

# PROJECT MANUAL

for the

## **Veteran's Road Culvert Replacement Over Five Mile Creek**

**Town of Ticonderoga  
Essex County, New York**

**D036296  
PIN 1761.09**

**March 2022**

**Prepared For:**



Town of Ticonderoga  
132 Montcalm Street  
Ticonderoga, New York 12883

**Prepared By:**

# **GPI**

Greenman-Pedersen, Inc.  
80 Wolf Road, Suite 300  
Albany, New York 12205

Submitted in accordance with the Highway Law and the Standard  
Specifications officially finalized and adopted on May 1, 2022 as posted on  
the New York State Department of Transportation's website.

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## INVITATION TO BIDDERS

### **Veteran's Road Culvert Replacement over Five Mile Creek**

Town of Ticonderoga, Essex County, New York

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NOTICE IS HEREBY GIVEN, that the Essex County Purchasing Agent, on behalf of the Undersigned Supervisor of the Town of Ticonderoga, will accept sealed bids at the Office of Purchasing, 7551 Court Street, Elizabethtown, NY 12932 until **2:00 p.m., Tuesday, May 3, 2022**, at which time bids will be publicly opened and read aloud for the **Veteran's Road Culvert Replacement over Five Mile Creek**.

No pre-bid conference will be held or will be scheduled.

Bid Documents will be available on or after **Monday, April 11, 2022** and may be obtained from the Essex County website, <https://www.co.essex.ny.us/bidders/publicbids.aspx>. Contractors that obtain Contract Documents from a source other than Essex County must register with the project on the Essex County website in order to be placed on the official plan holder's list, to receive addenda and other bid correspondence. Hard copy plan sets are available for purchase from the office of the Engineer:

Greenman-Pedersen, Inc., 80 Wolf Road #300, Albany, NY 12205, (518) 898-9566.

A complete bid must contain all documents listed on the Bidder's Checklist in accordance with the Instruction to Bidders. This is a Unit Price bid. No bidder may withdraw their bid within forty-five (45) calendar days after the actual date of the bid opening. Each bid must be accompanied by a Certified Check or Bid Bond, payable to the Town of Ticonderoga in the amount of five percent (5%) of the base bid in accordance with the Instruction to Bidders.

The successful bidder will be required to furnish construction performance and payment bonds in the full amount of the contract price. The successful bidder will be required to comply with all provisions of the Federal Government Equal Opportunity clauses issued by the Secretary of Labor on May 21, 1968 and published in the Federal Register (41 CFR Part 60-1, 33 F.2 7804). This project is being progressed through the New York State Department of Transportation Culvert NY Program under PIN 1761.09. Construction will be in strict conformance with all NYSDOT Requirements and governed by the NYSDOT Standard Specification Section 100 – General Provisions and Section 200 thru 700 – Technical Specifications.

The Town affirmatively states that in regard to any contract entered into pursuant to these instructions, without regard to race, color, sex, religion, age, national origin, disability, sexual preference or Vietnam Era veteran status, disadvantaged and minority or women-owned business enterprises will be afforded equal opportunity to submit bids in response hereto.

In addition to bid sheets, the bidder shall submit executed non-collusion bid certificates signed by the bidder or one of its officers as required by the General Municipal Law Sec. 103d. The bidder shall also submit an executed certificate with the Iran Divestment Act signed by the bidder or one of its officers as required by the General Municipal Law Sec. 103g.

A Contract awarded pursuant to this notice shall be subject to the provisions of Sections 103-1, 103-b, 103-d and 103-g of the General Municipal Law.

The Town of Ticonderoga reserves the right to reject any and all bids, to waive any and all informalities and the right to disregard all nonconforming, non-responsive or conditional bids.

MARK WRIGHT  
Town of Ticonderoga

## INSTRUCTION TO BIDDERS

### **Veteran's Road Culvert Replacement over Five Mile Creek**

Town of Ticonderoga, Essex County, New York

D036296, PIN 1761.09

#### **1. Defined Terms**

- 1.1. Certain additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

Bidder – one who submits a bid directly to owner as distinct from sub-bidder, who submits a bid to a bidder.

Issuing Office – the office from which the bidding documents are to be issued and where the bidding procedures are to be administered.

Successful Bidder – the lowest responsible, responsive bidder to whom owner (on the basis of owner's evaluation as hereinafter provided) makes an award.

Agreement – The written contract between OWNER and CONTRACTOR covering the Work to be performed.

Bid – The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

Bidding Documents – The advertisement or invitation to Bid, instructions to bidders, the Bid form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids)

Contract Times – The number of days to the dates stated in the Agreement; to achieve substantial completion and to complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

CONTRACTOR – The person, firm or corporation with whom Owner has entered into the Agreement.

Drawings – The drawings which show the scope, extent, and character of the Work to be furnished and performed by CONTRACTOR and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents. Shop drawings are not Drawings as so defined.

Effective Date of the Agreement – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the agreement is signed and delivered by the last of the two parties to sign and deliver.

Engineer – The person, firm or corporation named as such in the Agreement.

Notice of Award – The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions present therein, within the time specified, OWNER will sign and deliver the Agreement.

OWNER – The public body or authority, corporation, association, firm or person with whom CONTRACTOR has

entered into the Agreement and for whom the Work is to be provided.

Underground Facilities – All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or material: electricity, gases, steam, liquid petroleum products, telephone, cable television, or other communications, sewage and drainage removal, traffic or other control systems or water.

#### **2. Copies of Bidding Documents**

- 2.1. Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Advertisement or Invitation to Bidders may be obtained from the Issuing Office. If the bidding documents are obtained from a source other than the issuing office, contractor must notify issuing office in order to be placed on the official plan holder's list, receive addenda and other bid correspondence. Bids received from contractors other than those on the official plan holder's list will not be accepted.
- 2.2. Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Document.
- 2.3. Owner and Engineer in making copies of Bidding Documents Available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

#### **3. Bidders Qualifications**

All Bidders, including foreign and domestic corporations must be qualified and/or licensed to do business within the state where the project is located. The Owner reserves the right to make any investigation deemed necessary to determine bidder qualifications and responsibility. All prospective bidders shall have completed projects of this nature and size previously, within similar time constraints. Bidder shall be prepared to furnish the Owner, upon request, with a listing of no less than three (3) previous similar projects successfully completed. Bidder shall furnish to the Owner, upon request, all data pertinent thereto.

#### **4. Examination of Contract Documents and Site**

- 4.1. It is the responsibility of each bidder before submitting a Bid:
  - 4.1.1. To examine thoroughly the Contract Documents and other related data identified in the bidding documents (including "technical data" referred to below);



- 4.1.2. To visit the site to become familiar with and satisfy Bidder as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the work;
- 4.1.3. To consider federal, state, and local laws and regulations that may affect cost, progress, performance, or furnishing of the Work;
- 4.1.4. To study and carefully correlate Bidders knowledge and observations with the Contract Documents and such other related data;
- 4.1.5. To promptly notify Engineer of all conflicts, errors, ambiguities or discrepancies which Bidder has discovered in or between the Contract Documents and such other related documents.
- 4.2. Information and data or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by Owners of such Underground Facilities or others, and the Owner and Engineer do not assume responsibility for the accuracy or completeness thereof.
- 4.3. Before submitting a Bid each Bidder will be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or performing and furnishing the Work in accordance with the time, price, and other terms and conditions of the Contract Documents.
- 4.4. On request, OWNER will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests, and studies as each Bidder deems necessary for submission of a Bid. Bidder must fill all holes and clean up and restore the site to its former conditions upon completion of such explorations, investigations, tests and studies.
- 4.5. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 5, that without exception of the Bid is premised upon performing and furnishing the Work required by the Contract Documents and applying the specific means, methods, techniques, sequences, or procedures for construction (if any) that may be shown or indicated or expressly required by the Contract Documents, the Bidder has given Engineer written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Contract Documents, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

## **5. Availability of Lands for Work, etc.**

The lands upon which the Work is to be performed, right-of-

way and easements for access thereto and other lands designated for use by the Contractor in performing the Work are identified in the Contract Documents. All additional land and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by OWNER unless otherwise provided in the Contract Documents.

## **6. Interpretation and Addenda**

- 6.1. No interpretations of the meaning of the specifications of other pre-bid documents will be made to any Bidder orally. Every request for such interpretation should be in writing or email addressed to the ENGINEER:

Sheri Kern  
Greenman-Pedersen, Inc.  
80 Wolf Road, Suite 300  
Albany, New York 12205  
skern@gpinet.com

Any oral discussions between the Bidder and the OWNER are to be considered informal and not binding. Any supplemental instructions will be in the form of written addenda. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addendum, so issued, shall become part of the contract documents. The OWNER and ENGINEER shall cease responding to bidders after the seventh calendar day preceding the bid opening date, so as to issue the final addendum, if necessary, for bidders to reflect in their bid submissions.

- 6.2. Addenda may also be issued to modify the Bidding documents as deemed advisable by OWNER and ENGINEER.

