required by Subsection **E(1)(e)[20]** shall be made by a licensed professional engineer. Determinations as to the qualifications of nonlicensed professionals shall be made in the reasonable discretion of the reviewing board.
- (f) Information provided by applicants pursuant to Subsection **E(1)(e)[25]** above shall be kept separately and excluded from disclosure under the Freedom of Information Act (Public Officers Law § 87 et seq.), pursuant to Public Officers Law § 87, Subdivision 2(d), upon a showing by the applicant that disclosure of the material would result in substantial competitive injury. Determinations on the showing required to demonstrate competitive injury under this subsection shall be made by the **Planning and Zoning** Director in consultation with the Town Attorney.
- (2)
- (a) Applications for new communications towers, facilities or equipment, including co-locations, existing tall structures, and those utilizing alternative tower structures requiring a change in use within an existing PUD or PDD shall be made to the Director of Planning **and Zoning**, who shall refer the application for zoning change to the Town Board.

(3)

- (d) New towers: future shared use. The applicant for a new communications tower should examine the feasibility of designing the proposed new communications tower to accommodate future demand for up to four additional commercial applications, for example, co-locations. The tower shall be structurally designed to accommodate, or to be extended to accommodate, at least four antenna arrays equal to those of the primary applicant, unless the applicant demonstrates that it is infeasible to do so, with substantial evidence submitted within a written record. The applicant shall submit to the board a letter of intent committing the owner of the proposed new tower and his/her successors in interest to negotiate in good faith for shared use of the proposed tower by other telecommunications providers in the future. This letter shall be filed with the Planning and Zoning Director. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the special use permit. The letter shall commit the new tower owner and his/her successors in interest to:

[3]

- (h) Applicants for a permit for a new communications tower or alternative tower structure shall furnish a visual impact assessment that shall include:

- [2] Pictorial representations of before and after views from key viewpoints both inside and outside of the Town, including but not limited to county roadways, highways and other major roads; parks and preserves, as well as other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to the public at large. Any key views requested by the Town's Planning and Zoning Director or consultant shall be provided at the initial meeting of the Planning Board or at any preapplication meeting where requested. Pictorial representations shall exclude foreground trees, telephone poles, wires, and other obstructions to the best possible degree in order to provide accurate presentations of actual visual impact. The Planning Board, acting in consultation with its consultants or experts, hired at the expense of the applicant, will provide guidance concerning the appropriate key sites at a preapplication meeting.

[7]

(i)

- [4] Unless waived by the Planning and Zoning Director, there shall be a preapplication meeting attended by the applicant as well as a member of the Planning Board or other reviewing board with jurisdiction. The purpose of the preapplication meeting will be to address issues that will help to expedite the review and permitting process. A preapplication meeting may also include a site visit, if required. The applicant shall request a preapplication meeting by correspondence directed to the reviewing board. The applicant may file the application upon expiration of 45 days following delivery of the correspondence requesting same, if such preapplication meeting is not scheduled by the appropriate reviewing board within 45 days. In cases of an application requiring a change in zoning for an existing or proposed PDD or PUD, the preapplication meeting may include a member of the Town Board.

F. Additional requirements applicable to all applications for special use permits.

- (10) An applicant shall submit no fewer than 14 copies of the entire completed application to the Planning Board, Planning and Zoning Department for distribution to the Planning Board and a copy of notice of the application to the Town Clerk. Where an application also requires action by the Zoning Board of Appeals, applicants shall submit an additional 14 copies of such applications. Where an action also requires action by the Town Board, such as where a zoning change to a PUD or Planned Development District would be required, pursuant to Subsection E(2), the applicant shall submit an additional seven copies of the application to that Board.
- (11) The holder of a special use permit for wireless communications facilities shall notify the Town of any intended modification of a communications tower, antenna or accessory communications structure and shall apply to the Planning and Zoning Department to modify, relocate, or rebuild the

same. Whenever modifications or replacement of antennas involve changes to antennas patterns, propagation, or additional transmission capability, the applicant shall submit current and updated radio frequency (RF) propagation plots that demonstrate existing and proposed RF coverage. However, antenna changes that do not alter any visually discernible components of the facility, involve changes to antennas patterns or propagation, or routine maintenance work not impacting antenna patterns do not require further review pursuant to this section.

(16) Compliance.

