

**Business of the Village Board  
Village of Saranac Lake**

SUBJECT: FEMA Contract and Funding Collection System Project

Date: 11/25/2024

DEPT OF ORIGIN: Village Manager

Bill # 175-2024

DATE SUBMITTED: 11/21/2024

EXHIBITS: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Village Attorney

\_\_\_\_\_  
Village Administration

EXPENDITURE  
REQUIRED:

AMOUNT  
BUDGETED:

APPROPRIATION  
REQUIRED:

\_\_\_\_\_  
SUMMARY STATEMENT:

FEMA Contract and Funding for the Collection System Upgrade Portion of the Water Pollution Control Plant Collection System Capital Project

MOVED BY: Scollin SECONDED BY: White

VOTE ON ROLL CALL:

MAYOR WILLIAMS

yes

TRUSTEE RYAN

yes

TRUSTEE WHITE

yes

TRUSTEE SCOLLIN

yes

TRUSTEE BRUNETTE

yes

## RESOLUTION APPROVING FEMA CONTRACT AND FUNDING

WHEREAS, the Village of Saranac Lake was awarded a Federal Emergency Management Agency Grant to assist in financing the Water Pollution Control Plant Upgrades Project, and,

WHEREAS, the Village Board of Trustees established a separate capital project fund (#230) to provide funding for projects associated with the acquisition, construction, and improvement of FEMA related capital projects,

WHEREAS, the funding amount of \$302,285 from the Capital Project Fund (#230) is necessary to cover the professional service fees for the FEMA funded Collection System Upgrades.

THEREFORE, BE IT RESOLVED, the Village Board of Trustees approves the use of the Capital Project Fund (#230) in the amount of \$302,285 for costs associated with the acquisition, construction, and improvement of FEMA related capital projects.



# Suozzo, Doty & Associates

PROFESSIONAL ENGINEERING, PLLC

Bolton Landing Office  
4607 Lake Shore Drive, Bolton Landing, NY 12814  
(518) 240-6293  
[www.sdapllc.com](http://www.sdapllc.com)

November 21, 2024

Bachana Tsiklauri  
Village Manager  
39 Main Street, Suite 9  
Saranac Lake, NY 12983  
Delivered via email only: [manager@saranaclake.gov](mailto:manager@saranaclake.gov)

**RE: Village of Saranac Lake Collection System: FEMA Funded - Professional Services Proposal  
SDA Project #24-130**

Dear Mr. Tsiklauri,

Suozzo, Doty & Associates Professional Engineering, PLLC (SDA) thanks you for the opportunity to submit this professional services proposal for your consideration. This proposal is for the FEMA funded collection system upgrade portion of the Village's overall WPCP and collection system capital project. We note that this proposal agreement is be subject to the attached NYSEFC Mandatory State Revolving Fund Terms and Conditions, Effective October 1, 2023 and is therefore made part of this contract. The Contract is also subject to the attached State of New York Contract for Grants (Number C001071, signed 10/24/24) and is therefore made part of this contract.

**FEMA Grant and SDA Proposal Structure**

The awarded FEMA grant contains two phases, Phase I and II. The Phase I (Engineering) deliverable is generally a 90% design plan set and is due February 1, 2026. The Phase II (Permits and Construction) deliverable is a construction plan set ready for bidding and permitting. At this time, SDA is providing a proposal for a portion of the work for Phase 1 (up to 10% design).

- FEMA Phase I proposal, which is the subject of this proposal, for 10% design, evaluation, and opinion of probable cost. Includes services generally from November 2024 to March 2025. This proposal also includes grant administration and project management / meeting attendance for all of FEMA Phase I.
- FEMA Phase I proposal to advance the project from 10% design to 90% design, will be provided at a later date. This future proposal will contain services to provide the FEMA Phase I deliverable. Includes services generally from March 2025 to February 1, 2026.

Please see below for specific detail regarding our proposal for the FEMA Phase I 10% design services:

**PROJECT UNDERSTANDING**

- The Village of Saranac Lake conducted an evaluation of the existing collection system, including the sewer mains known as "The Trunk Main," and "Swamp Line," "North Swamp Line," "East Interceptor Sewer," "Pine Street Siphon," and "West Route 3 Sewer" utilizing a NYSEFC planning grant. This evaluation was conducted by AES Northeast and identified several improvements needed to

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upgrade the sewer mains. The report was used to secure grant funds from two different agencies (FEMA and NYSEFC).

- The scope of work as outlined in the report included projects to rehabilitate all six (6) sewer mains with total rehabilitation costs exceeding grants secured to date. Individual projects were ranked into Priority 1 -6 and associated budgets provided for each.
- The Trunk Sewer Main and Swamp Line sewer mains are specifically funded by the FEMA Hazard Mitigation Grant Program (HMGP). The HMGP grant has been secured to fund through the 90% design set (referred to as FEMA Phase I). A second phase (referred to as FEMA Phase II) of the grant will fund finalized permits, bid sets, and construction period services, as well as the construction itself.
- The Village will obtain from the prior engineering firm and make available to SDA, an fly aerial mapping and of the project area for SDA's survey subconsultant.
- The Village of Saranac Lake undertook an RFQ process and selected SDA to provide engineering design and construction phase services for the overall project. Based upon initial review of the information provided in the RFQ and preliminary discussion with Village staff, the Village would like SDA to help establish a final project priority and refine cost estimates so that the final scope can be defined before final design is initiated.

### **PROJECT APPROACH**

Based upon our understanding of the project, for the Trunk Sewer Main and Swamp Line SDA will:

- Review the existing data and scope items to rank sewer main priorities and major design elements with Village municipal staff.
- Subcontract with MJ Engineering & Land Surveying ("MJ"), for preliminary survey for the project planning area.
- Subcontract with Arold Construction ("Arold") to provide close circuit television inspection of select sewer mains.
- SDA staff will provide 10% design alternatives and cost estimates.
- Attend monthly design meetings with the Village to review project status and deliverables.
- Provide final 10% design scope, narrative, plans, and cost estimates for furtherance of final design.
- Provide grant administration services for the entirety of the FEMA Phase I portion of the project.

### **SCOPE OF SERVICES**

#### **Preliminary Design (AKA 10% Design)**

Under these tasks, SDA will complete preliminary design for the FEMA funded collection system portion of the Capital Project. As requested, the work will include the following:

#### **Task 01: Sewer Main CCTV**

Assessing the current condition of the subject sewer mains is of utmost importance to the preliminary design evaluation and alternatives/cost estimate analysis. SDA will subcontract the CCTV inspection to Arold Construction Company, Inc (Arold). The total length of CCTV inspection (and associated cleaning) is



approximately 4,300 linear feet of 12" to 24" sanitary sewer pipe. Arold has estimated 6, 8-hour, days to complete the CCTV inspection (including videos and reports). Arold has estimated a per day of \$4,150 per day or a total estimate of \$24,900. During CCTV activities SDA will be on-site periodically to document manhole conditions. Attached find Arold's proposal that also lists the exclusions, inclusions, and special notes. Arold's proposal notes the following items that the Village would perform/provide:

- Permit fees (if required)
- Maintenance and protection of traffic.
- Bypass pumping (if required)
- Nearby hydrant or water tanker.
- Reasonable access to work areas.

#### **Task 02: Existing Sanitary Utility, Topographic and Boundary Survey**

Also of utmost importance is the utility, topographic, and boundary survey as the Trunk Sewer Main and Swamp Line are located in exceptionally difficult areas. The design evaluation and cost estimate will need the benefit of a utility (existing sanitary utility), topographic, and boundary survey. SDA will subcontract the preparation of the survey to MJ Engineering and Land Surveying, P.C. (MJ).

The survey will include the following:

- Locations and elevations of the existing sanitary manholes and inverts for the Trunk Sewer Main and Swamp Line. The estimate assumes a maximum of 50 structures and that Village staff will be available to assist with locating/opening structures and Village staff performing traffic control. The fee estimate assumes completion of the field survey prior to accumulation of ice and snow.
- Please note that this utility survey is just for the existing sanitary sewer system and does not include survey of other existing utilities and features. This approach is recommended because the proposed sanitary sewer route (and recommended construction type, i.e. open-cut or slip line) are not known at this time. To save project costs, the survey area will be limited at this time to avoid surveying a larger area that may not be part of the project. SDA will attempt to find all recording mapping in the subject area to support the 10% design. Once the route and construction type is determined, additional survey services will be required, and will be part of a future proposal.
- Topographic mapping edits of obscured areas from the existing topographic survey. Please note, the fee estimate assumes that the existing mapping is design grade, in AutoCAD format, and that a DTM has already been prepared. The fee is subject to change following receipt and review of existing mapping and DTM files.
- Preliminary boundary survey of the Trunk Sewer Main and Swamp line. The fee estimate assumes completion of minimal record research and limited field survey of boundary monumentation. The fee estimate assumes completion of the field survey prior to accumulation of ice and snow. Please note that this preliminary boundary survey. This approach is recommended because the proposed sanitary sewer route (and recommended construction type, i.e. open-cut or slip line) are not known currently. Once the route and construction type is determined, additional boundary survey services will be required.

#### **Task 03: Design Evaluation / Internal Report / Alternatives & Cost Estimate / Design Scope Ranking**



Under this task, SDA will complete preliminary design for the FEMA funded collection system. The work will include the following:

- Completion of 10% design evaluation and internal report or memo
- Completion of 10% design alternatives and cost estimates
- Completion of 10% design scope ranking and definition
- 10% design will be depicted on preliminary plan and profile sheets for each respective main

#### **Task 04: Grant Administration**

Under this task, SDA will provide grant administration services throughout FEMA Phase I. The grant approval letter outlined the following reporting requirements for: performance reports (Section 9 of Grant Award letter), financial reports (Section 10 of Grant Award letter), and closeout (Section 11 of the Grant Award letter). SDA will prepare the reports and submit to the Village for final review and submission.

Per Section 8 of the Grant Award Letter, quarterly performance and financial reports will be due on or around January 30, 2025, April 30, 2025, July 30, 2025, October 30, 2025, and January 30, 2026.

#### **Task 05: Project Management / Sewer Committee & Board Meetings**

Under this task, SDA staff will attend approximately 14 sewer committee meetings and 14 Village board meetings in order to coordinate with the Village and keep the Village informed of project milestones and current activities for the entire FEMA Phase I for the duration of FEMA Phase I (February 2026). Also included in this task is project management services for the technical design items for the duration of FEMA Phase I (February 2026).

#### **ASSUMPTIONS/LIMITATIONS**

The following are excluded from this proposal:

- The project engineering report as prepared by AES Northeast is currently under review by the New York State Environmental Facilities Corporation. Response to comments is not included in the current proposal but can be added as an additional service.
- The Village will make available all existing documentation, including existing design plans, technical specifications and flow/loading data.
- An aerial fly and mapping were conducted by AES Northeast and the file will be made available for use in completing project survey. Survey under this phase is limited to that necessary to complete the 10% design. Additional survey work will be required at a later date.
- Sewer main inspections, including cleaning, etc. are provided on a daily rate basis. Six (6) days of work has been estimated. If additional days are required, they will be charged at the daily rate.
- Maintenance and Protection of Traffic (M&PT) and bypass pumping will be provided by the Village for all survey work and sewer main inspections. Any permit fees will be paid by the Village.
- SDA has been retained for final design, bidding, construction administration, and project representative services. The full scope, fee and schedule of these services is to be defined at a later date and will be subject to a separate proposal.

- SDA has been retained for preliminary design, final design, bidding, construction administration, and project representative services for the WPCP and non-FEMA funded collection system portions of the project. A proposal for same has been provided under separate cover(s).

#### **PROFESSIONAL SERVICES FEE AND COMPENSATION**

SDA will perform the above-listed professional services in accordance with the fees and schedule depicted in the Professional Services Fee Schedule. Lump sum tasks will be billed monthly commensurate with work completed to date. Time and material tasks will be completed on a time and materials basis which will be billed in accordance with our discounted rate schedule in effect at the time of service. The budgets for Time and Materials tasks are estimates only, SDA will attempt to complete the tasks within the subject budgets, but an additional budget may be required to complete the noted services. SDA will not exceed any budget without prior authorization from you.

Any direct expenses we incur (mileage, overnight mailings, document reproduction, etc.) will be billed under Task RE00.

Please note that the level of effort and therefore the amount of fee needed for each individual task is currently unknown, as such SDA reserves the right to use any available task budget to advance the services requested under this proposal.

Invoices will be submitted to the Client on a monthly basis. Payment shall be made to Suozzo, Doty & Associates Professional Engineering, PLLC within 30 calendar days of the date of invoice. A 1.5% finance charge will be applied to any invoice unpaid within 30 days. Checks shall be forwarded to Suozzo, Doty & Associates Professional Engineering, PLLC, 4607 Lake Shore Drive, P.O. Box 653, Bolton Landing, NY 12814.



### **PROFESSIONAL SERVICES FEE SCHEDULE**

<b>Task</b>	<b>Lump Sum</b>	<b>T&amp;M Estimate<sup>1</sup></b>	<b>Subconsultant Fee Estimate<sup>2</sup></b>	<b>Schedule<sup>3</sup></b>
<b>Task 01 Sewer Main CCTV (Arold)</b>	\$2,800	---	(Arold) - \$28,635	Start: 2 weeks from authorization. End: 5 weeks
<b>Task 02 Existing Sanitary Utility, Topographic and Boundary Survey (MJ)</b>	\$1,200	---	(MJ) - \$40,250	Start: 2 Weeks from Authorization. End: 6-8 weeks
<b>Task 03 Design Evaluation / Internal Report / Alternatives &amp; Cost Estimate / Design Scope Ranking (SDA)</b>	\$164,900	---	---	Start: Upon Authorization End: March 2025
<b>Task 04 Grant Administration (SDA)</b>	\$20,000	---	---	Start: Upon Authorization. End: FEMA Phase 1 (2/1/26)
<b>Task 05 Project Management / Sewer Committee &amp; Board Meetings (SDA)</b>	\$43,000	---	---	Start: Upon Authorization. End: FEMA Phase 1 (2/1/26)
<b>Task RE00 – Reimbursables (SDA)</b>	---	\$1,500	---	Start: Upon Authorization. End: FEMA Phase 1 (2/1/26)
<b>Subtotal</b>	<b>\$220,900</b>	<b>\$1,500</b>	<b>\$68,885</b>	
<b>Total</b>	<b>\$302,285</b>			

<sup>1</sup>Time and Materials tasks are estimates only, SDA will attempt to complete the tasks within the subject budgets, but an additional budget may be required to complete the noted services. SDA will not exceed any budget without prior authorization from you.

<sup>2</sup>Subconsultant fees include 15% markup for SDA's administrative efforts. The subconsultant fees will be billed on time and materials basis.

<sup>3</sup>Schedule begin and completion dates are estimates only and begin upon authorization. SDA will make its best attempt to begin and complete tasks in accordance with the periods depicted above, but certain items that affect the schedule may be out of SDA's control (e.g. agency approvals, client availability, record document availability, etc.)

### **ATTACHMENTS**

- Endorsement Page and Standard Terms and Conditions
- NYSEFC Non-Construction Mandatory State Revolving Fund Terms and Conditions
- State of New York Contract for Grants (Number C001071, signed 10/24/24)
- Arold Construction Proposal

### **CLOSING AND AGREEMENT**

We thank you for this opportunity to work with the Village on this important project! If you find this proposal acceptable, please execute where indicated on the following page. If you have any questions or if you need additional information, please feel free to contact us directly at 518-240-6293. Thank you!





Sincerely,

A handwritten signature in black ink, appearing to read "G. Swart".

Gregory Swart, PE, Project Manager

A handwritten signature in black ink, appearing to read "R. Adams".

Richard Adams, PE, Collection Lead Engineer

cc: File



**ENDORSEMENTS**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated below.

**Engineer: Suozzo, Doty & Associates**  
**Professional Engineering**  
**PLLC, (SDA)**

**By:** \_\_\_\_\_

**Print name:** Kathleen A. Suozzo

**Title:** Managing Principal

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

**Address for SDA's receipt of notices:**

P.O. Box 653, 4607 Lake Shore Drive

Bolton Landing, NY 12814

**Email for SDA's receipt of notices:**

[ksuozzo@sdapllc.com](mailto:ksuozzo@sdapllc.com)

**Client: Village of Saranac Lake**

**By:** \_\_\_\_\_

**Print name:** Bachana Tsiklauri

**Title:** Village Manager

**Date Signed:** 11/26/2024

**Address for Client's receipt of notices:**

39 Main Street, Suite 9

Saranac Lake, NY 12983

**Email for Client's receipt of notices:**

[manage@ saranac lake ny.gov](mailto:manage@ saranac lake ny.gov)

## ATTACHMENTS

## FEMA Funded Collection System Upgrades

### **PART IV ENGINEER STANDARD TERMS AND CONDITIONS**

- 1) **STANDARD OF CARE** Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the Services are performed. Professional services are not subject to, and Engineer cannot provide, any warranty or guarantee, express or implied, including warranties or guarantees contained in any uniform commercial code.
- 2) **TECHNICAL ACCURACY** Client shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Client-furnished information.
- 3) **CONSULTANTS** Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Client. Subject to the standard of care set forth in above, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- 4) **COMPLIANCE WITH LAWS, REGULATIONS, POLICIES, AND PROCEDURES** Engineer and Client shall comply with applicable Laws and Regulations. Engineer shall comply with any and all policies, procedures, and instructions of Client that are applicable to Engineer's performance of services under this Agreement and that Client provides to Engineer in writing, subject to the standard of care set forth above, and to the extent compliance is not inconsistent with professional practice requirements.

This Agreement is based on Laws and Regulations and Client-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Client's responsibilities or to Engineer's scope of services, times of performance, or compensation: (1) changes after the Effective Date to Laws and Regulations; (2) the receipt by Engineer after the Effective Date of Client-provided written policies and procedures; (3) changes after the Effective Date to Client-provided written policies or procedures.

Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Client agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements. Engineer's services do not include providing legal advice or representation.

- 5) **CHANGE OF SCOPE** The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by the Client. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined.
- 6) **SAFETY** Engineer has established and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, Engineer specifically disclaims any authority or responsibility for general job site safety and safety of persons other than Engineer employees.