## **7. Bid Security**

- 7.1. Each Bid must be accompanied by Bid security made payable to the OWNER in the amount of five percent (5%) of Bidders maximum Bid price and in the form of a certified or bank check or a Bid Bond (on form attached, if a form is prescribed) issued by a surety.
- 7.2. The Bid security of Successful Bidder will be retained until such Bidder has executed the Agreement, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Bidder fails to execute and deliver the Agreement and furnish the required contract security within fifteen (15) days after Notice of Award, OWNER may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom OWNER believes to have a reasonable chance of receiving the award may be retained by the OWNER until the earlier of the seventh (7) day after the Effective Date of the Agreement or the forty-fifth (45) day after the Bid opening, whereupon Bid security furnished by such Bidders will be returned. Bid security with Bids

which are not competitive will be returned within seven (7) days after the bid opening.

## **8. Contract Times**

The number of days within which, or the dates by which, the Work is to be substantially completed and also completed and ready for final payment.

## **9. Liquidated Damages**

The successful bidder, upon his failure or refusal to execute and deliver the contract and bonds required within ten (10) days after he has received notice of acceptance of bid, shall forfeit to the OWNER, as liquidated damages for such failure or refusal, the security deposited with his bid.

The bidder must also agree to liquidated damages in accordance with Section 108 of the current New York State Department of Transportation Standard Specifications as of the date of advertisement per calendar day beyond the completion date of **120 days after Notice to Proceed has been issued.**

## **10. Substitute and "Or-Equal" Items**

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement.

## **11. Subcontractors, Suppliers and Others**

- 11.1. The identity of certain Subcontractors, Suppliers and other persons and organizations (including those who are to furnish the principal items of material and equipment) to be submitted to the OWNER in advance of a specified date prior to the Effective Date of the Agreement, apparent Successful Bidder, and any other Bidder so requested, shall within five (5) days of Notice of Award submit to OWNER a list of all such Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work for which such identification is required.

An OWNER or ENGINEER who after due investigation reasonably believes that a Subcontractor, Supplier or other person or organization is suspended, debarred or has otherwise been declared ineligible to perform this contract, may request that a Successful Bidder submit an acceptable substitute Subcontractor, Supplier, person or organization.

If apparent Successful Bidder declines to make any such substitution, the OWNER may award the contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, other persons and organizations.

- 11.2. In contracts where the Contract Price is on the basis of Cost-of-the-Work Plus a Fee, apparent Successful Bidder, prior to the Notice of Award, shall identify in writing to

the OWNER those portions of the Work that such Bidder proposes to subcontract and after the Notice of Award may only subcontract other portions of the Work with OWNER's written consent.

- 11.3. No CONTRACTOR shall be required to employ any Subcontractor, Supplier, other person or organization against whom the CONTRACTOR has a reasonable objection.

## **12. Bid Form**

- 12.1. The Bid Form and the Bid Summary Form (where applicable) are included with the Bidding documents; additional copies may be obtained from Engineer (or issuing office).
- 12.2. All blanks on the Bid Form must be completed by printing in black ink or by typewriter.
- 12.3. Bids by corporations must be executed in the corporate name by the president or vice president (or corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.
- 12.4. Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.
- 12.5. All names must be typed or printed in black ink below the signature.
- 12.6. The Bid shall contain acknowledgement of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).
- 12.7. The address and telephone number for communications regarding the Bid must be shown.
- 12.8. All documents set forth in the Bidders Checklist must be submitted with bid.

## **13. Submission of Bids**

Bids shall be submitted at the time and place indicated in the Advertisement or Invitation to Bidders and shall be enclosed in a sealed envelope, marked with the project title and name an address of Bidder and accompanied by the Bid security and other required documents (see bidders checklist). If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

## **14. Modification and Withdrawal of Bids**

- 14.1. Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are submitted at any time prior to the opening of Bids.
- 14.2. Where a unilateral error or mistake is discovered in a Bid, such Bid may be withdrawn after showing of the following: (1) the mistake is known or made known to the OWNER and ENGINEER prior to the awarding of the

contract or within three days after opening of the Bid, whichever period is shorter; and (2) the price Bid was based on an error of such magnitude that enforcement would be unconscionable; and (3) the Bid was submitted in good faith and the Bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; and (4) the error in the Bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, goods or services made directly in the compilation of the Bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn by inspection of the original work papers, documents or materials used in the preparation of the Bid; and (5) it is possible to place the OWNER in status quo ante.

#### **15. Opening of Bids**

Bids will be opened and (unless obviously non-responsive) read aloud publicly at the place where bids are to be submitted. An abstract of the amounts of the base Bids and major alternates (if any) may be made available to Bidders after the opening of the Bids.

#### **16. Bids to Remain Subject to Acceptance**

All Bids will remain subject to acceptance for forty-five (45) days after the day of the Bid opening, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to that date.

#### **17. Award of Contract**

- 17.1. To the fullest extent permitted by law OWNER reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, non-responsive, unbalanced, or conditional Bids and to reject the Bid of any Bidder if OWNER believes that it would not be in the best interest of the project to make an award to that Bidder, whether because the Bid is not responsible or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by OWNER. OWNER also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate, to the extent permitted by law, contract times with the Successful Bidder.
- 17.2. Discrepancies between words and figures will be resolved in favor of the words. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.
- 17.3. In evaluating Bids, OWNER will consider the qualifications of Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, lump sum price and other data, as may be requested in the Bid form or prior to Notice of Award.
- 17.4. OWNER may consider the operating costs, maintenance requirements, performance data and guarantees of major

item of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to Notice of Award.

- 17.5. OWNER may conduct such investigations as OWNER deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications, and financial ability of Bidders, to perform and furnish the Work in accordance with the Contract Documents to OWNER'S satisfaction within the prescribed time.
- 17.6. If the contract is to be awarded, it will be awarded to the lowest responsible Bidder whose evaluation by OWNER indicates to OWNER that the award will be in the best interest of the project.
- 17.7. If the contract is to be awarded, OWNER will give successful Bidder a Notice of Award within forty-five (45) days after the day of the Bid opening.

#### **18. Contract Security**

When successful Bidder delivers the executed Agreement to OWNER, it must be accompanied by the required performance and payment Bond.

#### **19. Signing of Agreement**

When OWNER gives Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement Within fifteen days thereafter CONTRACTOR shall sign and deliver the required number of counterparts of the Agreements to OWNER with the required bonds. Within ten days thereafter OWNER shall deliver one fully signed counterpart to CONTRACTOR.

#### **20. Pre-Bid Conference**

A pre-bid conference may be held as outlined in the Invitation to Bidders. If held, representatives of the OWNER and ENGINEER will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference. ENGINEER will transmit to all prospective Bidders of record such Addenda as ENGINEER considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

#### **21. Lobbying Activities on Federal Aid Contracts**

Each Bidder is required to comply with the provisions contained in the Requirements Regarding Lobbying Activities on Federal Aid Contracts and shall submit the Disclosure of Lobbying Activities with the Bid.

#### **22. Sales and Use Taxes**

OWNER is exempt from New York State Sales and Use Tax on materials and equipment to be incorporated into work. Said taxes should not be included in Contract Price.

#### **23. Non-Collusive Bidding Procedures**

Each Bidder is required to comply with the requirement regarding non-collusive bidding procedures and shall submit the appropriate Non-Collusive Bidding Certification and

Non-Collusive Bidding Certification Bidder Information with the Bid. Knowledge of bid collusions or other questionable contract related practices shall be reported per the instructions contained in Reporting Violations of the Non-Collusive Bidding Procedures, Misconduct, or other Prohibited Contract Activities.

#### **24. Disadvantaged/Minority/Women Business Enterprise Utilization Goals**

The provisions for Disadvantaged Business Enterprise Utilization Goals are set forth in the Additional State and Federal Conditions herein. Each bidder must submit the Disadvantaged/Minority/Women's Business Enterprise Utilization Goals (D/M/WBE) form with its bid. The goal requirement for this project is 6% of the total bid price for Minority Business Enterprise (MBE), 13% of the total bid price for Women Business Enterprise (WBE), and 6% of the total bid price for Service Disabled Veteran Owned Business (SDVOB).

#### **25. Equal Employment Opportunity Participation Goals**

The provisions for Equal Employment Opportunity Participation Goals are set forth in the Additional State and Federal Conditions herein.

#### **26. Schedule for Bid and Award of Contract**

A schedule of the major events required for the Bid and Award is shown below:

- Notice of Award - No later than 45 days following Bid Opening
- Signed Documents returned by Contractor - No later than 15 days following Notice of Award
- Signed Documents returned by the Owner with Notice to Proceed - No later than 10 days following Signed Documents returned by Contractor
- Submittal of Bonds and Insurance - No later than 15 days following Notice of Award

#### **27. Prevailing Wages**

This is a public works project and the higher of Davis-Bacon wages and prevailing wages as determined by the New York State Department of Labor must be paid.

#### **28. Federal Aid Contract**

This is NOT a federally-aided contract, and is subject to the approval of New York State Department of Transportation (NYSDOT).

The low bidder will be required to complete a New York State Uniform Contracting Questionnaire. The questionnaire must be reviewed and approved by NYSDOT before the Owner may award the Contract.

