

# Town of Moriah, New York

## Hamlet of Port Henry, NY

### Request for Engineering Services Proposal:

#### Port Henry Water & Sewer Utility Main

#### Replacement

**PROJECT NUMBER: P-1003-2019**

**DATE ISSUED: February 19<sup>th</sup>, 2019**

**UPDATED: TBA**

#### **Program Requirements:**

- NYS Office of Community Renewal (OCR) Community Development Block Grant (CDBG)
- <http://www.nyshcr.org/Programs/NYS-CDBG/GrantAdministration.htm>

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# REQUEST FOR PROPOSALS – ENGINEERING SERVICES

NOTICE IS HEREBY GIVEN, that the Undersigned, on behalf of the Town of Moriah will accept proposals **until 2:00 P.M. on March– 15<sup>th</sup>, 2019** for **Municipal Civil Engineering Services** for the **Port Henry Water & Sewer Utility Replacement** project.

PLEASE TAKE FURTHER NOTICE that the Town affirmatively states that in regard to any contract entered into pursuant to this notice, without regard to race, color, sex, religion, age, national origin, disability, sexual preference or veteran status, disadvantaged and minority or women-owned business enterprises will be afforded equal opportunity to submit bids in response hereto.

**Disadvantaged and Minority/Women-Owned Business Enterprises (M/WBE businesses, Service-Disabled Veteran Owned Businesses (SDVOB and Section 3 businesses are strongly encouraged to participate in this project.** The Town is an equal opportunity employer.

*For more information on the requirements associated with NYS OCR funds, please see their website for a complete list of documents & requirements relevant to this project and necessary for all consultants & contractors under this project:*

- <http://www.nyshcr.org/Programs/NYS-CDBG/GrantAdministration.htm>

In addition to the proposal, Respondents shall submit executed non-collusion certificates signed by the proposer or one of its officers as required by the General Municipal Law Sec. 103d. The Respondents shall also submit an executed certificate of compliance with the Iran Divestment Act signed by the proposer or one of its officers as required by the General Municipal Law Sec. 103g. The Town reserves the right to except any and all proposal(s), reject any and all proposals not considered to be in the best interest of the Town, and to waive any technical or formal defect in the proposals which is considered by the Town to be merely irregular, immaterial, or unsubstantial.

Please contact the Essex County Planning Office (518 873-3426 or [CommunityResources@co.essex.ny.us](mailto:CommunityResources@co.essex.ny.us) for additional information concerning the Proposals. Specifications may be obtained at the **NYS Contract Reporter account:**

**“Essex County Department of Community Development & Planning”**

**RFP Title: “Port Henry Water & Sewer Utility Replacement RFP”**

All proposals submitted in response to this notice shall be marked "**PORT HENRY WATER & SEWER UTILITY REPLACEMENT PROPOSAL**" clearly on email traffic and/or the outside of the envelope containing your electronic/digital response files.

**Published: February 19th, 2019**

*Essex County Office of Community Resources  
Elizabethtown, New York 12932  
CommunityResources@co.essex.ny.us  
(518) 873-3426*

# INTRODUCTION

## A. Overview

This Request for Proposals (“RFP”) is being issued by the TOWN OF MORIAH (“the Town”) for ENGINEERING SERVICES for a municipal project. The project will be funded by New York State Office of Community Renewal (NYS OCR), and all aspects must be compliant to their requirements, which are included herein as **Appendix A**.

Companies with demonstrated experience in ***Municipal Civil Engineering Projects*** and public funding agency administration interested in making their services available to the Town are invited to respond to this RFP. “Respondents” means the companies or individuals that submit proposals in response to this RFP. It is understood that the selected Respondent acting as an individual, partnership, corporation or other legal entity, is licensed to provide such services in New York State. The Respondent shall be financially solvent and each of its members if a joint venture, its employees, agents or sub-consultants of any tier shall be competent to perform the services required under this RFP document.

The Town is seeking to encourage participation by respondents who are DBE/MBE/WBE, Section 3 and/or Veterans’ business enterprises. For the purposes of the project, the Town is requiring a ***documented*** DBE/MBE/WBE & Section 3 participation compliance & good faith effort per the Program requirements listed in **Appendix A** by providing evidence of direct solicitation to these required DBEs after contract award, but before given Notice to Proceed.

Nothing in this RFP shall be construed to create any legal obligation on the part of the Town or any respondents. The Town reserves the right, in its sole discretion, to amend, suspend, terminate, or reissue this RFP in whole or in part, at any stage. In no event shall the Town be liable to respondents for any cost or damages incurred in connection with the RFP process, including but not limited to, any and all costs of preparing a response to this RFP or any other costs incurred in reliance on this RFP. No respondent shall be entitled to repayment from the Town for any costs, expenses or fees related to this RFP. All supporting documentation submitted in response to this RFP will become the property of the Town. Respondents may also withdraw their interest in the RFP, in writing, at any point in time as more information becomes known.

## B. Time of Response

Respondents will have approximately four (4) weeks to provide a response to this RFP. The Town and resources from Essex County will review the proposals and respond within two (2) weeks of RFP closure, after Town Board Meetings are held

- |                                |  |
|--------------------------------|--|
| 1. RFP Posted:                 | <b>Friday February 19th, 2019</b>                          |
| 2. Statements Due:             | <b>Friday, March 15th, by 2:00 pm.</b>                     |
| 3. Town Board Proposal Review: | <b>March 15<sup>th</sup> - April 5th, 2019</b>             |
| 4. Contract Awarded estimated: | <b>April 11<sup>th</sup>, 2019 (Regular Board Meeting)</b> |

## C. Contract Negotiations

After review and interviews are complete, the Town will approve the successful Proposal via Board Resolution and then provide a Notice of Award to the Respondent

#### **D. Contract Execution**

Once the contract Terms and Conditions have been approved, the final contract cannot be executed until the NYS OCR program requirements are completed and provided as part of the contract documents, such as the EEO, M/WBE & Section 3 Plans, other required forms and plans, etc. Once these have been provided the Town Board will execute the final contracts with the Respondent

#### **E. Term of Contract**

Any contract awarded pursuant to this RFP solicitation shall be for a contract period of approximately **(18) months** and will expire upon completion of the projects' administrative close out. **Substantial completion of the construction of the project must be completed no later than 12/01/20, and administrative closeout must be complete no later than 12/31/20.**

#### **F. Funding Agency Requirements**

Award recipients must follow the guidance provided in **Appendix A**. All Respondents must demonstrate capability to adhere to the following Funding Agencies' requirements:

- Davis Bacon Related Acts (DBRA) Compliance
- Disadvantaged Business Enterprises (DBE) & Minority Women Business Enterprise (MWBE) Compliance
- Equal Employment Opportunity (EEO) Compliance
- Anti-Lobbying Policy
- *Others as required per Appendix A.*

Respondents are strongly encouraged to read these regulations prior to submitting their response to this RFP. Dates and schedules provided by the above funding agencies will be incorporated into project scope of work and schedule requirements.

## PROFESSIONAL SERVICE REQUIREMENTS

### A. Scope of Work

The Town of Moriah received a Community Development Block Grant to support sewer and water transmission facilities in a low income area of the Town. The Port Henry hamlet is where numerous safety concerns from a substandard system exist. The proposed project is located in the former Village of Port Henry in the Town of Moriah, NY. The project consists of water and sewer improvements to include 1<sup>st</sup> Lane, Oak Lane Ridge Lane. The project consists of roughly 3,000 linear feet of water main replacement and 2,800 linear feet of sanitary sewer main replacement and rehabilitation. The existing sewer and water infrastructure in the area is antiquated and in need of replacement and/or rehabilitation. Reported issues in the area include, but are not limited to, water quality, fire flow demands, adequate frost depth of water mains and were and water systems not meeting regulatory standards. We are requesting the proposal, design and construction for these improvements. The Town is utilizing funding necessary to meet the needs of area residents.

This Request for Qualifications will determine the most qualified Engineering Firm to survey, design, prepare permitting and bidding documents, proceed with construction management and observation including following all State and Federal rules and regulations governing the Community Development Block Grant Program.

Recipients will provide a Cost Proposal according to the Tasks listed below and also in in the “Deliverables Table” in **Appendix K**. For a detailed description of the services and deliverables in each Phase, see “Draft Form of Contract”, **Appendix L, Exhibit A** “Requested Services”.

**The Scope of Work must include the following tasks, at a minimum:**

- **General Requirements – (Tasks 1 -4)** The consultant shall participate in public meetings, pre-bid meetings, pre-construction and job meetings and distribution of meeting minutes to the Town and Essex County. Monthly progress meetings with the Town, County and the DEC are anticipated during the planning portion of this project. The consultant shall maintain and produce a project schedule in Gantt Format. The consultant shall work with the Essex County Office of Community Resources for permitting & funding compliance for this project. Essex County will develop all funding applications, funding compliance oversight, act as Minority Business Officer (MBO) and provide finance consultation with the Town with technical input from the consultant. The consultant will be responsible for any technical information required for project development and permitting purposes. The consultant shall additionally coordinate with regulatory & funding program representatives as requested for review and approval of the bid package and any compliance measures.
- **Field Investigations – (Task 5, 19 - 21)** The consultant shall conduct such field work they deem necessary to obtain the required information to properly design the water system upgrades. This work may include, but not be limited to surveying, geotechnical/hydrogeological studies, and evaluation of all system components. All data collected during this Task shall be a separate deliverable to the Town in a hard copy format (3 hard copies of full-size plans) and digital format (.shp file, .pdf, etc.).

- **Basis of Design Report & Preliminary Design – (Tasks 6 & 7)** The consultant shall prepare provide recommendations for system design, prepare preliminary plans for the system upgrade, and develop a Basis of Design Report, in accordance with NYS DEC guidelines. Once the Basis of Design Report is approved by the Town and County, it will be submitted to the NYS DEC for review and approval.
- **Final Design of Water Treatment System Upgrades – (Tasks 8 & 9)** Once the Basis of Design Report has been approved and funding has been secured for the project, the consultant will provide detailed design plans, specifications, and contract documents for the project. The design of the facilities shall be in conformance with 10-State Standards and approved by the NYS Department of Health and/or Department of Environmental Conservation.
- **Bidding Assistance – (Tasks 10 – 12)** The consultant shall provide bidding assistance for this project including providing copies and plans and specifications to be distributed to contractors, attending a pre-bid meeting, issuing minutes for the pre-bid meeting, answering contractor questions, issuing addenda, as necessary, reviewing the bids, and making recommendations to the Town.
- **Construction Administration & Management – (Tasks 13 –18)** The consultant shall provide construction management services including, but not limited to, the following:
  1. Issuing a Notice to Proceed (NTP).
  2. Reviewing and approving all Submittals, shop drawings and substitutions, as necessary.
  3. Reviewing and making recommendations to the Town for any requested Change Orders
  4. Reviewing and certify contractor invoices and making recommendations to the Town for payment.
  5. Review and certify contractor Certified Payrolls.
  6. Providing adequate construction observations services to ensure proper construction of the project (Please provide estimate construction period and number of hours. construction inspector will be on-site)
  7. Review of the final work and development of and punch list
  8. Provide a letter of construction compliance at the end of the project.
  9. ~~Provide NYS DEC compliant Operations and Maintenance Manuals for the project.~~

The consultant shall be responsible for coordinating all aspects of this project and addressing any questions or concerns of the NYS DOH, NYS DEC and any other regulatory agencies as required. Additionally, the consultant shall work to meet all DBE, MBE, WBE, SDVOB, and Section 3 participation requirements and goals, as required for funding compliance. Davis-Bacon prevailing wage rate documentation is required for this project, as determined by DOL, and must be included with the bidding documents.



## **B. Quality of Work**

All work shall follow recognized professional practices and standards and meet the specifications required by local, state and federal approval of the project's plans and specification prior to advertising the project for construction bidding.

## **C. Records**

The design professional is to maintain all books, documents, papers, account records and other evidence pertaining to this work and to make such materials available at their respective offices at all reasonable times during the agreement and for a period up to seven **(7) years** from the date of final payment under the agreement. Throughout the project, the respondent will be required to coordinate with the Town and the Essex County Planning Office via regular project meetings and other electronic project management software.

**All reports, documents, information, presentations, electronic drawings, and other materials prepared by the award recipient in connection with this Agreement are deliverables to be provided to the Town as a result of the project.** Copies of all reports, designs, project documents, supporting information and any materials or equipment furnished to the award recipient by the Owner shall remain the property of the Owner and award recipient's limited possession of the purpose of carrying out the Work, shall be returned to the Owner at the conclusion of the Agreement. **Nothing written in this paragraph, however, will be interpreted to forbid the award recipient from retaining a single copy of the information for its files.**

## **D. Additional Requirements**

Professional services shall comply with all codes, standards, regulations, and workers' safety rules that are administered by federal agencies (EPA, OSHA, and DOT), state agencies (State OSHA, DNR, and DCH), and any other local regulations and standards (i.e. local ordinance and building codes) that may apply. ***Further requirements are identified in the accompanying Appendix of this RFP.***

## **SUBMITTAL REQUIREMENTS**

### **A. Preliminary Requirements**

1. \*Certificate of Authority (Corporation) or Certificate of Existence (ex: Professional Limited Liability Company or “PLLC”) issued by the NY Secretary of State
2. \*Evidence of Insurance: Commercial General Liability with limits not less than \$2,000,000; Workers Compensation and Employers Liability with limits not less than \$500,000; and, Automobile Liability with limits not less than \$1,000,000 per occurrence.
3. \*References: At least three (3) references of *related projects*, including date of project, contact person and phone number, and a brief description of the project.
4. \*Conflict of Interest Statement & Supporting Documentation: Respondent shall disclose any professional or personal financial interests that may be a conflict of interest in representing the Town. In addition, all Respondents shall further disclose arrangement to derive additional compensation from various investment and reinvestment products, including financial contracts.
5. \*Non-Collusion Biding Affidavit: Provide completed, signed & notarized form back with Response
6. \*Iran Divestment Act Compliance Form: Provide completed & signed form back with Response

***\*RFP RESPONSE WILL BE CONSIDERED INCOMPLETE AND NOT SCORED IF THESE ITEMS ARE NOT PROVIDED IN COMPLETION***

### **B. Letter of Interest**

Submit a Cover Letter of Interest signed by a duly authorized officer or representative of the Respondent, not to exceed two pages in length. The Letter of Interest must also include the following information:

- The principal place of business and the contact person, title, telephone/fax numbers and email address.
- A brief summary of the qualifications of the Respondent and team.
- Description of organization (i.e. Professional Corporation, or Professional Limited Liability Company).
- The names and business addresses of all Principals of the Respondent. For purposes of this RFP “Principals” shall mean persons possessing an ownership interest in the Respondent.
- If the Respondent is a partially owned or fully-owned subsidiary of another organization, identify the parent organization and describe the nature and extent of the parent organization’s approval rights, if any, over the activities of the Respondent.

## C. Main Proposal

The purpose of the proposal is to demonstrate the qualifications, competence and capacity of the Respondents in conformity with the requirements of this RFP. As such, the substance of proposals will carry more weight than their form or manner of presentation. The proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this project. It should also specify an approach that will meet the request for proposals requirements.

The proposal should address all the points outlined in the request for proposals. The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of the request for proposals. While additional data may be presented, the following items must be included; this represents the criteria against which the proposal will be evaluated.

1. **Qualifications Proposal:** Provide a synopsis of the years of experience and detailed qualifications in performing the range of municipal drinking water wells on various project types in compliance with applicable standards, including team's resumes. Respondents should provide narrative examples of a minimum of three (3) projects in detail that are similar in nature to projects described in the RFP (see "References"). References for similar projects and portfolio vignettes will be reviewed to evaluate the level of experience.
2. **Technical Proposal:**
  - a. **Project Management Plan:** Discuss approach to the project in terms of understanding of the established Scope and Deliverables execution, with regard to any constraints identified in this RFP, to include funding requirements. Provide a plan for engaging the Town's project team and regulatory agencies required. Provide the number of full-time and part-time employees, partnerships or subconsultants proposed and their value to the project.
  - b. **Schedule:** Capacity to complete the scope of work within the defined period of performance: May 2019 – December 2020. The successful Respondent will have a detailed project schedule & work plan to illustrate the ability complete the work with respect to constraints, either stated or assumed. The Schedule Proposal must include a Gantt chart to illustrate your proposed schedule.
  - c. **Funding Agency Experience:** Respondents should state whether they are an DBE/MBE/WBE or Section 3 business enterprise; if so, provide a copy of a current DBE/MBE/WBE certification letter. Respondents may also cite previous project experience in working with DBE firms, cite any existing partnerships with DBEs or cite the planned DBE partnerships relevant to addressing requirements of this project & RFP. If Respondents are planning to cite proposed DBE partnerships for this project (e.g., no existing contract vehicle), please provide contact information for reference checks with the appropriate point of contact for validation.
3. **Cost Proposal:**
  - a. Cost will not be the primary factor in the selection of firm. The proposed price will be graded based upon the following formula:
    - Average Bid / Your Price = X (whereby X cannot exceed 100%)
    - X \* 15 points = Points awarded based on cost

- b. This should include the lump sum/unit rates for different Tasks, per the table provided in **Appendix K, “Deliverables Table”**. Respondents should include a description of the costs and detail proposals for *cost savings* in their Proposal. Labor cost estimates will include payments of prevailing wage rates as determined by the NYS Department of Labor and Industries as applicable (such as Survey work for example).

## **SELECTION PROCESS**

The Selection Committee comprised of the Town and resources from Essex County staff will review qualifications in accordance with the evaluation criteria set forth herein. Proposals that are submitted timely and comply with the mandatory requirements of the RFP will be evaluated in accordance with the terms of the RFP. Any professional services contracts resulting from this RFP will not necessarily be awarded to the Respondent with the lowest price. Instead, professional services shall be awarded to vendor whose proposal received the most points in accordance with criteria set forth in RFP.

## **EVALUATION CRITERIA AND SCORING**

In evaluating responses to this Request for Proposal, the Town will take into consideration the experience, capacity, and costs that are being proposed by the Respondent. The following Evaluation Criteria will be considered in reviewing submittals:

The point system is to evaluate the experience and capacity of the Respondent. Maximum is 100 Points:

- Respondents will be awarded up to **10 Points** for **Completeness of Response**.
  
- Respondents will be awarded up to **35 Points** for **Qualifications Proposal**.
  - *Related Project Experience:*      **20 Points**
  - *Public Funding Experience:*      **15 Points**
  
- Respondents will be awarded up to **35 Points** for the **Technical Proposal**:
  - *Project Management Plan:*      **20 Points**
  - *Schedule:*      **15 Points**
  
- Respondents will be awarded up to **20 Points** for **Cost Proposal**.

## QUESTIONS

*Questions regarding this RFP* should be submitted in writing via email to Essex County Community Resources at ([CommunityResources@co.essex.ny.us](mailto:CommunityResources@co.essex.ny.us)) between the hours of 0900 – 1500 *only*. Any RFI responses will in turn be made available to all Respondents as they are received by means of direct emails.

## SUBMITTAL DUE DATE

**Responses to this RFP are due by 2:00pm on Friday, March 15th 2019.** RFP responses must be submitted via electronic PDF sent to the following web address:

<https://app.smartsheet.com/b/form/e81353dcb6834c7e8560cd54412fb933>

The Town will select a Respondent on **April 12<sup>th</sup>, 2019** at a regular Board Meeting.

If you run into technical difficulties providing your response by the web link above, it is also acceptable to submit your RFP responses in writing via email, OR mail-in digital files (.PDF format) on flash-drive to the RFP point of contact:

Essex County Office of Community Resources  
7533 Court Street – PO Box 217  
Elizabethtown, NY 12932  
[CommunityResources@co.essex.ny.us](mailto:CommunityResources@co.essex.ny.us)  
(518) 873-3426

Each Respondent shall receive a confirmation of their submission via email, regardless of manner of RFP response. Respondents are advised to adhere to the Submittal Requirements. Failure to comply with the instructions of this RFP will be cause for rejection of submittals. **NO HARD COPIES WILL BE ACCEPTED.**

## **RFP SUBMITTAL REQUIREMENTS CHECKLIST**

### **FORMS FROM RFQ PACKAGE TO RETURN:**

- RFP Submittal Requirements Checklist (*Provide Checklist with RFP Response*)
- \*Appendix C: References (Minimum 3 related projects)
- \*Appendix D: Conflict of Interest Statement & Supporting Documentation
- \*Appendix E: Certification of Authority
  - Aka, Certificate of Good Standing (Corporation) or Certificate of Existence (Limited Liability Company) issued by the Secretary of State (If Respondent is a joint venture, a Certificate of Good Standing or Certificate of Existence, as applicable, must be submitted for each entity comprising the joint venture.)
- \*Appendix F: Vendor Responsibility Questionnaire (if over \$100K in proposed contract value)
- \*Appendix G: W-9 Form
- \*Appendix H: Non-Collusive Bidding Certification
- \*Appendix I: Iran Divestment Act Compliance Form
- \*Appendix K: Deliverables Table with proposed costs

### **FOR THE RESPONDENT TO PROVIDE:**

- Letter of Interest
- Qualifications Proposal:
  - Description of Company
  - Capacity of Company
  - Resumes of specific staff identified to work on project
  - State License and or Certification
- Technical Proposal:
  - Project Management Plan (*Describe your approach in detail*)
  - Schedule Proposal (*Provide in a Gantt Chart format*)
  - Experience with DBE/MBE/WBE, Local Hiring, HUD Section 3, if applicable
- Pricing Proposal Description (*Also include figures in “Deliverables Table”*)
- \*Evidence of Insurance

\*These documents must be submitted and complete before the Town will review the remainder of the proposal.

## **APPENDIX A: FUNDING PROGRAM REQUIREMENTS**

**CHAPTER 4  
PROCUREMENT STANDARDS**

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## **CHAPTER 4 PROCUREMENT STANDARDS**

### **I. INTRODUCTION**

The Office of Community Renewal (OCR) has elected to adopt the federal procurement procedures (24 CFR 85.36) as the procurement procedures applicable to the New York State Community Development Block Grant (NYS CDBG) program. If NYS CDBG funds are used to pay for a product or service in whole or in part, NYS CDBG procurement procedures apply unless the Recipient's procurement policy is stricter.

All procurements, regardless of dollar amount, must be conducted to provide open and free competition. Many times competition can be restricted by organizational conflict or non-competitive practices among contractors. Recipients should be alert to issues of this nature, which may adversely affect procurement practices. Before entering into any agreements to purchase equipment or materials or to retain the services of a consultant or contractor, Recipients need to verify compliance with the federal procurement requirements.

### **II. GENERAL PROCUREMENT STANDARDS**

**A. Establish written procedures for the procurement of supplies and other expendable property, equipment, real property, and other services with NYS CDBG funds.** These procedures are to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. The procedures must describe how services or supplies are to be obtained. The procedure policy should address at a minimum the following:

1. Procurement reviews to avoid unnecessary and duplicate purchases;
2. Analysis of lease and purchase alternatives to determine which would be the most economical and practical procurement;
3. Solicitations for goods and services including:
  - a. A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features that unduly restrict competition.
  - b. Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.
  - c. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

- d. The specific features of “brand name or equal” descriptions that bidders are required to meet when such items are included in the solicitation. Failure to include “brand name or equal” is referred to as sole source bidding and is specifically prohibited.

For more information on the prohibition as sole source bidding, refer to Brand Name or Equal Specifications [24 CFR 85.36(c)(1)(vi)]. Under this form of specification, clear and accurate product descriptions are developed. These descriptions shall not contain features that unduly restrict competition. It may be necessary to describe technical requirements for materials and equipment by referencing brand name products in order to define performance or other salient requirements. References to brand names shall be followed by the words “or equal” and a description of the item’s essential characteristics so that competition is not restricted.

Specific brand names may be used only for establishing design and quality standards and only if there is no other reasonable method of designating the required quality of the item desired. When brand names or catalog numbers are used, inform the offerors that such references establish only design or quality standard; in fact, any other products that clearly and demonstrably meet the standard are also acceptable.

- e. The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
- f. Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

**B. Maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.** Reference the Conflict of Interest section in Chapter 6.

**C. Take full responsibility as the “responsible authority” regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements.** This includes disputes, claims, protest of awards, source evaluation or other matters of a contractual nature.

**D. Establish protest procedures to handle and resolve disputes relating to procurement and in all instances disclose information regarding the protest to OCR.** A protestor must exhaust all administrative remedies with the Recipient and OCR before pursuing protests with the responsible federal agency.

**E. Ensure that all procurement transactions are conducted in a manner to provide, to the maximum extent practicable, open and free competition.** In order to ensure

objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the Recipient.

- F. Ensure that the type of procuring instruments used (i.e. fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) is appropriate for the particular procurement and for promoting the best interest of the program or project involved.** The “cost plus a percentage of cost” or “percentage of construction cost” methods of contracting shall not be used.
- G. Ensure contracts are made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.**
- H. Upon request, make available to OCR for review, pre-award, and procurement documents, such as requests for proposals or invitations for bids and independent cost estimates, when any of the following conditions apply:**
  - 1. A Recipient’s procurement procedures or operation fail to comply with the federal procurement standards.
  - 2. The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently \$100,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.
  - 3. The procurement, which is expected to exceed the small purchase threshold, specifies a “brand name” product.
  - 4. The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under sealed bid procurement.
  - 5. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.
- I. Conduct a cost or price analysis and document it in the procurement files in connection with every procurement action.**
- J. Maintain procurement records. Files for purchases in excess of the small purchase threshold shall include the following at a minimum: (a) basis for contractor selection; (b) justification for lack of competition when competitive bids or offers are not obtained; and (c) basis for award cost or price.**

**K. Maintain a system for contract administration to ensure contractor conformance with the terms, conditions, and specifications of the contract and to ensure adequate and timely follow up of all purchases.**

**L. Ensure that all contracts include all required provisions that define a sound and complete agreement. Refer to Exhibit 4-1 Contact Provisions.**

### **III. PROCUREMENT PROCEDURES**

#### **A. Full and Open Competition**

All procurement transactions should be conducted in a manner that provides full and open competition. Procurement procedures should avoid any provisions that would restrict or eliminate competition. Some of the situations considered to be restrictive of competition include:

1. Placing unreasonable requirements on firms in order for them to qualify to do business;
2. Requiring unnecessary experience and excessive bonding;
3. Noncompetitive pricing practices between firms or between affiliated companies;
4. Noncompetitive awards to consultants that are on retainer contracts;
5. Organizational conflicts of interest;
6. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement; (Refer to II (A) (3)(d) above; and
7. Any arbitrary action in the procurement process.

**To maintain an open and fully competitive process, Recipients must solicit bids by mail and public notices in large circulation daily newspapers, large regional papers and/or special trade publications.**

#### **B. Geographic Preference**

As recipients of federal funds, NYS CDBG Recipients should conduct procurement in a manner that avoids the use of administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals. Including criteria in a request for proposals such as “knowledge of community” or “experience with community” would be considered to “unduly restrict competition” and are discouraged.

### **C. Written Selection Procedures**

NYS CDBG Recipients should have written selection procedures which provide, at a minimum, that all solicitations:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description should not contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, describe those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.
2. Avoid, if at all possible, detailed product specifications. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors must be clearly stated.
3. Identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Recipients will ensure that all pre-qualified lists of persons, firms, or products which are used in acquiring goods and services, are current and include enough qualified sources to ensure maximum open and free competition. Recipients will not preclude potential bidders from qualifying during the solicitation period.

## **IV. METHODS OF PROCUREMENT**

Of the four methods of procurement, Recipients should select the most appropriate method based upon need and the nature of the services required. The following is a summary of the four basic selection alternatives and the requirements associated with each:

### **A. Small Purchase Procedures**

Those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$100,000 in the aggregate. Price or rate quotations shall be obtained from an adequate number of qualified sources. This should not be used for retaining the professional services of an architect, auditor, engineer or consultant for your NYS CDBG project without prior approval from OCR. Recipients utilizing this procedure should:

1. Record the rate or quote received along with other identifying information (name, address, and telephone numbers) and document the questions asked.