- (a) Following construction of the facilities for which the special use permit was obtained, the **Planning and Zoning** Department and Town Engineer shall cause an inspection to occur upon the land or structure where the special use is located in order to ascertain that the applicant has complied with all of the conditions of the approved special use permit and site plan listed and ordinances applicable to said permit and property affected.
 - (b) The Building Department and the **Planning and Zoning** Department shall keep records of all communications tower and facility special use permits issued pursuant to this section and inspect existing tower sites and wireless communications facilities as necessary to ensure continuing compliance with the criteria and requirements under which the relevant special use permits were issued. The Town designates the **Planning and Zoning** Department as the repository of official set of records under this section.
 - (c)
- (20) Any applicant desiring relief, waiver or exemption from any aspect or requirement of this section may make such request at the preapplication meeting or, subsequently, to the **Planning and Zoning** Director. Any request for waiver or exemption from any aspect of this section shall be contained in the original application for either a special use permit or, in the case of an existing or previously granted special use permit, a request for modification of its communications tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the applicant to prove. The applicant shall bear all costs of the Town in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the Town, its residents and other service or the ability of the reviewing board to conduct its review pursuant to this section.

G. Fees.

- (1) At the time that a person or entity submits an application fee for a special use permit for a new communications tower, such person or entity shall pay a single, nonrefundable application fee of \$5,000. If the application is for a special use permit for co-locating on an existing communications tower or tall structure, where no increase in height of the tower or structure is required, the application fee shall be \$2,000, which is nonrefundable. Such fee shall be paid to the **Planning and Zoning** Department, which shall maintain records of payment in consultation with the Town Comptroller.
- (2) In addition to the application fee described in Subsection **G(1)** above, applicants shall deposit a separate review fee in the amount of \$7,500, which shall be utilized for all reasonable costs of consultants and expert reviews of any application, including, where applicable, preapproval evaluation as well as during construction or modification of sites, once permitted. Such experts and consultants as shall be reasonably required by the Town shall be made available to the appropriate reviewing board. The Town shall maintain a separate escrow account for such review fee funds and shall return the unused portion of any such funds to the applicant within 60 days of any final action on any application or formal withdrawal of same. If at any time during the review process this escrow has a balance less than \$2,000, the applicant shall immediately, upon notification by the Town, replenish said escrow account so that the balance shall be at least \$5,000. Such additional

escrow funds shall be deposited with the Town before any further action is taken on the application. The escrow amount for review fees shall apply to both new communications tower applications and those for colocations and shall be paid to the **Planning and Zoning** Department, which shall maintain a separate accounting of the fees and disbursements from said escrow, for each application, in consultation with the Town Comptroller.

§ 208-113 **Purpose and applicability.**

- A. Purpose. The purpose of this article is to establish clear procedures for review of site plans, establish standardized and clear requirements for site plan applications, assure functional and attractive development and minimize adverse impacts on the natural and man-made environment. The Town of Clifton Park considers the site plan to be a form of contract between the owner and the public (represented by the Town) in which the Town agrees to permit certain development in return for commitments on the part of the owner to fulfill and maintain all of the requirements of the approved site plan.
- B. Applicability.
- (1) In all cases where this chapter requires a special use permit and/or site plan approval by the Planning Board, no building permit shall be issued by the Building Inspector except upon approval of and in conformity with a site plan approved by the Planning Board. Receipt of an approved site plan from the **Planning and Zoning** Department or written correspondence from the Director of **Planning and Zoning** authorizing the release of the building permit for a project is required prior to the issuance of a permit. An approved site plan shall be required prior to any field inspections by the Building Inspector. Generally, a site plan approval is required for all uses of land, new construction or expansion of existing uses for other than one- and two-family dwelling units and uses accessory thereto. This includes, but is not limited to, all Planned Development Districts (except those containing only one- and two-family dwelling units which shall require subdivision approval), all applications for a soil disturbing activity (SDA), all changes of use in the Light Industrial District as required by § **208-66E** of this chapter and all other telecommunication towers as required by § **208-95B** of this chapter. **[Amended 12-9-1996 by L.L. No. 11-1996; 10-16-2006 by L.L. No. 15-2006; 11-9-2015 by L.L. No. 12-2015]**
 - (2)
 - (b) If the new use is not of the same type and intensity (i.e., office to retail, sit-down restaurant to fast-food restaurant, etc.), the new owner shall, if required by the Building Inspector, appear before the **Planning and Zoning** Department to arrange to appear before the Planning Board to determine if a revised site plan approval will be required prior to the issuance of a building permit and/or certificate of occupancy or tenancy.
 - (9) Lot line adjustment procedures. **[Added 3-2-2009 by L.L. No. 1-2009]**
 - (a) Applications for lot line adjustments shall be made in writing to the **Planning and Zoning** Director and shall consist of the following documentation:

[4]
 - (b) The **Planning and Zoning** Director will forward the application to the Town Zoning Officer, who shall review the application to ensure that the lot line adjustment will not result in any code violations.
 - (c) The **Planning and Zoning** Director, in consultation with the Town Zoning Officer, shall review and

approve or deny an application for a lot line adjustment within 45 days. If the application is approved, the **Director of the Department of Building and Development** shall issue a certificate of lot line adjustment, which the applicant shall file with the Saratoga County Clerk concurrently with the deed effecting the lot line adjustment.