#### **29. Delegation of Authority**

Where reference is made to New York State, Commissioner of Transportation, State Department of Transportation Officials and Employees, etc., either in these specifications or the NYSDOT Standard Specification, Construction and Materials it shall mean the appropriate Town of Ticonderoga Official.

The Town of Ticonderoga or its authorized representative shall make all final interpretations of any questions or irregularities arising out of these specifications and the NYSDOT Standard Specification, Construction and Materials used on this project.

Under subsequent sections of this document the term "OWNER" shall mean the Town of Ticonderoga and being the governmental unit whose name is given on the Contract Document cover.

## **BIDDER'S CHECKLIST**

### **Veteran's Road Culvert Replacement over Five Mile Creek Town of Ticonderoga, Essex County, New York D036296, PIN 1761.09**

In order to submit a complete bid, Bidders must submit the following documents:

- \_\_\_\_\_ Bid Form: Page 10-13
- \_\_\_\_\_ Certified Copy of Resolution of Board of Directors (For Corporations): Page 14
- \_\_\_\_\_ Bid Sheets: Page 15-25
- \_\_\_\_\_ Lobbying Certifications: Page 26-30
- \_\_\_\_\_ Non-Collusive Bidding Certification: Page 31-37
- \_\_\_\_\_ Bid Bond or Certified Bank Check: Page 38-39
- \_\_\_\_\_ Affidavit of Worker's Compensation: Page 40
- \_\_\_\_\_ Certification of Compliance Iran Divestment Act: Page 41
- \_\_\_\_\_ D/M/WBE Utilization Goals: Page 42
- \_\_\_\_\_ Proof of Ability to do Work in NYS or Covenant to Obtain  
(Obtained from NY Department of State)

**Also the following forms are due from the apparent responsible low bidder no later than 7 days after bid opening:**

- \_\_\_\_\_ NYS Uniform Contracting Questionnaire with attachments (17 pages minimum)
- \_\_\_\_\_ The Contractor shall submit a complete M/WBE utilization package in EBO.

***PLEASE DO NOT SUBMIT THE ENTIRE PROJECT MANUAL WITH YOUR BID. BIDDERS SHALL SUBMIT ALL DOCUMENTS PRESENTED IN THIS CHECKLIST ON SINGLE-SIDED SHEETS IN THE EXACT ORDER SHOWN. NO SUBSTITUTION OF FORMS WILL BE ALLOWED. ENTRIES MAY BE TYPED OR LEGIBLY HANDWRITTEN EXCEPT AS SPECIFICALLY NOTED.***

**BID FORM**

PROJECT IDENTIFICATION: PIN 1761.09  
 Veteran's Road Culvert over Five Mile Creek  
 Town of Ticonderoga  
 Essex County, New York

CONTRACT IDENTIFICATION: D036296

THIS BID IS SUBMITTED TO: Linda Wolf, CPA  
 Essex County Purchasing Department  
 7551 Court Street – PO Box 217  
 Elizabethtown, NY 12932

1. The undersigned BIDDER proposes and agrees, if this bid is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all work as specified or indicated in the Contract Documents for the Bid Price and Bid Times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents
2. Bidder accepts all the terms and conditions of the Advertisement or Notice to Bidders and Instruction to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for forty-five (45) days after the Bid opening. Bidder will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen (15) days after the date of OWNER's Notice of Award
3. In submitting this Bid, BIDDER represents as more fully set forth in the Agreement, that:
  - a. BIDDER has examined and carefully studied the Bidding Documents and the following Addenda receipt of all which is hereby acknowledged: (List Addenda by Addendum Number and Date)  


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  - b. BIDDER has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, and furnishing of the work.
  - c. BIDDER is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of work.



7. Communications concerning this Bid shall be addressed in writing to:

Essex County Department of Public Works  
 8053 US Route 9  
 Elizabethtown, NY 12932  
 Attn. Gary Rancour

or via email to: Gary.Rancour@essexcountyny.gov

8. Terms used in this Bid will have the meanings indicated in the Instructions.

SUBMITTED on \_\_\_\_\_ 2021.

CONTRACTOR \_\_\_\_\_  
 (Signature of Authorized Representative)

\_\_\_\_\_  
 (Print Name)

\_\_\_\_\_  
 (Title)



### **BIDDER INFORMATION SHEET**

NAME OF BIDDER: \* \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

TYPE OF ENTITY: CORPORATION \_\_\_\_ PARTNERSHIP \_\_\_\_ INDIVIDUAL \_\_\_\_

IF A NON-PUBLICLY OWNED CORPORATION:

NAME OF CORPORATION: \_\_\_\_\_

LIST OF PRINCIPAL STOCKHOLDERS (HOLDING OVER 5% OF OUTSTANDING SHARES):

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

LIST OF OFFICERS: \_\_\_\_\_

\_\_\_\_\_

LIST OF DIRECTORS: \_\_\_\_\_

\_\_\_\_\_

DATE OF ORGANIZATION: \_\_\_\_\_

IF A PARTNERSHIP:

PARTNERS: \_\_\_\_\_

\_\_\_\_\_

NAME OF PARTNERSHIP: \_\_\_\_\_

DATE OF ORGANIZATION: \_\_\_\_\_

\* IF THE BUSINESS IS CONDUCTED UNDER AN ASSUMED NAME, A COPY OF  
THE CERTIFICATE REQUIRED TO BE FILED UNDER THE NEW YORK GENERAL  
BUSINESS LAW MUST BE ATTACHED.

**CERTIFIED COPY OF RESOLUTION OF BOARD OF DIRECTORS**

\_\_\_\_\_  
(NAME OF CORPORATION)

“Resolved that \_\_\_\_\_,  
(Person Authorized to Sign) (Title)

of \_\_\_\_\_ authorized to sign and submit Bid for this corporation for  
(Name of Corporation)

the following project:

\_\_\_\_\_  
and to include in such bid the certificate as to non collusion, and for any inaccuracies or misstatements in such certificate this corporate Bidder shall be liable under the penalties of perjury.

The foregoing is true and correct copy of resolution adopted by:

\_\_\_\_\_  
(NAME OF CORPORATION)

At meeting of its Board of Directors held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

(SEAL)

**The above form must be completed if the Bidder is a corporation**

**VETERAN'S ROAD CULVERT REPLACEMENT OVER FIVE MILE CREEK  
TOWN OF TICONDEROGA, ESSEX COUNTY, NEW YORK  
D036296, PIN 1761.09**

ITEM NUMBER	ESTIMATED QUANTITY	ITEM DESCRIPTION WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT BID PRICE		AMOUNT BID	
			DOLLARS	CENTS	DOLLARS	CENTS
202.120001	1	REMOVING EXISTING SUPERSTRUCTURES				
		LUMP SUM				
203.07	25	SELECT GRANULAR FILL				
		PER CUBIC YARD				
203.25	9	SAND BACKFILL				
		PER CUBIC YARD				
206.01	745	STRUCTURE EXCAVATION				
		PER CUBIC YARD				
206.0201	35	TRENCH AND CULVERT EXCAVATION				
		PER CUBIC YARD				

**VETERAN'S ROAD CULVERT REPLACEMENT OVER FIVE MILE CREEK  
TOWN OF TICONDEROGA, ESSEX COUNTY, NEW YORK  
D036296, PIN 1761.09**

BROUGHT FORWARD \_\_\_\_\_

ITEM NUMBER	ESTIMATED QUANTITY	ITEM DESCRIPTION WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT BID PRICE		AMOUNT BID	
			DOLLARS	CENTS	DOLLARS	CENTS
209.13	300	SILT FENCE - TEMPORARY				
		PER LINEAR FOOT				
304.12	70	SUBBASE COURSE, TYPE 2				
		PER CUBIC YARD				
402.128304	29	12.5 F3 TOP COURSE HMA, 80 SERIES COMPACTION				
		PER TON				
402.198904	5	19 F9 BINDER COURSE HMA, 80 SERIES COMPACTION				
		PER TON				
402.378904	7	37.5 F9 BASE COURSE HMA, 80 SERIES COMPACTION				
		PER TON				

**VETERAN'S ROAD CULVERT REPLACEMENT OVER FIVE MILE CREEK**  
**TOWN OF TICONDEROGA, ESSEX COUNTY, NEW YORK**  
**D036296, PIN 1761.09**

BROUGHT FORWARD \_\_\_\_\_

ITEM NUMBER	ESTIMATED QUANTITY	ITEM DESCRIPTION WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT BID PRICE		AMOUNT BID	
			DOLLARS	CENTS	DOLLARS	CENTS
407.0103	16	STRAIGHT TACK COAT				
		PER GALLON				
490.30	315	MISCELLANEOUS COLD MILLING OF BITUMINOUS CONCRETE				
		PER SQUARE YARD				
552.11	1,540	PERMANENT STEEL SHEETING				
		PER SQUARE FOOT				
554.40	90	FILL TYPE RETAINING WALL (0 - 6FT)				
		PER SQUARE FOOT				
555.09	78	CONCRETE FOR STRUCTURES, CLASS HP				
		PER CUBIC YARD				

**VETERAN'S ROAD CULVERT REPLACEMENT OVER FIVE MILE CREEK**  
**TOWN OF TICONDEROGA, ESSEX COUNTY, NEW YORK**  
**D036296, PIN 1761.09**