While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Client's safety programs of which Engineer has been informed in writing.

- 7) **DELAYS** If events beyond the control of Client or Engineer, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be amended to the extent necessary to compensate for such delay. In the event such delay exceeds 60 days, Engineer shall be entitled to an equitable adjustment in compensation.
- 8) **TERMINATION/SUSPENSION** Either party may terminate this Agreement upon 30 days written notice to the other party. Client shall pay Engineer for all Services, rendered prior to termination, plus any expenses of termination.

In the event either party defaults in its obligations under this Agreement (including Client's obligation to make the payments required hereunder), the non-defaulting party may, after 7 days written notice stating its intention to suspend performance under the Agreement if cure of such default is not commenced and diligently continued, and failure of the defaulting party to commence cure within such time limit and diligently continue, suspend performance under this Agreement.

- 9) **OPINIONS OF CONSTRUCTION COSTS** Any opinion of construction costs prepared by Engineer is supplied for the general guidance of the Client only. Since Engineer has no control over competitive bidding or market conditions, Engineer cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to Client.
- 10) **RELATIONSHIP WITH CONTRACTORS** Engineer shall serve as Client's professional representative for the Services and may make recommendations to Client concerning actions relating to Client's other subcontractors, but Engineer specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by Client.

Engineer shall not at any time supervise, direct, control, or have authority over any of the Client's subcontractors work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Contractor for the Project, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Contractor to comply with Laws and Regulations applicable to that Contractor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Client, Client's subcontractor, and/or Owner's Contractor.

Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.

- 11) **CONSTRUCTION REVIEW** For projects involving construction, Client acknowledges that under generally accepted professional practice, interpretations of construction documents in the field are normally required, and that performance of construction-related services by the design professional for the project permits errors or omissions to be identified and corrected at comparatively low cost. Client agrees to hold Engineer harmless from any claims resulting from performance of construction-related services by persons other than Engineer.

Engineer shall not be responsible for any decision made regarding the

## FEMA Funded Collection System Upgrades

Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.

- 12) **INSURANCE** Engineer will maintain insurance coverage for Professional, Comprehensive General, Automobile, Worker's Compensation, and Employer's Liability in amounts in accordance with legal, and Engineer's business requirements. Certificates evidencing such coverage will be provided to Client upon request. For all projects the Client agrees to make the Engineer as an additional insured on its policies related to the project. For projects involving construction, Client agrees to require the Owner's construction contractor, if any, to include Engineer as an additional insured on its policies relating to the Project. Engineer's coverages referenced above shall, in such case, be excess over Client's or Owner's Contractor's primary coverage.
- 13) **HAZARDOUS MATERIALS** Hazardous materials may exist at a site where there is no reason to believe they could or should be present. Engineer and Client agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work. Engineer agrees to notify Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. Client acknowledges and agrees that it shall report to the appropriate federal, state or local public agencies, as required, any conditions at the site that may present a potential danger to the public health, safety or the environment. Client shall make provisions for, or have existing agreements with Owner to execute any manifests or forms in connection with transportation, storage and disposal of hazardous materials resulting from the site or work on the site or shall authorize Engineer to execute such documents as Client's agent. Client waives any claim against Engineer and agrees to defend, indemnify, and save Engineer harmless from any claim or liability for injury or loss arising from Engineer's discovery of unanticipated hazardous materials or suspected hazardous materials.
- 14) **INDEMNITIES** To the fullest extent permitted by law, Client and Engineer each agree to indemnify and hold the other harmless, and their respective officers, employees, agents, and representatives, from and against liability for all claims, losses, damages, and expenses, including reasonable attorneys fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of Client and Engineer, they shall be borne by each party in proportion to its negligence.
- 15) **LIMITATIONS OF LIABILITY** No employee or agent of Engineer shall have individual liability to Client, Owner, or Project Contractor. Client agrees that, to the fullest extent permitted by law, Engineer's total liability to Client for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, Engineer's negligence, errors, omissions, strict liability, or breach of contract and whether claimed directly or by way of contribution shall ~~not exceed the total compensation received by ENGINEER under this Agreement, or be limited in the aggregate to the amount of Engineer's insurance or if Client desires a limit of liability greater than that provided above, Client and Engineer shall include as an attachment to this Agreement the amount of such limit and the additional compensation to be paid to Engineer for assumption of such additional risk.~~
- 16) **ACCESS** Client shall provide Engineer safe access to any premises necessary for Engineer to provide the Services.
- 17) **REUSE OF PROJECT DELIVERABLES** Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by Client for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by Engineer for the specific purpose intended, shall be at the Client's risk. Further, all title blocks and the Engineer's seal, if applicable, shall be removed if and when Client provides deliverables in electronic media to another entity. Client agrees that relevant analyses, findings and reports provided in electronic media shall also be provided in "hard copy" and that the hard copy shall govern in the case of a discrepancy between the two versions, and shall be held as the official set of drawings, as signed and sealed. Client shall be afforded a period of 30 days in which to check the hard copy against the electronic media. In the event that any error or inconsistency is found as a result of this process, Engineer shall be advised and the inconsistency shall be corrected at no additional cost to Client. Following the expiration of this 30-day period, Client shall bear all responsibility for the care, custody and control of the electronic media. In addition, Client represents that it shall retain the necessary mechanisms to read the electronic media, which Client acknowledges to be of only limited duration. Client agrees to defend, indemnify, and hold harmless Engineer from all claims, damages, and expenses, (including reasonable litigation costs), arising out of such reuse or alteration by Client or others acting through Client.  
  
All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- 18) **RECORDS RETENTION** Engineer shall maintain on file in legible form, for a period of three years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Client's request, Engineer shall provide a copy of any such item to Client at cost.
- 19) **PROPRIETARY INFORMATION** Information relating to the Project, unless in the public domain, shall be kept confidential by Client and Engineer and shall not be made available to third parties without written consent of the other party.
- 20) **INDEPENDENT CONTRACTOR** Engineer is an independent Contractor and will maintain complete control of and responsibility for its employees, agents, methods, and operations. Nothing contained in this Agreement will create any contractual relationship between The Owner and Engineer.
- 21) **AMENDMENT** This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.
- 22) **ASSIGNMENT** Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.
- 23) **STATUTE OF LIMITATIONS** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.
- 24) **DISPUTE RESOLUTION** Parties shall attempt to settle disputes arising under this agreement by discussion between the parties senior representatives of management. If any dispute cannot be resolved in this manner, within a reasonable length of time, parties agree to attempt non-binding mediation or any other method of alternative dispute resolution prior to filing any legal proceedings.

IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL ENGINEER BE LIABLE TO CLIENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES.



## FEMA Funded Collection System Upgrades

- 25) NO WAIVER No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.
- 26) NO THIRD-PARTY BENEFICIARY Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including Client's contractors, if any.
- 27) SEVERABILITY The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.
- 28) AUTHORITY The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.
- 29) CONTROLLING LAW This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.
- 30) NOTICES Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt. Email notices shall be sent to the addresses listed on the signature page of the agreement.
- 31) SURVIVAL All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 32) ACCRUAL OF CLAIMS To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.
- 33) ENTIRE AGREEMENT, ATTACHMENTS, AND WRITTEN AMENDMENTS This Agreement, including the Attachments hereto and all Change Orders, contain the entire agreement among the parties with respect to the subject matter hereof; all representations, promises and prior or contemporaneous understandings among the parties with respect to the subject matter hereof are merged into and expressed in this instrument and such documents; and any and all prior agreements among the parties with respect to the subject matter hereof are hereby terminated and canceled. This Agreement may be amended only by an instrument in writing duly signed by or on behalf of the parties hereto.
- 34) COMPENSATION Engineer will prepare and submit invoices to the Client on a monthly basis. Client shall make payment to the Engineer within 30 calendar days of the date of the invoice.
- 35) ADDITIONAL SERVICES Additional services can be provided if deemed necessary and approved by the Client. Compensation for additional services can be negotiated as needed. Additional work will be approved by the Client prior to the execution of the additional tasks.

Services not indicated or included in the above-listed scope of services or which are subsequently requested, either verbally or in writing, will be considered additional services. The fee will be based upon either a mutually agreed fixed fee or an hourly basis at rates in effect at the time the services are performed, plus subcontracts and reimbursable expenses as outlined in the Rate Schedule for the year in which the work is being performed.

**NYSEFC NON-CONSTRUCTION MANDATORY STATE REVOLVING  
FUND TERMS AND CONDITIONS**



# **Mandatory State Revolving Fund Terms and Conditions**

**For Contracts Funded with the NYS Clean Water State Revolving Fund  
or Drinking Water State Revolving Fund**

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**Identify Contract Type prior to Advertisement for Bid:**

☐ **Construction**

- ☐ **Treatment Works and Drinking Water Projects**
- ☐ **Non-Treatment Works**

☐ **Non-Construction**

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**Effective October 1, 2023**

**New York State Environmental Facilities Corporation  
625 Broadway, Albany, NY 12207-2997  
P: (518) 402-6924  
[www.efc.ny.gov](http://www.efc.ny.gov)**





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## INTRODUCTION

The terms and conditions below must be incorporated verbatim into contracts receiving SRF financial assistance. Additional information relating to each of the requirements is included in the companion guidance document.

# REQUIRED CONTRACT LANGUAGE

## COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

**Broker** means a firm that does not itself perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.

**Construction** means the process by which a contractor or subcontractor builds, alters, repairs, remodels, improves or demolishes infrastructure.

**Contract** means an agreement between a Recipient and a Contractor.

**Contractor** means all bidders, prime contractors, non-construction service providers, and consultants as hereinafter defined, unless specifically referred to otherwise.

**Manufacturer** means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.

**MBO** is designated and employed by the Recipient as a Minority Business or Compliance Officer responsible for MWBE/DBE/SDVOB/EEO reporting and compliance.

**Non-Construction Provider** means any individual or business enterprise that provides one or more of the following: legal, engineering, financial advisory, technical, or other professional services, supplies, commodities, equipment, materials, or travel.

**Recipient** means the party, other than EFC, to a grant agreement or a project finance agreement with EFC through which funds for the payment of amounts due thereunder are being paid in whole or in part. Responsible through Project Finance Agreement (PFA) to comply with EFC requirements.

**State** means the State of New York.

**Subcontract** means an agreement between a Contractor and a Subcontractor.

**Subcontractor** means any individual or business enterprise that has an agreement, purchase order, or any other contractual arrangement with a Contractor.

**Supplier** means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

**Treatment Works** is defined in Clean Water Act (CWA) Section 212. This does not include nonpoint source projects as defined in CWA Section 319 and estuary management program projects as defined in CWA Section 320.

## **SECTION 1     FEDERAL ARCHITECTURAL AND ENGINEERING PROCUREMENT REQUIREMENTS**

*Any Architectural and Engineering (A/E) services for all CWSRF projects and for DWSRF projects receiving federal grant are required to be procured in compliance with 40 USC 1101 et. seq., and 48 CFR Part 36 Subpart 36.6. The Recipient must certify compliance to receive financing. Disregard this section if it does not apply to this Contract.*

## **SECTION 2     REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR WOMEN AND MINORITY GROUP MEMBERS**

*The Equal Employment Opportunities requirements of this section apply to all Contracts and Subcontracts, with the exception of: (1) the requirements under Title VII of the Civil Rights Act of 1964 and 41 CFR Part 60-1 Subpart A which apply only to construction Contracts and Subcontracts; and (2) the Federal Affirmative Action Regulations requirements which apply only to construction Contracts and Subcontracts greater than \$10,000.*

*The Minority- and Women- Owned Business Enterprises ("MWBE") participation requirements of this section apply to the Contracts Meeting Article 15-A Thresholds.*

**Contracts Meeting Article 15-A Thresholds** means Contracts or Subcontracts meeting the thresholds under New York State Executive Law Article 15-A as follows:

- a) Non-Construction Provider Contracts greater than \$25,000;
- b) Non-Construction Provider Contracts that are initially under \$25,000 but subsequent change orders or contract amendments increase the Contract value to above \$25,000;
- c) Construction Contracts greater than \$100,000; and,
- d) Construction Contracts that are initially under \$100,000 but subsequent change orders or contract amendments increase the Contract value to above \$100,000.

*Disregard this section if it does not apply to this Contract or Subcontract.*

### **I.    General Provisions**

A. Contractors and Subcontractors are required to comply with the following provisions:

1. New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State Contracts meeting Article 15-A thresholds.
2. Title VI of the Civil Rights Act of 1964 and 40 CFR Part 7 ("Title VI") for any program or activity receiving federal financial assistance, as those terms are defined therein.
3. Title VII of the Civil Rights Act of 1964 and 41 CFR Part 60-1 Subpart A ("Title VII") for construction Contracts related to any government programs providing federal financial assistance, as those terms are defined therein.
4. 41 CFR Part 60-4 ("Federal Affirmative Action Regulations") for federal or federally assisted construction Contracts in excess of \$10,000, as those terms are defined therein.
5. Section 504 of the Rehabilitation Act of 1973 ("Section 504") for any program or activity receiving federal financial assistance, as those terms are defined therein.
6. The Age Discrimination Act of 1975 ("Age Discrimination Act") for any program or activity receiving federal financial assistance, as those terms are defined therein.

7. Section 13 of the Federal Water Pollution Control Act ("Clean Water Act") Amendments of 1972 ("Section 13") for any program or activity receiving federal financial assistance under the Clean Water Act, as those terms are defined therein.
- B. Upon request from the Recipient and/or EFC, Contractor will provide complete responses to inquiries and all MWBE and EEO records available within a reasonable time or as otherwise determined by EFC.
- C. Failure to comply with all of the requirements herein may result in a finding by the Recipient that the Contractor is non-responsive, non-responsible, and/or has breached the Contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to subsection III(E) of this section, or enforcement proceedings as allowed by the Contract.
- D. If any terms or provisions herein conflict with Executive Law Article 15-A, the MWBE Regulations, Title VI, Title VII, or Federal Affirmative Action Regulations, such law and regulations shall supersede these requirements.

## **II. Equal Employment Opportunities (EEO)**

- A. Each Contractor and Subcontractor performing work on the Contract 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.
- B. The Contractor shall comply with the provisions of the Human Rights Law (Executive Law Article 15), Title VI, Title VII, the Federal Affirmative Action Regulations, Section 504, Age Discrimination Act, Section 13, and all other State and Federal statutory and constitutional non-discrimination provisions. The 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.
- C. Contractors and Subcontractors shall have instituted grievance procedures to assure the prompt and fair resolution of complaints when a violation of Title VI of the Civil Rights Act of 1964 or Title 40 CFR Part 7 is alleged.
- D. Pursuant to 40 CFR § 7.95, the Contractor shall display a copy of the EEO notice at the project site in a visible location. The notice shall accommodate individuals with impaired vision or hearing and should be provided in languages other than English where appropriate. The notice must also identify the employee responsible for its EEO compliance. See guidance document for sample notice.
- E. The Contractor will include the provisions of Subdivisions II(A) and II(C) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.
- F. The Contractor and Subcontractor will comply with the requirements of 41 CFR § 60-1.4(b) and (c), and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor and Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- G. **For construction contracts in excess of \$10,000**, the Contractor and Subcontractor will comply with the Affirmative Action Regulations and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor place affirmative action goals on Contracts and Subcontracts, as established by the United States Department of Labor. See guidance document for goals.
- H. Pursuant to 41 CFR Section 60-1.7 for federally assisted construction Contracts, Contractor and Subcontractor will annually file an EEO-1 Report with the Joint Reporting Committee for the Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) according to the instructions provided at <https://www.eeoc.gov/employers/eo-1-survey/eo-1-instruction-booklet> , if Contractor or Subcontractor:
1. Is not exempt from compliance pursuant to 41 CFR § 60-1.5;
  2. Has 50 or more employees;
  3. Is a prime Contractor or first tier Subcontractor; or Subcontractor below the first tier which performs construction work at the site of construction; and
  4. Has a Contract, Subcontract, or purchase order amounting to \$50,000 or more.

### III. Business Participation Opportunities for MWBEs

*Applicable to Contracts Meeting Article 15-A Thresholds*

#### A. Contract Goals

1. **New York State certified MWBE participation goals for this contract are 20%.** For projects funded from the sources listed below, the goals may be achieved through any combination of MBE and/or WBE participation.
  - a. CWSRF, DWSRF & Green Innovation Grant Program (GIGP).
  - b. NYS Water Infrastructure Improvement Act Grants that are also receiving EFC financing.
  - c. NYS Intermunicipal Grants that are also receiving EFC financing.
2. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section III-A hereof, the Contractor should reference the directory of New York State Certified MWBEs found at <https://ny.newnycontracts.com>.
3. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as defined in 5 NYCRR § 140.1, may be applied towards achievement of applicable MWBE participation goals.
  - a. For construction and construction-related services Contracts or Subcontracts, the portion of the Contract or Subcontract with an MWBE serving as a Supplier, and so designated in ESD's Directory, that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the Contract or Subcontract. The portion of a Contract or Subcontract with an MWBE serving as a Broker, as denoted by NAICS code 425120, that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.
  - b. For Non-Construction Provider Contracts or Subcontracts, the portion of a Contract or Subcontract with an MWBE serving as a Broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.
4. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR § 142.8, the Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as Subcontractors or Suppliers in the performance of the Contract.

5. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if it 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 Recipient for liquidated or other appropriate damages, as set forth herein.

**B. MWBE Utilization Plan**

1. The Contractor represents and warrants that Contractor has submitted a completed copy of the MWBE Utilization Plan with all required bid forms to the MBO no later than the execution date of this Contract.
2. The 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 III-A of this section.
3. The 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, the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is not responsive.
4. The Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the MBO. The Contractor shall indicate the changes to the MBO in the Monthly MWBE Contractor Compliance Report immediately following the change. At EFC's discretion, an updated MWBE Utilization Plan form and good faith effort documentation may be required to be submitted. When a Utilization Plan is revised due to execution of a change order, the change order should be submitted to the MBO with the Monthly MWBE Contractor Compliance Report or revised Utilization Plan.
5. The Contractor shall submit copies of all fully executed Subcontracts, agreements, and purchase orders that are referred to in the MWBE Utilization Plan to the MBO within 30 days of their execution.