2. Follow prudent purchasing practices and receive competitive telephone or written quotations for all small purchase procurements. In all cases, the local government should obtain price or rate quotations from a minimum of two qualified sources.
3. When price quotations are obtained orally, written supportive documentation, such as detailed notes describing telephone contacts (who, what, when, etc.), must be maintained in the files.
4. If the local government small purchase procedures are more restrictive than those described above, the local government procedures must be used.

## **B. Procurement by Sealed Bid**

Bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest price. The sealed bid method is the preferred method for procuring construction when the following conditions exist:

1. A complete, adequate and realistic specification or purchase description is available;
2. Two or more responsible suppliers are willing and able to compete effectively for the business;
3. The procurement lends itself to a firm fixed-price contract (a specified price to be paid when the items or services are delivered); and
4. Selection of the successful bidder can appropriately be made principally on the basis of price.

## **C. Procurement by Competitive Proposals**

The phrase “procurement by competitive proposals” is often used interchangeably with the frequently used term “Competitive Negotiation.” This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. The method for soliciting competitive proposals is the publication of a Request for Proposal (RFP). Procurement by competitive proposals is the appropriate procurement procedure for retaining professional services such as an architect, auditor, or engineer for your NYS CDBG project.

When a Recipient receives only one response to a competitive solicitation, the procurement process should be reviewed by OCR to determine whether it was unduly restrictive or tailored to a particular contractor or supplier. The burden of proof will be on the Recipient to demonstrate that it made reasonable efforts to assure maximum open and free competition and that its procurement procedures did not have the effect of unnecessarily restricting competition.

## D. Procurement by Noncompetitive Proposals

Noncompetitive negotiation is procurement through solicitation of a proposal from only one source or, after solicitation of a number of sources; competition is determined to be inadequate.

Procurement by noncompetitive proposals may be used only when the award of a contract is unfeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

1. The items or services required are only available from a single source;
2. A public emergency exists such that the urgency will not permit a delay beyond the time needed to employ one of the other authorized procurement methods;
3. After solicitation from a number of sources, competition is determined to be inadequate, and OCR authorizes the noncompetitive method. In all cases, noncompetitive negotiation which will involve NYS CDBG funds must have prior approval from OCR. Recipients must contact their OCR Community/Economic Developer.

A cost analysis must be provided including the projections of the data, and the evaluation of the specific elements of costs and profits.

## V. PROFESSIONAL SERVICE CONTRACTS

Recipients have the option of administering the NYS CDBG program themselves or contracting with another entity such as a consultant. Recipients are reminded that all applicable procurement procedures must be followed if the consultant is paid with NYS CDBG funds. Before a Recipient enters into an agreement with a consultant, a competitive method must be used to procure professional services. This process entails a Request for Proposals or a Request for Qualifications and a review process.

### A. Preparing a Request for Proposals (RFP)

Although the RFP process may appear time consuming, taking the time to make sure that a competent engineer or other consultant is hired will, in the long term, save money and prevents problems.

An RFP is a written announcement that invites consultants to compete for the provision of services. The RFP should include:

1. **The name of the local government issuing the RFP.**
2. **A brief description of the project including location, purpose, time frame, and present status.** The RFP should be concise and to the point, containing all the

important information needed for the firms to respond in a factual manner. However, do not overdo the RFP; include only the necessary information. A wordy or unclear RFP will unnecessarily increase the time each firm spends preparing their response and your time in reviewing the proposals. Recipients should, however, be sure to specify any services or equipment the consultant will be expected to provide, such as requiring that they open a local office or provide secretarial or financial management services. These can significantly affect how the consultant will budget his or her time and resources. The RFP should also describe any unique problems involved in the project and any previous studies that would be available for their review.

3. **A general description of the scope of the services to be provided by the consultant. The entire project scope should be included in the RFP. For instance, engineering services for the planning, design and construction phases of the project should be specifically listed in the RFP and be addressed by the responding firms.** Recipients can always change engineering firms, but if they are hired to do the facility plan (planning phase) only, and later the Recipient wants to use the same firm for the design, Recipients must go through this same procurement process again.

Recipients should not go into precise detail about the scope of the services the consultant is expected to perform. Recipients must be careful to tell what they want done and not how to do it. The response should not be a repeat of the RFP.

The RFP should allow the consultant to demonstrate his knowledge and experience by filling in the details of how he would approach the problem and the alternatives that should be considered.

4. The amount budgeted for the proposed scope of service. Recipients may want to consider including the amount budgeted for architectural, engineering, or grant administration services in the RFP. Knowledge of the available budget will also help the consultant to fit the proposal to the financial resources available, making sure that time and resources are used most efficiently.
5. The method of payment to be used.
6. The time frame for performing the work, including any major milestones or deadlines involved.
7. Information required of each respondent in order to make the selection, including consultant qualifications, related experience on similar projects, current and projected workloads, capability to meet time and budget requirements, and identity of and qualifications of professional personnel to be assigned to the project.
8. The methods and criteria to be used in evaluating the proposals, and the relative weight of each of the criteria. The RFP should not only describe the criteria to be used in evaluating the proposals but also the relative weight attached to each criterion.



This is important for the consultant to better understand the priorities of your concerns and how to respond to them.

9. The name and telephone number of a local person who can be contacted for further information regarding the RFP. The RFP should also include the names and phone numbers of people that will be available and knowledgeable enough to answer questions about the RFP. Do not just list the chief elected official if that person is not likely to be available during normal business hours.

Consultants interested in responding will usually contact you before they decide to submit a proposal. OCR recommends that you be frank in answering the consultant's questions. Consultants should be allowed to review your NYS CDBG application so that they can gain a better understanding of what your community hopes to accomplish through the project.

10. Directions for submitting a response to the RFP. The directions for submitting the RFP should specify the date and time of the submittal deadline and the number of copies required. Since proposals are sometimes hand delivered, be sure to include an office address where someone will be available to accept them.

## **B. Soliciting Proposals**

Recipients should be able to document that proposals were solicited from an adequate number of qualified sources and that full and open competition took place prior to selection of a consultant. Encouraging adequate competition is of obvious interest and benefit to Recipients in terms of retaining the most qualified consultant at a reasonable cost. The more responses, the better the community's chance of hiring the best qualified firm.

At a minimum, the Recipient should advertise the RFP at least once in the newspaper used for its regular legal advertising. OCR's concern in reviewing local procurement procedures is that the Recipient be able to demonstrate reasonable efforts to solicit from an adequate number of qualified sources. If the RFP is advertised in a small town newspaper with only local distribution, the effort may be open to question. **Therefore, the OCR strongly recommends that Recipients also advertise at least once in a newspaper with regional distribution in their area of the state, in addition to local advertising.**

Advertising RFPs does not mean that the entire text of the RFP must be included in a legal advertisement. The advertisement can briefly announce that the community is requesting proposals and that a copy of the detailed RFP is available upon request. This approach, in lieu of publishing the entire text of the RFP, might substantially reduce advertising costs. However, it will mean that the Recipient must allow additional time for persons or firms to request and receive a copy of the RFP and to respond.

Recipients should send copies of the RFP to firms that have previously indicated an interest in submitting a proposal. You can also contact other firms directly and ask them to submit proposals. By retaining copies of the letters sent to these firms Recipients will have clear documentation of efforts inviting competitive proposals in the event that Recipients receive a limited number of responses.

**You should allow at least four weeks for responses to your RFP.** OCR considers three weeks the very minimum to allow for a reasonable time for a firm to prepare an adequate response. Less time for response would unnecessarily restrict competition. If time is too limited, some very qualified potential respondents may either be eliminated or may not be allowed sufficient time to prepare a quality proposal.

### **C. Reviewing Proposals and Selecting a Consultant**

Recipients may wish to consider appointing a committee of three to five people to review the responses to the RFP. Members of the committee should be familiar with the RFP and work to be accomplished through the contract. It may also be helpful to have a member of the committee with technical knowledge or experience appropriate to the project. Recipients should have a method for conducting technical evaluations of the proposals received and for selecting awardees.

The committee should try to keep to a minimum the time between the proposal deadline, evaluation of the proposals, and the final selection of the consultant. Forty-five days is a reasonable time period. It is not necessary to interview a large number of consultants to demonstrate adequate competition. Responding to an RFP can involve a significant amount of time and expense for responding firms. It would be unfair to ask a consultant to also take the time and to incur travel expenses if they are unlikely to be selected. If you receive a large number of responses, try to limit the number of consultants to be personally interviewed to the top contenders (five should be the maximum). At a minimum, however, Recipients should interview more than one of the firms or persons that submitted responses before making a selection, in order to demonstrate that adequate competition took place.

The review committee should interview the finalists separately. Do not allow other firms to sit in on any firm's presentation. The consultants should describe their qualifications, the manner in which they would handle the work tasks, and respond to any questions regarding the content of their proposals. The individual who will be principally responsible for doing the work on your project day-to-day should be present at the interview. Allow adequate time for formal presentations and questions from the committee.

Standard questions should be asked during the interview to allow comparison of the responses. Ask the same questions of each firm. Provide each person on the selection committee a sheet listing the questions to be asked during the interview. Each member of the selection committee should note the consultant's answer to each question, and should rate the answer using a predetermined scoring method.

After ranking the responses in order of their scores on the evaluation factors and checking references, the committee will make their recommendation. Once it has reached a final decision, the Recipient should notify all of the respondents of the results in writing, as soon as possible.

#### **D. References**

**Before you make your final selection of a consultant, there is no step that is more important than to thoroughly check references.** Always request a list of prior clients, including their name, description of the work performed, address, and the name and phone number of a person to contact. A list of their most recent projects is usually best. Recipients should contact several references for each respondent being considered. Some useful questions might be:

1. Were you satisfied with the quality and timeliness of the work?
2. Was the consultant knowledgeable about funding programs and related requirements?
3. Was the consultant willing and able to work closely and effectively with local staff?
4. Were the costs or charges reasonable in relation to the work actually performed?
5. Did you experience any problems that would discourage you from hiring them again?

Also check to see if the work done for these clients is similar to what you want the consultant to do. The ability to write a grant application, for example, does not mean that the same consultant has the capability to assist you with the management of a grant. Sometimes the person or firm you are interested in will be a new firm with few, if any, client references. New, small firms can sometimes be just as good as well-established, large firms, so instead of asking for client references, you would ask for employer references.

Checking references prior to selecting a consultant is the most important action you can take to avoid becoming involved with an unsatisfactory consultant.

#### **E. Preparing the Contract**

The grant Recipient's negotiation with the selected consultant will include the scope of services, timetable, contract cost, and payment terms. In most cases, the Consultant will prepare a draft scope of services based on the proposal submitted in response to the RFP. This should include detailed descriptions of the services to be provided, along with a work schedule indicating the time line for completion of the more significant tasks, and identify the products or services to be provided.

## **Put It in Writing**

The community should insist that any “understanding” between the consultant and the local government be written into the contract. “Gentlemen’s agreements” can cause problems, even when involving apparently minor issues. The more time that is spent on describing who will be doing what, when, and for what fee, the smoother relations will be later on. Several points that should be clarified in the contract to protect the community’s interests are:

1. State that only those key individuals who are identified in the firm’s proposal for specific tasks are permitted to charge their time and expenses to the job. This should not apply to clerical and support staff whose costs were not specified in the consultant’s original proposal.
2. All commitments stated in the contract must be honored unless changes are approved in writing.
3. It is important that the contract allow a fair and reasonable profit for the consultant. The basis for this could be previous experience, contacts with other municipalities, or published professional guidelines.

Preparation of the contract itself is relatively simple once these issues have been agreed upon. It is the Recipient’s responsibility to include provisions related to all applicable NYS CDBG requirements in any contract or agreement through which NYS CDBG funds are passed on to a contractor or subcontractor.

## **F. Contract Administration and Supervision**

Recipients should establish and maintain procedures to monitor contractor performance to ensure that they are performing in accordance with the scope of services, timetable, and any other terms and conditions specified in their contracts or purchase orders. Ongoing monitoring of the contractor’s performance and progress in completing contracted work tasks will prevent problems which may affect the quality, timely completion, or cost of the contract for your overall NYS CDBG project.

**All payment requests must be carefully reviewed before they are approved, to make sure that costs are reasonable and are consistent with the terms of your contract or purchase order. Recipients should require narrative progress reports with each billing. The consultant should be requested to report on each separate product specified in the budget. Billing should list hours spent on each budget category by employee type. If you do not understand an item on an invoice or believe a charge is not adequately documented, you should contact your consultant and resolve the question before payment is approved.**

Some communities have found that their relationship with a consultant goes more smoothly if a specific person is assigned to act as a day-to-day liaison with the consultant and to review progress reports and requests for payment.

### **G. Prior Commitments to Consultants**

A Recipient may have contracted with a consultant, architect, or engineer to prepare the original NYS CDBG application. This contract cannot be renewed or extended without further competition unless it can be clearly documented that the original hiring process met all federal and state requirements and included a scope of services that included the activities proposed and that could extend beyond grant writing at the Recipient's discretion.

Professional services provided for a longer period than originally procured must be re-advertised. The original consultant may respond to the Recipient's RFP, and it is perfectly legitimate to consider that consultant's prior performance when making the selection. The RFP process does not preclude you from hiring an engineer that has previously worked for you and who performed well. It does mean that you must give other qualified firms a reasonable opportunity to submit a proposal.

A community may receive a proposal for what is called a loss-leader-arrangement, where the consultant offers to prepare or assist with a grant application at cut rates or for no cost in return for favorable consideration in the selection process for a project manager, architect or engineer. No such arrangement, whether based on an oral or written agreement, can be valid or binding on the Recipient since it clearly violates federal requirements mandating "full and open competition." Also, using an evaluation criterion such as "familiarity with project or community" or "has previously worked with the community," for example, would be considered as restricting competition because it would favor a consultant or firm that had worked with the community previously and could possibly discourage competition by other consultants.

## **VI. USE OF CONSULTANTS ALREADY UNDER CONTRACT**

If the Recipient has a consultant under a pre-existing, multi-year contract, it is permissible to use that consultant as long as the activity to be carried out was outlined in the original scope of work used to procure the consultant and the process used to procure the consultant met federal requirements. Please note that multi-year contracts should be limited to three years and to one specialty area, such as housing, public works or economic development.

A single Request for Proposals (RFP) for NYS CDBG administrative services including housing, public works and economic development is not consistent with federal procurement requirements. That is, an RFP of such broad scope would place unreasonable requirements on firms in order for them to qualify to do business. Therefore, OCR restricts three-year contracting to specific specialty areas. A single RFP to carry out all NYS CDBG housing-related activities or all NYS CDBG economic development-related activities is acceptable.

## **VII. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS**

Recipients are required to take affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Recipients shall take all of the following steps to further this goal:

Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

Recipients should obtain a list of Minority and Women-owned Business Enterprises (MBE/WBE) certified firms by contacting the, ESD Division of MWBD, Albany, NY 12245, (518) 292-5250 or utilize the website-based retrieval process at <http://www.esd.ny.gov/MWBE.html>.

## **VIII. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (12 USC 1701U)**

In accordance with the requirements under Section 3 of the Housing and Urban Development Act of 1968, as amended, Recipients shall ensure that employment and other economic opportunities generated by the use of NYS CDBG funds shall, to the greatest extent feasible, be directed to low- and very-low income persons, particularly those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low- and very low-income persons. Assistance covered by Section 3 includes the expenditure of NYS CDBG funds for work arising in connection with housing rehabilitation, housing construction, or other public construction projects.

Section 3 requirements are applicable to all procurement actions in excess of the small purchase threshold established at 24 CFR 85.36(d)(1), regardless of whether the procurement

is governed by 24 CFR 85.36. Section 3 applies to the entire project or activity funded with assistance that triggers Section 3 requirements.

Recipients of NYS CDBG grants that exceed \$200,000 must include a Section 3 clause in all construction contracts for \$100,000 or more.

## **IX. DEBARMENT, SUSPENDED OR INELIGIBLE CONTRACTORS**

Persons who have been declared debarred or suspended from participation in federally funded programs, by a federal government agency, are ineligible for participation in the NYS CDBG program. The List of Parties Excluded from Federal Procurement and Nonprocurement Programs for the federal government includes contractors that have been found in serious violation of federal labor standards or other requirements, and therefore have been debarred, suspended, or otherwise declared ineligible for participation in federally assisted construction projects. The List of Parties Excluded from Federal Procurement and Nonprocurement Programs is maintained by the U.S. General Services Administration and may be obtained at [www.epls.gov](http://www.epls.gov). Use of this list is required for all HUD-financed programs to verify eligibility status of contractors.

Persons who have been declared debarred or suspended from participation in New York State public works projects by the Bureau of Public Works are listed in the NYS Bureau of Public Work's List of Employers Ineligible to Bid on or Be Awarded Any Public Work Contract. This list can be obtained via the Internet at <http://labor.state.ny.us>. Any person(s) on this list are ineligible for participation in New York State's NYS CDBG Office of Community Renewal Program. Work's List of Employers Ineligible to Bid on or Be Awarded Any Public Work Contract. This list can be obtained at [www.labor.state.ny.us](http://www.labor.state.ny.us) and selecting the Debarred Employers tab. Any person(s) on this list are ineligible for participation in New York State's NYS CDBG Office of Community Renewal Program.

Recipients must maintain evidence of compliance with this requirement by retaining a copy of the lists in their Office of Community Renewal files.

**X. EXHIBITS**

4-1 Contract Provisions

4-2 Section 3 Rider



## EXHIBIT 4-1

### Contract Provisions

It is the responsibility of the Recipient to ensure that any of these applicable provisions are included in all contract documents. It is not acceptable for the provisions to just be photo copied and attached to the contract, but rather, the appropriate provision should be included in the appropriate contract section(s). **All contracts entered into or awarded by a Recipient shall contain the following provisions as applicable:**

1. **Equal Employment Opportunity** - All construction contracts awarded in excess of \$10,000 shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
2. **Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)** - All contracts and subgrants in excess of \$2000 for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. All suspected or reported violations shall be reported to the Federal awarding agency.
3. **Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)** - When required by Federal grant program legislation, all construction contracts awarded by Recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The Recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. All suspected or reported violations shall be reported to the Federal awarding agency.
4. **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330)** - Where applicable, all construction contracts awarded in excess of \$100,000. Contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330), as

supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous on federal and federally financed and assisted construction projects. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. **Patent Rights to Inventions Made Under a Contract or Agreement** - Contract agreements for the performance of experimental, developmental, or research work shall provide for the patent rights of the Federal Government and the Recipient in any resulting invention in accordance with 37 CFR 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 the awarding agency.
6. **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et sea.), as amended** - Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
7. **Section 3 12 U.S.C. 1701u of The Housing and Community Development Act of 1968, as amended** - All contracts subject to Section 3 shall include the clause set forth at 24 CFR 135.38 as provided in the Section 3 Rider.
8. The following provisions shall also be included in all contracts.
  - a. Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances by which a contractor violates or breaches the contract terms, and provides for such remedial actions as may be appropriate.
  - b. All contracts in excess of \$10,000 shall contain suitable provisions for termination by the Recipient, including the manner by which such termination shall be effected and the basis for settlement.
  - c. Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the Recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For

those contracts or subcontracts exceeding \$100,000, the OCR may accept the bonding policy and requirements of the Recipient, provided the OCR has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

- i. 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 shall, upon acceptance of this bid, execute such contractual documents as may be required within the time specified.
  - ii. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  - iii. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.
  - iv. Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."
- d. All negotiated contracts awarded by Recipients or subrecipients shall include a provision to the effect that the Recipient or subrecipient, the OCR, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.
  - e. All contracts shall contain a provision indemnifying the Housing Trust Fund Corporation, its agents and employees, from and against any and all claims, actions, damages, losses, expenses and costs of every nature and, including reasonable attorney's fees, incurred by or assessed or imposed against the Housing Trust Fund Corporation, to the fullest extent permitted by law, arising out of the project being funded with NYS CDBG funds.
  - f. All contracts shall contain a provision acknowledging that all parties shall be bound by, and comply with all applicable Federal, State, and local laws and regulations, including but not limited to, 24 CFR Parts 85 and 570.

## EXHIBIT 4-2

### SECTION 3 RIDER

Contractor must comply with and must ensure that the following language is included in all applicable subcontracts for work related to this Contract (the term “Contractor” as used herein shall also be deemed to mean “Subcontractor”):

1. Section 3 Clause (24 CFR 135.38)

- A. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u (Section 3). The purpose of Section 3 is to ensure that Employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this Agreement agree to comply with HUD’s regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediments that would prevent them from complying with the Part 135 regulations.
- C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understand, if any, a notice advising the labor organization or workers’ representative of the Contractor’s commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the Subcontractor is in violation of the regulations in 24 DFR Part 135. The Contractor will not subcontract with any Subcontractor where the Contractor has notice knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part

135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.

- F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
  - G. With respect to work performed in connection with Section 3 covered Indian Housing Assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).
2. Contractor shall maintain such records, and complete and submit forms as may be amended from time to time, as required by the NYS Office of Community Renewal ("OCR") and/or HUD including but not limited to the Section 3 New Hires Report and the Section 3 Business Certification Package. Such forms shall be submitted in accordance with the directions contained therein and at such other times as the OCR and/or HUD may direct.

**CHAPTER 5  
GENERAL PROVISIONS**

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## CHAPTER 5 GENERAL PROVISIONS

### I. LABOR STANDARDS

#### A. Introduction

Depending on the type of activity to be undertaken with New York State Community Development Block Grant (NYS CDBG) funding, Recipients may need to comply with either the State Labor Standards required by Article 8 of the New York State Labor Law and/or the Federal Labor Standards as required by the Davis-Bacon Act. **It is the Recipients' sole responsibility to fully understand and comply with the requirements of the labor laws that impact their project prior to implementation of their NYS CDBG Program.** Recipients should contact the appropriate State or Federal agency concerning any issues related to State and/or Federal Labor Standards.

**Article 8 of the New York State Labor Law** requires Department of Jurisdictions awarding a public work contract to request a state wage rate determination prior to the bidding of a contract. The wage rate determination must be included as part of the bid document.

A "Department of Jurisdiction" includes a state department agency, board or commission; a county, city, town or village; a school district, board of education or board of cooperative educational services; a sewer, water, fire, improvement and other district corporations; a public benefit corporation; and a public authority awarding a public work contract.

"Public work" is construction, reconstruction or maintenance conducted on behalf of the public. The project's primary objective must be to benefit the public and the Department of Jurisdiction is party to a contract involving the employment of laborers, workers or mechanics.

**Davis-Bacon Act (40 USC 276a-276a-5)** requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Department of Labor and are issued in the form of federal wage decisions for each classification of work. **The law is applicable to all construction contracts awarded by Recipients or sub-recipients in excess of \$2,000. Residential rehabilitation contracts involving structures that contain fewer than eight (8) units are exempt from this requirement.** Multi-unit structures that contain eight (8) or more units within the structure regardless of the number of units being rehabilitated and mixed-use properties must comply with the Davis-Bacon Act (i.e. façade work).

For projects subject to the requirements of both Federal and State Labor Standards, both state and federal wage rate determinations must be obtained and included in the bid document for the project. In this case, the contractor is required to pay the higher of the two rates for the particular job classification.

#### B. Recipient Responsibility

Recipients should fully understand what is required for construction contracts before starting the implementation process for your NYS CDBG project:

- **Recipients must ensure that all construction contracts in excess of \$2,000 comply with all applicable Federal Labor Standards and provisions.**

- Recipients must ensure that all public works contracts awarded by a Department of Jurisdiction comply with all applicable State Labor Standards and provisions.

Recipients must include a copy of the current prevailing wage rate determination in each Request for Bids. **A copy of the bid specifications, proposed contract provisions and evidence that wage rates have been incorporated into the contract must be forwarded to the Recipient's OCR Community/Economic Developer prior to issuing the bids for construction.**

- Recipients may only award contracts to eligible contractors and subcontractors which have accepted the wage rate determination and signed a certification to pay wages on that basis and comply with other labor standards.
- Contractors and sub-contractors must pay the wage rate determined by the Secretary of Labor to be the prevailing rate in that labor market.
- Recipients are required to report all suspected, reported or confirmed violations of over \$1,000 and must require the contractor to prepare a supplemental payroll and make appropriate restitution to affected employees.
- Recipients must conduct confidential interviews with employees to assure compliance with the terms of the Copeland Anti-Kickback Act.
- Recipients must develop compliance and enforcement procedures that ensure all applicable labor standards requirements are met.
- Recipients must complete all required Federal and State Labor Standards compliance reports.
- Recipients must send a copy of the wage schedule and other related documents that were included in the construction contracts (for all prime contractors) to their Office of Community Renewal (OCR) Community/Economic Developer.
- Recipients must submit Semi-Annual Labor Standard Enforcement Reports to OCR. OCR is required to submit these reports to HUD for projects subject to Davis-Bacon.

### **C. Labor Standards Administration**

In order to comply with labor standard requirements, Recipients must develop a compliance and enforcement procedure that ensures all applicable labor standard requirements are met. The following steps will assist Recipients in ensuring compliance with applicable labor standards provisions:

#### **Step 1 - Determine Applicability**

The first and sometimes most difficult step is determining whether and to what extent the NYS Labor Law and/or Davis-Bacon wage standards apply to a particular contract or project. Most HUD-assisted construction work is covered by Davis-Bacon but there are some exceptions. The best and safest approach is whenever the contract project involves construction work that is valued in excess of \$2,000 to assume that Davis-Bacon rates will be applicable and then look more closely to see if there's any reason for non-coverage.



## **Step 2 - Designate a Labor Standards Compliance Officer**

Recipients must designate a Labor Standards Compliance Officer who will be responsible for prevailing wage compliance. This person will serve as liaison between the contractor, the project engineer, and OCR and have overall responsibility for coordinating and ensuring compliance with all appropriate labor standards regulations and ensuring that an accurate filing system is maintained. The officer's name must appear on all requests, notices and correspondence related to labor standards regulations and project compliance.

## **Step 3 - Request Wage Rate Determination**

### State Prevailing Rate Schedule

The Bureau of Public Works of the NYS Department of Labor issues New York State Prevailing Rate Schedules annually on July 1 for each locality within New York State. **Recipients must request a Prevailing Wage Schedule for their project from the appropriate regional office of the NYS Bureau of Public Works ([www.labor.state.ny.us/workerprotection/publicwork/PWContactUs.shtml](http://www.labor.state.ny.us/workerprotection/publicwork/PWContactUs.shtml)). Request for wage determinations should be submitted to the NYS Department of Labor, Bureau of Public Works within 90 days prior to the scheduled bid opening date.** Prevailing Rate Schedules list the hourly rates for the trades and occupations of the workers to be employed on the public work project. The Bureau of Public Works can provide additional guidance on the process and procedures required for compliance with NYS Labor Law.

### Federal Wage Determinations – Davis-Bacon

Federal wage rate determinations are issued by the U.S. Department of Labor for each State by means of a general wage decision issued early each January and subsequent periodic modifications throughout the balance of the year, in the four basic categories within the construction industry: Heavy, Highway, Building, and Residential. These determinations are meant to be all-inclusive and representative of an area's (the area in which the project is located) prevailing basic wage and fringe benefits for every type of job classification of laborers and mechanics within their respective industry category. The bid specifications and/or the contract for each project subject to Davis-Bacon wage rates must contain both a Davis-Bacon wage decision and its own labor standards clauses. These are usually bound into the contract specifications.

### **Recipients must obtain a wage determination from the U.S. Department of Labor.**

To obtain a wage determination from the U.S. Department of Labor, Recipients must access the Government Printing Office website at <http://www.wdol.gov/>. **Recipients must send a copy of the wage determination to their OCR Community/Economic Developer including evidence that the wage determination was verified prior to the bid opening.**

In most cases, NYS CDBG projects will only use the heavy prevailing wage rates. However, in certain cases, more than one wage determination should be included in the bid document by the project engineer. A guideline from the HUD Labor Relations Office, referred to as the 25% Test, can generally be followed to determine when more than one wage determination should be used for NYS CDBG-funded construction contracts. For instance, this "rule of thumb" provides that if building construction is a "significant component" of the project (the budget for building construction exceeds 25% of the total anticipated construction contract amount), then the project

engineer should include both Heavy and Building rates in the bid document. The same 25% Test concept would apply to a public facility project which is principally building construction, such as a sewage treatment plant, but which also includes more than 25% of non-building construction activity. In such cases, the project engineer should include both Building and Heavy prevailing wage rates in the bid document. This is a guideline, not a rigid requirement. If your project appears to fall under this 25% Test, consult your OCR Community/ Economic Developer for guidance.