BROUGHT FORWARD \_\_\_\_\_

ITEM NUMBER	ESTIMATED QUANTITY	ITEM DESCRIPTION WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT BID PRICE		AMOUNT BID	
			DOLLARS	CENTS	DOLLARS	CENTS
556.0202	6,600	EPOXY-COATED BAR REINFORCEMENT FOR STRUCTURES				
		PER POUND				
556.03	66	STUD SHEAR CONNECTORS FOR BRIDGES				
		EACH				
563.07	2	INSTALLATION OF STORED PREFABRICATED BRIDGE UNITS				
		EACH				
564.0501	1	STRUCTURAL STEEL, TYPE 1				
		LUMP SUM				
564.2001001	3,000	HOT-DIP GALVANIZING OF STRUCTURAL STEEL				
		PER POUND				

**VETERAN'S ROAD CULVERT REPLACEMENT OVER FIVE MILE CREEK  
TOWN OF TICONDEROGA, ESSEX COUNTY, NEW YORK  
D036296, PIN 1761.09**

BROUGHT FORWARD \_\_\_\_\_

ITEM NUMBER	ESTIMATED QUANTITY	ITEM DESCRIPTION WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT BID PRICE		AMOUNT BID	
			DOLLARS	CENTS	DOLLARS	CENTS
568.50	111	STEEL BRIDGE RAILING (TWO-RAIL)				
		PER LINEAR FOOT				
568.70	128	TRANSITION BRIDGE RAILING				
		PER LINEAR FOOT				
584.50010018	1,092	THIN POLYMER (EPOXY) OVERLAYS FOR STRUCTURAL SLABS				
		PER SQUARE FOOT				
586.10	80	FIELD DRILL HOLES IN EXISTING STRUCTURAL STEEL				
		EACH				
606.10	24	BOX BEAM GUIDE RAILING				
		PER LINEAR FOOT				

**VETERAN'S ROAD CULVERT REPLACEMENT OVER FIVE MILE CREEK  
TOWN OF TICONDEROGA, ESSEX COUNTY, NEW YORK  
D036296, PIN 1761.09**

BROUGHT FORWARD \_\_\_\_\_

ITEM NUMBER	ESTIMATED QUANTITY	ITEM DESCRIPTION WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT BID PRICE		AMOUNT BID	
			DOLLARS	CENTS	DOLLARS	CENTS
606.100002	60	BOX BEAM GUIDE RAILING (SHOP BENT OR SHOP MITERED)				
		PER LINEAR FOOT				
606.120101	1	BOX BEAM END PIECE				
		EACH				
606.120201	3	BOX BEAM GUIDE RAILING END ASSEMBLY TYPE IIA				
		EACH				
606.73	355	REMOVING AND DISPOSING BOX BEAM GUIDE RAILING				
		PER LINEAR FOOT				
610.1402	10	TOPSOIL -ROADSIDE				
		PER CUBIC YARD				



**VETERAN'S ROAD CULVERT REPLACEMENT OVER FIVE MILE CREEK  
TOWN OF TICONDEROGA, ESSEX COUNTY, NEW YORK  
D036296, PIN 1761.09**

BROUGHT FORWARD \_\_\_\_\_

ITEM NUMBER	ESTIMATED QUANTITY	ITEM DESCRIPTION WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT BID PRICE		AMOUNT BID	
			DOLLARS	CENTS	DOLLARS	CENTS
610.1601	45	TURF ESTABLISHMENT - ROADSIDE				
		PER SQUARE YARD				
619.01	1	BASIC WORK ZONE TRAFFIC CONTROL				
		LUMP SUM				
619.1713	700	TEMPORARY POSITIVE BARRIER - CATEGORY 3 (PINNING PROHIBITED)				
		PER LINEAR FOOT				
620.03	37	STONE FILLING (LIGHT)				
		PER CUBIC YARD				
620.04	70	STONE FILLING (MEDIUM)				
		PER CUBIC YARD				

**VETERAN'S ROAD CULVERT REPLACEMENT OVER FIVE MILE CREEK  
TOWN OF TICONDEROGA, ESSEX COUNTY, NEW YORK  
D036296, PIN 1761.09**

BROUGHT FORWARD \_\_\_\_\_

ITEM NUMBER	ESTIMATED QUANTITY	ITEM DESCRIPTION WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT BID PRICE		AMOUNT BID	
			DOLLARS	CENTS	DOLLARS	CENTS
625.01	1	SURVEY OPERATIONS				
		LUMP SUM				
627.50140008	100	CUTTING PAVEMENT				
		PER LINEAR FOOT				
637.11	3	ENGINEER'S FIELD OFFICE - TYPE 1				
		PER MONTH				
637.34	1,000	OFFICE TECHNOLOGY AND SUPPLIES				
		<b>ONE DOLLAR AND ZERO CENTS</b>	<b>1</b>	<b>00</b>	<b>1,000</b>	<b>00</b>
		DOLLARS AND/OR CENTS				
646.23	12	LARGE SNOWPLOWING DELINEATOR				
		EACH				

**VETERAN'S ROAD CULVERT REPLACEMENT OVER FIVE MILE CREEK  
TOWN OF TICONDEROGA, ESSEX COUNTY, NEW YORK  
D036296, PIN 1761.09**

BROUGHT FORWARD \_\_\_\_\_

ITEM NUMBER	ESTIMATED QUANTITY	ITEM DESCRIPTION WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT BID PRICE		AMOUNT BID	
			DOLLARS	CENTS	DOLLARS	CENTS
646.32	8	STEEL POST, 2.0 LB/FT				
		EACH				
663.0408	25	PLASTIC WATER PIPE, 8"				
		PER LINEAR FOOT				
663.0508	60	BRIDGE MOUNTED WATER PIPE, 8"				
		PER LINEAR FOOT				
663.1808	2	BOLTED SLEEVE TYPE COUPLING, 8"				
		EACH				
663.240803	25	INSULATION FOR BURIED WATER PIPE (8" WITH 3 IN THICK INSULATION)				
		PER LINEAR FOOT				

**VETERAN'S ROAD CULVERT REPLACEMENT OVER FIVE MILE CREEK**  
**TOWN OF TICONDEROGA, ESSEX COUNTY, NEW YORK**  
**D036296, PIN 1761.09**

BROUGHT FORWARD \_\_\_\_\_

ITEM NUMBER	ESTIMATED QUANTITY	ITEM DESCRIPTION WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT BID PRICE		AMOUNT BID	
			DOLLARS	CENTS	DOLLARS	CENTS
663.29010407	125	TEMPORARY WATER MAIN - 04 NPS				
		PER LINEAR FOOT				
663.4104	85	REMOVE AND DISPOSE OF EXISTING WATER MAIN, 4"				
		PER LINEAR FOOT				
697.03	24,000	FIELD CHANGE PAYMENT				
		<b>ONE DOLLAR AND ZERO CENTS</b>	<b>1</b>	<b>00</b>	<b>24,000</b>	<b>00</b>
		DOLLARS AND/OR CENTS				
698.04	100	ASPHALT PRICE ADJUSTMENT				
		<b>ONE DOLLAR AND ZERO CENTS</b>	<b>1</b>	<b>00</b>	<b>100</b>	<b>00</b>
		DOLLARS AND/OR CENTS				
698.05	100	FUEL PRICE ADJUSTMENT				
		<b>ONE DOLLAR AND ZERO CENTS</b>	<b>1</b>	<b>00</b>	<b>100</b>	<b>00</b>
		DOLLARS AND/OR CENTS				

**VETERAN'S ROAD CULVERT REPLACEMENT OVER FIVE MILE CREEK  
TOWN OF TICONDEROGA, ESSEX COUNTY, NEW YORK  
D036296, PIN 1761.09**

BROUGHT FORWARD \_\_\_\_\_

ITEM NUMBER	ESTIMATED QUANTITY	ITEM DESCRIPTION WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT BID PRICE		AMOUNT BID	
			DOLLARS	CENTS	DOLLARS	CENTS
699.040001	1	MOBILIZATION				
		<b><i>CANNOT EXCEED 4% - SEE SPECIFICATIONS</i></b>				
		LUMP SUM				
TOTAL OR GROSS SUM WRITTEN IN WORDS:			\$ _____			

### **CERTIFICATION FOR FEDERAL AID CONTRACTS**

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

The prospective participant also agrees by submitting his/her bid or proposal that he/she shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000.00 and that such subrecipients shall certify and disclose accordingly.

**THESE MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS, AND MUST BE INCLUDED IN EACH BID PROPOSAL.**

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001".
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code for the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the Federal covered action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form; print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB Control Number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington D.C. 20503.



### DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b>		<b>2. Status of Federal Action:</b>		<b>3. Report Type:</b>	
a. contract		a. bid/offer/application		a. initial filing	
b. grant		b. initial award		b. material change	
c. cooperative agreement		c. post-award		<b>For Material Change Only:</b>	
d. loan				year _____ quarter _____	
e. loan guarantee				date of last report	
f. loan insurance					
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:			<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>		
Congressional District, if known:			Congressional District, if known:		
<b>6. Federal Department/Agency:</b>			<b>7. Federal Program Name/Description:</b>		
			CFDA Number, if applicable:		
<b>8. Federal Action Number, if known:</b>			<b>9. Award Amount, if known:</b>		
			\$		
<b>10. a. Name and Address of Lobbying Registrant</b> (if individual, last name, first name, MI):			<b>b. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MI):		
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.			Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
<b>Federal Use Only:</b>				Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)	

**REQUIREMENTS REGARDING LOBBYING ACTIVITIES ON FEDERAL AID CONTRACTS**

**DISCLOSURE OF LOBBYING ACTIVITIES**

Continuation Sheet

Approved by  
OMB  
0348-0046

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ Of \_\_\_\_\_

Authorized for Local Reproduction - Standard Form LLL

## NON-COLLUSIVE BIDDING CERTIFICATIONS

### REQUIRED BY SECTION 139-D, STATE FINANCE LAW and SECTION 103-D OF GENERAL MUNICIPAL LAW

“Section 139-d, SFL and Section 103-d, GML, “Statement of non-collusion in bids to the state.”

1. Every bid hereafter made to the state or any public department, agency, or official thereof, where competitive bidding is required by statute, rule, or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury:

Non-collusive bidding certification.

(a) By submission of this bid, each bidder and each person signing on behalf of any 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 his knowledge and belief:

(1) 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;

(2) 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

(3) 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.

(b) A bid shall not be considered for award nor shall any award be made where (a)(1)(2) and (3) 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 therefore. Where (a)(1)(2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department, or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that the 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 subparagraph one (a).

2. Any bid hereafter made to the state or any public department, agency, or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, or regulation, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized by the board of directors of the bidder and such authorization shall be deemed to have included 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."

**REQUIRED BY TITLE 23, U. S. CODE, AND SECTION 112. A NON-COLLUSIVE BIDDING CERTIFICATION MUST BE INCLUDED IN EVERY BID PROPOSAL REGARDLESS OF WHETHER NYSDOT SPECIFICATIONS OR LOCAL SPECIFICATIONS ARE USED.**

(A) 2

"By submission of this bid, the bidder does hereby tender to the Owner this sworn statement pursuant to Section 1128 of Title 23, U. S. Code-Highways and does hereby certify, in conformance with said Section 112 of Title 23, U. S. Code-Highways that the said Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the above contract."

**REQUIRED BY TITLE 49, CFR, VOLUME 1, SUBTITLE A, PART 29**

"The signatory to the proposal, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, his/her company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (of five percent or more ownership):

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any Federal agency within the past three years;
3. Does not have a proposed debarment pending; and
4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

EXCEPTIONS: The Contractor should list any relevant information, attaching additional sheets to the proposal if necessary. (Exceptions will not necessarily result in disapproval, but will be considered in determining responsibility. For any exception noted, the Contractor should indicate to whom it applies, the initiating agency, and the dates of actions. Providing false information may result in criminal prosecution or administrative sanctions).

**THESE MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS. HOWEVER, THE NYS COLLUSIVE BIDDING CERTIFICATION AND MANY IN USE BY LOCAL GOVERNMENTS ARE ALMOST IDENTICAL AND ARE ACCEPTABLE.**

**THE FOLLOWING PAGES ARE THE REQUIRED CERTIFICATION REGARDING NON-COLLUSIVE BIDDING PROCEDURES AND THE CONTRACTOR'S ELIGIBILITY TO SUBMIT A BID UNDER FEDERAL LAW. THE LAST PAGE IS A GENERAL BIDDER INFORMATION FORM. ALL SHOULD BE INCLUDED IN THE CONTRACT DOCUMENTS, IMMEDIATELY FOLLOWING THE PAGE(S) WHICH CONTAINS THE NON-COLLUSIVE BIDDING REQUIREMENTS. BY SIGNING ONE OF THESE CERTIFICATIONS, THE CONTRACTOR CERTIFIES THAT HE UNDERSTANDS AND AGREES TO BE BOUND BY THE PROVISIONS OF THE FOLLOWING LAWS:**

1. NEW YORK STATE FINANCE LAW, ARTICLE 9, SECTION 139-d
2. TITLE 49, CFR, PART 29
3. TITLE 23, U. S. CODE-HIGHWAYS, SECTION 112

THE CONTRACTOR SHOULD CHOOSE THE APPROPRIATE NOTARIZATION WHICH CORRESPONDS TO THE TYPE OF COMPANY (SOLE PROPRIETORSHIP, PARTNERSHIP, OR CORPORATION) THAT HE/SHE REPRESENTS OR IS AFFILIATED WITH. ALL BIDDERS SHOULD FILL OUT THE APPROPRIATE SECTION OF THE BIDDER INFORMATION SHEET.

BY EXECUTING THIS DOCUMENT, THE CONTRACTOR AGREES TO:

1. Perform all work listed in accordance with the Contract Documents at the unit prices bid; subject to the provisions of Section 104 -04, Standard Specifications, Construction and Materials, published by the New York State Department of Transportation, and dated May 4, 2006, if applicable;
2. All the terms and conditions of the non-collusive bidding certifications required by Section 139-d of the State Finance Law, and Section 112, Title 23, U.S. Code;
3. Certification of Specialty Items category selected, if contained in this proposal;
4. Certification of any other clauses required by this proposal and contained herein;
5. Certification, under penalty of perjury, as to the current history regarding suspensions, debarments, voluntary exclusions, determinations of ineligibility, indictments, convictions, or civil judgments required by 49 CFR Part 29.
6. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment in the workplace and provides annual sexual harassment training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the New York State Labor Law.

Date:

(Legal Name of Person, Corporation, or Firm Which  
is Submitting Bid or Proposal)

BY: \_\_\_\_\_  
(Signature of Person Representing Above)

AS: \_\_\_\_\_  
(Official Title of Signator in Above Firm)  
(Acknowledgment by Individual Contractor, If a Corporation)

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me  
personally came \_\_\_\_\_, to me known and known  
to me to be the person who executed the above instrument, who being duly sworn by me, did  
depone and say that he/she resides at \_\_\_\_\_

of the \_\_\_\_\_, and that he/she is the \_\_\_\_\_

the corporation described in and which executed the above instrument, and that he/she signed his/her name thereto on behalf of said Corporation by order of the Board of Directors of said Corporation.

Notary Public

(Acknowledgment by Co-Partnership Contractor)

STATE OF NEW YORK     )  
   ) SS:  
 COUNTY OF                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person described in and who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of \_\_\_\_\_, consisting of himself/ herself and \_\_\_\_\_, and that he/she executed the foregoing instrument in the firm name of \_\_\_\_\_ and that he/she had authority to sign same, and did duly acknowledge to me that he/she executed same as the act and deed of said firm of \_\_\_\_\_ for the uses and purposes mentioned herein.

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

(Acknowledgment by Individual Contractor)

STATE OF NEW YORK     )  
   ) SS:  
 COUNTY OF                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known and

known to me to be described in and who executed the foregoing instrument, and that he/she acknowledged that he/she executed the same.

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

# **NON-COLLUSIVE BIDDING CERTIFICATION BIDDER INFORMATION**

Bidder to provide information listed below:

Bidder Address: \_\_\_\_\_

Street or P. O. Box No. \_\_\_\_\_

City \_\_\_\_\_

\_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Federal Identification No.: \_\_\_\_\_

Name of Contact Person: \_\_\_\_\_

Phone # of Contact Person: \_\_\_\_\_

If Bidder is a Corporation:

President's Name & Address:

\_\_\_\_\_

Secretary's Name & Address:

\_\_\_\_\_

Treasurer's Name & Address:

\_\_\_\_\_

If Bidder is a Partnership:

Partner's Name & Address:

\_\_\_\_\_

Partner's Name & Address:

\_\_\_\_\_

If Bidder is a Sole Proprietorship:

Owner's Name & Address:

\_\_\_\_\_



**REPORTING VIOLATIONS OF NON-COLLUSIVE BIDDING PROCEDURES,  
MISCONDUCT, OR OTHER PROHIBITED CONTRACT ACTIVITIES**

U. S. DEPARTMENT OF TRANSPORTATION HOTLINE. Persons with knowledge of bid collusion (i.e., contractors, suppliers, workers, etc.) or other questionable contract related practices (inadequate materials, poor workmanship, theft of materials, etc.) are encouraged to report such activities by calling the U. S. D. O. T. HOTLINE. The HOTLINE number is 1-800-424-9071 and calls will be answered from 8:00 A.M. to 5:00 P.M. EST, Monday thru Friday. This HOTLINE is under the direction of the U.S.D.O.T.'s Inspector General. All information will be treated confidentially and the caller's anonymity will be respected.

NEW YORK STATE INSPECTOR GENERAL HOTLINE. Reports of New York State Governmental Misconduct may be made in strict confidence to the New York State Inspector General on the Toll Free Statewide HOTLINE or by writing to the Office of the Inspector General. The Toll Free Statewide HOTLINE telephone number is 1-800-367-4448 and calls will be answered between 8:00 A.M. and 4:30 P.M., Monday through Friday. The address of the Office of the State Inspector General is the State Capitol, Executive Chamber, Albany, New York 12224.