**C. Request for Waiver**

1. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver to the MBO documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request aligns with the documentation identified on the Request for Waiver form, the MBO shall forward the request to EFC for evaluation, and EFC will issue a written notice of acceptance or denial within twenty (20) days of receipt.
2. If the MBO, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the Recipient 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.

**D. Monthly MWBE Contractor Compliance Report ("Monthly MWBE Report")**

1. The Contractor agrees to submit a report to the MBO by the third business day following the end of each month over the term of this Contract documenting the payments made and the progress towards achievement of the MWBE goals of the Contract. The Monthly MWBE Report must be supplemented with proof of payment by the Contractor to its Subcontractors (e.g., copies of both sides of a cancelled check) and proof that Subcontractors have been paid within 30 days of receipt of payment from the Recipient. The final Monthly MWBE Report must reflect all Utilization Plan revisions and change orders.

E. Liquidated Damages - MWBE Participation

1. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, if it has been determined by the Recipient or EFC that the Contractor has willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to Recipient liquidated damages or other appropriate damages, as specified herein and as determined by the Recipient or EFC.
2. Liquidated damages shall be calculated as an amount not to exceed the difference between:
  - a. All sums identified for payment to MWBEs had the Contractor achieved the approved MWBE participation goals; and,
  - b. All sums actually paid to MWBEs for work performed or materials supplied under this Contract.
3. The Recipient and EFC reserve the right to impose a lesser amount of liquidated damages than the amount calculated above based on the circumstances surrounding the Contractor's non-compliance.
4. In the event a determination has been made by the Recipient or EFC which requires the payment of damages identified herein and such identified sums have not been withheld, Contractor shall pay such damages to the Recipient within sixty (60) days after they are assessed unless prior to the expiration of such sixtieth day the Contractor has filed a complaint with the Empire State Development Corporation – Division of Minority and Women's Business Development ("ESD") pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the damages shall be payable if the Director of ESD renders a decision in favor of the Recipient.

### **SECTION 3 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

*The requirements of this section apply to all Construction Contracts and Subcontracts*

- A. New York State Veterans' Service Law Article 3, and 9 NYCRR Part 252, and/or any other related regulations promulgated thereto, provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. New York State recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of EFC Contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as Subcontractors or Suppliers, as protégés, or in other partnering or supporting roles.

- B. Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <http://ogs.ny.gov/Core/SDVOBA.asp>.
- C. Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.



## SECTION 4 AMERICAN IRON AND STEEL (AIS) REQUIREMENT

*The requirements of this section apply to (1) all Construction Contracts and Subcontracts for DWSRF projects and CWSRF Treatment Works projects and (2) all Contracts for the purchase of iron and steel products for a DWSRF project or CWSRF Treatment Works project. Disregard this section if it does not apply to this Contract or Subcontract.*

The Contractor shall submit with their bid or proposal documents an executed AIS Contractors Certification on the form attached hereto as [Attachment 2](#) acknowledging to and for the benefit of the Recipient of the Clean Water State Revolving Fund ("CWSRF") or the Drinking Water State Revolving Fund ("DWSRF") financial assistance that the Contractor understands the goods and services under this Agreement are being funded with monies made available by the New York State Environmental Facilities Corporation ("EFC") through the CWSRF or the DWSRF and that such funding is subject to certain statutory restrictions requiring that certain iron and steel products used in the project be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement.

The Contractor hereby represents and warrants that:

- (a) the Contractor has reviewed and understands the American Iron and Steel Requirement,
- (b) all of the iron and steel products covered by the American Iron and Steel Requirement used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and
- (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Recipient.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Recipient to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Recipient resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EFC or any damages owed to the EFC by the Recipient). While the Contractor has no direct contractual privity with the EFC, as a lender to the Recipient for the funding of this project, the Recipient and the Contractor agree that the EFC is a third-party beneficiary and neither this paragraph, nor any other provision of this Agreement necessary to give this paragraph force or effect, shall be amended or waived without the prior written consent of the EFC.

## SECTION 5 DAVIS-BACON (DB) PREVAILING WAGE REQUIREMENTS

*The requirements of this section apply to all Construction Contracts and Subcontracts greater than \$2,000 for either DWSRF projects or CWSRF Treatment Works projects. Disregard this section if it does not apply to this Contract or Subcontract.*

### **For Contracts in Excess of \$2,000:**

#### **1. Minimum Wages**

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(ii) of this section) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. The Davis–Bacon poster (WH–1321) can be found at <https://www.dol.gov/whd/regs/compliance/posters/davis.htm> . Wage determinations may be obtained from the US Department of Labor's website, <https://beta.sam.gov/> .

- (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
1. The work to be performed by the classification requested is not performed by a classification in the wage determination;
  2. The classification is utilized in the area by the construction industry; and,
  3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.
- (C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1) (ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

- (iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
  - (iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program *provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis–Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
2. Withholding. The Recipient shall upon its own action or upon written request of the EPA Award Official or an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis–Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Contract, the Recipient may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
3. Payrolls and basic records.
- (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis–Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis–Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
  - (ii)(A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Recipient. Such documentation shall be available on request of EFC or EPA. As to each payroll copy received, the Recipient shall provide written confirmation in a form satisfactory to EFC indicating whether or not the project is in compliance with the requirements of 29 CFR § 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/government-contracts/construction/forms> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and Subcontractors shall

maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient, for transmission to EFC, EPA if requested by EPA, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a Subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the Recipient (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;
2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or Subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Recipient, EFC, EPA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the Recipient, EFC, or EPA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

#### 4. Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job

site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

- 5. Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.
- 6. Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR § 5.5(a)(1) through (10) and such other clauses as the Recipient may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier subcontractor with all the Contract clauses in 29 CFR § 5.5.
- 7. Contract Termination: Debarment. A breach of the contract clauses in 29 CFR § 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR § 5.12.
- 8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by

reference in this Contract.

9. Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the Recipient, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

***For Contracts in Excess of \$100,000:***

1. Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages. The Recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or Subcontractor under any such Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

5. In any Contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR § 5.1, the Contractor or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen,



working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the Recipient and the Department of Labor, and the Contractor or Subcontractor will permit such representatives to interview employees during working hours on the job.

## **SECTION 6 REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT**

*The requirements of this section apply to all Contracts and Subcontracts.*

Contractor and any Subcontractors shall comply with, Subpart C of 2 CFR Part 180 as implemented and supplemented by 2 CFR Part 1532. The Contractor is not a debarred or suspended party under 2 CFR Part 180 or 2 CFR Part 1532, or 29 CFR § 5.12. Neither the Contractor nor any of its Subcontractors have contracted with, or will contract with, any debarred or suspended party under the foregoing regulations.

The Contractor and any Subcontractors have not been debarred from or deemed ineligible for Government Contracts or federally assisted Construction Contracts pursuant to Executive Order 12549.

The Contractor and any Subcontractors have not been deemed ineligible to submit a bid on or be awarded a public contract or subcontract pursuant to Article 8 of the State Labor Law, specifically Labor Law § 220-b. In addition, neither the Contractor nor any Subcontractors have contracted with, or will contract with, any party that has been deemed ineligible to submit a bid on or be awarded a public contract or subcontract under Labor Law § 220-b.

In addition, the Contractor and any Subcontractors have not been deemed ineligible to submit a bid and have not contracted with and will not contract with any party that has been deemed ineligible to submit a bid under Executive Law § 316.

## **SECTION 7 RESTRICTIONS ON LOBBYING**

*The requirements of this section apply to all Contracts and Subcontracts greater than \$100,000. Disregard this section if it does not apply to this Contract or Subcontract.*

The Contractor and any Subcontractor bidding or proposing a Contract or Subcontract in excess of \$100,000 shall submit with their bid or proposal documents an executed Certification Regarding Lobbying pursuant to 40 CFR Part 34 ("Lobbying Certification") in the form attached hereto as [Attachment 3](#), consistent with the prescribed form provided in Appendix A to 40 CFR Part 34.

## **SECTION 8 CONSTRUCTION SIGNS**

*The requirements of this section apply to all EFC projects. Additional signage is required for projects receiving financing from the federal Bipartisan Infrastructure Law (BIL).*

If Contractor is expected to provide an EFC Construction Sign, a specification will be included in the enclosed contract documents.

## **ATTACHMENTS (Required Forms)**



## **Attachment 1 – EFC MWBE Utilization Plan**



#### **Instructions for Contractors & Service Providers:**

Contractors and Service Providers must complete Sections 2 and 3. **Submit the completed, signed (electronic signature box checked and dated) form to the Recipient's Minority Business Officer (MBO) no later than the date of contract execution.** Incomplete forms will be found deficient. If more than 10 subcontractors are used, additional pages for Section 3 can be found on EFC's website.

**If the prime contract is being performed by the parties to a Joint Venture, Teaming Agreement, or Mentor-Protégé Agreement that includes a certified MWBE, please contact EFC for assistance.**

MWBE firms must be certified by the NYS Empire State Development Corporation (ESD) in order to be counted towards satisfaction of MWBE participation goals. The utilization of certified MWBEs for non-commercially useful functions may not be counted towards utilization of certified MWBEs in the Utilization Plan. Please note whether a firm is serving as a broker or supplier on the contract. A broker is denoted by NAICS code 425120 and is designated as a broker in [ESD's MWBE Directory](#). A supplier is denoted by a NAICS code beginning with 423 or 424, or a NIGP code that does not begin with the number 9 and is designated as a supplier in ESD's MWBE Directory. If a firm is serving as a broker, please additionally provide the percentage of the broker's commission on the contract.

See the [Mandatory Terms and Conditions](#) or consult your designated MBO for further guidance.

#### **Instructions for Minority Business Officers (MBO):**

The MBO must complete Section 1. Email the completed, signed (electronic signature box checked and dated) form to your EFC Program Compliance Specialist.

The subject heading of the email to the EFC Program Compliance Specialist should follow the format "UP, Project Number, Contractor." EFC will review the Utilization Plan and email the MBO an acceptance or denial.

**NYS Environmental Facilities Corporation  
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan**

SECTION 1: MUNICIPAL INFORMATION			
Recipient/Municipality:		County:	
Project No.:	GIGP No.:	Contract ID:	Registration No. (NYC only):
Minority Business Officer:		Email:	Phone #:
Address of MBO:			
Electronic Signature of MBO: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief.			Date:

SECTION 2: PRIME CONTRACTOR / SERVICE PROVIDER INFORMATION				
Firm Name:			Contract Type: <input type="checkbox"/> Construction <input type="checkbox"/> Other Services	
<b>Prime Firm is Certified as:</b> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> N/A <input type="checkbox"/> Other: If certified, please include Prime information in Section 3. If dual certified, you must select either MBE <u>or</u> WBE.				
Address:		Phone #:	Fed. Employer ID #:	
Description of Work:			Email:	
Award Date:	Start Date:	Completion Date:	MWBE GOAL Total	PROPOSED MWBE Participation
<b>Total Contract Amount: \$</b> <b>MWBE Eligible Contract Amount: \$</b> (MWBE Goals are applied to this amount and includes all change orders, amendments, & specialty waivers)			<b>Total:</b> %    \$	<b>Total:</b> %    \$

**NYS Environmental Facilities Corporation  
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan**

SECTION 3: MWBE SUBCONTRACTOR INFORMATION			
<b>This Submittal is:</b>	<input type="checkbox"/> The First/Original Utilization Plan <input type="checkbox"/> Revised Utilization Plan #:		
<b>NYS Certified M/WBE Subcontractor Info</b>		<b>Contract Amount:</b>	<b>For EFC Use:</b>
<b>Business Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<b>Start Date:</b>		
Select Only One: <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<b>Completion Date:</b>		
<b>Full Contract Amount: \$</b>			
<b>Business Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<b>Start Date:</b>		
Select Only One: <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<b>Completion Date:</b>		
<b>Full Contract Amount: \$</b>			
<b>Business Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<b>Start Date:</b>		
Select Only One: <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<b>Completion Date:</b>		
<b>Full Contract Amount: \$</b>			
<b>Business Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<b>Start Date:</b>		
Select Only One: <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<b>Completion Date:</b>		
<b>Full Contract Amount: \$</b>			

**NYS Environmental Facilities Corporation  
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan**

SECTION 3: M/WBE SUBCONTRACTOR INFORMATION continued			
<b>Business Name:</b>		<b>Fed. Employer ID#:</b>	
<b>Address:</b>		<b>Phone #:</b>	
<b>Scope of Work:</b>		<b>Email:</b>	
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:		<b>Start Date:</b>	
<b>Select Only One:</b> <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		<b>Completion Date:</b>	
<b>Full Contract Amount: \$</b>			
<b>Business Name:</b>		<b>Fed. Employer ID#:</b>	
<b>Address:</b>		<b>Phone #:</b>	
<b>Scope of Work:</b>		<b>Email:</b>	
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:		<b>Start Date:</b>	
<b>Select Only One:</b> <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		<b>Completion Date:</b>	
<b>Full Contract Amount: \$</b>			
<b>Business Name:</b>		<b>Fed. Employer ID#:</b>	
<b>Address:</b>		<b>Phone #:</b>	
<b>Scope of Work:</b>		<b>Email:</b>	
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:		<b>Start Date:</b>	
<b>Select Only One:</b> <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		<b>Completion Date:</b>	
<b>Full Contract Amount: \$</b>			
<b>Business Name:</b>		<b>Fed. Employer ID#:</b>	
<b>Address:</b>		<b>Phone #:</b>	
<b>Scope of Work:</b>		<b>Email:</b>	
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:		<b>Start Date:</b>	
<b>Select Only One:</b> <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		<b>Completion Date:</b>	
<b>Full Contract Amount: \$</b>			
SIGNATURE			
<b>Electronic Signature of Contractor:</b> <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and that all MWBE subcontractors will perform a commercially useful function. <b>Name (Please Type):</b>			<b>Date:</b>

## **Attachment 2 – AIS Contractor’s Certification**



# Environmental Facilities Corporation

AIS CONTRACTOR CERTIFICATION  
FOR CONSTRUCTION CONTRACTS FUNDED THROUGH  
THE NYS CLEAN WATER STATE REVOLVING FUND, OVERFLOW AND STORMWATER GRANTS  
OR  
THE NYS DRINKING WATER STATE REVOLVING FUND VIA THE  
NYS ENVIRONMENTAL FACILITIES CORPORATION

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

Contractor's Name: \_\_\_\_\_

Contract ID: \_\_\_\_\_

SRF Project No.: \_\_\_\_\_

SRF Recipient Name: \_\_\_\_\_

I certify that the iron and steel products permanently incorporated into the public water system or wastewater treatment works project under this construction contract will be and/or have been produced in the United States, in accordance with the requirements of the United States Environmental Protection Agency and 33 U.S.C. § 1388, 42 U.S.C. § 300j-12(a)(4) and any regulations promulgated thereunder. I will develop and maintain necessary documentation to demonstrate that the iron and steel products permanently incorporated into the project were produced in the United States, and make such documentation available to The New York State Environmental Facilities Corporation or their authorized representatives, upon request.

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

Name (print): \_\_\_\_\_

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

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

## **Attachment 3 – Lobbying Certification**





# Environmental Facilities Corporation

**New York State Environmental Facilities Corporation  
CERTIFICATION REGARDING LOBBYING  
FOR  
CONTRACTS, GRANTS, LOANS, AND  
COOPERATIVE AGREEMENTS  
40 CFR Part 34**

SRF Project No.: \_\_\_\_\_  
Recipient: \_\_\_\_\_  
Project Description: \_\_\_\_\_

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) 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 an 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.
- (2) 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 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 Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Date: \_\_\_\_\_  
Contract ID: \_\_\_\_\_

**STATE OF NEW YORK CONTRACT FOR GRANTS (NUMBER  
C001071, SIGNED 10/24/24)**

# STATE OF NEW YORK CONTRACT FOR GRANTS FACE PAGE

STATE AGENCY (Name & Address): <b>New York State Division of Homeland Security and Emergency Services</b> <b>1220 Washington Avenue Building 7a</b> <b>Albany, NY 12242</b>	BUSINESS UNIT/DEPT. ID: <b>DHS01</b>  CONTRACT NUMBER: <b>C001071</b>  CONTRACT TYPE (select one): <input type="checkbox"/> Multi-Year Agreement <input type="checkbox"/> Simplified Renewal Agreement <input checked="" type="checkbox"/> Fixed Term Agreement
CONTRACTOR NAME: <b>Village of Saranac Lake</b>	TRANSACTION TYPE: <input checked="" type="checkbox"/> New <input type="checkbox"/> Renewal (list periods): <input type="checkbox"/> Amendment (list periods):
CONTRACTOR IDENTIFICATION NUMBERS:  NYS Vendor ID Number: <b>1000003055</b> Federal Tax ID Number: <b>156-001376</b> Unique Entity Identifier (UEI): <b>TJ3NYFR4G4P6</b>	PROJECT NAME: <b>HMGP#4480-0084 Village of Saranac Lake Wastewater Upgrade</b> ASSISTANCE LISTINGS (formerly CFDA) NUMBER (ALN) (Federally Funded Grants Only): <b>97.039 (HMGP)</b>
CONTRACTOR PRIMARY MAILING ADDRESS:  <b>396 Main St.</b> <b>Saranac Lake NY, 12983-1789</b>  CONTRACTOR PAYMENT ADDRESS: <input checked="" type="checkbox"/> Check if same as primary mailing address  CONTRACT MAILING ADDRESS: <input checked="" type="checkbox"/> Check if same as primary mailing address  CONTRACTOR PRIMARY E-MAIL ADDRESS:  <b>mayorwilliams@saranaclakeny.gov</b>	CONTRACTOR STATUS:  <input type="checkbox"/> For Profit <input checked="" type="checkbox"/> Municipality <input type="checkbox"/> Tribal Nation <input type="checkbox"/> Individual <input type="checkbox"/> Not-for-Profit  Charities Registration Number:  Exemption Status/Code:  <input type="checkbox"/> Sectarian Entity

**C001071**

Contract Number: # \_\_\_\_\_

# STATE OF NEW YORK CONTRACT FOR GRANTS FACE PAGE

## CURRENT CONTRACT TERM:

From: **5/21/2024** To: **2/1/2026**

## AMENDED TERM:

From: To:

## CONTRACT FUNDING AMOUNT

(*Fixed Term* - enter current period amount;  
*Simplified Renewal* - enter cumulative amount  
to date; *Multi-year* - enter total projected  
amount of the contract):

CURRENT: **\$ 782,335.58**

AMENDED:

## FUNDING SOURCE(S)

- ☐ State  
☒ Federal  
☐ Other

## ATTACHMENTS INCLUDED AS PART OF THIS AGREEMENT (select all that apply):

☒ Appendix A

☒ Attachment A:

- ☐ A-1 Agency Specific Terms and Conditions  
☒ A-2 Program Specific Terms and Conditions  
☒ A-3 Federally Funded Grants and Requirements Mandated  
by Federal Laws

☒ 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

☒ Other: **FEMA Approval letter dated 5/21/2024 and Conditions of Approval (COA), FEMA Record of Environmental  
Consideration (REC), Notary Page**

## STATE OF NEW YORK CONTRACT FOR GRANTS SIGNATURE PAGE

IN WITNESS THEREOF, the parties hereto have electronically signed and agreed to this Contract, or approved this Contract on the dates below their signatures.