For further information on this subject see: [http://www.hud.gov/offices/olr/olr\\_9603.cfm](http://www.hud.gov/offices/olr/olr_9603.cfm)

#### Unclassified Workers

In the event the construction project will involve laborers or mechanics with job classifications that do not appear on the wage determination provided, the recipient must make a request to OCR for an appropriate classification. The Report of Additional Classification and Wage Rate Form, HUD Form 4230A ([www.hud.gov/offices/olr/olrform.cfm](http://www.hud.gov/offices/olr/olrform.cfm)) must be used for this request.

#### **Step 4 - Prepare the bid documents/contract**

Both the federal and state labor standard regulations require specific language be included in all solicitations for bids and contracts for projects that must comply with labor standard regulations. Exhibit 5-12 provides a link to the Federal Labor Standards provisions and the State Labor Standards provisions. Additionally, each bidder and the contractor selected are required to provide specific certifications assuring the Recipient compliance with the prescribed labor standards requirements. In addition to the required labor provisions, all contracts must also include the required contract provisions as outlined in Chapter 4, Exhibit 4-1 and must comply with all required bonding provisions.

#### **Step 4a. - Verify the Wage Rate in the Solicitation for Bids**

A copy of the current wage rate determinations must be included in any solicitation for bids. **Recipients must verify that the determination is the most current available from the Department of Labor.**

Federal Wage Determinations have the following time limitations:

- a. If a contract is not executed within 90 days of the bid opening, any applicable later modifications to the original wage determination must be included in the contract; or
- b. If construction has not commenced within 90 days of the bid opening, any applicable later modifications to the original wage determination must be included in the contract.

According to the HUD Labor Relations Office, a Change Order, rather than rebidding, can incorporate the modifications under items a) and b) above.

#### **Step 4b. - Verify Bidder Eligibility**

##### Debarment, Suspended or Ineligible Contractors

Persons who have been declared debarred or suspended from participation in federally funded programs by a federal government agency are ineligible for participation in the NYS CDBG

program. The U.S. General Services Administration maintains the List of Parties Excluded from Federal Procurement and Non procurement Programs for the federal government ([www.epls.gov/](http://www.epls.gov/)). This list includes contractors who have been found in serious violation of Federal Labor Standards or other requirements, and therefore have been debarred, suspended, or otherwise declared ineligible for participation in federally assisted construction projects. Use of this list is required for all HUD-financed programs to verify eligibility status of contractors.

Once bids are received for a project, Recipients must verify a contractor's eligibility by reviewing the List of Parties Excluded from Federal Procurement and Non procurement Programs to verify the eligibility status of the contractors. Persons who have been declared debarred or suspended from participation in New York State public works projects by the Bureau of Public Works are listed in the NYS Bureau of Public Work's List of Employers Ineligible to Bid on or Be Awarded Any Public Work Contract. This list can be obtained at <http://www.labor.state.ny.us>. All proposed prime contractors and consultants must be verified for eligibility, by the Recipient, prior to awarding any NYS CDBG-funded contracts. In addition, participants in contracts associated with a NYS CDBG project must certify they and their principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible. This step should take place as soon as possible following the bid opening, and before awarding any construction or consultant contract.

Recipients must not make any contract award or permit any contract award to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in NYS public works projects or federal assistance programs.

#### **Step 4c. - Reverify the Wage Rate**

For projects where Davis-Bacon is applicable, not less than 15 business days prior to the bid opening, the Recipient must contact the U.S. Department of Labor to determine whether the wage rate decisions included in the bid solicitation are still current. In those instances where the U.S. Department of Labor has issued a modification of the earlier wage determination, Recipients must provide the new rate decision to all potential bidders by addendum, if a reasonable amount of time is allowed for this procedure.

#### **Step 5 - Evidence of Compliance**

For projects where the Federal Labor Standards are applicable, Recipients must submit evidence that executed contracts for all contractors (prime and sub) contain federal labor standards provisions. **A copy of the bid specifications, proposed contract provisions, and evidence that the wage rates have been incorporated into the contract must be forwarded to the Recipient's OCR Community/Economic Developer prior to issuing the bids for construction.** Non-receipt of the required documents will delay and may eventually suspend the processing for request for funds.

## **Step 6 - Inform Contractors of Labor Standard Requirements by Conducting a Preconstruction Conference**

Following the contract award for construction projects involving NYS CDBG funds, OCR recommends that the Recipient hold a pre-construction conference. The Recipient and prime contractor should include all subcontractors in the discussions to ensure that they are aware that they must also comply with the Labor Standards and equal employment opportunity provisions. The project architect and/or engineer (if applicable) should attend the conference to cover the technical or other contract related issues for the Recipients. The Recipient's project manager will cover the federal or state compliance issues.

The pre-construction conference represents a key opportunity prior to the beginning of project construction for giving instructions to the contractor. **A well-planned and executed conference can help prevent problems and misunderstandings that could delay the project at a later date.**

To assist Recipients in preparing for and conducting the pre-construction conferences for NYS CDBG-funded construction contracts, Federal Labor and Civil Rights Requirements Exhibit 5-2 and a Pre-construction Conference Planning Guide Exhibit 5-1, have been provided. The Guide provides a general format to be used as an agenda, supplemental information on labor standards and civil rights requirements, and a blank conference checklist and agenda, which should be followed to record minutes for the conference.

At a minimum, pre-construction conferences should include the following topics of discussion, which should outline the contractors or sub-contractors responsibilities:

- prevailing wage requirements, including posting prevailing wages continually at the job site;
- employment of apprentices or trainees;
- weekly pay for employees;
- submission of weekly payrolls Form WH-347, [www.hud.gov/offices/olr/olrform.cfm](http://www.hud.gov/offices/olr/olrform.cfm);
- penalties if prevailing wage requirements and labor standards requirements are not complied with;
- payment of overtime;
- equal employment opportunity requirements;
- employment of minorities and local workers;
- Section 3 requirements;
- use of minority and women's business enterprises;
- notices that must be posted at the job site;
- the use of bona fide, registered subcontractors; and
- key responsibilities of the contractor, engineer/architect, and project manager.

In order to document discussions that occur during the pre-construction conference, the Recipient should prepare minutes of the conference. A verbatim record is not necessary, as the names of the persons who attend and a summary of the comments and issues covered is sufficient. If minutes are recorded, a copy of the minutes should be retained in the files. Recipients should provide copies of the minutes to each contractor representative who attends the pre-construction conference. This helps document that the key requirements have been covered.

## **Step 7 - Monitor Contractor Performance**

It is the Recipient's responsibility to monitor construction activities to ensure that all required notices are posted prominently at the construction site, that the contractor's weekly payroll reports are accurate and submitted weekly as required, and that the contractor is complying with applicable labor standards. This monitoring function can be accomplished through the following activities:

- **conduct on-site inspections to ensure that required notices and copies of the applicable wage rates are posted at reasonably accessible locations for the workers to review;**
- **compare weekly payroll reports to the prevailing wage rate decision;**
- **conduct interviews with construction employees to confirm job classifications and pay rates ([www.hud.gov/offices/olr/olrform.cfm](http://www.hud.gov/offices/olr/olrform.cfm)). Interviews should be conducted at least once a month throughout the construction period with a representative of each classification of laborers involved in the construction and at least 10 percent of the workforce;**
- **initial and date each payroll to document that the payroll review has been completed on a weekly basis;**
- **implement a process that authorizes payment to the contractor after specific milestones are met; and**
- **certify that the contractor has complied with all labor and civil rights requirements.**

### **Use of Volunteers**

The Housing and Community Development Act exempts "volunteers" from Davis-Bacon Act requirements on NYS CDBG program funded projects. Davis-Bacon wage rates shall not apply to any individual that:

- performs services for which the individual volunteered;
- does not receive compensation for such services, or is paid expenses, reasonable benefits, or a nominal fee for such services; and
- is not otherwise employed at any time in the construction work.

The Project Manager should use and obtain a signed Volunteer Certification Form, Exhibit 5-3, for each volunteer worker, other than the contractor's employees, performing work on NYS CDBG-funded project activities.

## **Step 8 - Investigate Labor Standards Violations**

Violations of labor standards requirements may surface as the result of either monitoring or through a specific complaint by a construction worker. In either instance, the Recipient is responsible for thoroughly investigating and documenting the alleged violation.

If a violation is suspected, the Recipient should immediately notify their OCR Community/Economic Developer and work with the contractor on an informal basis to resolve the problem and allow a reasonable time for correction. Where the contractor refuses to address the violation or continues to violate labor standards provisions, your OCR Community/Economic Developer should be immediately notified in writing of the violation. The contractor should be informed that an unresolved finding of labor standards violation could result in disbarment and make the contractor ineligible for participation in NYS CDBG assisted construction projects in the future.

#### **D. Davis-Bacon Reporting Requirements**

Twice per year, Recipients undertaking activities that require compliance with Federal Labor Standards (Davis-Bacon and the related Acts) must submit a Semi-Annual Labor Standards Enforcement Report to OCR, who will notify Recipients directly if a report is due for a CDBG funded project. Reports are due within ten (10) days of the end of the reporting periods, which are October 1 through March 31 and April 1 through September 30. Information provided on this report will be submitted to HUD to demonstrate compliance with federal requirements. Recipients who fail to submit the reports in a timely manner are at risk of having funds suspended for all open grants until the report is received and approved by OCR.

## **II. CONFLICT OF INTEREST**

In addition to the provisions of New York State General Municipal Law Article 18 Conflicts of Interest of Municipal Officers and Employees, there are two sets of federal conflict of interest provisions applicable to state administered NYS CDBG non-entitlement funds. The first set, applicable to the procurement of goods and services, is located at 24 CFR 570.489 (g). This section states:

*“When procuring property or services to be paid for in whole or in part with NYS CDBG funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts (Other conflicts of interest are covered by Sec. 570.489(h)). The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, executive orders and implementing regulations.”*

OCR has elected to adopt the federal procurement standards implemented at 24 CFR part 85. Regarding conflict of interest issues, 24 CFR 85.36(b)(3) provides:

*“Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:*

- (i) The employee, officer or agent,*
- (ii) Any member of his immediate family,*
- (iii) His or her partner, or*
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.*

*The grantee’s or subgrantee’s officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or*

*conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest."*

These provisions prohibiting conflicts arising out of procurement activities permit no exceptions and therefore, must be avoided. The second set of provisions applicable to state administered NYS CDBG non entitlement funds is found at 24 CFR 570.489(h), which provides:

(1) Applicability

- (i) In the procurement of supplies, equipment, construction, and services by the States, units of local general governments, and subrecipients, the conflict of interest provisions in paragraph (g) of this section shall apply.
- (ii) In all cases not governed by paragraph (g) of this section, this paragraph (h) shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with NYS CDBG funds by the unit of general local government or its subrecipients, to individuals, businesses and other private entities.

(2) Conflicts prohibited. Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph (3) of this section who exercise or have exercised any functions or responsibilities with respect to NYS CDBG activities assisted under this subpart or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(3) Persons covered. The conflict of interest provisions for paragraph (h)(2) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving NYS CDBG funds.

(4) Exceptions: Thresholds requirements. Upon written request by the State, an exception to the provisions of paragraph (h)(2) of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the state may be granted by HUD on a case-by-case basis. In all other cases, the state may grant such an exception upon written request of the unit of general local government provided the state shall fully document its determination in compliance with all requirements of paragraph (h)(4) of this section including the state's position with respect to each factor at paragraph (h)(5) of this section and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the state or unit of general local government as appropriate. An exception may be considered only after the state or unit of general local government, as appropriate, has provided the following:

- (i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

- (ii) An opinion of the attorney for the state or the unit of general local government, as appropriate, that the interest for which the exception is sought would not violate state or local law.
- (5) Factors to be considered for exceptions. In determining whether to grant a requested exception after the requirements of paragraph (h)(4) of this section have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:
- (i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
  - (ii) Whether an opportunity was provided for open competitive bidding or negotiation;
  - (iii) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
  - (iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;
  - (v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (h)(3) of this section;
  - (vi) Whether undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
  - (vii) Any other relevant considerations.

To request an exception as authorized under 24 CFR 570.589(h)(4), the Recipient must submit the following documents to OCR:

1. A written request which:
  - a. details the nature of the conflict; and
  - b. specifically addresses each applicable factor enumerated in subparagraph (5) of 24 CFR 570.489(h); and
  - c. is signed by the Recipient's chief elected official.
2. An opinion letter signed by the Recipient's legal counsel stating that the interest for which the exception is sought would not violate state or local law.
3. Minutes of the public meeting at which disclosure of the conflict was made.
4. Conflict of Interest Disclosure (Refer to Exhibit 5-16)

Refer to Exhibit 5-17 for further guidance on the requirements for Conflict of Interest Submissions.

Upon the receipt and review of the forgoing documents, OCR will issue a written determination either granting or denying the requested exception.

### **III. PROJECT SIGNS**

OCR requires a project sign at the site of all construction projects which involve more than \$50,000 in NYS CDBG funds. The expense associated with meeting this requirement is an eligible expense and may be charged as a construction or an administrative expense.



## **A. Sign Specifications**

### Installation

1. Install sign at the site within one week of the start of construction.
2. Erect sign in a prominent location, secure from vandalism.

### Materials

1. Signboard: 4' X 8', 3/4" plywood, MDO B-B EXT-APA.
2. Primer: As recommended by finish coat manufacturer for the substrate and finish material.
3. Lettering and striping shall be uniform with sharp, neat profiles.
4. "Optional Information" included on sign shall be visually subordinate to other information provided.
5. Supports: Treated D.F. posts.

### Maintenance and Removal

1. Maintain the sign plumb and level for the duration of the work.
2. The sign must be removed from the property 60 days after final payment or project completion, whichever is later.

## **B. Sign Design**

The sign design layout must follow the specifications available on the HCR website, <http://www.nyshcr.org/Funding/SignSpec/>

## **C. Sign Placement**

- With respect to placement, traffic control signs, regulatory, warning, and guide signs have a higher priority than OCR signage
- In no case shall these signs be placed such that they obscure road users' view of other traffic control devices.
- OCR signs should be placed where they can be easily identified with the corresponding projects.
- If the placement of OCR signs conflicts with newly installed higher priority signs, or traffic signals, or temporary traffic control devices, or other priority devices, the sign should be relocated.
- Due to public safety concerns, OCR signs should not be allowed at the following locations:
  - On the front, back, adjacent to or around any traffic control device, including traffic signs, signals, changeable message signs, traffic control device posts or structures, or bridge piers.
  - At key decision points where a driver's attention is more appropriately focused on traffic control devices, roadway geometry, or traffic conditions. These locations include, but are not limited to exit and entrance ramps, intersections controlled by traffic signals or by stop or yield signs, highway-rail grade crossings, and areas of limited sight distance.

#### IV. DISPLACEMENT, RELOCATION AND ACQUISITION

Recipients who undertake NYS CDBG-assisted activities that involve displacement, permanent relocation, demolition or conversion of residential units occupied by low-income households are responsible for complying with all regulations under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act), and Section 104(d) of the Housing and Community Development Act of 1974, as amended, and all implementing regulations.

The primary purpose of these laws is to ensure that when NYS CDBG-funded projects result in the demolition or conversion of units, all affected persons receive the proper relocation assistance and benefits. The acquisition requirements of the federal relocation and acquisition regulations apply in most instances, including when a property is acquired by a nonprofit or for-profit entity that has received a loan or grant from your NYS CDBG project.

To ensure compliance with the URA, recipients should reference the HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition ([www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm](http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm)) and 49 CFR Part 24 for detailed information on the specific displacement, relocation and acquisition requirements.

#### V. LEAD BASED PAINT

##### **EFFECTIVE MAY 6, 2014, THE PRESUMPTION OF LEAD ON ANY NYS CDBG PROGRAM FUNDED HOUSING ACTIVITY WILL NO LONGER BE PERMITTED.**

##### **A. Renovation, Repair and Painting Rule**

Common renovation activities like sanding, cutting, and demolition can create hazardous lead dust and chips by disturbing lead-based paint, which can be harmful to adults and children. To protect against this risk, on April 22, 2008, EPA issued a [rule \(40CFR745.80\) requiring the use of lead-safe practices](http://www.epa.gov/lead/40cfr745.80) and other actions aimed at preventing lead poisoning. Under the rule, beginning April 22, 2010, and updated October, 2011, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 regardless of the source of funding must be certified and must follow specific work practices to prevent lead contamination.

EPA requires that firms performing renovation, repair, and painting projects that disturb lead-based paint in pre-1978 homes, child care facilities and schools be certified by EPA and that they use certified renovators who are trained by EPA-approved training providers to follow lead-safe work practices.

##### **EPA and the HUD rules apply to all housing rehabilitation activities.**

##### **B. Lead Safe Housing Rule**

All NYS CDBG-funded housing rehabilitation and home ownership projects must adhere to the Residential Lead-Based Paint Hazard Reduction Act of 1992 (24 CFR Part 35). These regulations must be carefully followed to ensure that exposure to lead hazards is reduced in any residential property to be rehabilitated or purchased. The regulations can be found at <http://www.hud.gov/offices/lead/enforcement/lshr.cfm>.

HUD has created an Interpretive Guidance that can be used to address many of the questions that have arisen as a result of the implementation of these new regulations. The Interpretive Guidance can be found at: <http://www.hud.gov/utilities/intercept.cfm?/offices/lead/library/enforcement/LSHRGuidance21June04.pdf>

For questions that cannot be answered through the regulations or Interpretive Guidance, Recipients should submit their questions in writing to their OCR Community/Economic Developer. OCR will respond in writing.

**EPA and the HUD rules apply to all housing rehabilitation activities.**

**C. Types of Housing Covered**

- Any private housing that is receiving CDBG housing rehabilitation assistance
- Federally-owned housing being sold
- Housing receiving a federal subsidy that is associated with the property, rather than with the occupants (project-based assistance)
- Public housing
- Housing occupied by a family receiving a tenant-based subsidy (such as a voucher or certificate)
- Multifamily housing for which mortgage insurance is being sought
- Housing receiving federal assistance for rehabilitation, reducing homelessness, and other special needs

**D. Types of Housing Not Covered**

- Housing built since January 1, 1978, when lead paint was banned for residential use
- Housing exclusively for the elderly or people with disabilities, unless a child under age 6 is expected to reside there
- Zero-bedroom dwellings, including efficiency apartments, single-room occupancy housing, dormitories, or military barracks
- Property that has been found to be free of lead-based paint by a certified lead-based paint inspector
- Property where all lead-based paint has been removed
- Unoccupied housing that will remain vacant until it is demolished
- Non-residential property
- Any rehabilitation or housing improvement that does not disturb a painted surface

**E. Notices and Pamphlets**

As per 24CFR Part 35, Recipients undertaking housing rehabilitation and homeownership activities are required to provide appropriate lead hazard information pamphlets and notices to the owners and occupants of the residential structure. The ***Protect Your Family From Lead in Your Home*** pamphlet [http://www.hud.gov/offices/lead/library/enforcement/pyf\\_eng.pdf](http://www.hud.gov/offices/lead/library/enforcement/pyf_eng.pdf) and the ***EPA Renovate Right*** pamphlet <http://www2.epa.gov/lead/lead-safe-certified-guide-renovate-right> must be provided to all owners, potential owners, and occupants of the residential structure to be purchased or that is undergoing rehabilitation.

In addition to the lead hazard information pamphlet, Recipients are also required to provide specific notices when lead based paint evaluation and/or hazard reduction activities are being undertaken. Recipients must provide the appropriate notice(s) (Exhibit 5-8) to all owners and occupants of the residential structure where the activities are being undertaken.

## F. Calculating Federal Rehabilitation Assistance

Prior to beginning any lead hazard evaluation or reduction activities, Recipients must determine the level of Federal assistance being provided to a specific unit. Lead-based paint requirements for rehabilitation vary based on the amount of federal rehabilitation assistance (as defined in 24 CFR 35.915), and the calculation can affect (1) the requirement for a risk assessment and (2) the type of lead hazard controls required.

The three categories are:

- Assistance of up to and including \$5,000 per unit;
- Assistance of more than \$5,000 per unit up to and including \$25,000 per unit; and
- Assistance of more than \$25,000 per unit.

The amount of federal rehabilitation assistance is based on two calculations, and the lesser of the two is used to determine the category. The two calculations are:

1. **The average Federal housing assistance per assisted dwelling unit** – Federal assistance includes all Federal funds that are assisting the project, regardless of the use of the funds. Federal funds being used for acquisition, construction and project soft costs are included.

The following are examples of programs that are considered Federal assistance:

- HUD grant programs, including CDBG, HOME, HOPE
- Special Needs programs such as HOPWA, ESG, Supportive Housing, Shelter Plus Care and other McKinney programs
- Section 8 and other HUD rental assistance programs
- Dept. of Agriculture's Rural Development funds

The following are examples that are not considered Federal assistance for the purpose of this calculation:

- Proceeds from the sale of Low-Income Housing Tax Credits
- Proceeds from FHA mortgage insurance, including rehab funds such as 203(k)
- Weatherization Assistance Program (separate guidance has been issued)
- Fannie Mae and Freddie Mac programs
- Federal Home Loan Bank programs

If you are using Federal funds on a project and the program is not clearly identified as included or excluded by these lists, contact OCR to determine applicability before proceeding.

2. **The average hard costs of rehabilitation per unit** – The hard costs of rehabilitation include all hard costs, regardless of source, except for the costs associated with lead-based paint hazard evaluation and hazard reduction activities (as explained below). All other hard costs of rehabilitation are to be included, regardless of whether the source of funds is Federal or non-Federal, public or private.

The following are not hard costs and need not be included in this calculation:

- Soft costs, including financing fees, credit reports, title binders and insurance, recordation fees, transaction taxes, impact fees, legal and accounting, appraisals, architectural and engineering fees
- Administrative costs
- Relocation costs
- Environmental review costs
- Acquisition costs
- Also, the costs of complying with the LBP Rule that are not normally incurred as part of rehabilitation may be excluded from this calculation, including such things as:
  - Lead evaluation costs (risk assessments, visual assessments or inspections)
  - Worksite preparation
  - Occupant protection, including relocation, storage or protection of belongings
  - Interim controls, standard treatments, or abatement activities that are being done only for purposes of lead hazard control and would not be done in the normal course of the rehabilitation except for the LBP requirements
  - The incremental costs of a rehab activity that are the result of safe work practice requirements (e.g., if the standard window replacement cost is \$275 per window without LBP, but \$310 when using safe work practices in an interim control job, the incremental cost of \$35 per window may be treated as an additional LBPH reduction cost and excluded from the calculation of rehabilitation hard costs)
  - Waste handling attributable to lead-based paint hazard reduction.
  - Specialized cleaning designed to remove LBP dust
  - Clearance activities, including visual assessments, dust wipes, and reports

These LBP hazard reduction costs may be excluded from the calculation of rehabilitation hard costs (the second of the two required calculations), but are not excluded from the calculation of Federal housing assistance (the first of the two calculations) if they are paid with Federal funds.

For a residential property that includes both federally assisted and non-assisted units, these calculations apply only to the federally assisted units. The rehabilitation costs and Federal assistance associated with non-assisted units are not included in the calculations of the average per unit hard costs of rehabilitation and the average Federal assistance per unit, but the pro rata share of the exterior, common area, and common systems costs are included. For multi-unit projects with both federally-assisted and non-assisted units, rehabilitation hard costs per unit are calculated as follows:

1. In-unit rehabilitation hard costs for assisted units divided by the number of federally-assisted units in the project; plus
2. Rehabilitation hard costs for common areas and exterior surfaces divided by the total number of units in the project.

Exhibit 5-9 is provided as the form for documenting the amount of Federal Rehabilitation Assistance and evidence of this calculation must be contained in every project file.

## **G. Lead Based Paint Evaluation and Hazard Reduction Requirements**

For all residential properties receiving Federal housing rehabilitation assistance up to and including \$25,000, Recipients must complete the following activities:

1. Conduct lead based paint testing on the entire dwelling unit including surfaces to be disturbed, deteriorated surfaces and friction and impact surfaces and all surfaces expected to be disturbed or replaced during rehabilitation activities.
2. Perform a lead based paint risk assessment in the dwelling units receiving Federal assistance and in associated common areas and exterior painted surfaces in accordance with 24CFR35.1320(b) and EPA Renovator, Repair and Painting rules at 40 CFR Part 745 before rehabilitation begins.
3. Risk assessors must use standards for determining dust-lead hazards and soil-lead hazards that are at least as protective as those promulgated by the EPA at 40 CFR 745.227(h).
4. If lead testing indicates the presence of lead based paint hazards, implement safe work practices during rehabilitation work in accordance with 24CFR35.1350 and EPA Renovator, Repair and Painting rules at 40 CFR Part 745 and repair any paint that is disturbed and all lead based paint hazards.
5. After completion of any rehabilitation disturbing painted surfaces, perform a clearance examination of the housing unit(s) in accordance with 24CFR35.1340.

For Residential property receiving more than \$25,000 per unit in Federal rehabilitation assistance, Recipients must complete the following:

1. Conduct lead based paint testing on the entire dwelling unit including surfaces to be disturbed, deteriorated surfaces and friction and impact surfaces and all surfaces expected to be disturbed or replaced during rehabilitation activities.
2. Perform a lead based paint risk assessment in the dwelling units receiving Federal assistance and in associated common areas and exterior painted surfaces in accordance with 24CFR35.1320(b) and EPA Renovator, Repair and Painting rules at 40 CFR Part 745 before rehabilitation begins.
3. Risk assessors must use standards for determining dust-lead hazards and soil-lead hazards that are at least as protective as those promulgated by the EPA at 40 CFR 745.227(h).
4. If lead testing indicates the presence of lead based paint hazards, implement safe work practices during rehabilitation work in accordance with 24CFR35.1350 and EPA Renovator, Repair and Painting rules at 40 CFR Part 745 and abate any paint that is disturbed and all lead based paint hazards.
5. After completion of any rehabilitation disturbing or abating painted surfaces, perform a clearance examination of the housing unit(s) in accordance with 24CFR35.1340.

## **H. Lead Based Paint Inspections and Paint Testing**

For projects requiring lead-based paint inspections and paint testing, Recipients must ensure that lead-based paint inspections and paint testing are performed in accordance with 40 CFR 745.324 or 40 CFR 745.227(b) and (h). For any paint inspections and paint testing on deteriorated paint surfaces or surfaces to be disturbed or replaced, Recipients must ensure that the paint inspection and paint testing is performed by an EPA certified lead-based paint inspector or risk assessor.

## **I. Risk Assessments**

For projects requiring risk assessments, Recipients must ensure that risk assessments and lead-hazard screenings are performed in accordance with 40 CFR 745.227(c), (d), and (h). Risk assessors must use standards for determining dust-lead hazards and soil-lead hazards that are at least as protective as those promulgated by the EPA at 40 CFR 745.227(h). Recipients must ensure that lead-hazard screens are performed in accordance with 40 CFR 745.227(c). HUD strongly recommends that lead-based paint inspectors, risk assessors, and sampling technicians provide a plain-language summary of the results suitable for posting or distribution to occupants. Recipients must also be in compliance with HUD Risk Assessment requirements at 24 CFR 35.1320(b).

**Recipients are responsible for reviewing the risk assessment report.**

## **J. Interim controls.**

Interim control measures include paint stabilization of deteriorated paint, treatments for friction and impact surfaces, dust control, and lead-contaminated soil control. When conducting interim controls, Recipients must ensure the following:

1. Only those interim control methods identified as acceptable methods in a current risk assessment report shall be used to control identified hazards.
2. Occupants of dwelling units where interim controls are being performed shall be protected during the course of the work in accordance with 24CFR35.1345.
3. Clearance testing shall be performed at the conclusion of interim control activities in accordance with 24CFR35.1340.
4. A person performing interim controls must be trained in accordance with the hazard communication standard for the construction industry issued by the Occupational Safety and Health Administration of the U.S. Department of Labor at 29 CFR 1926.59, and either be supervised by an individual certified as a lead-based paint abatement supervisor or have completed successfully an approved lead-safe work practices course.