- (d) If the approval of the lot line adjustment would result in an increase in the development potential of any parcel, then the Planning **and Zoning** Director shall refer the application to the Planning Board for site plan review.
- (1) The fee for an application for a lot line adjustment shall be \$100. **[Added 3-2-2009 by L.L. No. 1-2009]**
- (2) Should more than six months have elapsed from the date of preliminary approval before the applicant seeks final site plan approval, the Planning Board may, in its sole discretion, require the applicant to resubmit his preliminary site plan and pay an additional preliminary fee pursuant to the provisions of this section.
- (3) The Planning Board, in its discretion, may require a fee upon final submission of the site plan by the applicant in the same amount as required for preliminary submission. This final fee requirement may be waived by the Planning Board in the interest of justice if requiring such final fee will, in the opinion of the Board, create an undue hardship on the applicant.

§ 208-114 **Conceptual plan.**

C.

- (2) Prior to the commencement of any soil disturbing activity (SDA), a sketch plan shall be presented to the Planning **and Zoning** Department. At a minimum, this plan shall include:
- (3) The Planning Board and the Stormwater Management Officer shall review the sketch plan and narrative to determine the suitability of the stormwater management and erosion control plan. A soil disturbance security, as approved by the Director of **Planning and Zoning**, shall be established prior to the issuance of a building permit. This security shall cover the full cost of constructing and maintaining all stormwater management and erosion control measures and shall be kept in effect until the Town determines that soil stabilization has occurred. Written acceptance of the plan by the Planning Board shall constitute permission for the owner to complete his building permit application. **[Amended 12-17-2007 by L.L. No. 13-2007]**

§ 208-115 **Application for preliminary site plan approval.**

An application for preliminary site plan approval shall be made in writing to the **Planning and Zoning** Department and shall include the following:

F. Notification.

- (1) (c) Proof required.
- [1] The applicant shall submit satisfactory proof that the property owners within 500 feet of the perimeter of the lands proposed for site plan approval have been notified in writing of the nature (include a brief narrative about the project and its location, including number of units, approximate commercial square footage) of the proposed site plan, and such notification shall also include the following written statement: "An application for site plan approval of lands within 500 feet of your property is being proposed. The site plan application will be filed with the **Planning and Zoning** Department of the Town of Clifton Park and may be reviewed by you during normal business hours at Town Hall. Please call the Planning **and Zoning** Department at 371-6651 if you have any questions about the procedures to review this application and the process for consideration of the proposal."

Floodplain Administrator

§ 119-4 **Definitions.**

LOCAL ADMINISTRATOR

The person appointed by the community to administer and implement this chapter by granting or denying development permits in accordance with its provisions. This person is often the Code Enforcement Officer, Building Inspector, **Stormwater Management Officer**, or employee of an engineering department.

§ 119-10 **Designation of local administrator.**

[The Director of Building and Zoning is hereby appointed] **The Town Board shall appoint a local administrator from the list of eligible titles as defined in § 119-4,** to administer and implement this chapter by granting or denying floodplain development permits in accordance with its provisions.

Chapter 36

Planning and Zoning, Department of

[HISTORY: Adopted by the Board of Trustees of the Town of Clifton Park 4-21-1986 by L.L. No. 9-1986. This local law was originally adopted and designated as L.L. No. 1-1986 and was refiled as L.L. No. 9-1986 to correct a clerical error. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 208.

§ 36-1 Purpose.

It is the purpose of this chapter to establish, pursuant to Article 3-A of the Town Law, a new Department entitled "Department of Planning and Zoning" in order to provide effective and efficient administration and enforcement of laws relating to planning for zoning, fire prevention and building construction, highways, water, sewers, parks, landfilling, the environment, disaster preparedness and Master Planning in the Town of Clifton Park.

§ 36-2 Establishment.

The Department of Planning and Zoning, hereafter referred to as "the Department" of the Town of Clifton Park is hereby established.

§ 36-3 Director of Department; Town Planner.