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 official, and as such I do agree, and I have the authority to agree, to all of the terms and conditions set forth in the Contract, including all appendices and attachments. I understand that (i) payment of a claim on this Contract is conditioned upon the Contractor's compliance with all applicable conditions of participation in this program and if applicable, the accuracy and completeness of information submitted to the State of New York through the New York State prequalification process and (ii) by electronically indicating my acceptance of the terms and conditions of the Contract, I certify that (a) to the extent that the Contractor is required to register and/or file reports with the Office of the 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 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:

Village of Saranac Lake

By: Jimmy Williams

Printed Name

Title: Mayor

Date: 10/25/24

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

STATE AGENCY:

NYS Division of Homeland Security and  
Emergency Services

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: # C001071

Page 1 of 1, Contract for Grants - Signature Page

January 2024

## STATE OF NEW YORK CONTRACT FOR GRANTS

This State of New York Contract for Grants, including all attachments and appendices (hereinafter referred to as “Contract” or “Agreement”), is hereby made by and between the State of New York acting by and through the applicable State Agency (State or Agency) 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 operation of a program or performance of a service; and desires to contract with a responsive and responsible Contractor possessing the necessary resources to provide such services or work; and

**WHEREAS**, the Contractor is ready, willing, and able to provide such services or work 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 and in compliance with the terms of the Contract, specifications outlined in the grant solicitation, resulting award, and other associated documents comprising the Agreement.

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

### STANDARD TERMS AND CONDITIONS

#### I. GENERAL PROVISIONS

**A. Order of Precedence:** In the event of a conflict among (i) the terms of the Contract or (ii) between the terms of the Contract and the original request for proposal, solicitation document, the program application or other documentation that was completed and executed by the Contractor in connection with a grant award, the order of precedence is as follows:

1. Appendix A – Standard Clauses for New York State Contracts
2. Contract for Grants Standard Terms and Conditions
3. Modifications to the Face Page
4. Modifications to Attachment A-2: Program Specific Terms and Conditions; Attachment A-3: Federally Funded Grants and Requirements Mandated by Federal Laws (modifications not required by the Federal government)<sup>1</sup>, Attachment B: Budget, Attachment C: Work Plan, and Attachment D: Payment and Reporting
5. The Face Page

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<sup>1</sup> For modifications required by the Federal government see Section I(M).

6. Attachment A-2: Program Specific Terms and Conditions, Attachment A-3: Federally Funded Grants and Requirements Mandated by Federal Laws, Attachment B: Budget, Attachment C: Work Plan; and Attachment D: Payment and Reporting
7. Modifications to Attachment A-1: Agency Specific Terms and Conditions
8. Attachment A-1: Agency Specific Terms and Conditions
9. Other attachments, including, but not limited to, the request for proposal or program application, if incorporated by reference on the Face Page

The documents above, collectively, comprise the entire Agreement and govern the program for the entirety of the term of the Contract and any resulting renewals.

**B. Funding:** Funding for the term of the 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 Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

**C. Contract Performance:** The Contractor shall perform all services or work, as applicable, and comply with all provisions of the 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 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.

**D. Modifications:** Any modifications to this Agreement, including any budgetary changes, must be mutually agreed to in writing by both parties and be reflected on the Face Page where such terms are modified. Modifications may be subject to the approval of the AG and OSC in accordance with Appendix A, Section 3, Comptroller's Approval. A modification 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 proportion of the total value of the Contract, equal to or greater than ten percent for contracts of five million dollars or less, or five percent for contracts of more than five million dollars. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Contract.

**E. Severability:** Any provision of the 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 Contract shall attempt in good faith to reform the 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.

**F. Interpretation:** The headings in the 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 gender neutral. The 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.

**G. Notice:** All Notices under this Contract, including termination notices, shall be made in writing and directed to the representatives identified herein, or their designees and shall be transmitted by: a) certified or registered United States mail, return receipt requested; b) facsimile transmission; c) personal delivery; d) expedited delivery service; and/or e) e-mail. 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.

The parties may, on written notice, designate other individuals as their representatives. Such representatives shall request, oversee, supervise, and accept performance of services provided by the Contractor and shall receive any required submissions. Whenever an action is to be taken, or approval for services given by the Agency, such action or approval may be given only by the representatives designated pursuant to this Section.

**H. Indemnification:** The Contractor shall be solely responsible and answerable in damages for all accidents, incidents, 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 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 Contract.

**I. 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 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 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 the State of New York, the State Agency, or any county, or other local government entity.

**J. Partisan Political Activity and Lobbying:** Funds provided pursuant to the 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.

**K. 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 and will comply with requirements therein.

**L. Reporting Risks to Performance:** If any specific event, conjunction of circumstances, or any occurrence involving the staff, volunteers, directors, officers, subcontractors, or program participants of the Contractor threatens the successful completion of this project, in whole or in part, the Contractor agrees to notify the State Agency within three (3) calendar days of becoming aware of the occurrence describing the occurrence and the risk it poses to performance under the Contract. The Contractor’s notice shall include a written description of the event and a recommended solution. Such events may include, but not be limited to, death or serious injury, an arrest or possible criminal activity.

**M. Federally Funded Grants and Requirements Mandated by Federal Laws:** All the Specific Federal



requirements that are applicable to the Contract are identified in Attachment A-3 (Federally Funded Grants and Requirements Mandated by Federal Laws), attached hereto. To the extent that the Contract is funded, in whole or part, with Federal funds or mandated by Federal laws: (i) the provisions of the Contract that conflict with Federal rules, Federal regulations, or Federal program specific requirements shall not apply and (ii) to the extent that the modifications to Attachment A-3 are required by Federal requirements and conflict with other provisions of the Contract, the modifications to Attachment A-3 shall supersede all other provisions of this Contract; and (iii) 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-3 (Federally Funded Grants and Requirements Mandated by Federal Laws), attached hereto.

## **N. Renewal:**

1. **General Renewal:** The Contract may consist of successive periods on the same terms and conditions, as specified within the 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 Contract.
2. **Renewal Notice to Not-for-Profit Contractors:** The Contract, as specified herein, may consist of successive periods on the same terms and condition referred to as a “Simplified Renewal Contract.” Each additional or superseding period shall be on the forms specified by the State and shall be incorporated into the Contract. Pursuant to State Finance Law §179-t, if the 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 Contract no later than ninety (90) calendar days prior to the end of the term of the Contract, unless funding for the renewal is contingent upon enactment of an appropriation, than thirty (30) calendar days after the appropriation becomes law, whichever is later. Notwithstanding the foregoing, in the event 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 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. Notification to the Contractor of the State’s intent to not renew the 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 Contractor of its intent not to renew the Contract as required in this Section and State Finance Law §179-t, the 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 Contract.

## **II. TERMINATION AND SUSPENSION**

### **A. Termination:**

#### **1. Grounds:**

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

b) Cause: The State may terminate the 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 Contract and/or any applicable laws, rules, regulations, policies, or procedures. If the termination for cause results from unsatisfactory performance by the Contractor, the value of the work performed by the Contractor prior to termination shall be established by the State.

c) Non-Responsibility: Upon written notice to the Contractor, and a reasonable opportunity to be heard by the appropriate State officials or staff, this Contract may be terminated by the State at the Contractor's expense where the Contractor is determined by the State to be non-responsible. In such event, the State may complete contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

d) Convenience: The State may terminate the 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 or entity entering into the Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Contract, the Contract may be terminated or reduced at the State Agency's discretion. No reduction or termination shall apply to allowable costs already incurred by the Contractor whereby funds are available to the State Agency for payment of such costs. Upon termination or reduction of the 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 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: Performance under the Contract may be terminated or suspended by the State immediately upon the occurrence of a "force majeure" event. For purposes of the Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, declared pandemics, insurrection, riot, strikes, lockout, and any unforeseen circumstances and acts beyond the control of the parties which render the performance of contractual obligations impossible.

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

Upon receipt of notice of termination provided pursuant to the notice requirements prescribed in this Agreement, the Contractor shall stop work immediately and complete only those specific assignments and/or obligations, if any, subsequently approved by the State. In the event of termination other than for cause, the Contractor shall be entitled to compensation for services performed through the date of termination that are accepted by the State, and for any subsequent services that are accepted by the State, rendered in connection with any successor consultants and contractors, including transfer of records, briefing and any other services deemed necessary or desirable by the State. The Contractor agrees to cooperate to the fullest respect with any successor consultants and contractors.

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

Where the 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 Contract for the purposes set forth herein, the State

may, at its option, require: a) repayment to the State of any monies previously paid to the Contractor; b) return of any real property or equipment purchased under the terms of the Contract; or c) an appropriate combination of clauses (a) and (b) herein.

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

#### **4. 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 formal written notice outlining the specific details 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 Contract.

### **III. ADDITIONAL 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 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 Contract and/or any subcontract entered into under the 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 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 Contract, Contractor shall immediately notify the State.

#### **B. Subcontractors:**

1. If the Contractor enters into subcontracts for the performance of work pursuant to the 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 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 Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Contract, and (3) that nothing contained in the subcontract, nor under the 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, 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. 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). 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 Contract for any activity other than those provided for under the 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 Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Contract.

**D. Property:**

1. For the purposes of the Contract, "Property" is defined as 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. For Federally funded contracts, if there is any conflict in the definition of "Property" the federal awarding Agency definitions will apply.

- 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. Such Property shall be returned to the State at the Contractor's cost and expense upon the expiration of the Contract unless the State consents in writing to the Contractor retaining possession of the Property to use for similar purposes.
- b) 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.
- c) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the 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. The Contractor may not charge rental or use fees under this Contract for use or acquisition of Property to carry out its obligations under the Contract.
- d) 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 specified in the 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.
- e) 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 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 Contract:

- a) For cost-reimbursable contracts, all right, title and interest in Property with a remaining useful life shall belong to the State unless otherwise agreed to, in writing, by the State and the Contractor. However, upon agreement by the State, title shall pass to Contractor upon the end of the Property's useful life (as the phrase "useful life" is defined in Internal Revenue Code § 1.169-2).
- 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 Contract shall be governed by the terms and conditions of Attachment A-3 (Federally Funded Grants and Requirements Mandated by Federal Laws).

4. The Contractor shall maintain an inventory of all Property that is owned by the State and obtained

by the Contractor under this Agreement.

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 Contract (collectively, Records).
- b) The Contractor agrees to produce and retain for the balance of the term of the Contract, and for a period of six years from the later of the date of (i) the Contract and (ii) the most recent renewal of the Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the 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 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.

#### **F. Confidentiality:**

1. Contractor agrees that it will not use confidential, personally identifiable information relating to individuals who may receive services, or proprietary information disclosed to Contractor in connection with the services or work ("Confidential Information") for any purpose other than in connection with the services or work and in compliance with all applicable provisions of State and federal law. The Contractor is fully responsible for its staff, its subcontractor(s), and any subcontractor's staff with regard to Confidential Information and shall ensure that they meet all obligations with respect to maintaining the confidentiality and security of any information deemed confidential.
2. Information which falls into any of the following categories shall not be considered Confidential Information: a) information that is previously rightfully known to the Contractor without restriction on disclosure; b) information that becomes, from no breach of the Contract on the part of the Contractor, generally known in the relevant industry, or is otherwise publicly available; and c) information that is independently developed by Contractor without use of the Confidential Information.
3. Except as specifically permitted in this Agreement, Contractor shall not, at any time, in any fashion, form or manner, divulge, disclose, communicate, or use, any Confidential Information other than in connection with the services or as otherwise provided herein.
4. Contractor may disclose Confidential Information if such information is required to be disclosed by Contractor by any law, rule, regulation, judicial or administrative process or applicable professional standards, provided that, to the extent permitted by applicable law or regulation, the Contractor notifies the State prior to any such required disclosure.
5. Contractor agrees that, as between the Parties, all Confidential Information in its possession obtained in connection with the services or work hereunder is at all times the sole property of the State.
6. Where allowable by law and agreed to by the State, Contractor may retain one copy of the Confidential Information and any summaries, analyses, notes, or extracts prepared by Contractor which are based on or contain portions of the Confidential Information evidencing its services or work for the State as required by law, regulation, professional standards, or reasonable business practice.
7. In protecting the Confidential Information, Contractor shall exercise the same standard of care used by Contractor to protect its own confidential and proprietary information, to prevent the disclosure of Confidential Information to any third party. Contractor shall not use Confidential Information for any purpose other than in furtherance of its services or work for the State.

#### **G. Publicity:**

1. Publicity regarding the work, services, performance, and/or project governed by this Agreement

may not be released without prior written approval from the State. For the purposes of this Agreement, "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.

2. Any Publicity, publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Contract may not be published, presented or announced without prior written 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 State and 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 Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) calendar day period in which to review each manuscript for compliance with Confidential Information requirements prior to publication; 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 Contract (but are not deliverable under the 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 III(F)(2) (Publicity) hereof.

#### **H. Web-Based Applications-Accessibility:**

Any network-based information and applications development, or programming delivered to or by the State pursuant to this Contract or procurement, will comply with Section 508 of the Rehabilitation Act of 1973, as amended, and be consistent with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Information Communication Technology, as such policy may be amended, modified, or superseded (the "Accessibility Policy"). The Accessibility Policy requires that State Entity Information Communication Technology shall be accessible to persons with disabilities as determined by accessibility compliance testing. Such accessibility compliance testing will be conducted by (State Entity name, contractor or other) and any report on the results of such testing must be satisfactory to (State Entity name).

#### **I. 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.

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

#### **J. 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 Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Contract.

#### **K. Vendor Responsibility:**

The Contractor hereby acknowledges that the State Vendor Responsibility Questionnaire (Questionnaire) and certification are made part of this Contract and that any misrepresentation of fact in the Questionnaire and attachments, or in any Contractor responsibility information that may be requested by the State, may result in termination of this Contract.

The Contractor shall at all times during the contract term remain responsible. During the term of this Contract, any changes in the provided Questionnaire shall be disclosed to the State Agency, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of this Contract. Furthermore, the Contractor agrees, if requested by the State, it must present evidence of its continuing legal authority to do business in New York State, its integrity, experience, ability, prior performance, and organizational and financial capacity.

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 Contract, based on any information provided in the Questionnaire and/or any updates, clarifications, or amendments thereof; and/or when it discovers information that calls into question the responsibility of the Contractor. 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.

The State reserves the right to suspend any or all activities under this Contract, upon discovery of such information warranting review of responsibility. In the event of such suspension, the Contractor will 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 this Contract.

**L. Workers' Compensation Benefits:**

1. In accordance with Section 142 of the State Finance Law, the Contract shall be void and of no force and effect unless 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 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.

## **APPENDIX A**

# **STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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## STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, 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 other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this 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 are 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 contracting agency and with the concurrence of the State Comptroller where the original contract was subject **to the State Comptroller’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 any 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 this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER’S APPROVAL.** In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. **Comptroller’s approval of** contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

**4. WORKERS’ COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by 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 will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. 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 this contract shall be performed within the State of New York, 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 this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, 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 this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. 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 a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. 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 Contractor agrees, as a material condition of the contract, that neither the Contractor 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 Contractor, or any of the aforesaid affiliates of Contractor, 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 the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. 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 this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this 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 the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours 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. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") 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 the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, 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 payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) 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 principal 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. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The 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.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting 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 agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting 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 following shall apply and by signing this agreement the Contractor certifies and affirms that **it is Contractor's equal employment opportunity policy that:**

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, 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 and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, 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 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; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State 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.

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency 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 contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will 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.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment 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.

**16. NO ARBITRATION.** Disputes involving this 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.

**17. 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. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. 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 or 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.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. 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.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business and Technology Development  
625 Broadway  
Albany, New York 12245  
Telephone: 518-292-5100

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue 33rd Floor  
New York, NY 10017  
646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York 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 New York 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 this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their 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 they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** 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.



**24. PROCUREMENT LOBBYING.** To the extent this agreement is a “procurement contract” as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** 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: <https://ogs.ny.gov/iran-divestment-act-2012>

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.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

ATTACHMENT A-2

DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES  
Program Specific Terms and Conditions

**1. DEFINITIONS.**

- a) DHSES refers to the New York State Division of Homeland Security and Emergency Services.
- b) FEMA refers to the Federal Emergency Management Agency.
- c) Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program: but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. The Subrecipient may also be referred to as the "Contractor," "Sub-Applicant," or "Sub-recipient" as defined in the **Contract for Grants**, the grant application which gave rise to this contract, or any other state or Federal laws, rules or regulations which govern this agreement.