## **K. Abatement**

If a project meets the level of assistance that requires abatement of all interior lead hazards, abatement must be performed in accordance with 40 CFR 745.227(e) and must be completed by achieving clearance in accordance with 24CFR35.1340. If encapsulation or enclosure is used as a method of abatement, ongoing lead-based paint maintenance activities shall be performed in accordance with 24CFR35.1355. Abatement of an intact, factory-applied prime coating on metal surfaces is not required unless the surface is a friction surface.

## L. Clearance

Recipients that conduct any form of lead hazard control work must ensure that the work is completed, cleaned, and that the unit meets the clearance requirements as outlined in 40CFR745.227 and 24CFR35.1340.

## M. Allowances for presumption of lead

For Recipients which are undertaking well and septic replacement programs and that is the only activity that is undertaken, the OCR will allow presumption based on the following:

- Under 35.115(a)(8), “Any rehabilitation that does not disturb a painted surface” is exempt from the Rule. If no painted surface is disturbed by the scope of work, the Rule does not apply and no risk assessment is triggered, regardless of the cost.
- Well and septic activities and lateral connection assistance activities may qualify under this exemption, unless plumbing connections through painted surfaces are included in the scope of work.
- The “de minimis” exception in 35.1350(d) does not qualify the project as “exempt”. If any painted surface is disturbed or repaired, the Rule is triggered.
- Projects that involve well and septic or lateral connections only must clearly address this exception to the presumption standard in the approved Lead Based Paint Compliance Plan.

For Recipients which are undertaking any single housing rehabilitation project which results in a total project cost of less than \$5,000, the OCR **MAY** allow the presumption standard,

- In consultation with the OCR **PRIOR** to undertaking the activity.
- Further consultation with the assigned Community Developer may be warranted on a case-by-case basis.

## N. Lead Based Paint Compliance Plan and Certification

Effective June 1, 2014, the OCR will require Recipients of any CDBG housing assistance to submit Lead Based Paint Compliance Plan and a Lead Based Paint Compliance Plan Certification that will assist to further assure compliance with all applicable lead based paint regulations at 24 CFR Part 35 and 40 CFR Part 745, EPA rules as adopted by HUD.

To assist with this, the OCR has provided two Certification Forms:

1. Form 5-1 CDBG LBP Compliance Plan Certification Rehabilitation or Homeownership/Acquisition Assistance with Rehabilitation
2. Form 5-2 CDBG LBP Compliance Plan Certification Homeownership/Acquisition Assistance (no rehabilitation of any form)

Forms are available on the OCR website, <http://www.nyshcr.org/Forms/NYS-CDBG/>.

Lead Based Paint Plan and Certifications must be submitted prior to undertaking any housing activity that is subject to lead based paint compliance.

## VI. PROPERTY MANAGEMENT

### A. Introduction

Recipients must comply with the federal requirements for the management and disposition of property acquired in whole or in part with NYS CDBG funds. The treatment and disposition of property purchased with NYS CDBG funds will depend on the type of property, personal or real.



Recipients are responsible for any property acquired in whole or in part with NYS CDBG funds. Recipients must:

- Maintain a physical inventory of all property, both real property and equipment;
- Reconcile property records at least once every two years;
- Maintain a control system to ensure safeguards to prevent loss, damage, or theft of property. Any loss, damage, or theft must be investigated;
- Develop adequate maintenance procedures to keep property in good condition; and
- Establish proper sales procedures that will ensure the highest possible return when the sale of real property is necessary.

## **B. Real Property**

Real property is the land, including improvements to the land, structures, property and appurtenances. Real property does not include moveable machinery and equipment.

The regulations governing real property apply to real property within the Recipient's control which was acquired or improved in whole or in part using NYS CDBG funds in excess of \$25,000. These standards shall apply from the date NYS CDBG funds are first spent for the property until five years after closeout of the grant from which the assistance to the property was provided.

1. Title - Title to real property acquired under a grant will vest in the Recipient upon acquisition.
2. Use - Except as otherwise provided by federal statutes, real property will be used for the originally authorized purpose as long as needed for that purpose, and the Recipient shall not dispose of or encumber its title or other interests.
3. Disposition - When real property is no longer needed for the originally authorized purpose, the Recipient will request disposition instructions from the NYS CDBG program. The instructions will provide for one of the following alternatives:
  - a. Retention of Title - Retain title after compensation to the NYS CDBG program. The amount due the program will be computed by applying NYS CDBG's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a Recipient is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be issued as an offset to the cost of the replacement property.
  - b. Sale of Property - Sell the property and compensate the NYS CDBG program. The amount due the NYS CDBG program will be calculated by applying NYS CDBG's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a Recipient is directed to sell property, sales procedures shall be followed that provide competition to the extent practicable and result in the highest possible return.
  - c. Transfer of Title - Transfer title to the NYS CDBG program or to a third-party designated/approved by OCR. The Recipient shall be paid an amount calculated by

applying the Recipient's percentage of participation in the purchased of the real property to the current fair market value of the property.

### **C. Equipment**

Equipment is tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

1. Title  
Title to equipment acquired under a grant will vest in the Recipient upon acquisition.
2. Use
  - a. Equipment shall be used by the Recipient in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a federal agency.
  - b. The Recipient shall also make equipment available for use on other projects or programs currently or previously supported by the federal government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the NYS CDBG program. User fees should be considered, if appropriate.
  - c. The Recipient must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by federal statute.
  - d. When acquiring replacement equipment, the Recipient may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property subject to approval.
3. Management Requirements - Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, at a minimum, meet the following requirements:
  - a. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, percentage of federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property, Real Property Register, Form 10-5.
  - b. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
  - c. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of property. Any loss, damage, or theft shall be investigated.
  - d. Adequate maintenance procedures must be developed to keep the property in good condition.

- e. If the Recipient is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
4. Disposition - When original or replacement equipment acquired under a grant is no longer needed for the original project or program or for other activities currently or previously supported by a federal agency, disposition of the equipment will be made as follows:
    - a. Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligations.
    - b. Items of equipment with a current per-unit fair market value in excess of \$5,000 may be retained or sold and the NYS CDBG program shall have a right to an amount calculated by multiplying the current market value or proceeds from sale, by NYS CDBG's share of the equipment.
    - c. In cases where a Recipient fails to take appropriate disposition actions, the NYS CDBG program may direct the Recipient to take excess and disposition actions.
  5. Federal Equipment - In the event a Recipient is provided federally-owned equipment:
    - a. Title will remain vested in the federal government.
    - b. Recipients will manage the equipment in accordance with federal agency rules and procedures and submit an annual inventory listing.
    - c. When the equipment is no longer needed, the Recipient will request disposition instructions from the federal agency.
  6. Right to Transfer Title - HUD may reserve the right to transfer title to the federal government or a third party named by the NYS CDBG program when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:
    - a. The property shall be identified in the grant or otherwise made known to the Recipient in writing.
    - b. The NYS CDBG program shall issue disposition instruction within 120 calendar days after the end of the federal support of the project for which it was acquired. If the NYS CDBG program fails to issue disposition instructions within the 120 calendar-day period, the Recipient shall follow Item D above, Disposition.
    - c. When title to equipment is transferred, the Recipient shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

#### **D. Supplies**

Supplies are all tangible personal property other than equipment.

1. Title - Title to supplies acquired under a grant will vest, upon acquisition, in the Recipient.

2. Disposition - If there is a residential inventory of unused supplies exceeding \$5,000 in total aggregate fair market upon termination or completion of the award, and if the supplies are not needed for any other federally-sponsored programs or projects, the Recipient shall compensate the NYS CDBG program for its share.

#### **E. Change of Use of Real Property**

The regulations governing the change of use of real property apply to real property within the Recipient's control (including activities undertaken by subrecipients) which was acquired or improved in whole or in part using NYS CDBG funds in excess of the threshold for small purchase procurement. These standards shall apply from the date NYS CDBG funds are first spent for the property until five years after closeout of the Recipient's grant.

1. A Recipient may not change the use or planned use of any such property (including beneficiaries of such use) from that for which the acquisition or improvement was made, unless the Recipient provides affected citizens with reasonable notice of and opportunity to comment on any proposed change, and either:
  - a. The new use of the property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or
  - b. The requirements in paragraph 2 below are met.
2. If the Recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use that does not qualify under paragraph 1(a) above, it may retain or dispose of the property for the changed use if the Recipient's NYS CDBG project is reimbursed or the NYS CDBG program is reimbursed, at the discretion of the state. The reimbursement shall be in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-NYS CDBG funds for acquisition of, and improvements to, the property, except that if the change in use occurs after grant closeout but within five years of such closeout, the Recipient shall make the reimbursement to the NYS CDBG program account.
3. Following the reimbursement of the NYS CDBG program in accordance with paragraph 2 above, the property no longer will be subject to any NYS CDBG requirements.

### **VII. CIVIL RIGHTS**

#### **A. Introduction**

The U.S. Department of Housing and Urban Development (HUD) and the State of New York are committed to assuring that NYS CDBG Recipients take positive steps to ensure equal access to housing, employment, public facilities/services, contracting and business opportunities, NYS CDBG benefits/services, and displacement protection. In addition to equal access, Recipients must affirmatively further fair housing and accessibility for persons with disabilities.

Recipients are responsible for implementing their projects in compliance with all state and federal laws and regulations regarding civil rights, fair housing, and equal opportunity. The grant agreement itself certifies that you will actively enforce the provisions of these statutes and regulations and develop strategies for addressing these requirements. To ensure compliance, attention to the civil rights, fair housing, and equal opportunity components of your NYS CDBG projects must be all-inclusive, from the project design phase to the final progress report.

Recipients and NYS CDBG funded contractors must:

1. demonstrate that they afford equal employment opportunities to all persons;
2. take affirmative steps to ensure that minority groups are informed of grant opportunities;
3. demonstrate that their program benefits are not awarded in ways that discriminate; and
4. take affirmative steps to promote fair and equal access to housing, regardless of the type of grant.

Recipients and all contractors on NYS CDBG projects must comply with civil rights regulations in the following five areas. Compliance in these areas should be documented during implementation of your NYS CDBG project in order to demonstrate a good faith effort to comply with federal civil rights requirements:

- Program Benefit (Section 3): efforts to ensure that economic opportunities arising through HUD-assisted projects are directed toward low- and very low-income residents living in the project area;
- Recipient Hiring and Employment Practices: the community's affirmative action plan and activities initiated to extend employment opportunities to minorities and women;
- Contractor Affirmative Action: actions by contractors and subcontractors to employ minorities and women;
- Fair Housing: compliance with the federal mandate to administer all programs so as to affirmatively further housing availability and to prevent discrimination in federally-assisted housing; and
- Accessibility: actions taken to ensure access by persons with physical and mental disabilities to federally assisted programs and activities.

**B. Program Benefits (Section 3 of The Housing and Urban Development Act of 1968, as amended, 24CFR Part 135)**

Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the great extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents and business concerns in connection with projects and activities in their neighborhood.

Section 3 residents are defined as:

- Residents of public housing, or,
- Low- or very-low income residents of the project area.

Section 3 business concerns are businesses that can provide evidence that they meet one of the following:

- Are 51 percent or more owned by Section 3 residents; or
- At least 30 percent of its full time, permanent employees include persons that are currently Section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents or
- A business who commits to award subcontracts in excess of 25 percent of the dollar award of all subcontracts to businesses that meet at least one of the qualifications for business concerns.

Section 3 requirements apply to the entire project or activity funded with NYS CDBG assistance, regardless of whether the project or activity is fully or partially funded with NYS CDBG assistance.

Section 3 requirements apply to recipients that are awarded NYS CDBG grants in excess of \$200,000 and contractors and subcontractors with construction contracts or subcontracts in excess of \$100,000 that are funded in part or whole with NYS CDBG funds.

If a recipient receives a NYS CDBG award in excess of \$200,000, but construction contracts do not exceed \$100,000, Section 3 requirements only apply to the Recipient.

Recipients whose projects do not fall under Section 3 are nonetheless encouraged to comply with the Section 3 preference requirements.

Recipients, contractors and subcontractors must demonstrate compliance with the “greatest extent feasible” requirement of Section 3 by meeting the numerical goals set forth in 24 CFR Part 135.30 which are:

- 30% of the new hires be Section 3 residents;
- 10% of the total dollar amount of all Section 3 covered contracts in housing rehabilitation, housing construction and other public construction be awarded to Section 3 business concerns.

To aid in accomplishing the Section 3 requirements, Recipients should:

- Develop a list of Section 3 businesses and residents to be advised of opportunities for participation in project contracts or job opportunities. The Chamber of Commerce or similar business association in an area can often provide the names of eligible firms;
- Demonstrate compliance with Section 3 requirements by publishing a notice in the area newspaper before, as well as include in, advertising for construction bids. Such notices should be placed in publications having a circulation in the immediate area of the project. This will ensure that potential contractors are aware that whenever possible they should be hiring and buying locally, thus extending NYS CDBG benefits into the Recipient’s community;
- Include a notation of “An Equal Opportunity Employer” on your letterhead when it is used for NYS CDBG project-related correspondence;
- Include the following language in all requests for proposals, bid documents, contracts and sub-contracts: “The contractor will ensure that to the greatest extent feasible opportunities for training and employment arising in connection with this NYS CDBG-assisted project will be extended to lower-income project area residents. Further, the contractor will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in the award of contracts and purchase of services and supplies.”
- In addition to maintaining records of compliance, Recipients who meet the Section 3 thresholds, must report annually on their hiring and contracting with Section 3 residents. HCR’s Office of Fair Housing and Equal Opportunity (OFHEO) is responsible for distributing and collecting the Section 3 Reporting Form (available from [www.nysdhcr.gov/Forms/FairHousing/](http://www.nysdhcr.gov/Forms/FairHousing/)). The data collected in these forms is also used to satisfy HCR’s annual reporting to HUD for compliance with Section 3 and MBE/WBE. Following the award and execution of the grant agreement, OFHEO will contact Recipients and provide the reporting instructions and forms that are intended to track Recipients efforts to comply with the Section 3 requirements.

### **C. Recipient Hiring and Employment Practices**

Recipients are responsible for ensuring that individuals will not be discriminated against. They are required to establish affirmative action plans that promote equal employment opportunity by including data concerning the Recipient's affirmative actions for equal employment opportunity, recruitment advertising, hiring, promotions, layoffs or terminations, pay, and recruitment for training. These plans must be consistent with federal and state EEO laws when applicable.

In order to meet Title VI obligations, several steps should be taken by the Recipient to increase employment opportunities for protected groups when hiring for the NYS CDBG program. Efforts should include advertisements in minority newspapers. Any employment advertisements could include the following statement, "The (Name of Recipient) is an Equal Opportunity Employer."

Employment recruitment records should include a summary of the number of applicants for each position relating to the NYS CDBG Program, and the number of applicants who are minorities, women, and handicapped persons. There should also be documentation by race, gender, and handicap of the number of persons interviewed and the reasons for the hiring decisions. In addition to the above, Recipients with more than 100 employees are required to provide the civil rights information on the EEO4 form (<https://egov.eeoc.gov/eo4/pdf/EE04Form.pdf>). This form must be maintained in the Recipients files and be available for review at the time of monitoring.

### **D. Minority and Women's Business Enterprises**

Recipients must ensure that contractors take affirmative steps to ensure fair treatment in employment upgrading, transfer, recruitment, layoffs, rate of pay and selection for training. Recipients should encourage the prime contractors on their projects to utilize M/WBE firms to the maximum extent possible.

At a minimum, Recipients should establish and oversee a minority and women business outreach program that is designed to be:

- A good faith, comprehensive and continuing endeavor;
- Supported by a statement of public policy and commitment published in the electronic and print media of widest local circulation;
- Supported by an office and/or a key, ranking staff person with oversight responsibilities and access to the chief elected official; and
- Designed to utilize all available and appropriate public and private sector local resources.

The following guidelines should be used to provide assistance in implementing outreach programs to ensure the inclusions, to the maximum extent possible, of entities owned by minorities and women. Each participating Recipient should:

- Develop a systematic method for identifying and maintaining an inventory of certified minority and women's business enterprises (MBEs and WBEs) including their services, supplies and/or products offered;
- Utilize the local media, electronic and print, to market and promote contract and business opportunities for MBEs and WBEs;
- Develop informational and documentary materials (fact sheets, program guides, procurement forecasts, etc.) on contract/subcontract opportunities for MBEs and WBEs;
- Develop procurement procedures that facilitate opportunities for MBEs and WBEs to participate as vendors and supplies of goods and services;

- Sponsor business opportunity-related meetings, conferences, seminars, etc. with minority and women business organizations; and
- Maintain centralized records with statistical data on the utilization and participation of MBEs and WBEs as contractors/subcontractors in all HUD-assisted program contracting activities.

These above items represent basic outreach-related activities and are not all inclusive actions a participating Recipient may undertake.

Under the terms of Executive Order 11246, NYS CDBG Recipients are required to:

1. Include the equal opportunity clause in all non-exempt federally-assisted contracts for more than \$10,000, as set forth in 202 of Executive Order 11246; and
2. Ensure that all federally-assisted construction contractors and subcontractors on a NYS CDBG-assisted construction project take affirmative actions to ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex, or national origin.

The Empire State Development Corporation publishes a directory of minority and women-owned businesses and maintains a list of firms that have been certified through the State Certification Program. You may obtain a copy by contacting: Empire State Development Corporation, Affirmative Action Unit, 633 Third Avenue, 32<sup>nd</sup> Floor, New York, NY 10017, 212-803-3226

Recipients must report if contractors and sub contractors are a Minority and Women's Business Enterprise information as part of the Section 3 reporting requirements mentioned above. As with Section 3, following the award and execution of the grant agreement OFHEO will contract you with reporting instructions and the Section 3 & M/WBE reporting form. The forms are intended to track the inclusion of M/WBE contractors on CDBG funded projects. OFHEO's Section 3 and MBE/WBE forms are available on HCR's website at <http://www.nysdhcr.gov/Forms/FairHousing/>. Each Recipient must submit the Utilization of Section 3 Residents and Businesses form, and the respective Section 3 and M/WBE form.

## **E. Fair Housing**

NYS CDBG Recipients are responsible for taking specific actions to affirmatively further fair housing practices in their community. Participants in the NYS CDBG program will be required to affirmatively further fair housing related to soliciting renters, determining eligibility, and in the conduct of all transactions.

Fair housing provisions apply to the community as a whole, not just to NYS CDBG-supported housing projects, and they are an essential part of the community's responsibilities under the NYS CDBG program. No person shall be subjected to discrimination because of race, color, religion, sex, disability, age, familial status, or national origin.

Fair housing actions should increase housing opportunities and affirmatively promote fair housing throughout the entire housing market at all income levels. These activities may include independent actions by the Recipient or cooperative ventures with housing related industries, such as mortgage lenders, home builders, and local non-profits working in housing. The Recipient is expected to take progressive actions to further fair housing with each CDBG project.



The first step in developing a local fair housing program is to look closely at the community to identify areas of particular concern. In order to analyze whether a fair housing problem might exist within a community, Recipients should ask themselves the following questions:

- Does it appear that realtors are hesitant to show minorities rental or ownership units in certain areas of town or in certain apartment buildings or subdivisions?
- Is there evidence that local banks and savings and loans consistently fail to provide mortgage money or NYS CDBG improvement loans in certain areas of town?
- Do landlords rent to single parent households with children?
- Does the community actively assist people who believe they have encountered housing discrimination?

Recipients are required to:

- Promote maximum choice within the community's total housing supply;
- Lessen racial, ethnic, and economic concentrations;
- Facilitate desegregation and racially inclusive patterns in the occupancy and use of public facilities;
- Pass a fair housing resolution that demonstrates a "good faith effort" in complying with fair housing requirements. The fair housing resolution adopted by the Recipient must also be publicized and promoted within the community; and
- Designate a Fair Housing Officer who is familiar with the fair housing regulations to be the primary point of contact for all fair housing related issues.

A "good faith effort" to affirmatively further fair housing should:

- Review project activities to ensure that they serve low and very low-income minority residents as well as non-minorities;
- Develop a public information network using local newspapers, radio stations, bulletin boards, churches, and property tax mailings to ensure that all segments of the community are aware of fair housing requirements, especially realtors, landlords, financial institutions, and minority households;
- Develop a fair housing assistance program to make housing opportunities known to minorities, to monitor compliance, and to refer discrimination complaints to the proper authorities;
- Conduct a meeting with financial institutions that serve the community to discuss the importance of providing financial assistance for housing in all geographic areas and to all residents in the community;
- Survey special housing needs of minorities and women to determine possible effects of discrimination;
- Use the "Equal Housing Opportunity" slogan and logo on Recipient letterhead; and
- Display Fair Housing Posters and distribute a Fair Housing Handout and Complaint Pamphlet to explain fair housing rights, practices and statutory requirements.

When developing a fair housing/affirmative marketing program, it is very important that the Recipient document all of the actions taken, as well as the results of those actions. If these efforts are not documented, OCR will be unable to demonstrate to HUD that Recipients are meeting their fair housing obligations. OCR and the Recipient will assess affirmative marketing efforts of owners by comparing predetermined occupancy goals (based on the area from which potential tenants will come) to actual occupancy data the owner is required to maintain. Outreach efforts on the part of the owner will also be evaluated by reviewing marketing efforts.

## F. Accessibility

Recipients are required to take affirmative steps to ensure that qualified persons with disabilities are informed of the availability of program services and activities, and the Recipient's activities or services are readily accessible to, and usable by, individuals with disabilities. Recipients must provide handicapped persons with benefits and services that are as effective as those provided to non-handicapped individuals.

Recipients must ensure that NYS CDBG programs and activities are accessible, both structurally and administratively, to handicapped and disabled persons. Recipients are responsible for providing access to handicapped/disabled persons in four areas: communications, employment opportunities, program benefits, and physically accessible housing.

1. **Accessible Communications:** In order to ensure accessibility of program services and activities to persons with disabilities, Recipients must be aware of the possibility that individuals may need to use alternative forms of communication.
2. **Access to Employment:** Make reasonable accommodation to known physical or mental limitations of an otherwise qualified individual, unless to do so would impose an undue hardship on the employer. Cost alone does not necessarily constitute undue hardship. A person with a disability is otherwise qualified if they can satisfy the requisite skill, experience and education requirements for the position and can perform the essential functions of the job with or without reasonable accommodations.
3. **Program Accessibility:** All services, programs and activities be accessible to everyone, including people with disabilities, regardless of the accessibility of the Recipient's facilities.

The Recipient may not provide services or benefits to disabled persons through programs that are separate or different, unless the separate programs are necessary to ensure that the benefits or services are equally effective. Even when separate programs are permitted, an individual with a disability must still have the right to choose to participate in the regular program, and the Recipient may not require an individual with a disability to accept a special accommodation or benefit if the person chooses not to accept it.

4. **Physical Accessibility to Programs:** The Recipient should be able to identify the primary access point to their office building, and ensure that parking spaces are designated for people with disabilities displaying special permits on their vehicles. In addition, the Recipient needs to ensure that the accessible entrance to the building is kept accessible (i.e., free of snow and other blockage, with unauthorized persons not allowed to park in the handicap designated areas).

The regulations for meeting handicap accessibility requirements for housing facilities are complex and cannot be described concisely in this chapter. The Americans with Disabilities Act (ADA) generally does not cover private residential facilities. These facilities are addressed in the Fair Housing Amendments Act, which prohibits discrimination on the basis of disability in selling or renting housing. However, provisions of the Fire Administration Authorization Act of 1992, which became effective October 26, 1992, require that all housing units assisted with Federal funds be equipped with a hard-wired or battery-operated smoke detector that includes appropriate wiring that makes it possible to install visual and/or sensory alarm systems if the need arises. This requirement applies to all new construction, reconstruction, and rehabilitation projects on any multifamily or single family housing

assisted with NYS CDBG funds. Further, where alarms already exist in common areas, visual and sensory alarms should be provided also, as a reasonable accommodation to persons with disabilities.

The following are highlights of other handicap accessibility requirements that apply to all facilities designed, constructed or altered after July 11, 1988:

1. New Construction, Acquisition or Rehab of Single-Family Dwellings. Single-family dwellings must be made handicap accessible upon request of the owner or prospective buyer. That cost may be included in the mortgage amount. If costs exceed the allowable mortgage limits, those costs may be passed on to the prospective NYS CDBG buyer. All handicap accessible dwelling units must be distributed throughout the housing project and the sites made available in a range of sizes and amenities. Generally, historic properties must be made accessible unless doing so would substantially impair the significant historic features of the property or result in an undue financial or administrative burden.
2. New Construction or Substantial Rehab of Multi-Family Dwelling Units. In addition to ADA requirements, residential structures (other than privately owned residential structures) are subject to requirements of the Architectural Barriers Act of 1968 [24 CFR Part 40]. Standards for the design, construction and alteration of publicly owned residential structures to ensure that physically handicapped persons have ready access to and the use of such structures can be met by following the Uniform Federal Accessibility Standards outlined in Appendix A of 24 CFR, Part 40.

HUD does not require Recipients to take actions that would result in a fundamental alteration of facilities or programs or that would impose an undue financial or administrative burden on the Recipient. However, if the public cannot access (or some group is not likely to access) the Recipient's NYS CDBG program, reasonable accommodations must be made so that the program can be brought to persons with disabilities. HUD recommends that administrative changes be considered before costly structural changes.

#### **G. Section 504 Evaluation/Notification**

Under Section 504 of the Rehabilitation Act and the ADA, state and local governments receiving federal assistance are required to make their programs, activities and services accessible to individuals with disabilities. Title II extends this requirement to all state and local governments, whether or not they receive Federal funds. Title II applies regardless of the public entity's size and seeks to ensure access to all publicly funded programs, services and agencies. Public entities that receive Federal funds are subject to the requirements of both the ADA and Section 504.

Public entities were required to conduct a self-evaluation (an informal accessibility survey) to determine whether their facilities and programs are in compliance with ADA requirements by January 26, 1993. The self-evaluation is a comprehensive review of the public entity's policies and practices. The self-evaluation includes communication and employment, as well as the policies and practices for all services, programs, and activities. The self-evaluation must identify any services, policies, or practices that discriminate against or exclude people with disabilities. Any discriminatory policies or practices that are identified must be modified immediately.

There are two additional requirements for Section 504 compliance for Recipients with fifteen or more full or part-time employees:

1. According to 24CFR8.53, a Recipient shall designate at least one person to coordinate 504 and related compliance efforts. This shall be designated in writing and identified in any written notices. Grievance procedures must be adopted incorporating appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by disability. Any individual or authorized representative who believes that they have been discriminated against may file a complaint, which may be filed as indicated.

2. According to 24CFR8.54, a Recipient shall take appropriate initial and continuing steps to provide notification to participants, beneficiaries, applicants and employees of their nondiscriminatory provisions. The notification shall state, where appropriate, that the Recipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. Methods of notification include posting of notices, publication in newspapers and magazines, placement of notices in recipient's publications, and distribution of memoranda or other written communications

Additional information on compliance is also available from [www.ada.gov](http://www.ada.gov).

## **H. Policy Adopted to Handle Complaints of Discrimination**

Citizen complaint procedures are an integral part of civil rights activities. Every Recipient must establish a set of procedures for handling complaints of discrimination. These procedures, complaint forms, and other pertinent information should be contained within a file for public access. All complaints must remain confidential and information pertaining to the complaint cannot be disclosed to any entity except HUD.

Fair housing complaints must be submitted in writing, signed, addressed to the a responsible official (designee of the Recipient) and carbon copied to your OCR Community/Economic Developer, and filed with the Office of Fair Housing and Equal Opportunity at any HUD Office.

## **I. Limited English Proficiency – Executive Order 13166**

Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency”, was created to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP). As a result of this Executive Order, Federal agencies were directed to provide guidance and technical assistance to recipients of Federal funds as to how they can provide meaningful access to limited English proficient users of Federal programs. In addition, Federal agencies were told to look at how they served people who were limited in their English proficiency and to see what measures they could take in their direct contacts with LEP individuals that would increase meaningful access.

The basis for Executive Order 13166 is Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, (hereinafter Title VI), which provides that no person shall “on the ground 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.” As a result, Recipients of Federal funding are required to take reasonable affirmative steps to provide non-English speakers with a meaningful opportunity to participate in the federally funded programs.