**THIS IS REQUIRED IN ALL FEDERAL AID CONTRACTS.**

# BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER *(Name and Address):*

SURETY *(Name and Address of Principal Place of Business):*

OWNER *(Name and Address):*

## BID

Bid Due Date: As Noted in the Invitation to Bidders

Description: Veteran's Road Culvert Replacement over Five Mile Creek

## BOND

Bond Number:

Date *(Not earlier than Bid due date):*

Penal sum	_____	\$	_____
	(Words)		(Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

## BIDDER

## SURETY

_____ Bidder's Name and Corporate Seal	(Seal)	_____ Surety's Name and Corporate Seal	(Seal)
---	--------	---	--------

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

By: \_\_\_\_\_  
Signature (Attach Power of Attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

*Note: Above addresses are to be used for giving any required notice. Provide execution by any additional parties, such as joint venturers, if necessary.*

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2 All Bids are rejected by Owner, or
  - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

**AFFIDAVIT OF WORKERS COMPENSATION**

State of New York

SS:

City of Rensselaer

---

of 

---

being duly sworn, deposes and says that he now carries or that he has applied for a Workers Compensation Policy to cover the operations, as set forth in the preceding contract, and to comply with the provisions thereof.

Signed: 

---

Subscribed and sworn to before me

this 

---

 day of 

---

, 20 

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---

Notary Public

**CERTIFICATION OF COMPLAINEE IRAN DIVESTMENT ACT**

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, each Bidder/Contractor, any person signing on behalf of the 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 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 Municipality receive information that a Bidder/Contractor is in violation of the above-referenced certification, the Municipality will offer the person or entity an opportunity to respond. If the person or entity 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 the Municipality 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 Municipality 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 \_\_\_\_\_ and 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: \_\_\_\_\_

**DISADVANTAGED/MINORITY/WOMENS BUSINESS ENTERPRISE (D/M/WBE)  
UTILIZATION GOALS**

The Department has established the following utilization goal(s) for this contract, expressed as a percentage of the total contract bid price. For clarification of Disadvantaged Business Enterprise (DBE) Utilization, Minority Business Enterprise (MBE), and Women’s Business Enterprise (WBE) Utilization, Refer to 102-12 of the Standard Specifications.

Disadvantaged Business Enterprise (DBE) Utilization Goal	<u>0%</u>	(Federal Aid Only)
Minority Business Enterprise (MBE) Utilization Goal	<u>6%</u>	(Non-Federal Aid Only)
Women’s Business Enterprise (WBE) Utilization Goal	<u>13%</u>	(Non-Federal Aid Only)
Service Disabled Veteran Owned Business (SDVOB) Utilization Goal	<u>6%</u>	(Non-Federal Aid Only)

Directories and/or Information related to the current certification statue of Disadvantaged Business Enterprises, can be obtained by contacting:

NYS Department of Transportation  
Office of Civil Rights  
Sixth Floor  
Albany, NY 12232  
(518) 457-1129  
<https://www.dot.ny.gov/main/business-center/civil-rights>

Directories and/or Information related to the current certification statue of Minority and Women’s Business Enterprises, can be obtained by contacting:

Empire State Development Corporation  
Office of Minority and Women’s Business Development  
30 South Pearl Street, Albany, NY 12245  
(518) 292-5250  
[www.esd.ny.gov/MWBE.html](http://www.esd.ny.gov/MWBE.html)  
[www.empire.state.ny.us](http://www.empire.state.ny.us)

**Disadvantaged Business Enterprise Officer**

The Bidder shall designate and enter below the name of the Disadvantaged/Minority/Women’s Business Enterprise Officer who will have the responsibility for the D/M/WBE Utilization.

Bidder Designated D/M/WBE Officer	_____
	(Name)
	_____
	(Title)
Telephone Number	( ) _____

## D/M/WBE PRE-AWARD UTILIZATION PACKAGE

Within seven (7) calendar days after bid letting, the Apparent Low Bidder shall submit a complete D/M/WBE Pre-Award Utilization Package, as outlined per section 102-12 H of the NYSDOT Specifications. <https://www.dot.ny.gov/main/business-center/engineering/specifications/busi-e-standards-usc>.

This package shall be submitted to NYSDOT through the EBO software.  
<https://www.dot.ny.gov/dotapp/ebo>

If the contractor does not have an EBO account, they are directed to obtain an account. Instructions for obtaining a login can be found on the Department's website here: <https://www.dot.ny.gov/dotapp/ebo/instructions> . The processing time to obtain a login is included in the seven (7) calendar day period therefore; the contractor shall work on obtaining the necessary DBE data upon identification of being the apparent low bidder at the project letting. Obtaining an EBO login is free; however there is a onetime \$75 training fee. **All contractors on the project site and their subs must have EBO access.**

If an EBO account is not obtained prior to seven (7) calendar days of the bid opening, the AAP-10 forms must be completed and submitted to the municipality and engineer for forwarding onto NYSDOT. [https://www.dot.ny.gov/main/business-center/contractors/construction-division/construction-repository/AAP\\_10.pdf](https://www.dot.ny.gov/main/business-center/contractors/construction-division/construction-repository/AAP_10.pdf)

**If the DBE goals cannot be met within the 7 day time frame, your bid may be dismissed at the discretion of the owner.**

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR PROFIT CONSTRUCTION (CCA-2)**

**INSTRUCTIONS FOR COMPLETING THE NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE FOR PROFIT CONSTRUCTION**

Please Read Before Completing Questionnaire

- Complete all sections of the Questionnaire.
- Submit this form as required by the contracting agency after being announced the low bidder for any competitively bid contract, or when proposed for subcontract work. If you have submitted one within six (6) months of the bid date with any contracting agency, as long as the information remains unchanged and accurate, you may submit a complete certified copy of that form, together with an Affidavit of No Change, to the Agency with which you are bidding. A contracting agency may require additional information deemed necessary for its review. Whenever more space is needed to answer any question or you wish to give further explanation, complete by attaching extra pages. All questions must be answered.
- For each “Yes” answer in Sections IV, V, VI, VII, VII and IX, add additional explanatory material. For question 7.2, if your firm has OSHA citations, attach copies of each citation.
- A certified annual financial statement, including Accountant’s Review Report and Accompanying Notes, will be acceptable in lieu of completing the financial disclosure forms in the questionnaire.
- If you wish material in this Questionnaire to be held as confidential and exempt from disclosure under Freedom of Information, place an asterisk in front of all information you do not want disclosed to outside sources.
- This Questionnaire is generally valid for one calendar year, unless major changes have occurred (firm purchased by another business, bankruptcy, etc.), in which case re-submittal is required.
- Submit completed questionnaires marked “CONFIDENTIAL” to:

NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
CONTRACT MANAGEMENT BUREAU  
50 WOLF ROAD, 1st FLOOR, SUITE 1CM  
ALBANY, NY 12232  
(518) 457-1564



**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR PROFIT CONSTRUCTION (CCA-2)**

45

<b>BUSINESS ENTITY INFORMATION</b>				
<u>Legal Business Name*</u>			<u>EIN</u>	
Complete Address of the <u>Principal Place of Business</u>			Phone Number	Fax Number
E-mail		Website		
Authorized Contact for this Questionnaire				
Name			Phone Number	Fax Number
Title			E-mail	
Additional <u>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, the state or county where filed and the status (active or inactive).				
Type (DBA, Trade Name, Other)	Name	EIN	State or County where filed	Status (ACTIVE OR INACTIVE)

<b>I. BUSINESS CHARACTERISTICS</b>		
<b>1.0 <u>Business Entity</u> Type -</b>		
a) <u>Corporation</u> (including <u>P.C.</u> )	Date of Incorporation	
b) <u>Limited Liability Company (LLC or PLLC)</u>	Date Organized	
c) <u>Limited Liability Partnership</u>	Date of Registration	
d) <u>Limited Partnership</u>	Date Established	
e) <u>General Partnership</u>	Date Established	County (if formed in NYS)
f) <u>Sole Proprietor</u>	How many years in business?	
g) <u>Other</u>	Date Established	
If Other, explain:		
<b>1.1 Was the <u>Business Entity</u> formed in New York State?</b>	Yes	No
If "No" indicate jurisdiction where the <u>Business Entity</u> was formed: United States      State Other              Country		

\*All under lined terms are defined in the "New York State Vendor Responsibility Definitions List", which can be found at:  
<http://www.osc.state.ny.us/vendrep/documents/definitions.pdf>.