**2. NOTICE.** Pursuant to Section I, paragraph G of the **Contract for Grants**, all notices shall be in writing and shall be addressed to:

- a) For the State:  
Hazard Mitigation Program  
4<sup>th</sup> Floor  
1220 Washington Ave. Bldg. 7A  
Albany, NY 12226

- b) For the Subrecipient:  
(See contract face page)

**3. VENDOR RESPONSIBILITY (Required for all contracts that equal or exceed \$100,000).**

- a) Pursuant to Section III, paragraph B, subparagraphs 2, 3 & 4 of the **Contract for Grants**, and in accordance with State Finance Law §163(9)(f) and Executive Order 192, prior to entering into an agreement with a contractor, Subrecipient must require each contractor to submit a Vendor Responsibility Questionnaire so that DHSES may determine whether the proposed contractor is a responsible vendor. If the Subrecipient's contractor enters into a contract with a subcontractor that equals or exceeds \$100,000, that subcontractor must also submit a Vendor Responsibility Questionnaire. DHSES reserves the right to request a Vendor Responsibility Questionnaire for any proposed contractor or subcontractor.
- b) Whenever a Subrecipient contractor or subcontractor is required to submit a Vendor Responsibility Questionnaire, said contractor or subcontractor must comply with Section III, paragraph K of the **Contract for Grants**.
- c) Subrecipient shall include the Vendor Responsibility provisions found in in Section III, paragraph K of the **Contract for Grants** in all contracts that equal or exceed \$100,000, and shall be responsible for contractor and subcontractor compliance.

**4. FINAL PAYMENT.**

- a) Project Grants- Final payment will not be made until all grant requirements have been met.
- b) Planning Grants- Final payment will not be made until the plan has been adopted by 50% or more of the participating local jurisdictions within the approved multi-jurisdictional planning area.

5. **NEW YORK STATE HAZARD MITIGATION PLANNING STANDARDS (Applicable to Planning Grants only).**

Subrecipient must meet requirements as outlined in the New York State Hazard Mitigation Planning Standards as identified and scoped in your approved application (attached).

6. **IRAN DIVESTMENT ACT.** By entering into this Agreement, Subrecipient 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>.

Subrecipient further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Subrecipient 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. Subrecipient 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 DHSES receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, DHSES 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 DHSES 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 Subrecipient in default.

DHSES 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.

7. **ENERGY EFFICIENCY.** The Subrecipient shall comply with mandatory standards and policies relating to energy efficiency which are contained in the New York State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

8. **PERSONALLY IDENTIFIABLE INFORMATION.** All Subrecipients who collect Personally Identifiable Information (PII) are required to have a publicly-available privacy policy that describes what PII they collect, how they use PII, whether they share PII with third parties, and how individuals may have their PII corrected where appropriate.

9. **BONDING REQUIREMENTS (Applicable to construction and facility improvement contracts exceeding \$100,000).**

The Subrecipient shall comply with New York State bonding requirements, unless they have not been approved by FEMA, in which case the Subrecipient shall comply with the following minimum bonding requirements:

- a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b) A performance bond on the part of the Subrecipient for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the Subrecipient’s obligations under such contract.
- c) A payment bond on the part of the Subrecipient for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

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**Terms and Conditions for Federally Funded Grants**

The following terms and conditions apply to any contract for which any portion of the funding is derived from a Hazard Mitigation Assistance grant made by the Federal Emergency Management Agency through DHSES. These terms and conditions are in addition to all grant specific terms and conditions specified in the Conditional Letter of Approval provided by FEMA which is attached to the Contract made a part thereof.

**GENERAL CONDITIONS**

1. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.
2. **STATUTORY AND REGULATORY COMPLIANCE.** Subrecipient shall comply with all laws and regulations applicable to the Hazard Mitigation Assistance funds, including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including the allowability of certain expenses.
3. **REQUIREMENT FOR SYSTEM OF AWARD MANAGEMENT.** Subrecipient shall maintain the currency of its information in the System of Award Management (SAM) until submission of the final financial report required under this award or receipt of the final payment, whichever is later, as required by 2 CFR Part 25 and Appendix II to Part 25.
4. **ADMINISTRATIVE, COST, AUDIT AND PROGRAM REQUIREMENTS.** The Subrecipient must comply with the most recent version (unless a specific version is noted) of the Administrative Requirements, Cost Principles, and Audit requirements, and to the extent necessary cooperate and maintain information and documentation to allow DHSES to comply with the applicable regulations governing the FEMA-State Agreement. Failure to do so may result in disallowance of costs upon audit. A list of regulations and guidance applicable to United States Department of Homeland Security (DHS) grants is listed below:
  - a) 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
  - b) 2 CFR Part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, & other Non-Profit Organizations
  - c) 2 CFR Part 200 (OMB Circular A-87), Subpart E, Cost Principles
  - d) 2 CFR Part 220 (OMB Circular A-21), Cost Principles for Educational Institutions
  - e) OMB Circular A-122, Cost Principles for Nonprofit Organizations
  - f) 2 CFR Part 200, Subpart F, Audit Requirements
  - g) OMB Circulars A-94 and A-133
5. **HAZARD MITIGATION ASSISTANCE REQUIREMENTS**
  - a) New York State Administrative Plan for the Hazard Mitigation Program
  - b) Sections 203 (PDM) and 404 (HMGP) of the Stafford Act (42 USC 5121 *et seq.*)
  - c) Sections 1323 (RFC), 1361A (SRL), 1366 (FMA) of the National Flood Insurance Act of 1968, as amended (42 USC 4001 *et seq.*)
  - d) Section 322 of the Stafford Act and 44 CFR Part 201 (Mitigation Planning)
  - e) Section 324 of the Stafford Act and 44 CFR Part 207 (Management Costs)
  - f) National Historic Preservation Act, as amended (54 U.S.C. § 300101 *et seq.*)
  - g) Section 106 of the National Historic Preservation act (16 U.S.C. § 470)

- h) EO 11593: Identification and protection of historic properties
  - i) Archeological and Historical Preservation Act of 1974 (16 U.S.C. § 469a-1 *et seq.*)
  - j) National Environmental Policy Act, as amended (42 U.S.C. § 4321 *et seq.*)
  - k) EO 11988: Floodplain Management and EO 11990: Protection of Wetlands (44 CFR Part 9)
  - l) National Environmental Policy and Environmental Considerations (44 CFR Part 10)
  - m) Floodplain Management (44 CFR Part 60)
  - n) Flood Mitigation Grants (44 CFR Part 79)
  - o) Property Acquisition and Relocation for Open Space (44 CFR Part 80)
  - p) Hazard Mitigation Grant Program (44 CFR Part 206, Subpart N)
  - q) 44 CFR Parts 7, 9, 10, 13, 14, 17, 18, 25, 206, 220, and 221, and any other applicable FEMA policy memoranda and guidance documents
  - r) Federal Acquisition Regulations (FAR) Subpart 31.2, Contracts with Commercial Organizations
  - s) Other applicable Federal, State, Indian Tribal, and local laws, implementing regulations, and Executive Orders
6. **ADVANCE PAYMENTS.** DHSES, at its own discretion, may approve advance payments to the Subrecipient. Subrecipient agrees to expend the advance payments in accordance with the purposes set forth in Attachment C and consistent with Attachment B. Advanced funds must be placed in an interest-bearing account and are subject to the rules outlined in 2 CFR Part 200, (Uniform Administrative Requirements for Grants and Cooperative Contracts to State and Local Governments) and 2 CFR 215 (Uniform Administrative Requirements for Grants and Contracts with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations), which requires the Sub-Recipient to promptly remit back to the federal government, through DHSES, any interest earned on these advanced funds. The Sub-Recipient may keep interest earned up to \$100 per federal fiscal year (local government) or \$250 per federal fiscal year (not-for-profit) for administrative expenses. Interest must be reported on Fiscal Cost Reports and remitted to DHSES quarterly.
7. **USE OF GRANT FUNDS.** Any cost allowable to a particular Federal award provided for in 2 CFR Part 200, Subpart E may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations or terms and conditions of the Federal awards or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations or the terms and conditions of the Federal awards.
8. **FEDERAL DEBT.** Subrecipient certifies that it is non-delinquent in its repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments. (See OMB Circular A-129 and form SF-424B, item number 17).
9. **CONFLICTS OF INTEREST.** The Subrecipient shall notify DHSES as soon as possible if this contract or any aspect related to the anticipated work under this contract raises an actual or potential conflict of interest (as described in 2 CFR Part 200). The Subrecipient shall explain the actual or potential conflict in writing in sufficient detail so that the DHSES is able to assess such actual or potential conflict. The Subrecipient shall provide DHSES any additional information necessary for DHSES to fully assess and address such actual or potential conflict of interest.
10. **DEBARMENT AND SUSPENSION (Applicable to all contracts exceeding \$25,000).** This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such the Subrecipient is required to verify that none of the Subrecipient, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). The Subrecipient must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction (e.g., subcontract) it enters into. This certification is a material representation of fact relied upon by DHSES. If it is later determined that the Subrecipient did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to DHSES, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
11. **SUBCONTRACTING.** The Subrecipient represents to DHSES that all work shall be performed by personnel

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experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this contract. None of the goals, objectives or tasks, as set forth in Attachment C, shall be sub-awarded to another organization without specific prior written approval by DHSES. Where the intention to make sub-awards is clearly indicated in the application, DHSES approval is deemed given, if these activities are funded, as proposed. The Subrecipient must include the contract provisions required by 2 CFR §200.326 (and Appendix II to 2 CFR Part 200), in every contract issued by it so that such provisions will be binding upon each of its contractors as well as the requirement to flow down such terms to all lower-tiered subcontractors. These terms and conditions are found in Exhibit E, NYS Division of Homeland Security and Emergency Services Supplementary Conditions for Hazard Mitigation Assistance Contracts. A copy of which has been provided for reference with this contract.

The Subrecipient agrees that all subcontractor arrangements shall be formalized in writing between the parties involved. The writing must, at a minimum, include the following information:

- a) Activities to be performed;
- b) Time schedule;
- c) Project policies;
- d) Other policies and procedures to be followed;
- e) Dollar limitation of the Contract;
- f) Attachment C, Attachment E, Certification Regarding Lobbying, Debarment and Suspension and any special conditions set forth in the Contract;
- g) Applicable federal and/or State cost principles to be used in determining allowable costs;
- h) and Property Records or Equipment Inventory Reports

12. **AUDIT / ACCESS TO RECORDS.** The Subgrantee, DHSES, FEMA, the Comptroller General of the United States, New York State Office of State Comptroller, pertinent federal agencies, and other designated entities, or any of their duly authorized representatives, shall have, at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the Subrecipient which are related to this contract, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions. Such audits may include review of the Subrecipient's accounting, financial, and reporting practices to determine compliance with the Contract and reporting requirements; maintenance of accurate and reliable original accounting records in accordance with governmental accounting standards as well as generally accepted accounting principles; and specific compliance with allowable cost and expenditure documentation standards prescribed by applicable federal, State, and DHSES guidelines.
13. **SINGLE AUDIT REQUIREMENTS.** For audits of fiscal years beginning on or after December 26, 2014, Subrecipients that expend \$750,000 or more from all federal funding sources during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with the requirements of GAO's Government Auditing Standards, located at <http://www.gao.gov/govaud/ybk01.htm>, and the requirements of Subpart F of 2 C.F.R. Part 200. The Subrecipient must provide one copy of such audit report to DHSES within nine (9) months of the end of its fiscal year or communicate in writing to DHSES that Subrecipient is exempt from such requirement.
14. **MAINTENANCE/RETENTION OF RECORDS.** The Subrecipient shall establish and maintain complete records, including accurate books, financial records, supporting documents, accounts and other evidence directly pertinent to performance of work performed under this Contract consistent with generally accepted bookkeeping practices. Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement (collectively, the "Records") (i) for three (3) years from the time of closeout of FEMA's grant to the State or for the period provided in the FEMA regulations at 2 C.F.R. 200.333-337 or (ii) for six (6) years after the closeout of the Agreement, or, as long as required by state law, whichever may be longer.
15. **PROGRAM INCOME.** Program income earned by the Subrecipient during the grant funding Period must be reported in writing to DHSES, in addition to any other statutory reporting requirements. Program income consists

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of income earned by the Subrecipient that is directly generated by a supported activity or earned as a result of the grant program. Program income includes, but is not limited to, income from fees for services performed, the use of rental or real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights and interest on loans made with federal award funds. The Subrecipient agrees to report the receipt and expenditures of grant program income to DHSES. (2 CFR §200.307)

16. **ACCOUNTING FOR GRANT EXPENDITURES.** The Subrecipient agrees that it shall maintain adequate internal controls and adhere to Generally Accepted Accounting Principles for Government or Generally Accepted Accounting Principles for Not-for-Profit Organizations. Grant funds may be expended only for purposes and activities set forth in this Contract. If the Subrecipient receives funding from two or more sources, all necessary steps must be taken to ensure that grant-related transactions are not commingled. This includes, but is not limited to, the establishment of unique budget codes, a separate cost center, or a separate chart of Expenditures must be cross-referenced to supporting source documents including, but not limited to: purchase orders, contracts, real estate leases, invoices, vouchers, timesheets, time and attendance records, payroll journals, employee travel records, receipts and mileage logs, and cost allocation plans.
17. **ACKNOWLEDGEMENT AND USE OF SEALS, LOGOS, CRESTS, & LIKENESSES.** Subrecipient must acknowledge its use of federal funding when issuing statements, press releases, and requests for proposals, bid invitations and other documents describing projects or programs funded in whole or in part with Federal funds. Additionally, Subrecipient must obtain approval prior to using the DHS, FEMA, and/or NYS DHSES seal(s), logos, crests or likenesses of DHS, FEMA, and/or DHSES agency officials.
18. **USE OF HOTEL OR MOTELS (If applicable).** Pursuant to § 6 of the Hotel and Motel Fire Safety Act of 1990 (15 U.S.C. §2225a), Subrecipient must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. § 2225).
19. **FLOOD INSURANCE REQUIREMENT (If the total cost of construction or acquisition exceeds \$10,000).** If the Subrecipient engages in construction or acquisition in a special flood hazard area, it must purchase flood insurance in compliance with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234).
20. **UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION (Applicable to the purchase of ALL interests in real property acquired for project purposes).** Subrecipient must comply with Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq. [P.L. 91-646]) and Title 44 CFR, Part 25, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
21. **US EXECUTIVE ORDER 13224.** Subrecipient, its contractors and subcontractors, must comply with U.S. Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism.
22. **LOBBYING (Applicable to contracts exceeding \$100,000).** The Subrecipient certifies, 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 Subrecipient, to any person for influencing or attempting to influence an officer or employee of an 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 agency, a Member of Congress, an

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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 Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c) The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subgrantees shall certify and disclose accordingly.
- d) 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 31 U.S.C. § 1352. 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.

## **23. REQUIRED USE OF AMERICAN IRON, STEEL, MANUFACTURED PRODUCTS, AND CONSTRUCTION MATERIALS.**

### **(Applicable to contracts for BRIC and FMA Projects)**

Recipients must comply with the "Build America, Buy America" provisions of the Infrastructure Investment and Jobs Act and E.O. 14005. Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- a) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- c) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

**Waivers.** When necessary, recipients may apply for, and the Federal Emergency Management Agency may grant, a waiver from these requirements. When the Federal Emergency Management Agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:

- a) applying the domestic content procurement preference would be inconsistent with the public interest;
- b) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- c) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

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## **INTELLECTUAL PROPERTY**

24. **COPYRIGHT.** Any creative or literary work developed or commissioned by the Subrecipient with grant support provided by DHSES shall become the property of DHSES, entitling DHSES to assert a copyright therein, unless the parties have expressly agreed otherwise in a written instrument signed by them.
- a) If DHSES shares its right to copyright such work with the Subrecipient, DHSES reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use: (a) the copyright in any work developed under a grant, sub-grant, or contract under a grant or sub-grant; and (b) any rights of copyright to which a Subrecipient, Contractor, or a subcontractor purchases ownership with grant support.
  - b) If the grant support provided by DHSES is federally-sponsored, the federal awarding agency also reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use: (a) the copyright in any work developed under a grant, sub-grant or contract under a grant or sub-grant; and (b) any rights of copyright to which a Subrecipient, Contractor, or a subcontractor purchases ownership with such grant support.
  - c) The Subrecipient shall submit one copy of all reports and publications resulting from this Contract to DHSES within thirty (30) calendar days of completion. Any document generated pursuant to this grant must contain the following language:  
"This project was supported by a grant administered by the New York State Division of Homeland Security and Emergency Services and the U.S. Department of Homeland Security. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the New York State Division of Homeland Security and Emergency Services or the U.S. Department of Homeland Security."
25. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.** Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government and DHSES in any resulting invention in accordance with 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FEMA.

## **TERMINATION**

26. **FOR CAUSE (Applicable to contracts exceeding \$10,000).** If, through any cause, the Subrecipient shall fail to fulfill in a timely and proper manner his obligations under this Contract, or if the Subrecipient shall violate any of the covenants, agreements, or stipulations of this Contract, DHSES shall thereupon have the right to terminate this Contract by giving written notice to the Subrecipient of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Subrecipient under this contract shall, at the option of the DHSES, become DHSES's property and the Subrecipient shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Subrecipient shall not be relieved of liability to DHSES for damages sustained by the DHSES by virtue of any breach of the Contract by the Subrecipient, and DHSES may withhold any payments to the Subrecipient for the purpose of set-off until such time as the exact amount of damages due DHSES from the Subrecipient is determined.

27. **FOR CONVENIENCE (Applicable to contracts exceeding \$10,000).** DHSES may terminate this Contract at any time by giving at least ten (10) days' notice in writing to the Subrecipient. If the Contract is terminated by DHSES as provided herein, the Subrecipient will be paid for the time provided and expenses incurred up to the termination date.