Recipients of CDBG funds are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent

standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP persons come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the Recipient and costs. A sample self assessment may be found at [www.lep.gov/selfassesstool.htm](http://www.lep.gov/selfassesstool.htm).

After applying the four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. HUD recipients should apply the four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they could take to ensure meaningful access for LEP persons. Each Recipient of NYS CDBG funds is required to complete this assessment and maintain a copy in their program files along with any documentation of additional actions taken to comply with the requirements.

## VIII. EXHIBITS

### **Labor Standards**

- 5-1 Preconstruction Conference Checklist
- 5-2 Federal Labor and Civil Rights Requirements
- 5-3 Volunteer Certification Form
- 5-4 Contractor's Receipt of Required Program Materials

### **Project Sign**

- 5-5 Sample Project Sign Specifications

### **Displacement, Relocation and Acquisition**

- 5-6 Request for Acquisition Exemption
- 5-7 Acquisition Checklist

### **Lead –Based Paint**

- 5-8 Lead Based Paint Summary Notices
- 5-9 Dual Threshold Approach for Calculating Level of Rehabilitation Assistance
- 5-10 Implementing the Lead Based Paint Rule
- 5-11 Lead Based Paint References and Resources

### **Other Resources**

- 5-12 Links to Applicable Federal and State Regulations
- 5-13 Sample Notice Under the Americans With Disabilities Act
- 5-14 Sample Grievance Procedure Under the Americans with Disabilities Act
- 5-15 Links to Outside Agency Forms
- 5-16 Conflict of Interest Disclosure *NEW!*
- 5-17 Conflict of Interest Waiver Request Checklist *NEW!*

## EXHIBIT 5-1

### PRECONSTRUCTION CONFERENCE CHECKLIST

#### PRE-CONFERENCE PLANNING

- \_\_\_ 1. Identify and notify conference participants of the time and place of the preconstruction conference
- \_\_\_ 2. Prepare the materials that will be needed for the conference
- \_\_\_ 3. Organize the materials into individual packets for each conference participant

#### PRECONSTRUCTION MODEL AGENDA

- \_\_\_ 1. Identify the official representatives of participating organizations and how they can be contacted for official roster
- \_\_\_ 2. Identify the responsibilities of the architect or engineer if applicable
- \_\_\_ 3. Identify the responsibilities of the Recipient (local government)
- \_\_\_ 4. Identify the responsibilities of the contractor
- \_\_\_ 5. General discussion of contract terms
- \_\_\_ 6. Schedule for construction completion
- \_\_\_ 7. Subcontractors
- \_\_\_ 8. Project inspection (responsibilities of Recipient (local government), and architect or engineer)
- \_\_\_ 9. Compliance with federal labor standards
  - \_\_\_ Contractor's Guide to Davis-Bacon Requirements and Certified Payroll Forms
  - \_\_\_ Davis-Bacon Act
  - \_\_\_ Contract Work Hours and Safety Standards Act
  - \_\_\_ Copeland "Anti-Kickback" Act
- \_\_\_ 10. Compliance with civil rights regulations
  - \_\_\_ Executive Order 11246 as amended by Executive Order 11375
  - \_\_\_ Minority and Women-Owned Business Enterprises: Executive Order 12432
  - \_\_\_ Section 3 of the Housing and Urban Development Act of 1968

- 11. Notices that are required to be posted
  - Department of Labor’s Notice to Employees Working on Federal or Federally Financed Construction Projects
  - Appropriate wage determination
  - New York State Department of Commerce’s Equal Employment Opportunity poster
  - Department of Labor’s Job Safety and Health Protection poster
  
- 12. Forms the contractor must submit
  - Certified Payroll Forms (WH-347) or equivalent
  - Statement of Compliance with Labor Standards and Prevailing Wage Requirements (WH-348)
  - Names of all persons authorized to sign payrolls
  - Names of all subcontractors
  - Contract Reporting Form (Form 10-5)
  - Semi-Annual Labor Standards Enforcement Report (Form 5-1)
  
- 13. Forms to be signed at preconstruction meeting
  - Contractor’s Receipt of Required Program Materials
  
- 14. Materials to be provided to designated Labor Standards Compliance Office



## EXHIBIT 5-2

### FEDERAL LABOR AND CIVIL RIGHTS REQUIREMENTS

The Recipient should include the following information concerning federal labor standards and civil rights compliance during preconstruction conferences for construction projects involving NYS CDBG funds.

#### A. WAGE DETERMINATION AND EMPLOYEE CLASSIFICATION

**Davis-Bacon Act is applicable to all construction contracts awarded by Recipients in excess of \$2,000. The rehabilitation of seven or fewer residential units under one contract is exempt from this requirement.**

1. Laborers, mechanics, apprentices, and trainees must receive no less than the prevailing wages, plus fringe benefits paid for similar work in the locality.
  - a. Workers are covered by the Davis-Bacon Act while working at the site, transporting materials to and from the site and manufacturing or furnishing articles, supplies, or equipment on-site.
  - b. Apprentices or trainees may be paid less than journeyman wages if they are enrolled in an apprenticeship or training program approved by the U.S. Department of Labor (or State Apprentice Council recognized by the Department of Labor's Employment and Training Administration).
2. If the contractor needs laborers or mechanics whose classifications do not appear on the wage determination, Recipient's designated Labor Standards Officer must make a request for an appropriate classification to the U.S. Department of Labor.
3. Employees or supervisors working at other than their assigned classifications for 20 percent or more of their time must be paid and shown on the payrolls for each classification or, paid for all hours at the higher wage scale.
4. If the wage determination lists fringe benefits, the contractor must either provide them or pay the hourly equivalent in cash, in addition to the predetermined basic wage.
5. Claims and disputes including resolutions must be reported immediately to your OCR Community/Economic Developer and to the U.S Department of Housing and Urban Development (HUD), Labor Relations Office. HUD may be called upon by the State to investigate and settle claims and disputes, or may enter of their own volition if the need arises.
6. Laborers and mechanics must be paid no less than once per week.

## **B. WORK HOURS, OVERTIME, AND SAFETY STANDARDS**

**Contract Work Hours and Safety Standards Act, as amended, is applicable to all contracts awarded by local Recipients in excess of \$2,000 for construction projects employing mechanics or laborers.**

1. Forty hours is the standard work week.
2. One and one-half times the basic hourly rate of pay, exclusive of fringe benefit payments, must be paid for all hours over forty in a work week.
3. No worker shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health and safety.

## **C. DEDUCTIONS**

**Copeland “Anti-Kickback” Act is applicable to any federally assisted contract subject to Davis-Bacon standards.**

1. Full wages earned must be paid.
2. Permissible deductions include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, or accident insurance, vacation or holiday pay, and defraying costs of apprenticeship or similar programs.

## **D. CONTRACTOR REPORTING REQUIREMENTS**

**In conjunction with the previously described labor and civil rights requirements the contractor is required to periodically submit several forms to the Recipient’s designated Labor Standards Officer. The prime contractor is fully responsible for providing all reports required from subcontractors.**

1. Each contractor (prime and sub) must submit (through the prime contractor) Certified Payroll Forms (WH-347) for each week of work from the time the project begins through completion. If the contractor prefers to use a form other than WH-347, it must contain identical information. Weekly payrolls should be numbered sequentially, and be submitted to the Recipient no later than seven days following the end of the pay period.

Contractors are urged to use the U.S. Department of Labor (DOL), Payroll Form WH-347. Contractors may also use and furnish computerized weekly payrolls in lieu of the standard Payroll Form WH-347, if the basic information contained on the WH-347 is provided and the contractor includes signed certification for each payroll by using the “Statement of Compliance” Form WH-348. The text of the “weekly statement with respect to the payment of wages,” which is required by regulations of the U.S. Secretary of Labor, appears on the reverse side of this form.

Weekly Payroll Report Forms, WH-347 and WH-348 not only contain samples of these forms but examples and instructions for the contractor to follow for completing and filing

them on the project. For example, the Recipient should be aware that weekly payroll reports are also required from subcontractors identified as “working owners.” A “sole-proprietor” who performs work on the project, must still submit weekly payrolls showing himself or herself as “owner,” the work classification and the daily and total hours worked.

The payroll forms may be ordered from the Superintendent of Documents, Government Printing Office, Washington, D.C. 80402 or may be obtained from <http://www.dol.gov/whd/forms/wh347.pdf>. Contractors may also make copies of these forms and use them if they wish.

2. A completed Statement of Compliance with Labor Standards and Prevailing Wage Requirements must be submitted with each Certified Payroll Form. Certified payrolls must be submitted for each week that work is done on the project. Final payrolls shall be identified accordingly. If no work is performed on the project during a given period, on the next performance payroll, state: “No work performed from pay period ending (date) through (date).” The Statement of Compliance appears on the back of form WH-347 or as form WH-348 if WH-347 is not used.
3. For compliance with the New York State Labor Law, all contractors and sub-contractors will submit to the Recipient within 30 days after issuance of its first payroll, and every thirty days thereafter, a transcript of the original payroll record.
4. The first week after work on the project begins the Recipient’s designated Labor Standards Officer should be supplied with the names of anyone (other than owner or officer) who is authorized to sign payrolls for each contractor (prime and sub).
5. The prime contractor should supply the Recipient’s designated Labor Standards Officer with the names of all subcontractors working on the project prior to the preconstruction conference. Each subcontractor may then be informed of the conference. The names of any new subcontractors must be supplied immediately after they begin work on the project.
6. In accordance with E.O. 11246 each contractor (prime and sub) engaged in work totaling \$10,000 or more is required to submit a Minority Contract Reporting Form, as well as any documentation regarding affirmative action efforts to the local Recipient (Exhibit 5-I-8 is a sample Contract Reporting Form).
7. Working Subcontractors – Contractual relationships between contractors and alleged subcontractors (who perform mechanic’s work), which are formed for the purpose of evading the application of prevailing wage requirements, are expressly prohibited and may provide a basis for debarment. Where there is any doubt as to the bona-fide nature of a self-employed subcontractor who has no other employees, the following must be checked:

- a. Does the subcontractor have a registered trade name and is there a telephone listing under that name?
- b. Does the subcontractor have a license?
- c. Does the subcontractor have liability insurance or a subcontractor's bond?
- d. Does the subcontractor have a Federal Tax Identification Number?

Any of these criteria in conjunction with a signed contract containing HUD Federal Labor Standards Provisions from each such subcontractor should be sufficient to establish that he or she is a bona-fide subcontractor. Such a subcontractor will submit payrolls indicating only that he/she is the owner, the hours worked and the classification. The phrase "self-employed owner" shall be written under the name, address, and Social Security Number. Non-bona fide, self-employed subcontractors must be carried as employees on the payroll of the contractor who engaged him/her, and must be paid the prevailing wage rate for the classification of work performed.

Semi-annual reporting is also required for labor standard enforcement. The Recipient is required to report on the form provided in Exhibit 5-4 information regarding any/all contracts subject to Davis-Bacon, any/all reports of labor issues including; the filing of any complaints with the HUD Labor Relations Office, or the Department of Labor by employer and project name. Wage restitution and/or liquidated damaged data must be collected be reported on this form.

#### **E. JOB SITE NOTICES**

**The prime contractor is required to post the following notices in a manner that is conspicuous to all workers engaged in the construction project:**

1. Notice to Employees Working on Federal or Federally Financed Construction Projects (WH 1321);

Direct links to the English and Spanish versions of this new poster are:

(WH-1321) Davis-Bacon Poster (English):

<http://www.dol.gov/esa/whd/regs/compliance/posters/fedprojc.pdf>

(WH-1321) Davis- Bacon Poster (En Español):

<http://www.dol.gov/esa/whd/regs/compliance/posters/davispan.pdf>

2. Wage determination or a statement of all wage rates and supplements as specified in the contract. The statement of wage rates must be labeled "Prevailing Rate of Wages";
3. Equal Employment Opportunity poster;
4. Job Safety and Health Protection poster.

## **F. MONITORING AND SANCTIONS**

**The Recipient's designated Labor Standards Officer is responsible for monitoring the construction project to assure compliance with all relevant labor and civil rights requirements.**

1. On-site inspections must be conducted by the Recipient's Labor Standards Officer to ensure that required notices are posted.
2. Weekly payroll reports of the prime contractor and all subcontractors must be examined by the Recipient's Labor Standards Officer to ensure compliance with labor standards.
3. At least once per month the Recipient's Labor Standards Officer must conduct interviews with construction employees of the prime contractor and subcontractors. The interviews should be scheduled early into the first month of construction to assure initial compliance with labor standards, and on shorter projects, conducted midway towards completion. A representative of each classification of mechanic and laborer, and at least 10 percent of the work force should be interviewed.
4. Violations of the Davis-Bacon and related acts may result in restitution of wages to employees, suspension of the project payment, contract termination, and/or suspension or debarment of the contractor or subcontractor.
5. Violation of the Contract Work Hours and Safety Standards Act makes contractors liable for unpaid wages and for liquidated damages to the federal government in the sum of \$10.00 per worker per day for each violation. Intentional violations are a federal misdemeanor, punishable for each and every offense by a fine of not more than \$1,000 or by imprisonment for not more than 6 months, or both.
6. Violations of the Copeland Act could be the basis for contract termination and could result in criminal prosecution by the federal government.

## **G. CONTRACTOR AFFIRMATIVE ACTION**

**Executive Order 11246, as amended by Executive Order 11375, requires nondiscrimination in employment under federally assisted contracts and requires affirmative action to ensure equality of opportunity in all aspects of employment.**

The prime contractor and all subcontractors must ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex, or national origin.

**Disadvantaged Business Enterprises: Executive Order 12432 establishes the development of Disadvantaged Business Enterprises (DBEs) as a national priority.**

1. The Recipient should supply a list of area DBE's that the prime contractor can use for contacting such businesses.

2. In cases where subcontracts are still available, the prime contractor must make and document a good faith effort to contact qualified DBE's.

**Section 3 of the Housing and Urban Development Act of 1968 provides that to the extent feasible, opportunities for training and employment must be given to lower-income residents of NYS CDBG assisted project areas, and that contracts for work in connection with such projects be awarded to business concerns which are located in, or are owned in substantial part, by "project area" residents.**

The Recipient should inform the contractor of this requirement. The "project area" is defined as the county in which the project takes place.

**HUD Administrative Requirements for Grants, 24 CFR part 85.36, establishes procurement standards to be followed in federal assistance programs.**

Whenever possible, small, minority and women-owned businesses should be solicited as potential sources of supplies, construction and services.

**EXHIBIT 5-3**

**VOLUNTEER CERTIFICATION FORM**

**FOR VOLUNTEER CONSTRUCTION WORKERS ON  
COMMUNITY DEVELOPMENT BLOCK GRANT PROJECTS**

I, \_\_\_\_\_, do hereby attest to and certify the following regarding the  
*(Print Name)*

\_\_\_\_\_ located at \_\_\_\_\_, in  
*(Name of Project)* *(Address)*

\_\_\_\_\_, \_\_\_\_\_:  
*(City)* *(State)*

1. I am not now receiving nor will I receive wages to perform any type of construction work on the above named project.
2. I agree to report to the designated official the dates, number of hours, and the work I performed on the above named project.
3. I understand I am volunteering my services on this project and will not receive monetary or other remuneration for my services.

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Date)*

**EXHIBIT 5-4**

**CONTRACTOR'S RECEIPT OF REQUIRED PROGRAM MATERIALS**

(Local Government) \_\_\_\_\_  
(Project) \_\_\_\_\_

Preconstruction Meeting  
(Date) \_\_\_\_\_

On (date) \_\_\_\_\_, we, the undersigned, attended the preconstruction meeting for the (local government's) \_\_\_\_\_ (project) \_\_\_\_\_. At the meeting, we acknowledge receiving the following information:

1. Federal Labor Standards
  - Wage Determination and Employee Classification
  - Work Hours, Overtime and Safety Standards
2. Contractor Reporting Requirements
  - Contractor's Guide to Davis-Bacon Requirements and Certified Payroll Reports
  - Certified Payroll Forms
  - Payroll Information
3. Compliance with Civil Rights Regulations
4. Job Site Notices
  - Notice to Employees
  - Equal Employment Opportunity
  - Job Safety and Health Protection
  - Current Davis-Bacon Wage Determination, Decision # \_\_\_\_\_
5. Other

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date



## **EXHIBIT 5-5**

### **PROJECT SIGN SPECIFICATIONS**

The sign design layout must follow the specifications available on the HCR website, <http://www.nyshcr.org/Funding/SignSpec/>.

Please contact your OCR Community Developer for further guidance.

**EXHIBIT 5-6**

**REQUEST FOR ACQUISITION EXEMPTION**

TO: Housing Trust Fund Corporation  
Office of Community Renewal  
Hampton Plaza  
38 – 40 State Street, 9<sup>th</sup> Floor  
Albany, New York 12207

FROM: \_\_\_\_\_ Project # \_\_\_\_\_  
(City/County)

RE: \_\_\_\_\_  
(Description of real property)

Please provide concurrence that the above property is exempt from the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).

This acquisition of real property is exempt as defined in 49 CFR 24.101 of the URA.

- (1) Voluntary transaction. All procurement requirements specified in OMB Circular 102 will be met and this transaction meets the requirements of ALL THREE of the following conditions:
  - (a) Not acquired under the threat of eminent domain. Advertisements and owners provided written notification to this effect.
  - (b) A specified site is not necessary and the property to be acquired is not part of a project where substantially all of the property within an area will be eventually acquired.
  - (c) The owner will be informed of the estimated fair market value of the property.
  
- (2) Property is to be acquired by private sector and before the seller enters into the contract of sale, the buyer informs the seller:
  - (a) That it does not have the power of eminent domain and should negotiations fail to result in an amicable agreement, the property will not be acquired; and
  - (b) The owner will be informed of the estimated fair market value of the property.
  
- (3) Property to be acquired is in government ownership and cannot be taken by eminent domain.

Property owner is \_\_\_\_\_

Supporting data attached \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ (Chief Elected Official) \_\_\_\_\_ (Date)

<b>NYS CDBG Program Use Only:</b>	
<input type="checkbox"/> Concurrence	Signed: _____
<input type="checkbox"/> Nonconcurrence	Title: _____
	Date: _____

**EXHIBIT 5-7**

**ACQUISITION CHECKLIST**

City/County: \_\_\_\_\_ Project No.: \_\_\_\_\_

RE: \_\_\_\_\_  
*(description of real property)*

Owner (s)		Tenants	
Address		Address	

Procedure Implemented: \_\_\_\_\_ Date \_\_\_\_\_

(a)	Official determination to acquire property (usually execution of Grant Agreement)	
(b)	Preliminary Acquisition Notice mailed and owner informed of basic rights	
(c)	Enter into contract with appraiser	
(d)	Owner provided to accompany appraiser	
(e)	Property appraised	
(f)	Appraisal report received	
(g)	Enter into contract with review appraiser	
(h)	Receipt of review appraisal report	
(i)	Recipient establish purchase offer amount (offer must equal or be above approved appraisal value)	
(j)	Owner provided written purchase offer and determination of offer	
(k)	Settlement cost paid	
(l)	Final contract entered (all parties)	
(m)	Payment to owner	
(n)	Title recorded/filed with court	
(o)	Condemnation dates*	
(p)	90 days notice to vacate property	
(q)	Condemnation proceeding instituted	
(r)	Estimated just compensation deposited with courts	

Comments: \_\_\_\_\_  
 \_\_\_\_\_

**SIGNIFICANT DOLLAR AMOUNTS**

Appraisals	First	Second*	Third*	Review
	\$ _____	\$ _____	\$ _____	\$ _____
Compensation	Determined	Initial	Written Order	Acquisition
Amount:	\$ _____	\$ _____	\$ _____	Price
Settlement Costs	_____	_____	_____	_____
* If Applicable				

**EXHIBIT 5-8**

**LEAD BASED PAINT SUMMARY NOTICES**

**Summary Notice of Lead-Based Paint Inspection**

Address/location of property or structure(s) this summary notice applies to \_\_\_\_\_  
\_\_\_\_\_

Lead-based paint inspection description: \_\_\_\_\_  
\_\_\_\_\_

Date(s) of inspection: \_\_\_\_\_

Summary of inspection results (check all that apply)

- (a) \_\_\_\_ No lead-based paint was found.
- (b) \_\_\_\_ Lead-based paint was found.
- (c) \_\_\_\_ A brief summary of the findings of the inspection is provided below (required if lead-based paint found).

Summary of where lead-based paint was found. List at least the housing unit numbers and common areas (for multi-family housing), and building components (including type of room or space, and the material underneath the paint):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact person for more information about the inspection:

Printed name: \_\_\_\_\_  
Organization: \_\_\_\_\_  
Street and city: \_\_\_\_\_  
State: \_\_\_\_ ZIP: \_\_\_\_\_  
Phone number: (\_\_\_\_) \_\_\_\_\_

Person who prepared this summary notice:

Printed name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_  
Organization: \_\_\_\_\_  
Street and city: \_\_\_\_\_  
State: \_\_\_\_ ZIP: \_\_\_\_\_  
Phone number: (\_\_\_\_) \_\_\_\_\_

**Summary Notice of Lead-Based Paint Risk Assessment**

Address/location of property or structure(s) this summary notice applies to \_\_\_\_\_

\_\_\_\_\_

Lead-based paint assessment description: \_\_\_\_\_

\_\_\_\_\_

Date(s) of risk assessment: \_\_\_\_\_

Summary of risk assessment results (check all that apply)

- (a) \_\_\_\_ No lead-based paint hazards were found.
- (b) \_\_\_\_ Lead-based paint hazards were found.
- (c) \_\_\_\_ A brief summary of the findings of the risk assessment is provided below (required if any lead-based paint hazards were found).

Summary of types and locations of lead-based paint hazards. List at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and types of lead-based paint hazards found:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact person for more information about the risk assessment:

Printed name: \_\_\_\_\_  
Organization: \_\_\_\_\_  
Street and city: \_\_\_\_\_  
State: \_\_\_\_ ZIP: \_\_\_\_\_  
Phone number: (\_\_\_\_) \_\_\_\_\_

Person who prepared this summary notice:

Printed name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_  
Organization: \_\_\_\_\_  
Street and city: \_\_\_\_\_  
State: \_\_\_\_ ZIP: \_\_\_\_\_  
Phone number: (\_\_\_\_) \_\_\_\_\_

**Summary Notice of Completion of Lead-Based Paint Hazard Reduction Activity**

Address/location of property or structure(s) this summary notice applies to \_\_\_\_\_

Summary of the hazard reduction activity: \_\_\_\_\_

Start and completion date(s): \_\_\_\_\_

Activity locations and types. List at least the housing unit numbers and common areas (for multi-family housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and types of hazard reduction activities performed at the locations listed \_\_\_\_\_

Date(s) of clearance testing and/or soil analyses: \_\_\_\_\_

Locations of building components with lead-based paint remaining in the rooms, spaces or areas where activities were conducted \_\_\_\_\_

Summary of results of clearance testing and soil analyses

- (a) \_\_\_ No clearance testing was performed.
- (b) \_\_\_ Clearance testing showed clearance was achieved.
- (c) \_\_\_ Clearance testing showed clearance was not achieved.

Contact person for more information about the hazard reduction:

Printed name: \_\_\_\_\_  
Organization: \_\_\_\_\_  
Street and city: \_\_\_\_\_  
State: \_\_\_ ZIP: \_\_\_\_\_  
Phone number: (\_\_\_\_) \_\_\_\_\_

Person who prepared this summary notice:

Printed name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_  
Organization: \_\_\_\_\_  
Street and city: \_\_\_\_\_  
State: \_\_\_ ZIP: \_\_\_\_\_  
Phone number: (\_\_\_\_) \_\_\_\_\_

**EXHIBIT 5-9**

**CALCULATING THE LEVEL OF FEDERAL REHABILITATION ASSISTANCE**

Step 1. Determine the average Federal housing assistance per assisted unit. (For multi-family units, divide total by the number of assisted units.)

Step 2. Determine the rehabilitation hard costs for the unit. Exclude soft costs and costs that are solely attributable to the lead hazard control work.

Step 3. Use the lesser amount to determine the level of rehabilitation assistance for purposes of determining the lead hazard evaluation, work and clearance required.

See the Grant Administration Manual, Section V.F. for further explanation of these steps.

	<b>Project</b>	<b>Average Per Assisted Unit</b>
<b>Step 1. Federal Housing Assistance</b>		
CDBG Funds		
HOME Funds		
Other HUD Funds (list:		
Other Federal Housing Assistance (list:		
<b>Average Federal Housing Assistance (per assisted unit)</b>		
<b>Step 2. Hard Cost of Rehabilitation</b>		
Total estimated Rehabilitation Hard Costs		
Exclude: Costs of LBP hazard control work (list items)		
<b>Average Hard Cost of Rehabilitation (per assisted unit)</b>		
<b>Step 3. Federal Rehabilitation Assistance (per assisted unit)</b>		
Select the <u>lesser of Steps 1 &amp; 2 calculations</u> (per assisted unit) and check applicable category below		
If less than or equal to \$5,000 per unit: <ul style="list-style-type: none"> <li>▪ Test surfaces to be disturbed or presume LBP with OCR concurrence</li> <li>▪ Follow Safe Work Practices on disturbed surfaces</li> <li>▪ Clean &amp; clear immediate work site with lab-tested dust wipes</li> </ul>		<input type="checkbox"/>
If above \$5,000 but less than \$25,000 per assisted unit: <ul style="list-style-type: none"> <li>▪ Conduct risk assessment of unit</li> <li>▪ Follow 35.1340 interim controls for all hazards</li> <li>▪ Clean &amp; clear entire unit</li> </ul>		<input type="checkbox"/>
If more than \$25,000 per assisted unit: <ul style="list-style-type: none"> <li>▪ Conduct risk assessment of assisted unit &amp; common areas</li> <li>▪ Abate interior hazards (interim controls permitted for exterior)</li> <li>▪ Clean &amp; clear entire unit</li> </ul>		<input type="checkbox"/>

**EXHIBIT 5-10**  
**IMPLEMENTING THE LEAD BASED PAINT RULE**

- 1) Are the property (ies) exempt from the regulation?
  - a) Construction completed after 1/1/78?
  - b) 0 BR unit(s)?
  - c) Elderly/disabled only?
  - d) Certified LBP Free or Abated?
  - e) Unoccupied pending demo?
  - f) Non-residential?
  - g) Rehab not disturbing paint?
  - h) Emergency action?
  
- 2) What kind of project is being assisted with CDBG?
  - a) Rehabilitation (Subpart J)
  - b) Homebuyer Assistance (Subpart K)
  - c) Other Acquisition Assistance (Subpart K)
  
- 3) What evaluation method is required?
  - a) Activity type
    - i) Rehabilitation less than \$5,000 Federal-Testing disturbed surfaces
    - ii) Rehab over \$5,000- Risk Assessment
    - iii) Homebuyer/Acquisition Assistance - Visual Assessment
  - b) Who will provide evaluation (and is training/certification needed)?
  - c) What is the estimated cost per unit?
  
- 4) What disclosure will be required and who is responsible?
  - a) Pamphlet
  - b) Tenant/Buyer notice of know LBP and hazards
  - c) Evaluation results (risk assessments & testing)
  - d) Hazard control results (if clearance)
  
- 5) If rehab, who will do the scope of work
  - a) Rehab scope
  - b) Hazard control scope
  - c) Integration of scopes (if applicable)
  - d) Is there an estimated range of cost for anticipated hazard control activities?
  
- 6) Who will do the hazard control work?
  - a) Work level
    - i) Paint stabilization
    - ii) Interim controls
    - iii) Abatement
  - b) Is there an adequate supply of workers/contractors qualified?
  - c) How will qualifications be determined?
  - d) What additional training is needed?



- 7) How will the hazard control work be monitored?
  - a) Type of monitoring of work practices and interim controls
  - b) Training required
  
- 8) Who will be responsible for clearance of hazard control work?
  - a) Contract assessors/inspectors
  - b) Staff assessors/inspectors/sampling technicians
  - c) Estimated cost of clearance per unit
  
- 9) What records will be maintained?
  - a) Evaluation method/results
  - b) Scope of work and contract
  - c) Hazard control work monitoring records
  - d) Clearance)
  
- 10) Will ongoing monitoring be required (and who will do it)?
  - a) If rental acquisition assistance, annual visual assessment
  - b) If rental rehab, annual visual assessment recommended

## EXHIBIT 5-11

### LEAD BASED PAINT REFERENCES AND RESOURCES

The following website links will provide additional information regarding the lead based paint regulations.