- A. Department head. The head of the Department of Planning shall be known as the "Director of Planning and Zoning" or, alternatively, as the "Town Planner."
- B. (Reserved)
- C. Appointment and term of office. The Director of the Department [of Planning] shall be appointed by the Town Board [and shall hold office until the first day of January next succeeding the first biannual town election held after his/her appointment, and thereafter, shall hold office for the term of two (2) years and until his/her successor shall have qualified; provided, however, that the appointees to such office shall be removable at the pleasure of the Town Board.] and shall serve at the pleasure of the Town Board. [Amended 9-21-1987 by L.L. No. 9-1987]
- D. Salary. The salary of the Director of the Department [of Planning] shall be determined in the same manner as is provided in the annual budget for the salaries of other town officers.
- E. Duties and authority.
 - (1) The Director of the Department [of Planning] shall be the principal executive officer of the Department.
 - (2) The Director shall have the duty to oversee the enforcement, administration of and compliance with the laws relating to zoning and planning, including but not limited to Chapter 208, Zoning, as amended or as may be amended; the Town Law of the State of New York; the General Municipal Law of the State of New York; the New York Codes, Rules and Regulations; the Public Health Law of the State of New York; the Transportation Corporation Law of the State of New York; the New York State Uniform Fire Prevention and Building Code Act, as amended or as may be amended; and all other applicable laws of the State of New York and the Town of Clifton Park as now existing, as amended or as may be amended.
 - (3) The Director of the Department [of Planning] shall be subject to the supervision and direction of the Town Board and the Town Supervisor.

§ 36-4 **Personnel; appointment and removal.**

- A. The personnel of the Department [of Planning] other than the Department Director shall consist of the Zoning Administrator, the Open Space Coordinator and such deputy planners, and administrative staff [clerks] as the Town Board may appoint or designate.
- B. The Director of the Department [of Planning] and the deputies, administrative staff and clerks of the Department [of Planning] shall be appointed by the Town Board on the basis of a civil service competitive examination and shall not be removed except in accordance with the Civil Service Law of the State of New York. [Amended 4-18-1988 by L.L. No. 5-1988]
- C. Bureau of Zoning Administration and Enforcement.
 - (1) The Bureau of Zoning Administration and Enforcement shall consist of the Zoning Administrator and such deputy zoning enforcement officers and administrative staff as the Town Board may appoint.
 - (2) The Zoning Administrator and deputies and administrative staff shall be subject to the supervision and direction of the Director of Planning Zoning.

Director of Parks and Recreation - Titles consistent, no change required

§ 153-11 Authority to establish membership fees.

The Director of Parks and Recreation shall establish annual membership fees for residents and for nonresidents and enter into agreements with area municipalities for reasonable membership fees for area residents as may be desirable for the maintenance and operation of the park, subject to approval by the Town Board.

§ 153-12 Rules and regulations; infractions; appeals.

- A. Rules and regulations for the Clifton Park Action Park shall be established by the Director of Parks and Recreation, subject to approval by the Town Board, and shall be posted at the park, are attached hereto and are available on the Town's website.
- B. Infractions or violations of Action Park rules and regulations established by the Director of Parks and Recreation as approved by the Board may result in a suspension or revocation of membership privileges, in addition to any other penalty as may be set forth in this article. Such suspension, revocation or limitation shall be in the discretion of the Assistant Director of Parks and Recreation ("Assistant Director") or his/her designee, subject to review upon appeal by the Director of Parks and Recreation. Appeal from such determination shall be in writing to the Director of the Department of Parks and Recreation within 30 days of the effective date of such determination and shall be heard at the Town Board meeting next following receipt of the appeal. The Director shall affirm, reverse, or modify the determination of the Assistant Director within one week of such hearing. Nothing herein shall prevent the Town Board or the Director from granting relief acceptable to the appellant prior to, or in the absence of, such written appeal or hearing.

153-18 Suspension or revocation of membership privileges; appeals.

- A. Infractions or violations of the three town pools and clubhouses' rules and regulations established by the **Director [of Parks and Recreation]** as approved by the Board may result in a suspension or revocation of membership privileges.
- B. Such suspension, revocation or limitation shall be in the discretion of the **Assistant Director of Parks and Recreation ("Assistant Director")** or his/her designee, subject to review, upon appeal, by the **Director [of Parks and Recreation]**. Appeal from such determination shall be in writing to the **Director [of the Department of Parks and Recreation]** within 30 days of the effective date of such determination and shall be heard at the Town Board meeting next following receipt of the appeal. The Director shall affirm, reverse, or modify the determination of the Assistant Director within one week of such hearing. Nothing herein shall prevent the Town Board or the Director from granting relief acceptable to the appellant prior to, or in the absence of, such written appeal.