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## CIVIL RIGHTS AND DIVERSITY PROVISIONS

28. **SMALL AND MINORITY FIRMS, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.** The Subrecipient will comply with the small and minority firms, women’s business enterprise, and labor surplus area requirements as set forth at 2 CFR Part 200. Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women’s business enterprises the maximum practicable opportunity to participate in the performance of the contract. As used in these Required Federal Provisions, the terms “small business” means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 U.S.C. § 632), and “minority and women’s business enterprise” means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, “minority group members” are Afro-Americans, Spanish-speaking, Spanish surnamed, or Spanish-heritage Americans, Asian-Americans, and American Indians. Subgrantee may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.
- The Subrecipient will take necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:
- Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
  - Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
  - Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women’s business enterprises;
  - Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises; and
  - Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
29. **TITLES VI AND VIII OF THE CIVIL RIGHTS ACT OF 1964 AND EXECUTIVE ORDER 11063.** The Subrecipient shall comply with the provisions of Titles VI and VIII of the Civil Rights Act of 1964 and with Executive Order 11063. No person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. No person shall, on the grounds of race, color, religion, sex, or national origin, be discriminated against in the sale, rental, or financing of dwellings. To the extent that any such sale, lease or other transfer of land shall occur, Subrecipient, in undertaking its obligation to carry out the Program assisted hereunder, will not itself so discriminate.
30. **SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT OF 1990.** The Subrecipient shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as amended, and any applicable regulations, and with the Americans with Disabilities Act of 1990 (42 U.S.C. § 126), as amended, and any applicable regulations. The Subrecipient agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance from FEMA.
31. **NONDISCRIMINATION.** The Subrecipient shall comply with other federal and state statutory, regulatory and constitutional non-discrimination provisions. During the performance of this contract, the Subrecipient agrees as follows:
- The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Subrecipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training,

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including apprenticeship. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- b) The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c) The Subrecipient will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Subrecipient's legal duty to furnish information.
- d) The Subrecipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Subrecipient's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e) The Subrecipient will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f) The Subrecipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g) In the event of the Subrecipient's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Subrecipient may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h) The Subrecipient will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Subrecipient will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Subrecipient becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Subrecipient may request the United States to enter into such litigation to protect the interests of the United States.

With respect to construction contracts and subcontracts exceeding \$10,000, The Subrecipient shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967; Executive Order 11478 of August 8, 1969; Executive Order 12107 of December 28, 1978; Executive Order 12086 of October 5, 1978; and as supplemented in Department of Labor regulations (41 C.F.R. Part 60). Subgrantee shall include the following Specifications, which are required pursuant to 41 C.F.R. 60-4.3 in all federally assisted contracts and subcontracts. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term "Construction Work" means the construction, rehabilitation, alteration,

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conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

**Standard Federal Equal Employment Opportunity Construction Contract Specifications for Contracts and Subcontracts in Excess of \$10,000. (Federal Notice Required by 41 CFR 60-4.3)**

1. As used in these specifications:
  - a) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d) "Minority" includes:
    - i. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - iv. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Subrecipient or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Agreement resulted.
3. If the Subrecipient is participating (pursuant to 41 CFR § 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Subrecipients must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Subrecipient, contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Subrecipient's, contractor's, or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Subrecipient shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this Agreement resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Subrecipient should reasonably be able to achieve in each Construction trade in which it has employees in the covered area. Covered Construction contractors performing Construction Work in geographical areas where they do not have a Federal or federally assisted Construction contract shall apply the minority and female goals established for the geographical areas where the work is being

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performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Subrecipient is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Subrecipient shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each Construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
  - c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.
  - d) Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
  - e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.
  - f) Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by

publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction Work is performed.

- g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction Work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
  - h) Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
  - i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
  - j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.
  - k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.
  - n) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p) Conduct a review, at least annually, of all supervisor's adherence to and performance under the Subrecipient's EEO policies and affirmative action obligations.
8. Subrecipients are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure

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that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. Goals for minorities and women have been established. The Subrecipient, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Subrecipient may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Subrecipient has achieved its goals for women generally, the Subrecipient may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Subrecipient shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Subrecipient shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.
12. The Subrecipient shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Subrecipient, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Subrecipient fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 C.F.R. § 60-4.8.
14. The Subrecipient shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents.

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32. **CERTIFICATION OF NONSEGREGATED FACILITIES (Applicable to construction contracts exceeding \$10,000).** The Subrecipient certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Subrecipient agrees that a breach of this certification is a violation of the nondiscrimination clause of this contract.

As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Subrecipient further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the nondiscrimination clause; that it will retain such certifications in its files; and that it will forward the preceding notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

33. **SECTION 503 OF THE REHABILITATION ACT OF 1973 (Applicable to contracts exceeding \$10,000).** The Subrecipient shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

- a) The Subrecipient will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Subrecipient agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:
1. Recruitment, advertising, and job application procedures;
  2. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  3. Rates of pay or any other form of compensation and changes in compensation;
  4. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  5. Leaves of absence, sick leave, or any other leave;
  6. Fringe benefits available by virtue of employment, whether or not administered by the Subrecipient;
  7. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  8. Activities sponsored by the Subrecipient including social or recreational programs; and
  9. Any other term, condition, or privilege of employment.
- b) The Subrecipient agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
- c) In the event of the Subrecipient’s noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.



- d) The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Subrecipient's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Subrecipient must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Subrecipient may have the notice read to a visually disabled individual or may lower the posted notice so that it might be read by a person in a wheelchair).
- e) The Subrecipient will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subrecipient is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.
- f) The Subrecipient will include the provisions of this clause in every subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the Act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Subrecipient will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

#### **LABOR PROVISIONS**

- 34. **MINIMUM WAGE AND MAXIMUM HOURS (Applicable to contracts with institutions of higher education, hospitals, and non-profit organizations).** Subrecipient must comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201).
- 35. **HATCH ACT.** Subrecipient must comply with the Hatch Act (5 U.S.C. §§1501-1508 & 7324-7328), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal Funds.
- 36. **DRUG-FREE WORKPLACE.** Pursuant to 42 U.S.C. § 701 *et seq.*, adopted at 2 C.F.R. Part 3001, all Subrecipients receiving grants from a Federal agency must maintain a drug-free workplace.

#### **ENVIRONMENTAL PROVISIONS**

- 37. **SOLID WASTE DISPOSAL.** Pursuant to 2 CFR § 200.322, Subrecipient must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (codified at 42 USC § 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 38. **CERTIFICATION OF COMPLIANCE WITH ENVIRONMENTAL LAWS (Applicable to ALL contract with a value exceeding \$150,000).** The Subrecipient and all subcontractors agree to comply with the following requirements (and their state and/or local counterparts or analogues, if any) insofar as they apply to the performance of this Agreement as any of the following may hereinafter be amended, superseded, replaced, or modified:
  - a) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951, 3 C.F.R., 1977 Comp., p. 117, as

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interpreted at 24 C.F.R. Part 55), and Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961, 3 C.F.R., 1977 Comp., p. 121);

- b) Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1451 et seq.);
- c) Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. § 349, as amended), and EPA regulations for Sole Source Aquifers (40 C.F.R. Part 149);
- d) Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 et seq.);
- e) Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. § 1271 et seq.);
- f) Clean Air Act, as amended (42 U.S.C. § 7401 et seq.);
- g) EPA regulations for Determining Conformity of Federal Actions to State or Federal Implementation Plans (40 C.F.R. Parts 6, 51, and 93);
- h) Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201 et seq.), and USDA regulations at 7 C.F.R. Part 658;
- i) FEMA criteria and environmental policy;
- j) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Feb. 11, 1994 (59 FR 7629, 3 C.F.R., 1994 Comp. p. 859);
- k) Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4001-4128);
- l) National Flood Insurance Reform Act of 1994 (42 U.S.C. § 5154a);
- m) Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. § 3501);
- n) Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4801 et seq.)
- o) Runway Clear Zone regulations (24 C.F.R. Part 51);
- p) Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251, et seq.), commonly known as the Clean Water Act, and all regulations and guidelines issued thereunder;
- q) Environmental Protection Agency ("EPA") regulations at 40 C.F.R. Part 50, as amended;
- r) All other applicable environmental laws that may exist now or in the future.

Further, Subrecipient shall abide by any conditions or requirements set forth in any environmental review performed by FEMA in furtherance of implementing the National Environmental Policy Act.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the Subrecipient, the following:

- a) A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. Part 32 or on the List of Violating Facilities issued by the EPA pursuant to 40 C.F.R. Part 15, as amended.
- b) Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c 8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- c) A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.
- d) Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraphs A through D of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

39. **DHS Standard Terms and Conditions.** (See next page)

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Attachment A-3: Terms and Conditions for Federally Funded Grants

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# FY 2024 DHS STANDARD TERMS AND CONDITIONS

The Fiscal Year (FY) 2024 Department of Homeland Security (DHS) Standard Terms and Conditions apply to all new federal awards of federal financial assistance (federal awards) for which the federal award date occurs in FY 2024 and flow down to subrecipients unless a term or condition specifically indicates otherwise. For federal awards that may involve continuation awards made in subsequent FYs, these FY 2024 DHS Standard Terms and Conditions will apply to the continuation award unless otherwise specified in the terms and conditions of the continuation award. The United States has the right to seek judicial enforcement of these terms and conditions.

All legislation and digital resources are referenced with no digital links. These FY 2024 DHS Standard Terms and Conditions are maintained on the DHS website at [www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions](http://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions).

## **A. Assurances, Administrative Requirements, Cost Principles, Representations, and Certifications**

- I. Recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances – Non- Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances as instructed by the federal awarding agency.

## **B. Recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in effect as of the federal award date and located at 2 C.F.R. Part 200 and adopted by DHS at 2 C.F.R. § 3002.10. General Acknowledgements and Assurances**

All recipients and subrecipients must acknowledge and agree to provide DHS access to records, accounts, documents, information, facilities, and staff pursuant to 2 C.F.R. § 200.337.

- I. Recipients must cooperate with any DHS compliance reviews or compliance investigations.
- II. Recipients must give DHS access to examine and copy records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities and personnel.
- III. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
- IV. Recipients must comply with all other special reporting, data collection, and evaluation requirements required by law, federal regulation, Notice of Funding Opportunity, federal award specific terms and conditions, and/or federal awarding agency program guidance.
- V. Recipients must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receiving the Notice of Award for the first award under which this term applies. Recipients of multiple federal awards from DHS should only submit one completed tool for their organization, not per federal award. After the initial submission, recipients are required to complete the tool once every two (2) years if they have an active federal award, not every time a federal award is made. Recipients must submit the completed tool, including supporting materials, to [CivilRightsEvaluation@hq.dhs.gov](mailto:CivilRightsEvaluation@hq.dhs.gov). This tool clarifies the civil rights obligations and related reporting requirements contained in these DHS Standard Terms and

# FY 2024 DHS STANDARD TERMS AND CONDITIONS

Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>. DHS Civil Rights Evaluation Tool | Homeland Security

The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension to the 30-day deadline if the recipient identifies steps and a timeline for completing the tool. Recipients must request extensions by emailing the request to [CivilRightsEvaluation@hq.dhs.gov](mailto:CivilRightsEvaluation@hq.dhs.gov) prior to expiration of the 30-day deadline.

## **C. Standard Terms & Conditions**

### **I. Acknowledgement of Federal Funding from DHS**

Recipients must acknowledge their use of federal award funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal award funds.

### **II. Activities Conducted Abroad**

Recipients must coordinate with appropriate government authorities when performing project activities outside the United States obtain all appropriate licenses, permits, or approvals.

### **III. Age Discrimination Act of 1975**

Recipients must comply with the requirements of the Age Discrimination Act of 1975, Pub. L. No. 94-135 (codified as amended at 42 U.S.C. § 6101 *et seq.*), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

### **IV. Americans with Disabilities Act of 1990**

Recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. §§ 12101– 12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

### **V. Best Practices for Collection and Use of Personally Identifiable Information**

Recipients who collect personally identifiable information (PII) as part of carrying out the scope of work under a federal award are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.

### **VI. Civil Rights Act of 1964 – Title VI**

Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352 (codified as amended at 42 U.S.C. § 2000d *et seq.*), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21. Recipients of an award from the Federal Emergency Management Agency (FEMA) must also comply with FEMA's implementing regulations at 44 C.F.R. Part 7.

# FY 2024 DHS STANDARD TERMS AND CONDITIONS

## VII. Civil Rights Act of 1968

Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284 (codified as amended at 42 U.S.C. § 3601 *et seq.*) which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex, as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)

## VIII. Copyright

Recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 to any work first produced under federal awards and also include an acknowledgement that the work was produced under a federal award (including the federal award number and federal awarding agency). As detailed in 2 C.F.R. § 200.315, a federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes and to authorize others to do so.

## IX. Debarment and Suspension

Recipients must comply with the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689 set forth at 2 C.F.R. Part 180 as implemented by DHS at 2 C.F.R. Part 3000. These regulations prohibit recipients from entering into covered transactions (such as subawards and contracts) with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

## X. Drug-Free Workplace Regulations

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106).

## XI. Duplicative Costs

Recipients are prohibited from charging any cost to this federal award that will be included as a cost or used to meet cost sharing or matching requirements of any other federal award in either the current or a prior budget period. (See 2 C.F.R. § 200.403(f)). However, recipients may shift costs that are allowable under two or more federal awards where otherwise permitted by federal statutes, regulations, or the federal financial assistance award terms and conditions.

## XII. Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX

Recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. No. 92-318 (codified as amended at 20 U.S.C. § 1681 *et seq.*), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17. Recipients of an award from the Federal Emergency Management Agency (FEMA) must also comply with FEMA's implementing regulations at 44 C.F.R. Part 19.

## XIII. Energy Policy and Conservation Act

Recipients must comply with the requirements of the Energy Policy and Conservation Act,

# FY 2024 DHS STANDARD TERMS AND CONDITIONS

Pub. L. No. 94-163 (1975) (codified as amended at 42 U.S.C. § 6201 *et seq.*), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

XIV. False Claims Act and Program Fraud Civil Remedies

Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. §§ 3729-3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made.)

XV. Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

XVI. Federal Leadership on Reducing Text Messaging while Driving

Recipients are encouraged to adopt and enforce policies that ban text messaging while driving recipient-owned, recipient-rented, or privately owned vehicles when on official government business or when performing any work for or on behalf of the Federal Government. Recipients are also encouraged to conduct the initiatives of the type described in Section 3(a) of E.O. 13513.

XVII. Fly America Act of 1974

Recipients must comply with Preference for U.S. Flag Air Carriers (a list of certified air carriers can be found at: [Certificated Air Carriers List | US Department of Transportation, https://www.transportation.gov/policy/aviation-policy/certificated-air-carriers-list](https://www.transportation.gov/policy/aviation-policy/certificated-air-carriers-list)) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

XVIII. Hotel and Motel Fire Safety Act of 1990

Recipients must ensure that all conference, meeting, convention, or training space funded entirely or in part by federal award funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a.

XIX. John S. McCain National Defense Authorization Act of Fiscal Year 2019

Recipients, subrecipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. The statute – as it applies to DHS recipients, subrecipients, and their contractors and subcontractors – prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.

XX. Limited English Proficiency (Civil Rights Act of 1964, Title VI)

Recipients must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

# FY 2024 DHS STANDARD TERMS AND CONDITIONS

## XXI. Lobbying Prohibitions

Recipients must comply with 31 U.S.C. § 1352 and 6 C.F.R. Part 9, which provide that none of the funds provided under a federal award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification. Per 6 C.F.R. Part 9, recipients must file a lobbying certification form as described in Appendix A to 6 C.F.R. Part 9 or available on Grants.gov as the Grants.gov Lobbying Form and file a lobbying disclosure form as described in Appendix B to 6 C.F.R. Part 9 or available on Grants.gov as the Disclosure of Lobbying Activities (SF-LLL).

## XXII. National Environmental Policy Act

Recipients must comply with the requirements of the National Environmental Policy Act of 1969, Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 *et seq.*) (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

## XXIII. Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

## XXIV. Non-Supplanting Requirement

Recipients of federal awards under programs that prohibit supplanting by law must ensure that federal funds supplement but do not supplant non-federal funds that, in the absence of such federal funds, would otherwise have been made available for the same purpose.

## XXV. Notice of Funding Opportunity Requirements

All the instructions, guidance, limitations, scope of work, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this federal award are incorporated by reference. All recipients must comply with any such requirements set forth in the NOFO. If a condition of the NOFO is inconsistent with these terms and conditions and any such terms of the Award, the condition in the NOFO shall be invalid to the extent of the inconsistency. The remainder of that condition and all other conditions set forth in the NOFO shall remain in effect.

## XXVI. Patents and Intellectual Property Rights

Recipients are subject to the Bayh-Dole Act, 35 U.S.C. § 200 *et seq.* and applicable regulations governing inventions and patents, including the regulations issued by the Department of Commerce at 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Awards, Contracts, and Cooperative Agreements) and the standard patent rights clause set forth at 37 C.F.R. § 401.14.

## XXVII. Procurement of Recovered Materials

States, political subdivisions of states, and their contractors must comply with Section

# FY 2024 DHS STANDARD TERMS AND CONDITIONS

6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962) and 2 C.F.R. § 200.323. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

## XXVIII. Rehabilitation Act of 1973

Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112 (codified as amended at 29 U.S.C. § 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

## XXIX. Reporting of Matters Related to Recipient Integrity and Performance

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of the federal award, then the recipient must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated by reference.

## XXX. Reporting Subawards and Executive Compensation

For federal awards that equal or exceed \$30,000, recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation set forth at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated by reference.

## XXXI. Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- (1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.



# FY 2024 DHS STANDARD TERMS AND CONDITIONS

## *Waivers*

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

- (a) When the Federal agency has determined that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:
  - (1) applying the domestic content procurement preference would be inconsistent with the public interest;
  - (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
  - (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at ["Buy America" Preference in FEMA Financial Assistance Programs for Infrastructure | FEMA.gov](#).

## *Definitions*

The definitions applicable to this term are set forth at 2 C.F.R. § 184.3, the full text of which is incorporated by reference.

### XXXII. SAFECOM

Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications. The SAFECOM Guidance is updated annually and can be found at [Funding and Sustainment | CISA](#).

### XXXIII. Terrorist Financing

Recipients must comply with E.O. 13224 and applicable statutory prohibitions on transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible for ensuring compliance with the E.O. and laws.

### XXXIV. Trafficking Victims Protection Act of 2000 (TVPA)

Recipients must comply with the requirements of the government-wide financial assistance award term which implements Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 106 (codified as amended at 22 U.S.C. § 7104). The award term is located at 2 C.F.R. § 175.15, the full text of which is incorporated by reference.

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## XXXV. Universal Identifier and System of Award Management

Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated reference.