**HUD**, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/healthy\\_homes](http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes)

**Center for Healthy Housing**, <http://www.nchh.org/>

**EPA**, <http://www2.epa.gov/lead>

**Community Connections**, <https://www.onecpd.info>

**State Department of Health**, <http://www.health.ny.gov/>

## EXHIBIT 5-12

### LINKS TO APPLICABLE STATE AND FEDERAL REGULATIONS

#### **Labor Standards:**

Federal Labor Standards Provisions (HUD 4010 Form):

<http://www.hud.gov/offices/adm/hudclips/forms/files/4010.pdf>

New York State Labor Standards:

<http://www.labor.ny.gov/workerprotection/publicwork/PWGeneralProvisions.shtm>

Semi Annual Labor Standard Report to be submitted by Housing Agency (HUD 4710)

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/labor\\_relations/olrform](http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_relations/olrform)

#### **Conflict of Interest:**

Conflict of Interest Regulations (24CFR570.611)

[http://edocket.access.gpo.gov/cfr\\_2010/aprqttr/pdf/24cfr570.611.pdf](http://edocket.access.gpo.gov/cfr_2010/aprqttr/pdf/24cfr570.611.pdf)

#### **Displacement, Relocation and Acquisition:**

Uniform Relocation Act (40CFR Part 24):

<http://www.gpo.gov/fdsys/pkg/CFR-2010-title24-vol3/pdf/CFR-2010-title24-vol3-sec570-611.pdf>

Real Estate Acquisition and Relocation Policy and Guidance (HUD Handbook 1378):

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/library/relocation/policyandguidance/handbook1378](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/relocation/policyandguidance/handbook1378)

#### **Lead Based Paint:**

Lead Based Paint Disclosure Rule:

[http://www.hud.gov/offices/lead/library/enforcement/24CFR35\\_SubpartA.pdf](http://www.hud.gov/offices/lead/library/enforcement/24CFR35_SubpartA.pdf)

Lead Safe Housing Rule:

<http://www.hud.gov/offices/lead/library/enforcement/LSHRFinal21June04.pdf>

Renovation Repair and Painting Rule:

<http://www.epa.gov/fedrgstr/EPA-TOX/2008/April/Day-22/t8141.htm>

#### **Property Management:**

Property Management and Acquisition (24CFR570.505)

<http://www.gpo.gov/fdsys/pkg/CFR-2010-title24-vol3/pdf/CFR-2010-title24-vol3-sec570-505.pdf>

#### **Civil Rights:**

Section 3 Regulations:

<http://www.hud.gov/offices/fheo/section3/Sect3-Regulations.pdf>

### **Equal Opportunity Requirements:**

Title VI of the Civil Rights Act of 1964

[www.justice.gov/crt/grants\\_statutes/titlevi.txt](http://www.justice.gov/crt/grants_statutes/titlevi.txt)

Section 109 of Title I of the Housing and Community Development Act

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/FH\\_Laws/109](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FH_Laws/109)

Minority and Women's Business Enterprises Requirements 24 CFR 85.36

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/cpo/grantees/cfr8536](http://portal.hud.gov/hudportal/HUD?src=/program_offices/cpo/grantees/cfr8536)

Executive Order 11246

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/FH\\_Laws/EXO11246](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FH_Laws/EXO11246)

### **Fair Housing Requirements:**

Fair Housing Act

<http://www.justice.gov/crt/housing/title8.php>

### **Accessibility and Section 504 Requirements:**

Section 504 of the Rehabilitation Act of 1979

<http://www.gpo.gov/fdsys/pkg/CFR-2000-title24-vol1/content-detail.html>

Title II of the American's with Disabilities Act of 1990

[http://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_fr.pdf](http://www.ada.gov/regs2010/titleII_2010/titleII_2010_fr.pdf)

Architectural Barriers Act of 1968

<http://www.access-board.gov/the-board/laws/architectural-barriers-act-aba>

Executive Order 11063

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/FH\\_Laws/EXO11063](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FH_Laws/EXO11063)

### **Limited English Proficiency Requirements**

Executive Order 13166

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/FH\\_Laws/EXO13166](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FH_Laws/EXO13166)

## EXHIBIT 5-13

### Sample NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 (ADA), the [Name of Recipient] will not discriminate against qualified individuals with disabilities on the basis of disability in its services, program, or activities.

**Employment:** [Name of Recipient] does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under Title I of the ADA.

**Effective Communication:** [Name of Recipient] will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in [Name of Recipient] programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

**Modifications to Policies and Procedures:** [Name of Recipient] will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities. For example, individuals with service animals are welcomed in [name of public entity] offices, even where pets are generally prohibited.

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of [Name of Recipient], should contact the office of [name and contact information for ADA coordinator] as soon as possible but no later than 48 hours before the scheduled event.

The ADA does not require the [Name of Recipient] to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.

Complaints that a program, service, or activity of [Name of Recipient] is not accessible to persons with disabilities should be directed to [name and contact information for ADA coordinator].

[Name of Recipient] will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.

## EXHIBIT 5-14

### Sample GRIEVANCE PROCEDURE UNDER THE AMERICANS WITH DISABILITIES ACT

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act of 1990 (ADA). It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the [Name of Recipient]. Employment related complaints of disability discrimination are covered elsewhere, in policies available from the human resources office of the [Name of Recipient].

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date and description of the problem. No particular format of the complaint is required. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities upon request.

The complaint should be submitted in writing by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to:

[Designee for Reasonable Accommodation/ADA Coordinator's name]  
ADA Coordinator [and other title if appropriate]  
[Mailing address for Designee/ADA Coordinator]

Within 15 calendar days after receipt of the complaint, the ADA Coordinator or his/her designee will meet with the complainant to discuss the complaint and the possible resolutions. Within 15 calendar days of the meeting, the ADA Coordinator or his/her designee will respond in writing, and where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of the [Name of Recipient] and offer options for substantive resolution of the complaint.

If the response by the ADA Coordinator or his/her designee does not satisfactorily resolve the issue, the complainant and or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the agency head or his/her designee.

Within 15 calendar days after receipt of the appeal, the agency head or his/her designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with the agency's final resolution of the complaint, or indicating that the matter has been returned to the ADA Coordinator for further action. If further response is indicated, the complainant will be contacted within 15 calendar days.

All written complaints received by the ADA Coordinator or his/her designee, appeals to the agency head or his/her designee, and responses from these two offices will be retained by the [Name of Recipient] for at least three (3) years.

## EXHIBIT 5-15

### LINKS TO OUTSIDE AGENCY FORMS

#### Labor Standards

Request for Additional Classification and Wages (HUD 4230A):

<http://www.hud.gov/offices/adm/hudclips/forms/hud4.cfm>

Record of Employee Interview (HUD 11):

<http://www.hud.gov/offices/adm/hudclips/forms/hud1.cfm>

Payroll Forms (WH347): <http://www.dol.gov/whd/forms/wh347.pdf> and Form Instructions:

<http://www.mdt.mt.gov/publications/docs/forms/contracting/wh347instr.pdf>

Davis-Bacon Poster: <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>

Equal Employment Opportunity Poster and Required Supplement:

<http://www1.eeoc.gov/employers/poster.cfm>

Occupational Health and Safety Administration Job Safety and Health Poster:

<http://63.234.227.130/Publications/osha3165.pdf>

#### Displacement, Relocation and Acquisition

“When a Public Agency Acquires Your Property” brochure:

<http://www.hud.gov/offices/cpd/library/relocation/publications/1041.pdf>

#### Lead Based Paint

“Protect Your Family from Lead in Your Home” brochure:

<http://www.epa.gov/lead/pubs/leadpdf.pdf>

***“EPA Renovate Right”*** pamphlet

<http://www2.epa.gov/lead/lead-safe-certified-guide-renovate-right>

Sample Lead Based Paint Disclosure Form for Sale of Housing:

[http://www.hud.gov/utilities/intercept.cfm?/offices/lead/library/enforcement/selr\\_eng.pdf](http://www.hud.gov/utilities/intercept.cfm?/offices/lead/library/enforcement/selr_eng.pdf)

Sample Lead Based Paint Disclosure Form for Rental of Housing:

[http://www.hud.gov/utilities/intercept.cfm?/offices/lead/library/enforcement/lesr\\_eng.pdf](http://www.hud.gov/utilities/intercept.cfm?/offices/lead/library/enforcement/lesr_eng.pdf)

#### Civil Rights

##### Section 3

Section3 Brochure:

<http://www.hud.gov/utilities/intercept.cfm?/offices/fheo/section3/Sect3-brochure.pdf>

##### Fair Housing

Fair Housing Brochure:

<http://www.hud.gov/offices/adm/hudclips/forms/files/928-1.pdf>

Fair Housing Planning Guide  
<http://www.hud.gov/offices/fheo/images/fhpg.pdf>

Accessibility and Section 504  
ADA Guide for Small Towns  
<http://www.ada.gov/smtown.htm>

ADA Title II Technical Assistance Manual:  
<http://www.ada.gov/taman2.html>

ADA Coordinator, Notice & Grievance Procedure: Administrative Requirements Under  
Title II of the ADA:  
<http://www.ada.gov/pcatoolkit/chap2toolkit.htm>

Limited English Proficiency  
Language Assistance and Self Assessment Planning Tool  
<http://www.lep.gov/selfassesstool.htm>



**EXHIBIT 5-16**

**SAMPLE CONFLICT OF INTEREST DISCLOSURE**

Under certain circumstances, an applicant for Community Development Block Grant (CDBG) program funds may have what is known as a "Conflict of Interest" and may need a waiver in order to participate in a CDBG funded activity. A conflict of interest may occur when if an applicant for participation in a CDBG funded activity is related to or has a business relationship with an employee, officer or elected official of the municipality that has been awarded the CDBG funds. If the municipality that has received CDBG assistance determines that a conflict of interest exists, a request for a waiver to the conflict of interest must be submitted by the local municipality that has been awarded the CDBG funds to the Office of Community Renewal prior to undertaking any activity funded with CDBG funds.

**\*DISCLOSURE\***

Please answer all questions below to assist in making a determination if a potential conflict of interest exists.

1.  Yes  No

Are you now, or have you been an employee, agent, consultant, officer, elected official, appointed official of the

\_\_\_\_\_ (Full name of Local Municipality)

If yes, please identify: \_\_\_\_\_

2.  Yes  No

Are you related (including by marriage or domestic partnership) to an employee, agent, consultant, officer, elected or appointed official or any other local official involved in the CDBG Program for which assistance is being applied for of the \_\_\_\_\_

(Full name of Local Municipality)

If yes, please identify: \_\_\_\_\_

3.  Yes  No

Do you have a business or professional relationship with anyone identified under question #1 above?

If yes, please identify: \_\_\_\_\_

I/we, the undersigned, certify that the above information is true to the best of my/our knowledge:

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

Typed Name: \_\_\_\_\_

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

Typed Name: \_\_\_\_\_

\_\_\_\_\_  
For official use only

CDBG Project Number: \_\_\_\_\_

Municipality: \_\_\_\_\_

Conflict of Interest does not exist CEO Signature: \_\_\_\_\_

A potential Conflict of Interest exists Date: \_\_\_\_\_

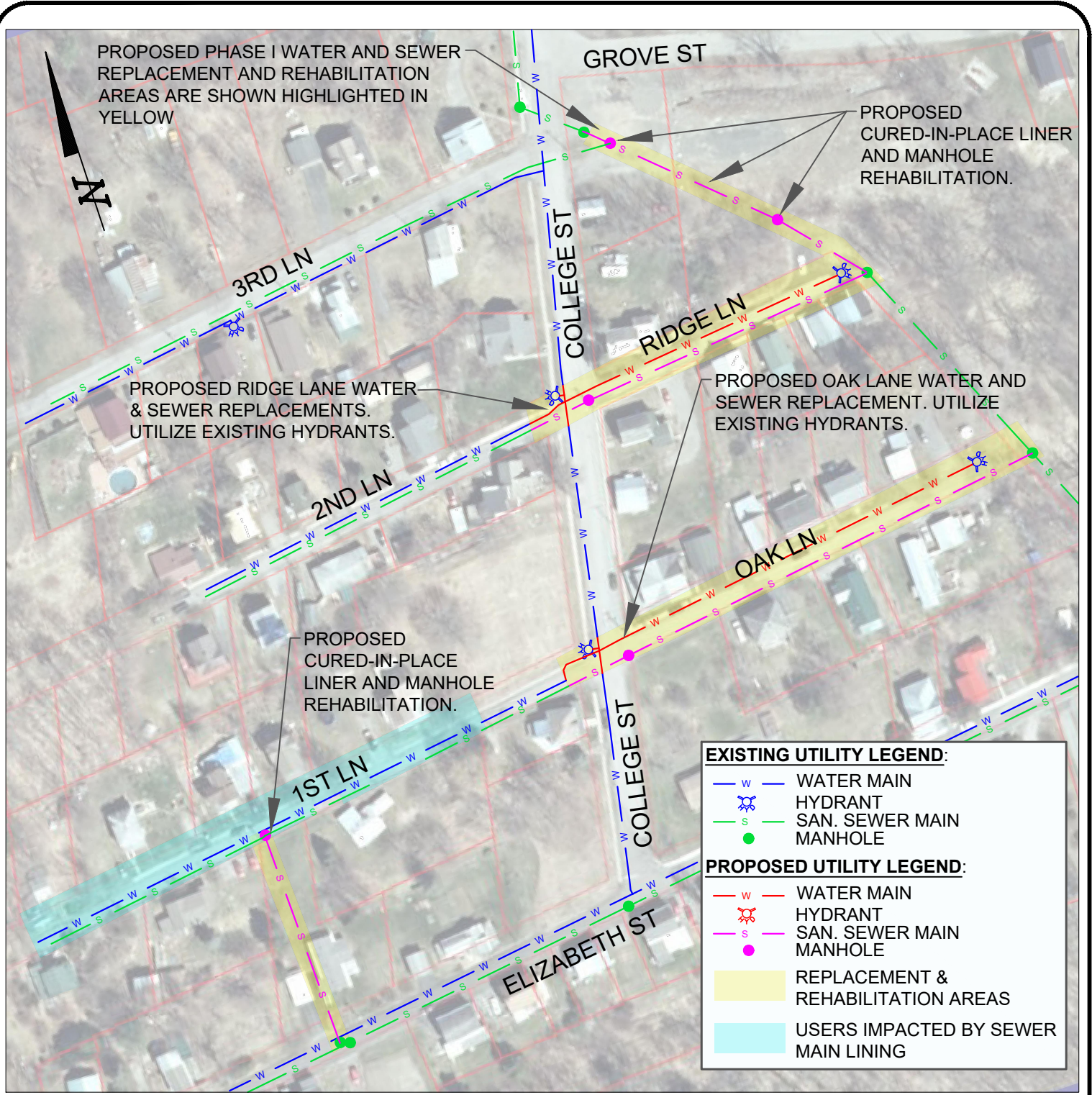
## **Exhibit 5-17**

### **Conflict of Interest Waiver Request Checklist**

All Requests for a Conflict of Interest Waiver Request must include the following:

1. A written request which:
  - a. Details the nature of the conflict; and
  - b. Specifically addresses each applicable factor enumerated in subparagraph (5) of 24 CFR 570.489(h); and
  - c. Is signed by the Recipient's chief elected official.
2. An opinion letter signed by the Recipient's legal counsel stating that the interest for which the exception is sought would not violate state or local law.
3. Minutes of the public meeting at which disclosure of the conflict was made. Public disclosure is considered to be a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made.
4. A completed Conflict of Interest Disclosure, Exhibit 5-16

## **APPENDIX B: PROJECT REFERENCE DATA**



1  
G-2
**PROPOSED SCHEMATIC PLAN**  
 SCALE: 1" = 125'

- NOTES:**
1. THIS DRAWING HAS BEEN GENERATED FROM INFORMATION PROVIDED BY THE TOWN AND AVAILABLE DOCUMENTATION FOR THE PURPOSES OF PREPARING A COMMUNITY DEVELOPMENT BLOCK GRANT APPLICATION TO THE OFFICE OF COMMUNITY RENEWAL.
  2. SANITARY SEWER AND WATER MAINS ARE SHOWN IN APPROXIMATE LOCATIONS.
  3. WATER SERVICES, VALVES AND SANITARY SEWER LATERALS ARE NOT SHOWN ON THE MAP FOR CLARITY.
  4. ALTHOUGH CURED-IN-PLACE LINING IS CALLED OUT FOR CERTAIN SECTIONS OF SEWER MAIN, ADDITIONAL SURVEYING AND INSPECTION SHALL BE REQUIRED BEFORE DETERMINING FINAL CONSTRUCTION METHODS.


**1ST, 2ND, 3RD LANE  
PROPOSED SCHEMATIC**

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**TOWN OF MORIAH**

MORIAH                      NEW YORK  
ESSEX

**G-2**

  
**CEDARWOOD**  
 ENGINEERING SERVICES PLLC

3903 Main St, Warrensburg, NY 12885. (P) 518.623.5500  
 8-12 Dietz St, Suite 302, Oneonta, NY 13820.  
 (P) 607.441.3246

## APPENDIX C: REFERENCES

**CERTIFICATION OF EXPERIENCE**

I, \_\_\_\_\_ HEREBY CERTIFY THAT (COMPANY \_\_\_\_\_  
\_\_\_\_\_ HAS PERFORMED THE FOLLOWING WORK WITHING THE LAST  
THREE YEARS **UNLESS SPECIFIED DIFFERENTLY IN THE SPECIFICATION:**

NAMES OF BUSINESS: \_\_\_\_\_ CONTACT NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
AMOUNT OF CONTRACT: \_\_\_\_\_ TELEPHONE NO.: \_\_\_\_\_  
TYPE OF WORK: \_\_\_\_\_ FAX NO.: \_\_\_\_\_  
EMAIL ADDRESS: \_\_\_\_\_

NAMES OF BUSINESS: \_\_\_\_\_ CONTACT NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
AMOUNT OF CONTRACT: \_\_\_\_\_ TELEPHONE NO.: \_\_\_\_\_  
TYPE OF WORK: \_\_\_\_\_ FAX NO.: \_\_\_\_\_  
EMAIL ADDRESS: \_\_\_\_\_

NAMES OF BUSINESS: \_\_\_\_\_ CONTACT NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
AMOUNT OF CONTRACT: \_\_\_\_\_ TELEPHONE NO.: \_\_\_\_\_  
TYPE OF WORK: \_\_\_\_\_ FAX NO.: \_\_\_\_\_  
EMAIL ADDRESS: \_\_\_\_\_

NAMES OF BUSINESS: \_\_\_\_\_ CONTACT NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
AMOUNT OF CONTRACT: \_\_\_\_\_ TELEPHONE NO.: \_\_\_\_\_  
TYPE OF WORK: \_\_\_\_\_ FAX NO.: \_\_\_\_\_  
EMAIL ADDRESS: \_\_\_\_\_

NAMES OF BUSINESS: \_\_\_\_\_ CONTACT NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
AMOUNT OF CONTRACT: \_\_\_\_\_ TELEPHONE NO.: \_\_\_\_\_  
TYPE OF WORK: \_\_\_\_\_ FAX NO.: \_\_\_\_\_  
EMAIL ADDRESS: \_\_\_\_\_

NAMES OF BUSINESS: \_\_\_\_\_ CONTACT NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
AMOUNT OF CONTRACT: \_\_\_\_\_ TELEPHONE NO.: \_\_\_\_\_  
TYPE OF WORK: \_\_\_\_\_ EMAIL ADDRESS: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

## **APPENDIX D: CONFLICT OF INTEREST STATEMENT**

## APPENDIX D: CONFLICT OF INTEREST STATEMENT

\_\_\_\_\_ (“Respondent”)

### Conflict of Interest Statement

The owner(s), corporate members or employees of [Respondent], shall derive any personal profit or gain, directly or indirectly, by reason of his or her participation with the [the Town of Lewis]. Each individual shall disclose to the [the Town of Lewis] any personal interest or direct relationship which he or she may have and shall refrain from participation in any decision making in related manners.

Any owner, corporate member or employee of [Respondent] who is an officer, board member, a committee member or staff member of a related organization shall identify his or her affiliation with such agency or agencies; further, in connection with any policy committee or board action specifically associated with [the Town of Lewis], he/she shall not participate in the decision affecting that entity and the decision must be made and/or ratified by the full board. At this time, I am a Board member, a committee member, or an employee of the following organizations/companies:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Now this is to certify that I, except as described below, am not now nor at any time during the past year have been:  
1) A participant, directly or indirectly, in any arrangement, agreement, investment, or other activity with any vendor, supplier, or other party; doing business with the [the Town of Lewis] which has resulted or could result in person benefit to me.

2) A recipient, directly or indirectly, of any salary payments or loans or gifts of any kind or any free service or discounts or other fees from or on behalf of any person or organization engaged in any transaction with the [the Town].

Any exceptions to 1 or 2 above are stated below with a full description of the transactions and of the interest, whether direct or indirect, which I have (or have had during the past year) in the persons or organizations having transactions with the [the Town of Lewis].

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Respondent:** \_\_\_\_\_

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

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

**Printed name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_



## **APPENDIX E: CERTIFICATE OF AUTHORITY**

**CERTIFICATE OF AUTHORITY**

I, \_\_\_\_\_  
(Officer other than officer executing proposal documents)

certify that I am the \_\_\_\_\_ of the \_\_\_\_\_  
(Title) (Name of Contractor)

\_\_\_\_\_ a corporation, duly organized and in good standing under the  
\_\_\_\_\_  
(Law under which organized, e.g., the New York Business Corporation Law)

named in the foregoing agreement; that \_\_\_\_\_  
(Person executing proposal documents)

who signed said agreement on behalf of the Contractor was, at the time of execution,  
\_\_\_\_\_ of the Contractor; that said agreement was duly signed for  
(Title of such person)

and in behalf of said Contractor by authority of its Board of Directors, thereunto duly authorized, and that  
such authority is in full force and effect at the date hereof.

\_\_\_\_\_  
Signature Corporate Seal

STATE OF NEW YORK ) SS.:  
COUNTY OF ESSEX )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_  
\_\_\_\_\_ to me known, and known to me to be the \_\_\_\_\_  
(Title) of \_\_\_\_\_ the corporation described in  
and which executed the above certificate, who being by me duly sworn did depose and say that he, the said \_\_\_\_\_  
\_\_\_\_\_ resides at \_\_\_\_\_, and that he is \_\_\_\_\_  
\_\_\_\_\_ of said corporation and knows the corporate seal of the said corporation; that the  
seal affixed to the above certificate is such corporate seal and that it was so affixed by order of the Board of  
Directors of said corporation, and that he signed his name thereto by like order.

\_\_\_\_\_  
Notary Public County

## **APPENDIX F: VENDOR RESPONSIBILITY QUESTIONNAIRE**

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

You have selected the For-Profit Non-Construction questionnaire which may be printed and completed in this format or, for your convenience, may be completed online using the New York State VendRep System.

**COMPLETION & CERTIFICATION**

The person(s) completing the questionnaire must be knowledgeable about the vendor's business and operations. An owner or officer must certify the questionnaire and the signature must be notarized.

**NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)**

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the IT Service Desk at [ITServiceDesk@osc.state.ny.us](mailto:ITServiceDesk@osc.state.ny.us) or call 866-370-4672.

**DEFINITIONS**

All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," found at [www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf](http://www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf). These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

**RESPONSES**

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

**REPORTING ENTITY**

Each vendor must indicate if the questionnaire is filed on behalf of the entire Legal Business Entity or an Organizational Unit within or operating under the authority of the Legal Business Entity and having the same EIN. Generally, the Organizational Unit option may be appropriate for a vendor that meets the definition of "Reporting Entity" but due to the size and complexity of the Legal Business Entity, is best able to provide the required information for the Organizational Unit, while providing more limited information for other parts of the Legal Business Entity and Associated Entities.

**ASSOCIATED ENTITY**

An Associated Entity is one that owns or controls the Reporting Entity or any entity owned or controlled by the Reporting Entity. However, the term Associated Entity does not include "sibling organizations" (i.e., entities owned or controlled by a parent company that owns or controls the Reporting Entity), unless such sibling entity has a direct relationship with or impact on the Reporting Entity.

**STRUCTURE OF THE QUESTIONNAIRE**

The questionnaire is organized into eleven sections. Section I is to be completed for the Legal Business Entity. Section II requires the vendor to specify the Reporting Entity for the questionnaire. Section III refers to the individuals of the Reporting Entity, while Sections IV-VIII require information about the Reporting Entity. Section IX pertains to any Associated Entities, with one question about their Officials/Owners. Section X relates to disclosure under the Freedom of Information Law (FOIL). Section XI requires an authorized contact for the questionnaire information.

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

<b>I. LEGAL BUSINESS ENTITY INFORMATION</b>			
<u>Legal Business Entity Name*</u>		<u>EIN</u>	
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>	
		Telephone ext.	Fax
Email		Website	
Additional <u>Legal Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , Other Identity, or <u>EIN</u> used in the last five (5) years and the status (active or inactive).			
Type	Name	EIN	Status
1.0 <u>Legal Business Entity</u> Type – Check appropriate box and provide additional information:			
<input type="checkbox"/> <u>Corporation</u> (including <u>PC</u> )		Date of Incorporation	
<input type="checkbox"/> <u>Limited Liability Company</u> ( <u>LLC</u> or <u>PLLC</u> )		Date of Organization	
<input type="checkbox"/> <u>Partnership</u> (including <u>LLP</u> , <u>LP</u> or <u>General</u> )		Date of Registration or Establishment	
<input type="checkbox"/> <u>Sole Proprietor</u>		How many years in business?	
<input type="checkbox"/> Other		Date Established	
If Other, explain:			
1.1 Was the <u>Legal Business Entity</u> formed or incorporated in New York State?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If 'No,' indicate jurisdiction where <u>Legal Business Entity</u> was formed or incorporated and attach a <u>Certificate of Good Standing</u> from the applicable jurisdiction or provide an explanation if a <u>Certificate of Good Standing</u> is not available.			
<input type="checkbox"/> United States State _____			
<input type="checkbox"/> Other Country _____			
Explain, if not available:			
1.2 Is the <u>Legal Business Entity</u> publicly traded?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide <u>CIK Code</u> or Ticker Symbol			
1.3 Does the <u>Legal Business Entity</u> have a <u>DUNS</u> Number?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," Enter <u>DUNS</u> Number			

\*All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," which can be found at [www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf](http://www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf).

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

<b>I. LEGAL BUSINESS ENTITY INFORMATION</b>		
1.4 If the <u>Legal Business Entity's Principal Place of Business</u> is not in New York State, does the <u>Legal Business Entity</u> maintain an office in New York State? (Select "N/A," if <u>Principal Place of Business</u> is in New York State.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No  <input type="checkbox"/> N/A
If "Yes," provide the address and telephone number for one office located in New York State.		
1.5 Is the <u>Legal Business Entity</u> a New York State certified <u>Minority-Owned Business Enterprise (MBE)</u> , <u>Women-Owned Business Enterprise (WBE)</u> , <u>New York State Small Business (SB)</u> or a federally certified <u>Disadvantaged Business Enterprise (DBE)</u> ? If "Yes," check all that apply: <input type="checkbox"/> New York State certified <u>Minority-Owned Business Enterprise (MBE)</u> <input type="checkbox"/> New York State certified <u>Women-Owned Business Enterprise (WBE)</u> <input type="checkbox"/> <u>New York State Small Business (SB)</u> <input type="checkbox"/> Federally certified <u>Disadvantaged Business Enterprise (DBE)</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
1.6 Identify <u>Officials</u> and <u>Principal Owners</u> , if applicable. For each person, include name, title and percentage of ownership. Attach additional pages if necessary. If applicable, reference to relevant SEC filing(s) containing the required information is optional.		
Name	Title	Percentage Ownership <i>(Enter 0% if not applicable)</i>

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

<b>II. REPORTING ENTITY INFORMATION</b>	
<p>2.0 The <u>Reporting Entity</u> for this questionnaire is:</p> <p>Note: Select only one.</p> <p><input type="checkbox"/> <u>Legal Business Entity</u></p> <p><i>Note: If selecting this option, "Reporting Entity" refers to the entire Legal Business Entity for the remainder of the questionnaire. (SKIP THE REMAINDER OF SECTION II AND PROCEED WITH SECTION III.)</i></p> <p><input type="checkbox"/> <u>Organizational Unit within and operating under the authority of the Legal Business Entity</u></p> <p>SEE DEFINITIONS OF "<u>REPORTING ENTITY</u>" AND "<u>ORGANIZATIONAL UNIT</u>" FOR ADDITIONAL INFORMATION ON CRITERIA TO QUALIFY FOR THIS SELECTION.</p> <p><i>Note: If selecting this option, "Reporting Entity" refers to the Organizational Unit within the Legal Business Entity for the remainder of the questionnaire. (COMPLETE THE REMAINDER OF SECTION II AND ALL REMAINING SECTIONS OF THIS QUESTIONNAIRE.)</i></p>	
<b>IDENTIFYING INFORMATION</b>	
a) <u>Reporting Entity</u> Name	
Address of the <u>Primary Place of Business</u> (street, city, state, zip code)	Telephone  ext.
b) Describe the relationship of the <u>Reporting Entity</u> to the <u>Legal Business Entity</u>	
c) Attach an <u>organizational chart</u>	
d) Does the Reporting Entity have a <u>DUNS</u> Number?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," enter <u>DUNS</u> Number	
e) Identify the designated manager(s) responsible for the business of the <u>Reporting Entity</u> . <i>For each person, include name and title. Attach additional pages if necessary.</i>	
Name	Title

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**INSTRUCTIONS FOR SECTIONS III THROUGH VII**

For each "Yes," provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). For each "Other," provide an explanation which provides the basis for not definitively responding "Yes" or "No." Provide the explanation at the end of the section or attach additional sheets with numbered responses, including the Reporting Entity name at the top of any attached pages.

<b>III. LEADERSHIP INTEGRITY</b>	
<i>Within the past five (5) years, has any current or former reporting entity official or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the reporting entity with any government entity been:</i>	
3.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.1 <u>Suspended, debarred, or disqualified</u> from any government contracting process?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.2 The subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
For each "Yes" or "Other" explain:	

<b>IV. INTEGRITY – CONTRACT BIDDING</b>	
<i>Within the past five (5) years, has the reporting entity:</i>	
4.0 Been <u>suspended</u> or <u>debarred</u> from any <u>government contracting process</u> or been <u>disqualified</u> on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, <u>debarment</u> for a violation of New York State Workers' Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 Had a low bid rejected on a <u>government contract</u> for failure to <u>make good faith efforts</u> on any <u>Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise goal or statutory affirmative action requirements</u> on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 Initiated a request to withdraw a bid submitted to a <u>government entity</u> in lieu of responding to an information request or subsequent to a formal request to appear before the <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each "Yes," explain:	



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<b>V. INTEGRITY – CONTRACT AWARD</b>	
<i>Within the past five (5) years, has the reporting entity:</i>	
5.0 Been <u>suspended</u> , cancelled or <u>terminated for cause</u> on any <u>government contract</u> including, but not limited to, a <u>non-responsibility finding</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.1 Been subject to an <u>administrative proceeding</u> or civil action seeking specific performance or restitution in connection with any <u>government contract</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.2 Entered into a formal monitoring agreement as a condition of a contract award from a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes,” explain:	

<b>VI. CERTIFICATIONS/LICENSES</b>	
<i>Within the past five (5) years, has the reporting entity:</i>	
6.0 Had a revocation, <u>suspension</u> or <u>disbarment</u> of any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or federal certification of <u>Disadvantaged Business Enterprise</u> status for other than a change of ownership?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes,” explain:	

<b>VII. LEGAL PROCEEDINGS</b>	
<i>Within the past five (5) years, has the reporting entity:</i>	
7.0 Been the subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.1 Been the subject of an indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as <u>serious or willful</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation or any other willful violation of New York State Labor Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or received an enforcement determination by any <u>government entity</u> involving a violation of federal, state or local environmental laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.5 Other than previously disclosed: a) Been subject to fines or penalties imposed by <u>government entities</u> which in the aggregate total \$25,000 or more; or b) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes,” explain:	

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<b>VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY</b>	
<b>8.0</b> Within the past five (5) years, has the <u>Reporting Entity</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
<b>8.1</b> Within the past five (5) years, has the <u>Reporting Entity</u> had any <u>liquidated damages</u> assessed over \$25,000?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
<b>8.2</b> Within the past five (5) years, have any <u>liens</u> or <u>judgments</u> (not including UCC filings) over \$25,000 been filed against the <u>Reporting Entity</u> which remain undischarged?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant's name(s), the amount of the <u>lien(s)</u> and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
<b>8.3</b> In the last seven (7) years, has the <u>Reporting Entity</u> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses.	
<b>8.4</b> During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any tax returns required by <u>federal</u> , state or local tax laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the <u>Reporting Entity</u> failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.	
<b>8.5</b> During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any New York State unemployment insurance returns?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the years the <u>Reporting Entity</u> failed to file/pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
<b>8.6</b> During the past three (3) years, has the <u>Reporting Entity</u> had any <u>government audit(s)</u> completed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
a) If "Yes," did any audit of the <u>Reporting Entity</u> identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any <u>material disallowance</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to 8.6 a), provide an explanation of the issue(s), relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

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<b>IX. ASSOCIATED ENTITIES</b> <i>This section pertains to any entity(ies) that either controls or is controlled by the reporting entity.                  (See definition of “associated entity” for additional information to complete this section.)</i>	
9.0 Does the <u>Reporting Entity</u> have any <u>Associated Entities</u> ? Note: All questions in this section must be answered if the <u>Reporting Entity</u> is either: – An <u>Organizational Unit</u> ; or – The entire <u>Legal Business Entity</u> which controls, or is controlled by, any other entity(ies). If “No,” SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X.	<input type="checkbox"/> Yes <input type="checkbox"/> No
9.1 Within the past five (5) years, has any <u>Associated Entity Official</u> or <u>Principal Owner</u> been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide an explanation of the issue(s), the individual involved, his/her title and role in the <u>Associated Entity</u> , his/her relationship to the <u>Reporting Entity</u> , relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s).	
9.2 Does any <u>Associated Entity</u> have any currently undischarged <u>federal</u> , New York State, New York City or New York local government <u>liens</u> or <u>judgments</u> (not including UCC filings) over \$50,000?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide an explanation of the issue(s), identify the <u>Associated Entity</u> ’s name(s), <u>EIN</u> (s), primary business activity, relationship to the <u>Reporting Entity</u> , relevant dates, the Lien holder or Claimant’s name(s), the amount of the <u>lien</u> (s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
9.3 Within the past five (5) years, has any <u>Associated Entity</u> :	
a) Been <u>disqualified</u> , <u>suspended</u> or <u>debarred</u> from any <u>federal</u> , New York State, New York City or other New York local <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
b) Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by any <u>federal</u> , New York State, New York City, or New York local <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
c) Been <u>suspended</u> , <u>cancelled</u> or <u>terminated for cause</u> (including for <u>non-responsibility</u> ) on any <u>federal</u> , New York State, New York City or New York local <u>government contract</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
d) Been the subject of an <u>investigation</u> , whether open or closed, by any <u>federal</u> , New York State, New York City, or New York local <u>government entity</u> for a civil or criminal violation with a penalty in excess of \$500,000?	<input type="checkbox"/> Yes <input type="checkbox"/> No
e) Been the subject of an indictment, grant of immunity, <u>judgment</u> , or conviction (including entering into a plea bargain) for conduct constituting a crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No
f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>federal</u> , New York State, New York City, or New York local <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes,” provide an explanation of the issue(s), identify the <u>Associated Entity</u> ’s name(s), <u>EIN</u> (s), primary business activity, relationship to the <u>Reporting Entity</u> , relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

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<b>X. FREEDOM OF INFORMATION LAW (FOIL)</b>	
<p>10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL).</p> <p>Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>If "Yes," indicate the question number(s) and explain the basis for the claim.</p>	

<b>XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE</b>		
Name	Telephone	Fax
	ext.	
Title	Email	

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**Certification**

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or Federal Law, as well as a finding of non-responsibility, contract suspension or contract termination.

**The undersigned certifies that he/she:**

- is knowledgeable about the submitting Business Entity’s business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Business Entity’s responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- is under an obligation to update the information provided herein to include any material changes to the Business Entity’s responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official \_\_\_\_\_

Printed Name of Signatory \_\_\_\_\_

Title \_\_\_\_\_

Name of Business \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_;

\_\_\_\_\_ Notary Public

**CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT**

As a result of the Iran Divestment Act of 2012 (the "Act"), Chapter 1 of the 2012 Laws of New York, a new provision has been added to State Finance Law (SFL) § 165-a and New York General Municipal Law § 103-g, both effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law) (the "Prohibited Entities List"). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date at which time it will be posted on the OGS website.

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each Bidder/Contractor, any person signing on behalf of any Bidder/Contractor and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the OGS website, that to the best of its knowledge and belief, that each Bidder/Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to SFL § 165-a(3)(b).

Additionally, Bidder/Contractor is advised that once the Prohibited Entities List is posted on the OGS Website, any Bidder/Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a Bidder/Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he/she/it has ceased engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the County shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Bidder/Contractor in default.

The County reserves the right to reject any bid or request for assignment for a Bidder/Contractor that appears on the Prohibited Entities List prior to the award of a contract and to pursue a responsibility review with respect to any Bidder/Contractor that is awarded a contract and subsequently appears on the Prohibited Entities List.

I, \_\_\_\_\_, being duly sworn, deposes and says that he/she is the \_\_\_\_\_ of the \_\_\_\_\_ Corporation and that neither the Bidder/Contractor nor any proposed subcontractor is identified on the Prohibited Entities List.

\_\_\_\_\_  
SIGNED

SWORN to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

**NON-COLLUSIVE BIDDING CERTIFICATION**

1. By submission of this bid, the undersigned bidder and each person signing on behalf of such bidder certifies and in the case of a joint bid each party thereto certifies as to its own organization — UNDER PENALTY OF PERJURY, that to the best of the undersigned’s knowledge and belief:

- (a) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- (b) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- (c) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

2. The undersigned acknowledges and agrees that a bid shall not be considered for award nor shall any award be made where any of the above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where one or more of the above has/have not been complied with, the bid shall not be considered for award nor shall any award be made unless the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

3. The undersigned also acknowledges and agrees that the fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraph 1 above.

4. The undersigned further acknowledges and agrees that any bid hereafter made to any political subdivision of the state or any public department, agency or official thereof by a bidder which is a corporation or a limited liability company for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in paragraph 1 of this certificate, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation or limited liability company.

Name of Bidder: \_\_\_\_\_  
(print full legal name)

Date Signed: \_\_\_\_\_ Signature: \_\_\_\_\_

Name of Person Signing Certificate: \_\_\_\_\_  
(print full legal name of signer)

Bidder is (check one):  an individual,  a limited liability partnership,  a limited liability company,  
 other entity (specify): \_\_\_\_\_

## **APPENDIX G: W-9 FORM**



# Request for Taxpayer Identification Number and Certification

**Give Form to the  
requester. Do not  
send to the IRS.**

Print or type  
See Specific Instructions on page 2.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification: check only <b>one</b> of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <b>Note.</b> For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
5 Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
6 City, state, and ZIP code	
7 List account number(s) here (optional)	

<b>Part I Taxpayer Identification Number (TIN)</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="10" style="text-align: center;">Social security number</td> </tr> <tr> <td style="width: 25%; height: 20px;"></td> <td style="width: 25%;"></td> <td style="width: 25%; text-align: center;">-</td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> </tr> <tr> <td colspan="10" style="text-align: center;">or</td> </tr> <tr> <td colspan="10" style="text-align: center;">Employer identification number</td> </tr> <tr> <td style="width: 25%; height: 20px;"></td> <td style="width: 25%;"></td> <td style="width: 25%; text-align: center;">-</td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> </tr> </table>	Social security number												-								or										Employer identification number												-							
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Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3.  <b>Note.</b> If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.																																																			

<b>Part II Certification</b>
Under penalties of perjury, I certify that:
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and 3. I am a U.S. citizen or other U.S. person (defined below); and 4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.
<b>Certification instructions.</b> You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at [www.irs.gov/fw9](http://www.irs.gov/fw9).

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
  - Form 1099-C (canceled debt)
  - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.
- If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.*
- By signing the filled-out form, you:
1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
  2. Certify that you are not subject to backup withholding, or
  3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
  4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* above.

## What is FATCA reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the Instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; do not leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account, list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note. ITIN applicant:** Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C Corporation, or S Corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

**Line 2**

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

**Line 3**

Check the appropriate box in line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box in line 3.

**Limited Liability Company (LLC).** If the name on line 1 is an LLC treated as a partnership for U.S. federal tax purposes, check the "Limited Liability Company" box and enter "P" in the space provided. If the LLC has filed Form 8832 or 2553 to be taxed as a corporation, check the "Limited Liability Company" box and in the space provided enter "C" for C corporation or "S" for S corporation. If it is a single-member LLC that is a disregarded entity, do not check the "Limited Liability Company" box; instead check the first box in line 3 "Individual/sole proprietor or single-member LLC."

**Line 4, Exemptions**

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space in line 4 any code(s) that may apply to you.

**Exempt payee code.**

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

**Note.** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

**Line 5**

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns.

**Line 6**

Enter your city, state, and ZIP code.

**Part I. Taxpayer Identification Number (TIN)**

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on this page), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [IRS.gov](http://IRS.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

**Part II. Certification**

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code* earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.

1. **Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.
2. **Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.
3. **Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.
4. **Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).
5. **Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

**What Name and Number To Give the Requester**

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor <sup>3</sup>
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.  
<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 2.

\*Note. Grantor also must provide a Form W-9 to trustee of trust.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

**Secure Your Tax Records from Identity Theft**

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.** Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-IDTHEFT (1-877-438-4338).

Visit [IRS.gov](http://IRS.gov) to learn more about identity theft and how to reduce your risk.

**Privacy Act Notice**

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

## **APPENDIX H: NON-COLLUSION AFFIDAVIT**

NON-COLLUSION AFFIDAVIT

The undersigned bidder or agent, being duly sworn on oath, says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He/She further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee gift, commission or thing of value on account of such sale.

OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID FOR PUBLIC WORKS ARE TRUE AND CORRECT.

Dated this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Name of Organization)

\_\_\_\_\_  
(Title of Person Signing)

\_\_\_\_\_  
(Signature)

ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public, personally appeared the above named and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public Signature

My Commission Expires: \_\_\_\_\_

## **APPENDIX I: IRAN DIVESTMENT ACT COMPLIANCE**

## IRAN DIVESTMENT ACT CERTIFICATION

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act’s effective date, at which time it will be posted on the OGS website.

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Bidder/Contractor is advised that once the list is posted on the OGS website, any Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to the solicitation, must certify at the time the Contract is renewed, extended or assigned that it is not included on the prohibited entities list.

During the term of the Contract, should the New York State Education Department (AGENCY) receive information that a person is in violation of the above-referenced certification, AGENCY will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then AGENCY shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

AGENCY reserves the right to reject any bid or request for assignment for an entity that appears on the prohibited entities list prior to the award 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.

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

Print Name: \_\_\_\_\_

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

Company Name: \_\_\_\_\_

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



**APPENDIX J: <INTENTIONALLY LEFT BLANK>**

## **APPENDIX K: DELIVERABLES TABLE**

<b>DELIVERABLES</b>	<b>LUMP SUM PROPOSED:</b>	<b>HOURS OF LABOR:</b>
<b>GENERAL REQUIREMENTS</b>		
Task 1) Project Schedule		
Task 2) Project Management & Coordination Meetings ( <i>incl. MILEAGE</i> )		
Task 3) Project Permitting		
<i>Task 3.1) Local Agency Permitting: County Highway, Zoning, etc.</i>		
<i>Task 3.2) State Agency Permitting: NYS DOT, NYS DEC, NYS DOH, NYS DOL, APA, SHPO, THPO, etc.</i>		
<i>Task 3.3) Federal Agency Permitting: ACOE, EPA, HUD/OCR, NEPA, USFWS, etc.</i>		
Task 4) Program Management: Consultant & Contractor Program Requirements & Reporting		
<b>PRELIMINARY DESIGN PHASE</b>		
Task 5) Field Data Collection & Review		
Task 6) Basis of Design Report ( <i>Owner / Regulatory approval</i> )		
Task 7) Schematic Designs ( <i>30% Designs to support full permitting</i> )		
<b>FINAL DESIGN PHASE</b>		
Task 8) Final Designs ( <i>100% completion for Funding/Regulatory approval</i> )		
Task 9) Regulatory Agency Coordination for Plans & Specs		
<b>BIDDING PHASE</b>		
Task 10) Provide Compliant Construction Documents ( <i>incl. PRINTING</i> )		
Task 11) Advertise for Bidding, provide Bid Response Services ( <i>incl. PUBLISHING</i> )		
Task 12) Tabulate Bid Results		
<b>CONSTRUCTION ADMIN PHASE</b>		
Task 13) Preconstruction Conference		
Task 14) Construction Period Services: Technical Analysis & Contractor Payments/Submittals		
<b>POST CONSTRUCTION PHASE</b>		
Task 15) Punch List with Contractor		
Task 16) Codes & Compliance Review / Certification ( <i>see Closeout Checklist</i> )		
Task 17) Engineer's Notice of Completion ( <i>Completion Certification</i> )		
<b>RPR SERVICES</b>		
Task 18) 12 Weeks of RPR Services ( <i>est.</i> )		
<b>REIMBURSABLES</b>		
Task 19) Surveys & Base Mapping		
Task 20) Archaeological Evaluations (as required)		
Task 21) Geotechnical Evaluations (as required)		

**APPENDIX L: DRAFT FORM OF CONTRACT (EJCDC)**

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

# AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by



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**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of           **TBA**           (“Effective Date”) between

          **THE TOWN OF MORIAH, NY**           (“Owner”) and

          **TBA**           (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

          **TOWN OF MORIAH COLLEGE ST. UTILITY REPLACEMENT**           (“Project”).

Other terms used in this Agreement are defined in **Article 7**.

Engineer's services under this Agreement are generally identified as follows:

**DESIGN THE TOWN THE UPGRADES FOR THE AREAS OF 1ST LANE, OAK LANE AND RIDGE LANE WATER AND SEWER UTILITY MAINS TO NYS DOH & NYS DEC STANDARDS GENERALLY CONSISING OF WATER UTILITY DISTRIBUTION MAINS AND ALL APPURTENANCES, SEWER COLLECTION MAINS AND ALL APPURTENANCES, ALONG 1<sup>ST</sup> LANE, RIDGE LANE & OAK LANE. PROJECT MUST REMAIN IN NYS OCR-FUNDED COMPLIANCE, AND CAUSE TO BE CONSTRUCTED NO LATER THAN DECEMBER 15 2020.**

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein, in **Exhibit A** and the originating RFP response, **and all revisions** included as **Exhibit P**.

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in **Exhibit B**.
- B. Owner shall pay Engineer as set forth in **Article 4 and Exhibit C**.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this



Agreement, subject to any express limitations or reservations applicable to the furnished items.

- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
  - 1. any development that affects the scope or time of performance of Engineer's services;
  - 2. the presence at the Site of any Constituent of Concern; or
  - 3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

### **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

#### **3.01 Commencement**

- A. Engineer is authorized to begin rendering services as of the Effective Date.
- B. **The term of this agreement shall commence on May 1<sup>st</sup>, 2019 through December 15<sup>TH</sup>, 2020, time being of the essence.**

#### **3.02 Time for Completion**

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in **Exhibit A and Exhibit L**, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

### **ARTICLE 4 – INVOICES AND PAYMENTS**

#### **4.01 Invoices**

- A. **Preparation and Submittal of Invoices:** Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of **Exhibit C**. Engineer shall submit its invoices to Owner on a monthly basis **prior to the Owners Town Board meeting for invoice approval, which is listed for public knowledge. The Town of Moriah Board**

**meets on the second Thursday of each month. Invoices are due and payable ~~within thirty (30) days of receipt after thirty (30) days of acceptance from the Town Board.~~**

#### 4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within **thirty (30) days** after receipt of Engineer's invoice, then:
  - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
  - 2. Engineer may, after giving **seven (7) days** written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- 3. **Exceptions to this section apply when the Consultant fails to provide funding agency required reports and/or documents that are complete and on time; if these reports are not supplied as required and further specified in the Attachments hereto, the Owner reserves the right to withhold payment without penalty by the Consultant to ensure that project costs are compliant per the specified funding agency program requirements.**
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of **Paragraph 4.01**.
- ~~D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of **Exhibit C**.~~

## **ARTICLE 5 – OPINIONS OF COST**

#### 5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 ~~Designing to Construction Cost Limit~~

- ~~A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.~~

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

**ARTICLE 6 – GENERAL CONSIDERATIONS**

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner 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 Owner-furnished information.
- C. *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 Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in **Paragraph 6.01.A**, 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.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
1. Engineer and Owner shall comply with applicable Laws and Regulations.
  2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in **Paragraph 6.01.A**, and to the extent compliance is not inconsistent with professional practice requirements.
    - a. Articles 8 & 9 NYS Labor Law: Public Works Building & Service Contracts
    - b. Section 220-f of NYS Labor Law: International Boycotts
    - c. Debarment/Suspension:

- 1) Exec. Order 12549 & 12689
  - 2) 42 USC ss 1320a-7b(f)
- d. HIPA Act of 1996
3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
- a. changes after the Effective Date to Laws and Regulations;
  - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
  - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. 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. Owner 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.
- G. **The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.**
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's 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 Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. 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.
- L. Engineer's services do not include providing legal advice or representation.

- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.
- O. The parties each acknowledge, covenant and agree that the relationship of the Consultant to the Owner shall be of an independent contractor. The Consultant, in accordance with its status as an independent contractor, further covenants and agrees that it
  - 1. will conduct itself in accordance with its status as an independent contractor;
  - 2. will neither hold itself out as nor claim to be an officer or employee of the Owner;
  - 3. will not make any claim, demand, or application for any right of privilege applicable to an officer or an employee of the Owner, including but not limited to workers' compensation benefits, unemployment insurance benefits, social security coverage or retirement membership or credits.
- P. The Consultant shall, during the term of this agreement, obtain and keep in full force and effect any and all licenses, permits and certifications required by any governmental authority having jurisdiction over the rendition and performance of the services to be furnished by the Consultant under this agreement.

6.02 ~~Design Without Construction Phase Services~~

- ~~A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in **Exhibit A, Paragraph A1.05**. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in **Exhibit A**.~~

6.03 *Use of Documents*

- A. 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.

- B. The Consultant is to maintain all books, documents, papers, account records and other evidence pertaining to this work ***and to make such materials available*** at their respective offices at all reasonable times during the agreement and **for a period up to six (6) years from the date of final payment under the agreement.**
- C. If Engineer is required to prepare or furnish Drawings and/or Specifications under this Agreement, Engineer shall deliver to Owner at least **two (2)** original printed record versions of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations, and further provide electronic copies (e.g., PDF.) upon completion of the project and upon payment in full to the Engineer.
- D. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties. **THIS PROVISION SHALL NOT APPLY TO SURVEY AND MAPPING PRODUCTS THAT WILL REMAIN THE PROPERTY OF THE OWNER AT PROJECT COMPLETION.**
- E. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

#### 6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in **Exhibit G**. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in **Exhibit G**. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in **Exhibit G**. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least **ten (10) days** prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Engineers' sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in **Exhibit G**. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and **Exhibit G** will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

- A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to **ninety (90) days** upon **seven (7) days** written notice to Engineer.
  2. *By Engineer:* Engineer may, after giving **seven (7) days** written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in **Paragraph 4.02.B**, or in response to the presence of Constituents of Concern at the Site, as set forth in **Paragraph 6.10.D**.
- B. *Termination:* The obligation to provide further services under this Agreement may be terminated:
1. For cause,
    - a. by either party upon **thirty (30) days** written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
    - b. by Engineer:
      - 1) upon **seven (7) days** written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon **seven (7) days** written notice if the Engineer's services for the Project are delayed or suspended for more than **ninety (90) days** for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in **Paragraph 6.10.D**.
      - 3) Engineer shall have no liability to Owner on account of such termination.
      - 4) **In the event of such termination, Engineer is still liable to provide copies of any project drawings, specifications, mapping and any other developed Work that the Owner has paid for in the period of performance.**
    - c. Notwithstanding the foregoing, this Agreement will not terminate under **Paragraph 6.06.B.1.a** if the party receiving such notice begins, within **seven (7) days** of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than **thirty (30) days** of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such **thirty (30) day** period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, **sixty (60) days** after the date of receipt of the notice.
  2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under **Paragraph 6.06.B** may set the effective date of termination at a time up to **thirty (30) days** later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*



1. In the event of any termination under **Paragraph 6.06**, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, **other than survey and Mapping products for which the Owner will have unfettered use**, at Owner's sole risk, subject to the provisions of **Paragraph 6.03**.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in **Paragraph 6.06.D.1**, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in **Exhibit C**.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located: **TOWN OF MORIAH, ESSEX COUNTY, NEW YORK, and any and all disputes shall be brought to the Essex County Supreme Court, Essex County, NY.**

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by **Paragraph 6.08.B** the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
  2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  3. Owner agrees that the substance of the provisions of this **Paragraph 6.08.C** shall appear in the Construction Contract Documents.

## 6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of **thirty (30) days** from the date of notice ~~prior to invoking the procedures of Exhibit H~~ or other provisions of this Agreement or exercising their rights at law.
- B. **No Exhibit H is included.**
- C. **After the thirty (30) day period for mutual negotiation has expired or the process has failed, then disputes, including breach or alleged breach thereof, may not be submitted to binding arbitration. Instead, the dispute must be heard in the Essex County Supreme Court or any other court of competent jurisdiction within Essex County, NY**
- D. ~~If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.~~

## 6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on **seven (7) days'** notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

## 6.11 Indemnification and Mutual Waiver

- A. ~~Indemnification by Engineer: To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**~~
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. ~~No Defense Obligation: The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.~~
- E. ~~Percentage Share of Negligence: To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.~~
- F. ~~Mutual Waiver: To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.~~

## 6.12 *Records Retention*

- A. Engineer shall establish and maintain complete and accurate books, records, documents, accounts & other evidence directly pertinent to performance under this contract of the Consultant on file in legible form, for a period of **six (6) years** following completion or termination of its services under each Task Order **plus the year in which the Work was completed**; all Documents, records (including cost records), and design calculations related to Consultant's services or pertinent to Consultant's performance under this Agreement.
- B. Upon Owner's request, Consultant shall provide access to the Records during normal business hours at an office of the Consultant in the State of New York; if not such office is available, then at a mutually agreeable venue for the purposes of inspection, auditing and copying. Consultant will also ensure the ability to send and utilize electronic/digital files of the same of more efficient transference of Records, per **Paragraph 6.04**. a copy of any such item to Owner at cost.
- C. The Owner 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: (1) the Consultant shall timely inform an appropriate Owner official, in writing, that said records should not be disclosed; and (2) said records shall be sufficiently identified and designation of said records as exempt under the statute is reasonable. Nothing contained herein shall diminish, or in any way affect, the Owners' right to discovery in any pending or future litigation.

## 6.13 *Miscellaneous Provisions*

- A. *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.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *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.
- F. *Discrimination Prohibited:* The services to be furnished and rendered under this agreement by the Consultant shall be available to any and all residents of Essex County without regard to race, color, creed, sex, religion, national or ethnic origin, handicap, or source of payment;

and under no circumstances shall a resident's financial ability to pay for the services provided be considered unless such consideration is allowed by State and/or Federal law, rule, or regulation.

- G. *Non-Discrimination in Employment*: The consultant will not discriminate against any employee or applicant for employment because of race, color, creed, sex, religion, national or ethnic origin, disability, or marital status. In the event that this is a contract to be performed in whole or in part within the State of New York for (a) the construction, alteration or repair of any public building or public work, (b) for the manufacture, sale of distribution of materials, equipment of supplies, (c) for building service, the Consultant agrees that neither it nor its subcontractors shall, by any race, color, creed, sex, religion, national or ethnic origin, handicap, or marital status:
- a. Discriminate in hiring against any citizen who is qualified and available to perform the work; or
  - b. Discriminate against or intimidate any employee hired for the performance of work under the contract.