## XXXVI. USA PATRIOT Act of 2001

Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

## XXXVII. Use of DHS Seal, Logo and Flags

Recipients must obtain written permission from DHS prior to using the DHS seals, logos, crests, or reproductions of flags, or likenesses of DHS agency officials. This includes use of DHS component (e.g., FEMA, CISA, etc.) seals, logos, crests, or reproductions of flags, or likenesses of component officials.

## XXXVIII. Whistleblower Protection Act

Recipients must comply with the statutory requirements for whistleblower protections at 10 U.S.C § 470141 U.S.C. § 4712.

## ATTACHMENT B - BUDGET

### Contract Periods

Contract Type: **Fixed Term**

Contract Term: 5/21/2024 to 2/1/2026

Contract Amount: \$ 782,335.58

### Contract Period Information Details

For Fixed Terms contracts, only Period 1 in the chart below is completed.

For Simplified Renewal contracts, Period 1 in the chart below is completed initially and additional periods are added incrementally as they are awarded.

For Multi-Year Contracts, all defined contract periods will be displayed. Out years represent projected funding amounts.

For all contracts, the Budget and Workplan Indicator is provided to represent whether these details are included on the following pages.

### Contract Period Information

[illegible]

Contract Number: C001071

## ATTACHMENT B-3 – CAPITAL BASED BUDGET SUMMARY

PROJECT NAME: Saranac Lake (V) Wastewater Upgrade Phase I

CONTRACTOR SFS PAYEE NAME: Village of Saranac Lake

CONTRACT PERIOD:	From:	05/21/2024
	To:	02/01/2026

CATEGORY OF EXPENSE	GRANT FUNDS	MATCH FUNDS	MATCH %	OTHER FUNDS	TOTAL
1. Scoping and Pre-Development	\$19817.10	\$2201.90	10		\$22019.00
2. Design	\$653067.76	\$72563.08	10		\$725630.84
3. Acquisition					\$0.00
4. Construction					\$0.00
5. Administration	\$70361.18	\$7817.91	10		\$78179.09
6. Working Capital/Reserves					\$0.00
7. Other	\$39089.54		0		\$39089.54
TOTAL	\$782335.58	\$82582.89		\$0.00	\$864918.47

**ATTACHMENT B-3 – CAPITAL BASED BUDGET  
DETAIL**

SCOPING AND PRE DEVELOPMENT - TYPE/DESCRIPTION	ITEM # (IF APPLICABLE)	QUANTITY (IF APPLICABLE)	UNIT PRICE (IF APPLICABLE)	TOTAL
1. Land, Structures and Right-of-Way				\$22019.00
2.				
3.				
4.				
5.				
6.				
7.				
8.				
TOTAL				\$22019.00

DESIGN - TYPE/DESCRIPTION	ITEM # (IF APPLICABLE)	QUANTITY (IF APPLICABLE)	UNIT PRICE (IF APPLICABLE)	TOTAL
1. Project Inspection Fees				\$22019.00
2. Architecture and Engineering				\$703611.84
3.				
4.				
5.				
6.				
7.				
8.				
TOTAL				\$725630.84

ACQUISITION - TYPE/DESCRIPTION	ITEM # (IF APPLICABLE)	QUANTITY (IF APPLICABLE)	UNIT PRICE (IF APPLICABLE)	TOTAL
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
TOTAL				\$0.00

CONSTRUCTION - TYPE/DESCRIPTION	ITEM # (IF APPLICABLE)	QUANTITY (IF APPLICABLE)	UNIT PRICE (IF APPLICABLE)	TOTAL
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
TOTAL				\$0.00

ADMINISTRATION - TYPE/DESCRIPTION	ITEM # (IF APPLICABLE)	QUANTITY (IF APPLICABLE)	UNIT PRICE (IF APPLICABLE)	TOTAL
1. Administrative Expenses				\$78179.09
2.				
3.				
4.				
5.				
6.				
7.				
8.				
TOTAL				\$78179.09

WORKING CAPITAL/RESERVES - TYPE/DESCRIPTION	ITEM # (IF APPLICABLE)	QUANTITY (IF APPLICABLE)	UNIT PRICE (IF APPLICABLE)	TOTAL
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
TOTAL				\$0.00

OTHER - TYPE/DESCRIPTION	ITEM # (IF APPLICABLE)	QUANTITY (IF APPLICABLE)	UNIT PRICE (IF APPLICABLE)	TOTAL
1. <b>Management Costs</b>				\$39089.54
2.				
3.				
4.				
5.				
6.				
7.				
8.				
TOTAL				\$39089.54



**ATTACHMENT C – WORK PLAN  
SUMMARY**

**PROJECT NAME:** Saranac Lake (V) Wastewater Upgrade Phase I

**CONTRACTOR SFS PAYEE NAME:** Village of Saranac Lake

**CONTRACT PERIOD:**

**From:** 05/21/2024

**To:** 02/01/2026

**Provide an overview of the project including goals, tasks, desired outcomes and performance measures:**

The project entails engineering studies of two sections existing wastewater utilities in the Village of Saranac Lake in order to make specific recommendations for proposed upgrades, which will be conducted in Phase II of the project. These sections are referred to as Basin I ("Swamp Line") and Basin IV ("Trunk Main"). The studies will be conducted to determine the best and safest methods of relocating and replacing vitrified clay tile lines under buildings, as well as filling and sealing those lines under structures that cannot be removed, relocating lines under parking areas and upsizing pipes between manholes in Basin I. Studies will also be conducted to determine the best materials to replace iron pipe lines, including pipe bursting methodology, relocating lines in the Woodruff Street area, and the installation of 16 new manholes to provide better access an service of the utility lines.

## **ATTACHMENT D PAYMENT AND REPORTING**

### **A. General Terms and Conditions:**

1. In full consideration of contract performance, 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 and the contract is fully executed. Contractor obligations or expenditures that precede the start date of the Contract shall not be reimbursed.
3. 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 Contract shall be governed by Article 11-B of the State Finance Law.
4. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. However, the State may, in its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. The State may require the Contractor to submit billing invoices electronically.
5. The Contractor shall submit documentation to support its claims for payment pursuant to this Contract. All supporting documentation must be completed and provided in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.
6. Payment for invoices submitted by the Contractor shall be rendered electronically in accordance with OSC's procedures and practices governing electronic payment unless payment by paper check is expressly authorized by the head of the State Agency, in his or her sole discretion after the Contractor establishes extenuating circumstances requiring payment by paper check.
7. If travel expenses are an approved expenditure under the 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.
8. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Contract as security for the faithful completion of services or work, as applicable, under the Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the 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.

9. All vouchers must be submitted by the Contractor 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.

10. All obligations must be incurred prior to the end date of the contract. The final claim of the contract term shall be submitted to the State Agency up to ninety (90) calendar days after the contract end date to make final expenditures if this contract is State Funded. However, if this 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 and submit the claim to the State Agency.

11. The State shall not be liable for payments on the 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.

12. The Contractor may be required to submit a Consolidated Fiscal Reporting System ("CFR"). The CFR is a standardized electronic reporting method accepted by State agencies, 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. 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.

## **B. Advance Payments and Claiming Requirements:**

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 for both multiyear and renewal contracts and the provisions of this contract. Federally funded contract advances will be made as set forth by the Federal grant award requirements and applicable Federal regulations and this contract.

2. For simplified renewals, the payment schedule will be modified as part of the renewal process. 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.

3. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims 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.

4. All Claim Submissions including Advance Payments, Initial Payments, and Reimbursements shall be made in accordance with the State Agency approved Schedule A: Claiming Requirements below.

## Schedule A: Claiming Requirements

Period :			
Claim Number	Claim Type	Claim Period	Due Date

5. Milestone/Performance Reimbursement is based upon the Contractor satisfactorily meeting specified and meaningful events or milestones in performance of duties under this Contract. Requests for such payments be 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.

- For non-performance based contracts, the Contractor's costs must be allocated pursuant to a plan that meets the requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) at 2 CFR Part 200. 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.
- 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.

6. Fee for Service Reimbursement is based upon a rate established by the Contractor for a service or services rendered. Payment shall be limited to only those fees specifically agreed upon in the Contract and shall be payable in accordance with the State Agency approved Schedule A: Claiming Requirements.

7. Rate Based Reimbursement is based upon an established rate per unit at defined intervals to be paid to the Contractor in accordance with the State Agency approved Schedule A: Claiming Requirements. Payment shall be limited to rate(s) established in the Contract and may be requested no more frequently than monthly.

8. Fifth Quarter Payments occur when there are scheduled payments and an expectation that services will be continued through renewals or subsequent contracts. 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 generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

9. If the Expenditure Based Budget is used in Attachment B-1 and the Expenditure Report is selected below, the Contractor shall submit, not later than the time period listed in the State Agency approved Schedule A: Claiming Requirements above, a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.

☐ Expenditure Report Required

### C. Refunds:

1. In the event that the Contractor must refund the State for Contract-related activities, including repayment of an advance or an audit disallowance, the refund must be made payable as set forth by the State Agency, must reference the contract number with its payment, and include a brief explanation of why the refund is being made.

2. If at the end or termination of the Contract there remains any unexpended balance of the monies advanced under the 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 Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

### D. Progress Reporting Requirements:

If the State Agency determines that Work Plan Based Reporting is required to summarize the progress made on the performance measures established in the Contract, such reporting shall be made online as directed by the State Agency.

If Work Plan Based Reporting is not required, the Contractor shall comply with the following applicable provisions and the Contractor shall provide the State Agency with one or more of the following reports as required by the State Agency:

1. *Narrative/Qualitative Report*: The Contractor shall submit no later than the time period identified in Schedule B: Progress Reporting Requirements, below, 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 the 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.

2. *Statistical/Quantitative Report*: The Contractor shall submit, on a quarterly basis, no later than the time period listed in Schedule B: Progress Reporting Requirements, below, 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.).

3. *Final Report*: The Contractor shall submit a final report as required by the Contract, not later than the time period listed in Schedule B: Progress Reporting Requirements, below, 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).

4. *Consolidated Fiscal Report:* The Contractor shall submit a consolidated fiscal report, which includes a year-end cost report and final claim not later than the time period listed in Schedule B: Progress Reporting Requirements below.

**Schedule B: Progress Reporting Requirements**

Period 1:			
Progress Report	Report Type	Report Period	Due Date
Quarterly Progress Report	Narrative / Qualitative / Expenditure	Quarterly Report 1	January 15
Quarterly Progress Report	Narrative / Qualitative / Expenditure	Quarterly Report 2	April 15
Quarterly Progress Report	Narrative / Qualitative / Expenditure	Quarterly Report 3	July 15
Quarterly Progress Report	Narrative / Qualitative / Expenditure	Quarterly Report 4	October 15
Final Report	Final Report	45 days after the end of contract period	

**E. Special Payment and Reporting Provisions**



**FEMA**

May 21, 2024

Ms. Rayana Gonzales  
Alternate Governor's Authorized Representative  
New York State Division of Homeland Security and Emergency Services  
1220 Washington Avenue  
Building 7A, Suite 710  
Albany, NY 12242

Attn: Alison Maura, State Hazard Mitigation Officer

Re: FEMA-4480-DR-NY  
Hazard Mitigation Grant Program (HMGP)  
HMGP Project: # 4480-0084  
Village of Saranac Lake  
Wastewater Upgrade – Approval Letter

Dear Ms. Gonzales:

The Federal Emergency Management Agency (FEMA) has completed review of the New York State Division of Homeland Security and Emergency Services (DHSES) request for funding of the Hazard Mitigation Grant Program (HMGP) project number 4480-0084 for the Village of Saranac Lake. DHSES as the grant recipient (hereinafter known as the Recipient) will administer this sub-grant to Saranac Lake (hereinafter known as the Sub-Recipient).

The approved Scope of Work (SOW), outlined in the application, replaces wastewater pipes and manhole covers in the Village of Saranac Lake, NY, servicing wastewater Basins I and IV. At Basin I, flowable fill will mitigate the future collapse 277 feet of 10-inch vitrified clay tile pipe, which under-lays multiple jeopardized buildings, retiring the pipe from service. The village will lay a replacement line for 423 feet of 12-inch (standard dimension ratio of 26) pipe, and place 11 new, precast, 4-foot diameter, manholes (5 of which will be new locations). At Basin IV, either 36-inch ductile iron or high-density polyethylene will substitute for an existing 568 feet of 24-inch cast iron pipe, and 4-foot diameter manholes will replace 16 older manholes.

Funding for Phase I has been made available in an amount not to exceed total project costs of \$825,828.93 with a Federal share of \$743,246.04 and the required non-Federal matching share of \$82,582.89. In addition, Sub-recipient management costs were requested and has been made available for an amount not to exceed at total cost of \$39,089.54 funded at a 100% Federal share for a total Federal share of \$782,335.58 obligated for this project. The necessary costs of requesting, obtaining, and administering federal disaster sub-grants will only be covered by an allowance as defined in 44 CFR Part 207. Approval is contingent upon the fulfillment of all conditions identified by FEMA (see the attached Conditions of Approval (COA)).

In order for FEMA to complete its technical feasibility, cost effectiveness and environmental historic preservation reviews and make a final project determination for HMGP funding, additional information is needed. The project review process is, therefore, being divided into two components, Phase I (Engineering) and Phase II (Permits and Construction). The Phase I approved SOW is to complete engineering design, conduct initial surveys, draft preliminary plans and finish noninvasive sampling, derive and document maximum ground disturbances. Further, provide an updated Benefit Cost Analysis with supporting documentation. This approval is contingent upon the fulfillment of all conditions identified by FEMA and itemized below. The following Phase I deliverables will be needed to assess technical feasibility and cost-effectiveness prior to Phase II approval.

- Complete engineering design.
- Conduct initial surveys.
- Finish noninvasive sampling, derive and document maximum ground disturbances.
- Updated Benefit Cost Analysis with supporting documentation.

Upon the timely completion of the Phase I deliverables, FEMA will consider Phase II for permits and construction funding, in the amount not to exceed the federal share of \$4,301,052.65 and a non-federal match of \$477,894.74. The maximum FEMA funding for both phases of this project is \$5,044,298.69 (90% of the total project cost) of \$5,604,776.32 and a total non-federal matching share of \$560,477.63, and \$211,500.99 for 100% of the Sub-recipient management costs for a total Federal share of \$5,255,799.68. The necessary costs of requesting, obtaining, and administering federal disaster sub-grants will only be covered by an allowance as defined in 2 C.F.R. Part 200

The Period of Performance (POP) deadline of February 1, 2026, has been established for this grant program. The POP is in accordance with Hazard Mitigation Assistance Guidance dated February 27, 2015, Part. VI. Award Administration Information, D.4 Program Period of Performance. DHSES will administer this sub-grant within the grant program POP.

Any change to the approved Scope of Work as identified within the application must be submitted to FEMA Region 2 for consideration and approval prior to implementation. This includes any potential extension of the sub-recipient project schedule as identified within the conditions of approval. Execution of any modification to the approved scope of work without prior FEMA Region 2's approval may jeopardize funding for the sub-grant project as a whole. In accordance with 2 CFR Part 200, the Recipient must ensure that Sub-recipients are aware of requirements imposed upon them by Federal Statute and regulations.

FEMA urges your office to meet with the Sub-recipient to review the project requirements as soon as possible. At this meeting, please discuss in detail the COA and project schedule including quarterly performance reporting and fiscal documentation requirements. FEMA is available to assist the Recipient and Sub-recipient in the implementation of this project.



Ms. Rayana Gonzales

May 21, 2024

Page 3 of 3

Should you have any questions or require additional information, please contact Sharon Edwards, Hazard Mitigation Assistance Branch Chief at (212) 680-3633 or by email at [Sharon.Edwards@fema.dhs.gov](mailto:Sharon.Edwards@fema.dhs.gov).

Sincerely,

**PATRICK  
M TUOHY**

Digitally signed by  
**PATRICK M TUOHY**  
Date: 2024.05.21  
12:42:24 -04'00'

William McDonnell  
Mitigation Division Director  
FEMA Region 2

cc: Ms. Shannon Al-Jabi, Chief of Mitigation Programs

Attachment: Conditions of Approval (COA)  
Record of Environmental Consideration

## **CONDITIONS OF APPROVAL**

HMGP Project: 4480-0084

Saranac Lake

Village of Saranac Lake

FEMA Region 2 approval is contingent upon fulfillment of all the following conditions:

### **1. Approved Scope of Work**

The approved Scope of Work (SOW) outlined in the application replaces wastewater pipes and manhole covers in the Village of Saranac Lake, NY, servicing wastewater Basins I and IV. At Basin I, flowable fill will mitigate the future collapse 277 feet of 10-inch vitrified clay tile pipe, which under-lays multiple jeopardized buildings, retiring the pipe from service. The village will lay a replacement line for 423 feet of 12-inch (standard dimension ratio of 26) pipe, and place 11 new, precast, 4-foot diameter, manholes (5 of which will be new locations). At Basin IV, either 36-inch ductile iron or high-density polyethylene will substitute for an existing 568 feet of 24-inch cast iron pipe, and 4-foot diameter manholes will replace 16 older manholes.

In order for FEMA to complete its technical feasibility, cost effectiveness and environmental historic preservation reviews and make a final project determination for HMGP funding, additional information is needed. The project review process is, therefore, being divided into two components, Phase I (Engineering) and Phase II (Permits and Construction). The Phase I approved SOW is to complete engineering design, conduct initial surveys, draft preliminary plans, finish noninvasive sampling, derive and document maximum ground disturbances, Further, provide an updated Benefit Cost Analysis with supporting documentation. This approval is contingent upon the fulfillment of all conditions identified by FEMA and itemized below. The following Phase I deliverables will be needed to assess technical feasibility and cost-effectiveness prior to Phase II approval.

- Complete engineering design.
- Conduct initial surveys.
- Finish noninvasive sampling, derive and document maximum ground disturbances.
- Updated Benefit Cost Analysis with supporting documentation.

### **2. Scope of Work Changes**

In accordance with 2 CFR Section 200.308, pass-through entities (the program Recipient) must obtain prior approval from FEMA prior to implementation of any proposed SOW change. Requests must be made in writing and demonstrate the need for the SOW change. The request should also include a revised SOW, schedule, and budget. Any SOW changes are subject to all programmatic requirements, including EHP review requirements. All approvals will be at FEMA's discretion.