## ARTICLE 7 – DEFINITIONS

### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
  2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
  3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
  4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
  5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
  6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
  7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment

in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.

16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.



37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

### 8.01 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, EJCDC Notice of Acceptability of Work.
- ~~F. Exhibit F, Construction Cost Limit.~~
- G. Exhibit G, Insurance.
- ~~H. Exhibit H, Dispute Resolution.~~
- ~~I. Exhibit I, Limitations of Liability.~~
- J. **Exhibit J, Special Provisions – Additional Terms & Conditions to Agreement.**
- K. Exhibit K, EJCDC Amendment to Owner-Engineer Agreement.
- L. **Exhibit L, Project Schedule.**
- M. **Exhibit M, Funding Program Requirements.** (*See Request for Proposal Appendix A*)
- N. **Exhibit N, EJCDC Contractor Payment Application.** (*For Inclusion at Bidding*)
- O. **Exhibit O, Project Closeout Checklist.** (*For inclusion at Bidding*)
- P. **Exhibit P, Engineer’s Originating Proposal Excerpt.**

### 8.02 *Total Agreement*

A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or

canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of **Exhibit K** to this Agreement.

#### 8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

#### 8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this **Paragraph 8.04**:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.**

Owner: **TOWN OF MORIAH**

Engineer: **TBA**

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

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

Print name: **HON. THOMAS SCOZZAFAVA**

Print name: \_\_\_\_\_

Title: **TOWN SUPERVISOR**

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

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

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

Engineer License or Firm's Certificate No. (if required): \_\_\_\_\_

State of: **NEW YORK**

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

**38 PARK PLACE, SUITE 1**

**PORT HENRY, NY 12974**

Designated Representative (**Paragraph 8.03.A**):

Designated Representative (**Paragraph 8.03.A**):

**Rob Wick, PMP**

Title: **Project Management Specialist**

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

Phone Number: **(518) 873-3426**

Phone Number: \_\_\_\_\_

E-Mail Address: **rwick@co.essex.ny.us**

E-Mail Address: \_\_\_\_\_

This is **EXHIBIT A**, consisting of **17** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1<sup>st</sup>, 2019**.

## **Engineer's Services**

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Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

### **PART 1 – BASIC SERVICES**

#### *A1.01 General Requirements:*

##### **A. Engineer shall provide:**

##### **1. Project Schedule.**

- a. Produce a project schedule in Gantt chart format at the start of the project as a baseline and continue to keep the schedule updated throughout project.
- b. Provide updates to the Owner for any changes to the schedule that may impact the timely execution of the project per the terms of the contract.

##### **2. Project & Program Management:**

- a. Conduct **bi-weekly progress meetings**, a minimum of one (1) project meeting per month, through all phases of design and construction; Engineer will notify Owner of any additional meetings required, whether they be informal, formal or official Board Meetings to pass various Resolutions.
- b. Engineer will keep all meeting minutes and distribute to attendees.
- c. Engineer will coordinate with Owner (or Owner's Designated Representative) for necessary permits.
- d. Ensure Engineer's own contract is compliant by the Owners' funding program requirements, and produce all necessary reports required.
- e. Ensure that Owners' Contractors contracts are also compliant per the Owners' funding program requirements, and all necessary reports required are produced.

#### *Study and Report Phase*

##### **B. Engineer shall:**

- ~~1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.~~

- a. ~~If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions:~~
  - b. ~~If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.~~
  - e. ~~If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify [ ] *[insert specific number]* alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.~~
2. ~~Identify potential solution(s) to meet Owner's Project requirements, as needed.~~
  3. ~~Study and evaluate the potential solution(s) to meet Owner's Project requirements.~~
  4. ~~Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.~~
  5. ~~Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.~~
  6. ~~After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.~~
  7. ~~Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.~~
  8. ~~Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.~~
  9. ~~Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.~~
  10. ~~When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and~~

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Exhibit A – Engineer's Services

EJDC® E-500, Agreement Between Owner and Engineer for Professional Services.

operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."

- ~~11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.~~
  - ~~12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.~~
  - ~~13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.~~
  - ~~14. Perform or provide the following other Study and Report Phase tasks or deliverables: [ ] [List any such tasks or deliverables here.]~~
  - ~~15. Furnish [ ] review copies of the Report and any other Study and Report Phase deliverables to Owner within [ ] days of the Effective Date and review it with Owner. Within [ ] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.~~
  - ~~16. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish [ ] copies of the revised Report and any other Study and Report Phase deliverables to the Owner within [ ] days of receipt of Owner's comments.~~
- ~~C. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.~~

#### A1.02 Preliminary Design Phase

- ~~A. After acceptance by Owner of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:~~
- ~~1. Project Permitting (these are not inclusive; may vary or change during the project):~~
    - ~~a. Topographic Survey & Map~~
    - ~~b. Boundary Survey & Map~~
    - ~~c. CONSULTANT shall provide technical support as needed to support any permitting process.~~
    - ~~d. CONSULTANT has allocated fees to cover the creation of drawings, technical documents, review of permit related documents and revision as needed~~

2. Prepare Schematic Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
3. In preparing the Schematic Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
4. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer **based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data,"** as set forth in **Paragraph A1.01.A.12** above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
5. Visit the Site as needed to prepare the Schematic Design Phase documents.
6. Advise Owner if additional reports, data, information, or services of the types described in **Exhibit B** are necessary and assist Owner in obtaining such reports, data, information, or services.
7. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
8. Based on the information contained in the Schematic Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
9. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.
10. Perform or provide the following other Schematic Design Phase tasks or deliverables:

**COORDINATE WITH THE OWNER AND OWNER'S PROJECT TEAM TO SUPPORT EFFORTS IN ACHIEVING ANY AND ALL PERMITTING NECESSARY FOR PROJECT TO REGULATORY AND FUNDING AGENCIES, PRIOR TO FINAL DESIGN AND IN TIME TO SUPPORT BIDDING OF CONSTRUCTION.**

11. Furnish **two [ 2 ]** review copies of the Schematic Design Phase documents, opinion of probable Construction Cost, and any other Schematic Design Phase deliverables to Owner within **thirty [ 30 ]** days of authorization to proceed with this phase, and review them with Owner. Within **ten [ 10 ]** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
  12. Revise the Schematic Design Phase documents, opinion of probable Construction Cost, and any other Schematic Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner **two [ 2 ] copies** of the revised Schematic Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within **fifteen [ 15 ] days** after receipt of Owner's **and any required Regulatory Agencies'** comments.
- B. Engineer's services under the Schematic Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Schematic Design Phase documents, revised opinion of probable Construction Cost, and any other Schematic Design Phase deliverables.
- A1.03 *Final Design Phase (100% complete Design for Regulatory/Funding Agency reviews)*
- A. After acceptance by Owner of the Schematic Design Phase documents, revised opinion of probable Construction Cost as determined in the Schematic Design Phase, and any other Schematic Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
    1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
    2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
    3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
    4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
    5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
    6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.



7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
  8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
  9. Perform or provide the following other Final Design Phase tasks or deliverables: **PROVIDE A FINAL SET OF PLANS & SPECS TO REGULATORY AND FUNDING AGENCIES IS SUCH TIME TO ALLOW FOR FORMAL REVIEW ACCEPTANCE PRIOR TO BIDDING CONSTRUCTION PROJECT.**
  10. Furnish for review by Owner, its legal counsel, and other advisors, **two [ 2 ] copies** of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within **sixty [ 60 ] days** of authorization to proceed with the Final Design Phase, and review them with Owner. Within **fifteen [ 15 ] days** of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
  11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit **two [ 2 ] final copies** of such documents to Owner **and any required Regulatory Agencies** within **twenty [ 20 ] days** after receipt of Owner's/Agencies comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is **1 - GENERAL CONTRACTOR**. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding Phase (incl. Program Compliant "Construction Documents")*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other

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construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:

1. **Conduct a Pre-Bidding Conference and ensure all potential Bidders are cognizant of any special considerations, to include Funding Agency requirements.**
2. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
3. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
4. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
5. Consult with Owner as to the qualifications of prospective contractors.
6. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
7. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of **Paragraph A2.02.A.2 of this Exhibit A.**
8. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
9. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
10. Perform or provide the following other Bidding Phase tasks or deliverables:

**ENGINEER WILL BE EXPECTED TO ENSURE ALL FUNDING REQUIREMENTS THAT THE PROJECT MUST BE COMPLIANT TO ARE CLEARLY CITED IN THE CONTRACT DOCUMENTS, TO ENSURE CONTRACTOR(S) HAVE ALL NECESSARY AGENCY PLAN & REPORT FORMS TO POPULATE, PER EXHIBIT M.**

- B. The Bidding Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if **Exhibit F** is a part of this Agreement).

## A1.05 Construction Phase

- A. Upon successful completion of the Bidding Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
  2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in **Exhibit D**. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in **Exhibit D**.
  3. **Additionally, RPR will conduct HUD/CDBG Wage Rate Interviews per Exhibit M, as required.**
  4. ~~*Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in **Exhibit B, Paragraph B2.01.**~~
  5. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
  6. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
  7. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

8. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
9. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
10. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
  - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
  - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
11. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.

12. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
13. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
14. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
15. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
16. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
17. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
18. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
19. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of **Paragraph A2.02.A.2 of this Exhibit A.**
20. *Inspections and Tests:*
  - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified

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indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.

- b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
  - c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
21. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within **ten (10) days** after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part **such that the Owner can pay the Contractor within a thirty (30) day term from invoice submission**. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
22. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents). **Further, the Engineer will review Contractor Submittals, to include any funding agency plans or reports that are due on monthly/quarterly deliverables for compliance and acceptability, to ensure that all project costs are funding agency compliant.**
  - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this

Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; ~~to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances;~~ or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

23. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, **Record Drawings**, Samples, and other data approved as provided under **Paragraph A1.05.A.17**. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages. **Engineer shall ensure that all Project Closeout documents listed in Exhibit P, "Project Closeout Checklist", are secured prior to issuing the "Notice of Acceptability of Work". Provided in Exhibit E.**
24. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
25. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables: **ENSURE ALL DELIVERABLES THROUGH CONSTRUCTION ADMINISTRATION ARE COMPLIANT AND IN ACCORDANCE WITH FUNDING PROGRAM REQUIREMENTS, LISTED IN EXHIBIT M.**
26. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as **Exhibit E ("Notice of Acceptability of Work")** that the Work is acceptable (subject to the provisions of the Notice and **Paragraph A1.05.A.21.b**) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
27. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the

acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in **Paragraph A1.03.D**, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of **Article 3**, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

#### A1.06 ~~Post-Construction~~ Close Out Phase

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
  - ~~2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.~~
  3. Perform or provide the following other ~~Post-Construction~~ Close Out Phase tasks or deliverables:  
  
**ENSURE ALL NECESSARY PROGRAM MANAGEMENT & DOCUMENTS ADDRESS FUNDING AGENCY REQUIREMENTS AS DEFINED IN EXHIBIT M.**
- B. The ~~Post-Construction~~ Close Out Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate ~~twelve~~ **two** months after the commencement of the Construction Contract's correction period.

## PART 2 – ADDITIONAL SERVICES

### A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in **Exhibit C**.



1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for ~~private or governmental grants, loans, or advances in connection with the Project~~; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in **Paragraph A1.01.A.1 and 2**.
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.

**NOTE: A PRIMARY DELIVERABLE OF THIS CONTRACT IS TO PROVIDE OWNER AN ELECTRONIC SET OF PROJECT DESIGN DATA TO INCLUDE ANY MAPS, DESIGNS, SPECIFICATIONS, ETC. USED IN CONJUNCTION WITH ESTABLISHING CONSTRUCTION DOCUMENTS (.pdf file type); THIS ACTIVITY IS NOT SUBJECT TO INTERPRETATION AS AN "ADDITIONAL SERVICE".**

7. Undertaking investigations and studies including, but not limited to:
  - a. detailed consideration of operations, maintenance, and overhead expenses;
  - b. ~~the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;~~
  - c. ~~preparation of appraisals;~~
  - d. ~~evaluating processes available for licensing, and assisting Owner in obtaining process licensing;~~
  - e. ~~detailed quantity surveys of materials, equipment, and labor; and~~

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~~f. audits or inventories required in connection with construction performed or furnished by Owner.~~

**NOTE: AS A PART OF THE CONSTRUCTION PHASE ADMINISTRATION SERVICES, THE ENGINEER IS EXPECTED TO PROVIDE ANALYSIS OF THE CONTRACTOR'S PAYMENT APPLICATIONS FOR ACCURACY REMITTED EACH MONTH, PER ATTACHED FORMS IN EXHIBITS, AND NOT SUBJECT TO INTERPRETATION AS AN "ADDITIONAL SERVICE".**

8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in **Exhibit B**, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
  - a. Services attributable to more prime construction contracts than specified in **Paragraph A1.03. D**.
  - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, *other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A)*.
- ~~12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.~~
13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by **Paragraph 5.02.A and Exhibit F**.
15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.

**NOTE: ENGINEER SHALL CITE IN CONSTRUCTION DOCUMENTS THAT THE CONTRACTOR IS RESPONSIBLE TO PROVIDE (2) SETS OF RECORD**

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Exhibit A – Engineer's Services

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**DRAWINGS, AND ENGINEER SHALL REVIEW FOR ACCURACY AND APPLY ANY NECESSARY MARKUPS, AS REQUIRED AS A NORMAL CONSTRUCTION PHASE SERVICES ACTIVITY, NOT SUBJECT TO INTERPRETATION AS “ADDITIONAL SERVICES”.**

18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner’s staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under **Paragraph A1.05.A.8**; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor’s compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

*A2.02 Additional Services Not Requiring Owner’s Written Authorization*

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.

**NOTE: ENGINEER SHALL COMMUNICATE TO OWNER ANY CHANGES TO THE PLANS & SPECIFICATIONS THAT RESULT IN PRODUCT CHANGES THAT DO NOT MEET THE EXISTING CONFIGURATION MANAGEMENT OR PRODUCT STANDARDS, PER THE ORIGINATING RFP, APPENDIX J.**

3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is **EXHIBIT B**, consisting of **4** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1<sup>st</sup>, 2019**.

## **Owner's Responsibilities**

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**Article 2** of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  1. Property descriptions.
  2. Zoning, deed, and other land use restrictions.
  3. ~~Utility and topographic mapping and surveys.~~
  4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.

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**Exhibit B – Owner's Responsibilities**

**EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.**

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5. Explorations and tests of subsurface conditions at or adjacent to the Site; ~~geotechnical reports and investigations~~; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, ~~laboratory tests and inspections of samples, materials, and equipment~~; with ~~appropriate professional interpretation of such information or data~~.
  6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
  7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
  3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- ~~G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.~~

**NOTE: THE ENGINEER SHALL PROVIDE AND/OR PROCURE AND NECESSARY TESTING THAT NEEDS TO OCCUR IN ORDER TO PRODUCE CONSTRUCTION DOCUMENTS. THE ENGINEER SHALL CITE IN CONSTRUCTION DOCUMENTS THE REQUISITE CONSTRUCTION PERMITTING, AND THAT THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY CONSTRUCTION PHASE TESTING THAT IS NECESSARY.**

- ~~H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.~~

**NOTE: THE ENGINEER IS RESPONSIBLE TO WORK WITH OWNER RESOURCES FROM COUNTY DEPARTMENTS TO SECURE ALL NECESSARY PERMITTING AND ENVIRONMENTAL APPROVALS FOR THE PROJECT.**

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this **Exhibit B** the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this **Exhibit B** that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in **Exhibit A**.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in **Part 2 of Exhibit A** of the Agreement, as required.
- T. Perform or provide the following: (SEE EXHIBIT J and EXHIBIT P)

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This is **EXHIBIT C**, consisting of **2** pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated **May 1<sup>st</sup>, 2019**.

**Payments to Engineer for Services and Reimbursable Expenses**  
**COMPENSATION PACKET BC-1: Basic Services – Lump Sum**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

**C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment**

A. Owner shall pay Engineer for Basic Services set forth in **Exhibit A**, except for services of *Engineer’s Resident Project Representative*, if any, as follows:

1. A Lump Sum amount of **\$TBA** based on the following estimated distribution of compensation, **and per the cost proposal included in Exhibit P**:

- a. **General Requirements/PM Services** **\$TBA**
- b. **Preliminary Design Phase** **\$TBA**
- c. **Final Design Phase** **\$TBA**
- d. **Bidding Phase** **\$TBA**
- e. **Construction Phase** **\$TBA**
- f. ~~**Post-Construction Phase**~~ ~~**\$0.00**~~

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.

3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.

4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following **Reimbursable Expenses (to include fees for Resident Project Representative included in “Compensation Packet RPR-2”**. Also see **Appendix 1 for rates or charges): \$TBA**

5. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the

billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

- B. *Period of Service:* The compensation amount stipulated in **Compensation Packet BC-1** is conditioned on a period of service **not exceeding December 15<sup>th</sup>, 2020**. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

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## COMPENSATION PACKET RPR-2: Resident Project Representative – Standard Hourly Rates

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

### C2.04 *Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment*

#### A. *Owner shall pay Engineer for Resident Project Representative Basic Services as follows:*

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative under **Paragraph A1.05.A of Exhibit A**, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be **\$TBA** (*This figure includes projected travel fees: Labor is \$TBA and travel is projected at \$TBA*) based upon full-time RPR services on an eight-hour workday, Monday through Friday, **over an a projection of (XX) hours per week, for (XX) weeks, or approximately (XXX) hours of allocation during the approximate one hundred twenty (120) day** construction schedule.

#### B. *Compensation for Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under **Paragraph C2.01**, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in **Appendix 1 to this Exhibit C**.
2. Reimbursable Expenses include the expenses identified in **Appendix 1** and the following: transportation (including mileage), lodging, and subsistence incidental thereto; ~~providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges;~~ reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of **1.1, AND LIMITED TO THE DELIVERABLES LISTED IN PARAGRAPH C2.01 OF EXHIBIT C**.
4. ~~The Reimbursable Expenses Schedule will be adjusted annually (as of January 1<sup>st</sup>, 2019) to reflect equitable changes in the compensation payable to Engineer.~~

#### C. *Other Provisions Concerning Payment Under this Paragraph C2.04:*

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Exhibit C – Compensation Packet RPR-2: Resident Project Representative Services—  
Standard Hourly Rates Method of Payment.

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1. **Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants**, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of **1.1**, **AND LIMITED TO THE DELIVERABLES LISTED IN PARAGRAPH C2.01 OF EXHIBIT C**.
2. *Factors*: The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts*:
  - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
  - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

**COMPENSATION PACKET AS-1:  
Additional Services – Standard Hourly Rates**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment**

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to **Paragraph A2.01 or A2.02 of Exhibit A**, except for services as a consultant or witness under **Paragraph A2.01.A.20**, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.
- B. *Compensation For Reimbursable Expenses:*
1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under **Paragraph C2.01** and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in **Appendix 1 to this Exhibit C**.
  2. Reimbursable Expenses include the expenses identified in **Appendix 1** and the following categories: transportation (including mileage), ~~lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges;~~ reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
  3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of **ONE POINT ONE [ 1.1], AND LIMITED TO THE DELIVERABLES LISTED IN PARAGRAPH C2.01 OF EXHIBIT C**.
  4. ~~The Reimbursable Expenses Schedule will be adjusted annually (as of January 1<sup>st</sup>, 2019) to reflect equitable changes in the compensation payable to Engineer.~~
- C. *Other Provisions Concerning Payment for Additional Services:*
1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of **ONE POINT ONE [ 1.1 ], AND LIMITED TO THE DELIVERABLES LISTED IN PARAGRAPH C2.01 OF EXHIBIT C**.

2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

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This is **Appendix 1 to EXHIBIT C**, consisting of **1** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1<sup>st</sup>, 2019**.

## **Reimbursable Expenses Schedule**

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Reimbursable Expenses are subject to review and adjustment per **Exhibit C**. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

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This is **Appendix 2 to EXHIBIT C**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1<sup>st</sup>, 2019**.

## **Standard Hourly Rates Schedule**

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A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this **Appendix 2 to this Exhibit C** and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in **Article C2**.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

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This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1<sup>st</sup>, 2019**.

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## **Duties, Responsibilities, and Limitations of Authority of Resident Project Representative**

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Article 1 of the Agreement is supplemented to include the following agreement of the parties:

### **ARTICLE 1 - SERVICES OF ENGINEER**

#### *D1.01 Resident Project Representative*

- A. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer’s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions.
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor’s work in progress, for the coordination of the Constructors’ work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in **Exhibit A, Paragraph A1.05**, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
  - 1. *General:* RPR’s dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
  - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
  - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor’s safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
  - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
  - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-site operations.
  - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:*
  - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
  - b. Receive Samples that are furnished at the Site by Contractor and notify Engineer of availability of Samples for examination.
  - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*
  - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
  - b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work; and

- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer-proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (**Exhibit E**).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

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This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1<sup>st</sup>, 2019**.



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**NOTICE OF ACCEPTABILITY OF WORK**

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**PROJECT: MORIAH COLLEGE STREET WATER & SEWER UTILITY REPLACEMENT**

**OWNER: TOWN OF MORIAH, NY**

**CONTRACTOR: TBA**

**OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION: P-1003-2019**

**EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT: TBA**

**ENGINEER: TBA**

**NOTICE DATE:**

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**To: Town of Moriah  
Owner**

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**And To: TBA  
Contractor**

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**From: TBA  
Engineer**

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The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, and the following terms and conditions of this Notice:

**CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK**

The Notice of Acceptability of Work (“Notice”) is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer’s professional opinion.
3. This Notice is given as to the best of Engineer’s knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor’s work) under Engineer’s Agreement with Owner, and applies only to facts that are within Engineer’s knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor’s performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner’s reservations of rights with respect to completion and final payment.

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

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

Dated: \_\_\_\_\_

This is ~~EXHIBIT F~~, consisting of ~~1~~ pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated [ ].

## Construction Cost Limit

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Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

### ~~F5.02 — Designing to Construction Cost Limit~~

- ~~A. — Owner and Engineer hereby agree to a Construction Cost limit in the amount of \$[ ].~~
- ~~B. — A bidding or negotiating contingency of [ ] percent will be added to any Construction Cost limit established.~~
- ~~C. — The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.~~
- ~~D. — Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit.~~
- ~~E. — If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.~~
- ~~F. — If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Construction Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.~~

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### Exhibit F – Construction Cost Limit.

EJDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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This is **EXHIBIT G**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1<sup>st</sup>, 2019**.

## **Insurance**

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**Paragraph 6.05** of the Agreement is supplemented to include the following agreement of the parties:

### G6.05 *Insurance*

A. The limits of liability for the insurance required by **Paragraph 6.05.A and 6.05.B** of the Agreement are as follows:

**1. By Engineer:**

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
  - 1) Bodily injury, each accident: \$100,000.00
  - 2) Bodily injury by disease, each employee: \$50,000.00
  - 3) Bodily injury/disease, aggregate: \$100,000.00
- c. General Liability --
  - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000.00
  - 2) General Aggregate: \$2,000,000.00
- d. Excess or Umbrella Liability --
  - 1) Per Occurrence: \$1,000,000.00
  - 2) General Aggregate: \$1,000,000.00

Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): \$1,000,000.00
- e. Professional Liability --
  - 1) Each Claim Made \$1,000,000.00
  - 2) Annual Aggregate \$2,000,000.00
- f. Other (specify): \$[ ]

2. **By Owner:**

a. Workers' Compensation:	Statutory
b. Employer's Liability --	
1) Bodily injury, Each Accident	\$100,000.00
2) Bodily injury by Disease, Each Employee	\$500,000.00
3) Bodily injury/Disease, Aggregate	\$100,000.00
c. General Liability --	
1) General Aggregate:	\$2,000,000.00
2) Each Occurrence (Bodily Injury and Property Damage):	\$1,000,000.00
d. Excess Umbrella Liability	
1) Per Occurrence:	\$1,000,000.00
2) General Aggregate:	\$1,000,000.00
Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):	\$1,000,000.00
e. Other (specify):	\$( [REDACTED] )

B. *Additional Insureds:*

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:

a. TBA  
Engineer

b. \_\_\_\_\_  
Engineer's Consultant

c. \_\_\_\_\_  
Engineer's Consultant

d. [ ]  
\_\_\_\_\_  
[other]

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.

3. The Owner shall be listed on Engineer's general liability policy as provided in **Paragraph 6.05.A.**

This is ~~EXHIBIT H~~, consisting of 2 pages, referred to in and part of the ~~Agreement between Owner and Engineer for Professional Services~~ dated ~~December 1st, 2018~~.

## Dispute Resolution

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Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

*[NOTE TO USER: Select one of the two alternatives provided.]*

### ~~H6.08 – Dispute Resolution~~

~~A. *Mediation:* Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by [here insert name of mediator, or mediation service]. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.~~

~~{or}~~

~~A. *Arbitration:* All Disputes between Owner and Engineer shall be settled by arbitration in accordance with the [insert the name of a specified arbitration service or organization here] rules effective at the Effective Date, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Paragraph H6.09.A will be specifically enforceable under prevailing law of any court having jurisdiction.~~

~~1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the [specified arbitration service or organization]. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.~~

~~2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$[ ] (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$[ ] (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$[ ] (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.~~

~~3. The rules of any arbitration shall be supplemented to include the following: The award rendered by the arbitrators shall be in writing, and shall include (a) a precise breakdown of the award, and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.~~

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Exhibit H - Dispute Resolution.

- ~~4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.~~
- ~~5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Engineer may join such Joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Paragraph H6.09.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.~~

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This is ~~EXHIBIT I~~, consisting of [ ] pages, referred to in and part of the ~~Agreement between Owner and Engineer for Professional Services dated August 17<sup>th</sup>, 2018.~~

## Limitations of Liability

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Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

~~A. *Limitation of Engineer's Liability*~~

~~1. *Engineer's Liability Limited to Stated Amount, or Amount of Engineer's Compensation:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all injuries, claims, losses, expenses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project, Engineer's or its Consultants' services, or this Agreement, from any cause or causes whatsoever, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants, shall not exceed the total amount of \$[ ] or the total compensation received by Engineer under this Agreement, whichever is greater. Higher limits are available for an additional fee.~~

~~2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, including but not limited to:~~

~~*[NOTE TO USER: List here particular types of damages that may be of special concern because of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc.]*~~

~~B. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or~~

~~destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.~~

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Exhibit I - Limitations on Liability.

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This is **EXHIBIT J**, consisting of [ 1 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1<sup>st</sup>, 2019**.

## **Special Provisions**

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**Paragraph(s) A. 1.03** of the Agreement is/are amended to include the following agreement(s) of the parties:

**SEE EXHIBIT ATTACHED FOR ADDITIONAL TERMS & CONDITIONS FOR THE TOWN.**

**ALSO SEE EXHIBIT P., “ENGINEER’S ORIGINATING PROPOSAL” FOR SCOPE AND COST PROPOSAL ELEMENTS, ALSO INCLUDED IN THIS CONTRACT.**

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This is **EXHIBIT K**, consisting of [ ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **May 1<sup>st</sup>, 2019**.

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**  
**Amendment No. \_\_\_\_\_**

**The Effective Date of this Amendment is: \_\_\_\_\_.**

Background Data

Effective Date of Owner-Engineer Agreement:

Owner: **TOWN OF MORIAH, NY**

Engineer: **TBA**

Project: **TOWN OF MORIAH COLLEGE ST. WATER & SEWER UTILITY REPLACEMENT**

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- \_\_\_ Additional Services to be performed by Engineer
- \_\_\_ Modifications to services of Engineer
- \_\_\_ Modifications to responsibilities of Owner
- \_\_\_ Modifications of payment to Engineer
- \_\_\_ Modifications to time(s) for rendering services
- \_\_\_ Modifications to other terms and conditions of the Agreement

Description of Modifications:

***Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.***

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): \_\_\_\_\_

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in **Exhibit C**.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

**OWNER: TOWN OF MORIAH, NY**

**ENGINEER: TBA**

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

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

**Print name:** HON. THOMAS SCOZZAFAVA

**Print name:** \_\_\_\_\_

**Title:** TOWN SUPERVISOR

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

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

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

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