### **3. Other Regulatory Requirements**

As part of our approval, the Sub-recipient is required to adhere to all applicable Federal regulations including the following: 2 CFR 200: Uniform administrative requirements, cost principles, and audit requirements for federal award.

## **CONDITIONS OF APPROVAL**

HMGP Project: 4480-0084

Saranac Lake

Village of Saranac Lake

### **4. Environmental Review Project Conditions**

Any change to the approved SOW will require re-evaluation for compliance with NEPA and other Laws and Executive Orders. Subrecipients should be made aware that this document does not address all federal, state, and local requirements. Acceptance of federal funding requires Recipient to comply with all federal, state, and local laws. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may also jeopardize federal funding.

#### **a) Archaeology**

If during the course of work, archaeological artifacts (prehistoric or historic) or human remains are discovered, the Subrecipient shall stop work immediately in the vicinity of the discovery and notify FEMA Region 2 within twenty-four (24) hours. The Sub-recipient will ensure that archaeological discoveries are secured in place, that access to the sensitive area is restricted, and that all reasonable measures are taken to avoid further disturbance of the discoveries. In addition, if unmarked graves are present, the Subrecipient shall notify the local law enforcement agency within twenty-four (24) hours of the discovery and FEMA Region 2 within seventy-two (72) hours. Work in the vicinity of any discovery will not resume until FEMA Region 2 has completed consultation with the State Historical Preservation Office, Tribal Nations, and other consulting parties as necessary.

#### **b) Solid and Hazardous Waste**

The Sub-recipient shall handle, manage, and dispose of all found solid and hazardous waste in accordance with requirements of local, state, and federal laws, regulations, and ordinances. The Subrecipient shall ensure that all debris is separated and disposed of in a manner consistent with New York State Department of Environmental Conservation (NYSDEC) guidelines at a permitted site or landfill.

#### **c) Permitting**

Prior to the commencement of work, the Sub-recipient is responsible for obtaining all Federal, State, and/or local permits that are required, including those that may be issued by the US Army Corps of Engineers, NYSDEC, and NYS Department of State. A copy of all permits and applicable documentation, e.g., permit applications, project plans, etc. must be submitted to DHSES, and subsequently to FEMA, to ensure compliance with the project's approved scope of work. Failure of the Subrecipient to obtain all required permits violates the conditions of this project approval and will jeopardize federal funding.

#### **d) Record of Environmental Consideration**

A copy of FEMA's Record of Environmental Consideration (REC) is included. The REC summarizes the results of the environmental review and outlines requirements of environmental and historic preservation compliance.

## **CONDITIONS OF APPROVAL**

HMGP Project: 4480-0084

Saranac Lake

Village of Saranac Lake

As part of our approval, the Sub-recipient is required to adhere to all applicable Federal regulations including the following: 2 CFR 200: Uniform administrative requirements, cost principles, and audit requirement for federal award.

### **5. Budget Changes**

Recipients and Sub-recipients are permitted to re-budget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved budget. For more information on direct cost categories, please see 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments. Projects will require the prior written approval of FEMA as follows:

- Cost overrun and underruns can result from a scope, schedule or budget change.
- Recipients must notify FEMA prior to redirecting funds from an underrun to other approved sub-grants for which an overrun has been requested. The sub-grant must continue to programmatic eligibility requirements to include cost share.

### **6. Project Completion Schedule**

The sub-grant project must be completed under the project schedule provided by the Sub-recipient within the project application, as finalized prior to project approval. The project completion date for this sub-grant award is February 1, 2026. Changes to this schedule would be considered a SOW change and therefore must be pre-approved by FEMA and the grant Recipient. Please note, the sub-grant project schedule is unique and separate from the grant Period of Performance (POP). The grant POP is the period during which the Recipient (DHSES) is expected to administer all HMGP activities under the declared disaster.

### **7. Period of Performance Extensions**

In order for the sub-recipient to be considered for a period of performance extension, DHSES must submit a formal written request to the Regional Administrator no later than sixty (60) days prior to the expiration of the period of performance and must include a justification for the extension. This justification is a written explanation of the reason or reasons for the delay; an outline of remaining funds available to support the extended performance period; and a description of performance measures necessary to complete the project within the requested extended period of performance.

Other information required with this request includes: a revised budget information form (regardless of whether or not there are changes to the budget); copies of any contracts entered by sub recipient with vendors; percentage of work completed, and a description of all work completed. Extensions may not be considered for projects that are a result of delays in project initiation and implementation.

## **CONDITIONS OF APPROVAL**

HMGP Project: 4480-0084

Saranac Lake

Village of Saranac Lake

### **8. Reporting Requirements**

Once funding has been obligated, in accordance with 44 C.F.R. 206.438 (d), the Governor's Authorized Representative is required to submit a claim to FEMA Region 2 for reimbursement of allowable costs prior to the drawing down of those funds. These submitted claims must also certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measure complies with the provisions of the FEMA-State Agreement.

Recipients and Sub-recipients must maintain records of work and expenditures. Recipients submit quarterly financial and performance reports to FEMA on January 30, April 30, July 30, and October 30. The first quarterly reports are due 30 days of the end of the first federal quarter following the initial grant award. FEMA may waive the initial reports.

The Recipient shall submit quarterly financial status and performance reports thereafter until the grant ends. Failure to submit financial and performance reports to FEMA in a timely manner may result in an inability to access grant funds until proper reports are received by FEMA. Recipients are encouraged to contact FEMA should this occur.

### **9. Performance Reports**

The Recipient shall submit a quarterly performance report for each grant award. Performance reports should include:

- Reporting period, date of report, and Recipient POC name and contact information.
- Project identification information, including FEMA project number (including disaster number and declaration date for the HMGP), Sub-recipient, and project type using standard NEMIS project type codes.
- Significant activities and developments that have occurred or have shown progress during the quarter, including a comparison of actual accomplishments to the work schedule objectives established in the grant.
- Percent of work completed and whether completion is on schedule, a discussion of any problems, delays, or adverse conditions that will impair the ability to meet the timelines stated in the grant, and anticipated completion date.
- Status of costs, including whether the costs are: (1) unchanged, (2) overrun, or (3) underrun. If there is a change in cost status, the report should include a narrative describing the change.
- A statement of whether a request to extend the grant POP is anticipated.

Requests for additional project time extensions would only be considered in instances where the sub-recipient has provided the Recipient with accurate quarterly status reports. FEMA may suspend drawdowns from SMARTLINK if quarterly reports are not submitted on time.

## CONDITIONS OF APPROVAL

HMGP Project: 4480-0084

Saranac Lake

Village of Saranac Lake

### 10. Financial Reports

Recipients shall submit a quarterly Federal Financial Report (FFR). Obligations and expenditures must be reported on a quarterly basis through the FFR (SF-425), which is due to FEMA within 30 days of the end of each calendar quarter (e.g., for the quarter ending March 31, the FFR is due no later than April 30). A report must be submitted for every quarter of the POP, including partial calendar quarters, as well as for periods where no grant activity occurs. Future awards and fund drawdowns may be withheld if these reports are delinquent. The final FFR is due 90 days after the end of the POP.

The Office of Management and Budget (OMB) has directed that FFR (SF-425) replace the use of the SF-269, SF-269A, SF-272, and SF-272-A. The SF-425 is intended to provide Federal agencies and grant recipients with a standard format and consistent reporting requirements. FEMA may suspend drawdowns from SMARTLINK/PARS if quarterly reports are not submitted on time.

### 11. Closeout

As required by 44 CFR 206.438(d), the Recipient will submit a letter signed by the Governor's Representative or equivalent certifying that:

- The report costs were incurred in the performance of eligible work.
- The approved work was completed, and the mitigation measure follows the provisions of the FEMA-STATE Agreement.
- Each sub-grant has been completed in compliance with the approved SOW.
- Actual expenditures have been documented and are consistent with the SF-424A or SF-424C.
- All program income has been deducted from total project costs as specified in 2 CFR Part 200.80.
- All project work was performed in accordance with all required and applicable building codes as modified or protected by the approved project. (If applicable)
- For new or updated hazard mitigation plans, a final copy of the FEMA-approved and community-adopted plan has been submitted to FEMA. (If applicable)
- The activity is consistent with 44 CFR Part 201 and 206.
- The Sub-Recipient can claim management costs incurred up to whichever of the following occurs first:
  - 180 days after work is completed for the non-management cost HMGP project for the declaration. OR
  - 180 days after the latest performance period for the non-management cost HMGP project. OR
  - The recipient management cost award has been closed out.

When one of the conditions is triggered, the timeframe for the Sub-Recipient to submit their management cost claim begins.

Sub-Recipients must submit final reporting to the pass-through entity no later than 90 days after the

## **CONDITIONS OF APPROVAL**

HMGP Project: 4480-0084

Saranac Lake

Village of Saranac Lake

end of the Period of Performance. To ensure that this requirement is met, the Recipient will ask the Sub-Recipient to submit final payment request within sufficient time after project completion to allow time to close the project. The Recipient must submit a final SF-425 and Performance Report no later than 120 days after the end date of the POP, per 2 CFR Sections 200.343 and 200.344.

17:17:09

## RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project HMGP-4480-0084-NY (1)

Title: Wastewater Upgrade

## NEPA DETERMINATION

<b>Non Compliant Flag:</b> No	<b>EA Draft Date:</b>	<b>EA Final Date:</b>
<b>EA Public Notice Date:</b>	<b>EA Fonsi</b>	<b>Level:</b> CATEX
<b>EIS Notice of Intent</b>	<b>EIS ROD Date:</b>	

**Comment** Village of Saranac Lake (subapplicant), Saranac Lake Wastewater Upgrade - Two areas of concern in the Village of Saranac Lake, Basin I (Swamp Line) and Basin IV (Trunk Main), Saranac Lake, Franklin and Essex Counties, New York. The two areas are a part of the sewer system with aged piping that will need to be replaced. SOW: This is a Phase 1 project to fund surveying, preliminary plans, permitting and noninvasive sampling to inform the Saranac Lake Wastewater Upgrade Hazard Mitigation Measures project. Project implementation/construction phase will require additional EHP review before being awarded. - elanger - 01/08/2024 16:39:11 GMT

## CATEX CATEGORIES

Catex Category Code	Description	Selected
a7	(a7) The commitment of resources, personnel, and funding to conduct audits, surveys, and data collection of a minimally intrusive nature. If any of these commitments result in proposals for further action, those proposals must be covered by an appropriate CATEX. Examples include, but are not limited to: (a) Activities designed to support the improvement or upgrade management of natural resources, such as surveys for threatened and endangered species, wildlife and wildlife habitat, historic properties, and archeological sites; wetland delineations; timber stand examination; minimal water, air, waste, material and soil sampling; audits, photography, and interpretation. (b) Minimally-intrusive geological, geophysical, and geo-technical activities, including mapping and engineering surveys. (c) Conducting Facility Audits, Environmental Site Assessments and Environmental Baseline Surveys, and (d) Vulnerability, risk, and structural integrity assessments of infrastructure.	Yes

## EXTRAORDINARY

Extraordinary Circumstance Code	Description	Selected ?
	No Extraordinary Circumstances were selected	

## ENVIRONMENTAL LAW / EXECUTIVE ORDER

Environmental Law/ Executive Order	Status	Description	Comment
Clean Air Act (CAA)	Completed	Project will not result in permanent air emissions - Review concluded	
Coastal Barrier Resources Act (CBRA)	Completed	Project is not on or connected to CBRA Unit or otherwise protected area - Review concluded	



17:17:09

## RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project HMGP-4480-0084-NY (1)

Title: Wastewater Upgrade

Environmental Law/ Executive Order	Status	Description	Comment
Clean Water Act (CWA)	Completed	Project would not affect any water of the U.S. - Review concluded	
Coastal Zone Management Act (CZMA)	Completed	Project is not located in a coastal zone area and does not affect a coastal zone area - Review concluded	
Executive Order 11988 - Floodplains	Completed	No effect on floodplain/flood levels and project outside floodplain - Review concluded	EO 11988: The proposed project is for surveying, preliminary plans, permitting and noninvasive sampling only. There is no funding associated with construction activities; therefore, there will be no impacts to the floodplains. - elanger - 01/08/2024 16:42:08 GMT
Executive Order 11990 - Wetlands	Completed	No effects on wetlands and project outside wetlands - Review concluded	EO 11990: The proposed project is for surveying, preliminary plans, permitting and noninvasive sampling only. There is no funding associated with construction activities; therefore, there will be no impacts to wetlands. - elanger - 01/08/2024 16:42:39 GMT
Executive Order 12898 - Environmental Justice for Low Income and Minority Populations	Completed	Low income or minority population in or near project area	EO 12898: Minority or low-income populations were identified through program coordination and public involvement, state EJ community lists or maps, or EJSCREEN reports for the proposed project area. Review of the project scope of work revealed no adverse effects on these populations. Therefore, no additional review for potential EJ concerns is required. The maps, reports, and other information are saved to the project files. - elanger - 01/08/2024 16:43:09 GMT
	Completed	No disproportionately high and adverse impact on low income or minority population - Review concluded	
Endangered Species Act (ESA)	Completed	Listed species and/or designated critical habitat present in areas affected directly or indirectly by the federal action	ESA: The proposed project is for surveying, preliminary plans, permitting and non-invasive sampling only. There is no funding associated with construction activities; therefore, there will be no impacts to listed species and designated critical habitat. - elanger - 01/08/2024 16:40:27 GMT
	Completed	No effect to species or designated critical habitat (See comments for justification) - Review concluded	
Farmland Protection Policy Act (FPPA)	Completed	Project does not affect designated prime or unique farmland - Review concluded	

17:17:09

## RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project HMGP-4480-0084-NY (1)

Title: Wastewater Upgrade

Environmental Law/ Executive Order	Status	Description	Comment
Fish and Wildlife Coordination Act (FWCA)	Not Applicable	Project does not affect, control, or modify a waterway/body of water - Review concluded	
Migratory Bird Treaty Act (MBTA)	Completed	Project located within a flyway zone	
	Completed	Project does not have potential to take migratory birds - Review concluded	
Magnuson-Stevens Fishery Conservation and Management Act (MSA)	Completed	Project not located in or near Essential Fish Habitat - Review concluded	
National Historic Preservation Act (NHPA)	Completed	Not type of activity with potential to affect historic properties - Review concluded	NHPA: Phase 1 project activities comply with Stipulation I.A.8.g of FEMA's New York Statewide Programmatic Agreement executed on November 26, 2019. This determination was made by Gabrielle Perlman, who meets the requirements of applicable SOI qualified staff pursuant to Stipulation I.B.1.a of the Agreement. - gperlma1 - 01/08/2024 14:07:22 GMT
Wild and Scenic Rivers Act (WSR)	Completed	Project is not along and does not affect Wild and Scenic River - Review concluded	

## CONDITIONS

## Standard Conditions:

Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.

This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.

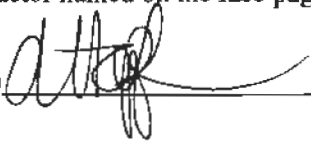
If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

STATE OF NEW YORK CONTRACT FOR GRANTS NOTARY PAGE

STATE OF NEW YORK

County of Franklin

On the 04<sup>th</sup> day of October, 2024, before me personally appeared James Williams, to me known, who being by me duly sworn, did depose and say that he/she resides at 39 main St., that he/she is the Mayor of the Village of Saranac Lake, the contractor described herein which executed the foregoing instrument; and that he/she signed his/her name thereto as authorized by the contractor named on the face page of this Contract for Grants.

(Notary) 

Amanda Hopf  
Notary Public State of New York  
No. 01H06437061  
Qualified in Franklin County  
Commission Expires August 1, 2026

Contract Number: # C001071

Page 1 of 1, Contract for Grants - Notary Page

January 2024

## **AROLD CONSTRUCTION PROPOSAL**



51 POWDER MILL BRIDGE RD. KINGSTON, NY 12401  
(845) 336-8753 PHONE (845) 336-8245 FAX  
www.aroldconstruction.com

## CONSTRUCTION COMPANY, INC.

A CERTIFIED WBE & DBE CONTRACTOR



### PROPOSAL

For: Suozzo, Doty & Associates  
Attn: Gregory Swart, PE  
Billing Address: 4607 Lake Shore Drive, Bolton Landing, NY 12814  
Phone: (518) 240-6293  
Email: [gswart@sdapllc.com](mailto:gswart@sdapllc.com)  
Date: 11/4/2024  
Project: Sanitary Sewer Investigation Swamp & Trunk Mains  
Location: Saranac Lake, NY  
Arch/Engineer: Suozzo, Doty & Associates

---

Subject to prompt acceptance, within 30 days and to all conditions stipulated, we propose to furnish the following:

Provide vac truck and camera truck with operators to perform cleaning and CCTV inspection on approximately 4,300' of 12" to 24" sanitary sewer by the day.

Total Price:	\$4,150/Day
Est. # Days:	4 to 6

#### Exclusions

Bonds, permits, fees or taxes  
Disposal of contaminated soils. (if encountered)  
Maintenance & protection of vehicle, railroad & pedestrian traffic other than cones.  
Bypass pumping. (If Required)

#### Inclusions

Videos & reports to be sent FTP site.  
We are a WBE/DBE Certified Contractor

#### Special Notes

Owner to provide nearby hydrant or tanker water & water/soils dumpsite at no charge to Arold.  
Owner shall notify Arold of any backcharges in advance and give Arold the opportunity to correct.  
Owner shall provide reasonable access to work areas for trucks & equipment.  
Arold will not be responsible for any restoration of surfaces due to equipment damage.  
Pricing is based on an 8 hour day. Overtime will be at a rate of \$550 per hour.  
Pricing is based on completion during the 2024 to 2025 construction season. Work delayed past 2025 will be subject to change.  
Pricing is based on our standard insurance. Additional insurance (railroad, etc.) will be at an additional cost.  
Pricing is based on payment within 30 days of invoicing.

Thank you for the opportunity to quote this project.

Regards,

Ryan Arold  
Vice President

Accepted By: \_\_\_\_\_

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