**Note: 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" as it existed at the time of certifications.**

# NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR PROFIT CONSTRUCTION (CCA-2)

EIN:

I. BUSINESS CHARACTERISTICS			
1.2 Is the <u>Business Entity</u> currently <u>registered to do business in New York State</u> ? <i>Note: Select "Not Required" if the <u>Business Entity</u> is a <u>Sole Proprietor</u> or <u>General Partnership</u></i>			Yes      No Not Required
If "No," explain why the <u>Business Entity</u> is not required to be <u>registered to do business in New York State</u> :			
1.3 Is the responding <u>Business Entity</u> a <u>Joint Venture</u> ? Note: If the submitting <u>Business Entity</u> is a <u>Joint Venture</u> , also submit a separate questionnaire for each <u>Business Entity</u> comprising the <u>Joint Venture</u> .			Yes      No
1.4 If the <u>Business Entity's</u> <u>Principal Place of Business</u> is not in New York State, does the <u>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.)			Yes      No N/A
If "Yes," provide the address and telephone number for one office located in New York State.			
1.5 Is the <u>Business Entity</u> a New York State certified <u>Minority-Owned Business Enterprise</u> , or <u>Women-Owned Business Enterprise</u> , or <u>New York State Small Business</u> , or federally certified <u>Disadvantaged Business Enterprise</u> ?			Yes      No
If "Yes," check all that apply: New York State certified <u>Minority-Owned Business Enterprise</u> (MBE) New York State certified <u>Women-Owned Business Enterprise</u> (WBE) <u>New York State Small Business</u> Federally certified <u>Disadvantaged Business Enterprise</u> (DBE)			
1.6 Identify each person who is, or has been within the past five (5) years, a <u>Business Entity Official</u> or <u>Principal Owner</u> of 5.0% or more of the firm's shares, or one of the five largest shareholders or a director, an officer, a partner or a proprietor. <u>Joint Ventures</u> : Provide information for all firms involved. (Attach additional pages if necessary.)			
Name	Title	Percentage Ownership (Enter 0% if not applicable)	Employment Status with the Firm
			Current      Former
			Current      Former
			Current      Former
			Current      Former
II. AFFILIATE and JOINT VENTURE RELATIONSHIPS			
2.0 Are there any other <u>construction</u> -related firms in which, now or in the past five years, the submitting <u>Business Entity</u> or any of the individuals listed in question 1.6 either owned or owns 5.0% or more of the shares of, or was or is one of the five largest shareholders or a director, officer, partner or proprietor of said other firm?			Yes      No
Firm/Company Name	Firm/Company EIN (If Available)	Firm/Company's Primary Business Activity	

## NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR PROFIT CONSTRUCTION (CCA-2)

EIN:

II. AFFILIATE and JOINT VENTURE RELATIONSHIPS		
Firm/Company Address		
Explain relationship with the firm and indicate percent ownership, if applicable (enter N/A, if not applicable):		
Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting <u>Business Entity</u> has in common with this <u>affiliate</u> ?		Yes      No
Individual's Name	Position/Title with Firm/Company	
2.1 Does the <u>Business Entity</u> have any <u>construction</u> -related <u>affiliates</u> not identified in the response to 2.0 above?		Yes      No
Affiliate Name	Affiliate EIN (If available)	Affiliate's Primary Business Activity
Affiliate Address		
Explain relationship with the affiliate and indicate percent ownership, if applicable (enter N/A, if not applicable):		
Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting <u>Business Entity</u> has in common with this firm?		Yes      No
Individual's Name	Position/Title with Firm/Company	
2.2 Has the <u>Business Entity</u> participated in any <u>construction Joint Ventures</u> within the past three (3) years? <i>Attach additional pages if necessary.</i>		Yes      No
Joint Venture Name	Joint Venture EIN (If available)	Identify parties to the Joint Venture

III. CONTRACT HISTORY
3.0 List the ten most recent <u>construction</u> contracts the <u>Business Entity</u> has completed using Attachment A – Completed Construction Contracts, found at <a href="http://www.osc.state.ny.us/vendrep/documents/attachmenta.doc">http://www.osc.state.ny.us/vendrep/documents/attachmenta.doc</a> . If less than ten, include most recent subcontracts on projects up to that number.
3.1 List all current uncompleted <u>construction</u> contracts by using Attachment B – Uncompleted Construction Contracts, found at <a href="http://www.osc.state.ny.us/vendrep/documents/attachmentb.doc">http://www.osc.state.ny.us/vendrep/documents/attachmentb.doc</a> .

IV. INTEGRITY – CONTRACT BIDDING		
Within the past five (5) years, has the Business Entity, an affiliate or any predecessor company or entity:		
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?	Yes	No
4.1 Been subject to a denial or revocation of a government prequalification?	Yes	No
4.2 Had any bid rejected by a <u>government entity</u> for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid?	Yes	No
4.3 Had a proposed subcontract rejected by a <u>government entity</u> for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid?	Yes	No
4.4 Had a low bid rejected on a <u>government contract</u> for failure to make <u>good faith efforts</u> on any <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or <u>Disadvantaged Business Enterprise</u> goal or <u>statutory affirmative action requirements</u> on a previously held contract?	Yes	No

## NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR PROFIT CONSTRUCTION (CCA-2)

EIN:

IV. INTEGRITY – CONTRACT BIDDING		
Within the past five (5) years, has the Business Entity, an affiliate or any predecessor company or entity:		
4.5 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ?	Yes	No
4.6 Initiated a request to withdraw a bid submitted to a <u>government entity</u> or made any claim of an error on a bid submitted to a <u>government entity</u> ?	Yes	No
<i>For each “Yes,” provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, project(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.</i>		

V. INTEGRITY – CONTRACT AWARD		
Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:		
5.0 Defaulted on or been <u>suspended</u> , cancelled or <u>terminated for cause</u> on any contract?	Yes	No
5.1 Been subject to an <u>administrative proceeding</u> or civil action seeking specific performance or restitution (except any disputed work proceeding) or requiring the <u>Business Entity</u> to enter into a formal monitoring agreement in connection with any <u>government contract</u> ?	Yes	No
5.2 Had its surety called upon to complete any contract whether government or private sector?	Yes	No
<i>For each “Yes,” provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u>/owners involved, project(s), contract number(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.</i>		

VI. CERTIFICATIONS/LICENSES		
Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:		
6.0 Had a revocation or <u>suspension</u> of any business or professional permit and/or license?	Yes	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 a <u>federal</u> certification of <u>Disadvantaged Business Enterprise</u> status, for other than a change of ownership?	Yes	No
<i>For each “Yes,” provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.</i>		

VII. LEGAL PROCEEDINGS		
Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:		
7.0 Been the subject of a criminal <u>investigation</u> , whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal</u> law?	Yes	No
7.1 Been the subject of:		
(i) An indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime; or	Yes	No
(ii) Any criminal <u>investigation</u> , felony indictment or conviction concerning the formation of, or any business association with, an allegedly false or fraudulent <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> , or a <u>Disadvantaged Business Enterprise</u> ?	Yes	No
7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as <u>serious</u> or <u>willful</u> ?	Yes	No

## NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR PROFIT CONSTRUCTION (CCA-2)

EIN:

<b>VII. LEGAL PROCEEDINGS</b> <b>Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:</b>		
<b>7.3</b> Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation?	Yes	No
<b>7.4</b> Had a New York State Labor Law violation deemed willful?	Yes	No
<b>7.5</b> Entered into a consent order with the New York State Department of Environmental Conservation, or a <u>federal</u> , state or local government enforcement determination involving a violation of <u>federal</u> , state or local environmental laws?	Yes	No
<b>7.6</b> Other than previously disclosed, been the subject of any <u>citations, notices, violation orders</u> , pending administrative hearings or proceedings or determinations of a violation of: <ul style="list-style-type: none"> <li>▪ <u>Federal</u>, state or local health laws, rules or regulations;</li> <li>▪ <u>Federal</u>, state or local environmental laws, rules or regulations;</li> <li>▪ Unemployment insurance or workers compensation coverage or <u>claim</u> requirements;</li> <li>▪ Any labor law or regulation, which was deemed willful;</li> <li>▪ Employee Retirement Income Security Act (ERISA);</li> <li>▪ <u>Federal</u>, state or local human rights laws;</li> <li>▪ <u>Federal</u>, state or local security laws?</li> </ul>	Yes	No
<i>For each "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.</i>		

<b>VIII. LEADERSHIP INTEGRITY</b> <b>If the Business Entity is a Joint Venture Entity, answer "N/A - Not Applicable" to questions in this section.</b> <b>Within the past five (5) years has any individual previously identified or any individual having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the Business Entity with New York State been subject to:</b>		
<b>8.0</b> A <u>sanction</u> imposed relative to any business or professional permit and/or license?	Yes	No
	N/A	
<b>8.1</b> A criminal <u>investigation</u> , whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal</u> law?	Yes	No
	N/A	
<b>8.2</b> Misdemeanor or felony charge, indictment or conviction for: <ul style="list-style-type: none"> <li>(i) Any business-related activity including but not limited to fraud, coercion, extortion, bribe or bribe-receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price-fixing or collusive bidding; or</li> <li>(ii) Any crime, whether or not business-related, the underlying conduct of which related to truthfulness, including but not limited to the filing of false documents or false sworn statements, perjury or larceny?</li> </ul>	Yes	No
	N/A	
<b>8.3</b> A <u>debarment</u> from any <u>government contracting process</u> ?	Yes	No
	N/A	
<i>For each "Yes," provide an explanation of the issue(s), the individual involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.</i>		

## NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR PROFIT CONSTRUCTION (CCA-2)

EIN:

IX. FINANCIAL AND ORGANIZATIONAL CAPACITY		
<b>9.0</b> Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?	Yes	No
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, relevant dates, 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.</i>		
<b>9.1</b> Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> had any <u>liquidated damages</u> assessed over \$25,000?	Yes	No
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, relevant dates, the contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>		
<b>9.2</b> Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> had any <u>liens, claims or judgments</u> (not including UCC filings) over \$25,000 filed against the <u>Business Entity</u> which remain undischarged or were unsatisfied for more than 90 days?	Yes	No
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, relevant dates, the Lien holder or Claimants' 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.</i>		
<b>9.3</b> In the last seven (7) years, has the <u>Business Entity</u> or any <u>affiliate</u> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	Yes	No
<i>If "Yes," provide the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, 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.</i>		
<b>9.4</b> What is the <u>Business Entity's</u> Bonding Capacity?		
a. Single Project	b. Aggregate (All Projects)	
<b>9.5</b> List <u>Business Entity's</u> Gross Sales for the previous three (3) Fiscal Years:		
1st Year (Indicate year ) Gross Sales	2nd Year (Indicate year ) Gross Sales	3rd Year (Indicate year ) Gross Sales
<b>9.6</b> List <u>Business Entity's</u> Average Backlog for the previous three (3) fiscal years: (Estimated total value of uncompleted work on outstanding contracts)		
1st Year (Indicate year ) Amount	2nd Year (Indicate year ) Amount	3rd Year (Indicate year ) Amount
<b>9.7</b> Attach <u>Business Entity's</u> annual <u>financial statement</u> and accompanying notes or complete Attachment C – Financial Information, found at <a href="http://www.osc.state.ny.us/vendrep/documents/attachmentc.xls">http://www.osc.state.ny.us/vendrep/documents/attachmentc.xls</a>		

X. FREEDOM OF INFORMATION LAW (FOIL)	
<b>10.0</b> Indicate whether any information provided herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL). <i>Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL. Attach additional pages if necessary.</i>	Yes      No
<i>Indicate the question number(s) and explain the basis for the claim.</i>	

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR PROFIT CONSTRUCTION (CCA-2)**

**EIN:**

**Certification**

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State contracting entities in making responsibility determinations regarding an award of a contract or approval of a subcontract; (2) recognizes that the Office of the State Comptroller (OSC) will rely on information disclosed in the questionnaire in making responsibility determinations and in approving a contract or subcontract; (3) acknowledges that the New York State contracting entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (4) acknowledges that intentional submission of false or misleading information may constitute a misdemeanor or felony under New York State Penal Law, may be punishable by a fine and/or imprisonment under Federal Law, and may result in 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 will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- is under 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 contracting entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Officer \_\_\_\_\_

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

Title \_\_\_\_\_

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

Address \_\_\_\_\_

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

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

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

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
ATTACHMENT A - COMPLETED CONSTRUCTION CONTRACTS**

**EIN:**

<b>Question 3.0: List the ten most recent construction contracts the Business Entity has completed. If less than ten, include most recent subcontractson projects up to that number.</b>							
1.	<b>Agency/Owner</b>				<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>			
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>			<b>EIN of JV, if applicable</b>	
2.	<b>Agency/Owner</b>				<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>			
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>			<b>EIN of JV, if applicable</b>	
3.	<b>Agency/Owner</b>				<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>			
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>			<b>EIN of JV, if applicable</b>	
4.	<b>Agency/Owner</b>				<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>			
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>			<b>EIN of JV, if applicable</b>	
5.	<b>Agency/Owner</b>				<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>			
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>			<b>EIN of JV, if applicable</b>	



**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
ATTACHMENT A - COMPLETED CONSTRUCTION CONTRACTS**

EIN:

<b>Question 3.0: List the ten most recent construction contracts the Business Entity has completed. If less than ten, include most recent subcontracts on projects up to that number.</b>							
6.	<b>Agency/Owner</b>				<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>			
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>			<b>EIN of JV, if applicable</b>	
7.	<b>Agency/Owner</b>				<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>			
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>			<b>EIN of JV, if applicable</b>	
8.	<b>Agency/Owner</b>				<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>			
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>			<b>EIN of JV, if applicable</b>	
9.	<b>Agency/Owner</b>				<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>			
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>			<b>EIN of JV, if applicable</b>	
10.	<b>Agency/Owner</b>				<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>			
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>			<b>EIN of JV, if applicable</b>	

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE**  
**ATTACHMENT B - UNCOMPLETED CONSTRUCTION CONTRACTS**  
**EIN:**

Question 3.1: List all current uncompleted construction contracts.								
1.	<b>Agency/Owner</b>					<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>				
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>				<b>EIN of JV, if applicable</b>	
			<b>Total Contract Amount</b>		<b>Amount Sublet to Others</b>		<b>Uncompleted Amount</b>	
2.	<b>Agency/Owner</b>					<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>				
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>				<b>EIN of JV, if applicable</b>	
			<b>Total Contract Amount</b>		<b>Amount Sublet to Others</b>		<b>Uncompleted Amount</b>	
3.	<b>Agency/Owner</b>					<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>				
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>				<b>EIN of JV, if applicable</b>	
			<b>Total Contract Amount</b>		<b>Amount Sublet to Others</b>		<b>Uncompleted Amount</b>	
4.	<b>Agency/Owner</b>					<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>				
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>				<b>EIN of JV, if applicable</b>	
			<b>Total Contract Amount</b>		<b>Amount Sublet to Others</b>		<b>Uncompleted Amount</b>	

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE**  
**ATTACHMENT B - UNCOMPLETED CONSTRUCTION CONTRACTS**  
**EIN:**

<b>Question 3.1: List all current uncompleted construction contracts.</b>							
<b>5.</b>	<b>Agency/Owner</b>				<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>			
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>			<b>EIN of JV, if applicable</b>	
			<b>Total Contract Amount</b>		<b>Amount Sublet to Others</b>	<b>Uncompleted Amount</b>	
<b>6.</b>	<b>Agency/Owner</b>				<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>			
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>			<b>EIN of JV, if applicable</b>	
			<b>Total Contract Amount</b>		<b>Amount Sublet to Others</b>	<b>Uncompleted Amount</b>	
<b>7.</b>	<b>Agency/Owner</b>				<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>			
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>			<b>EIN of JV, if applicable</b>	
			<b>Total Contract Amount</b>		<b>Amount Sublet to Others</b>	<b>Uncompleted Amount</b>	
<b>8.</b>	<b>Agency/Owner</b>				<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>			
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>			<b>EIN of JV, if applicable</b>	
			<b>Total Contract Amount</b>		<b>Amount Sublet to Others</b>	<b>Uncompleted Amount</b>	

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
ATTACHMENT B - UNCOMPLETED CONSTRUCTION CONTRACTS**

**EIN:**

<b>Question 3.1: List all current uncompleted construction contracts.</b>															
9.	<b>Agency/Owner</b>				<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>								
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>											
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>			<b>EIN of JV, if applicable</b>									
				<b>Total Contract Amount</b>	<b>Amount Sublet to Others</b>	<b>Uncompleted Amount</b>									
10.	<b>Agency/Owner</b>				<b>Award Date</b>	<b>Amount</b>	<b>Date Completed</b>								
	<b>Contact Person</b>		<b>Telephone No.</b>	<b>Design Architect and/or Design Engineer</b>											
	<b>Contract No.</b>	<b>Prime or Sub</b>	<b>Joint Venture (JV) Name, if applicable</b>			<b>EIN of JV, if applicable</b>									
				<b>Total Contract Amount</b>	<b>Amount Sublet to Others</b>	<b>Uncompleted Amount</b>									
<table border="1" style="width: 100%;"> <tr> <td align="right" colspan="7"><b>Grand Total All Uncompleted Contracts</b></td> <td></td> </tr> </table>								<b>Grand Total All Uncompleted Contracts</b>							
<b>Grand Total All Uncompleted Contracts</b>															

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE**  
**ATTACHMENT C – FINANCIAL INFORMATION**

**EIN:**  
**As of Date:**

**ASSETS**

Current Assets

1.	<u>Cash</u>		\$	
2.	<u>Accounts receivable – less allowance for doubtful accounts</u>	\$		
	Retainers included in accounts receivable			
	Claims included in accounts receivable not yet approved or in litigation			
	Total accounts receivable		\$	
3.	<u>Notes receivable – due within one year</u>		\$	
4.	<u>Inventory – materials</u>		\$	
5.	<u>Contract costs in excess of billings on uncompleted contracts</u>		\$	
6.	<u>Accrued income receivable</u>			
	Interest			
	Other (list)			
	Total accrued income receivable		\$	
7.	<u>Deposits</u>			
	Bid and plan			
	Other (list)			
	Total deposits		\$	
8.	<u>Prepaid expenses</u>			
	Income Taxes			
	Insurance			
	Other (List)			
	Total prepaid expenses		\$	
9.	<u>Other current assets</u>			
	(List)			
	Total other current assets		\$	
10.	<u>Total current assets</u>			\$

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE**  
**ATTACHMENT C – FINANCIAL INFORMATION**

**EIN:**

11.	<u>Investments</u>				
	Listed securities present market value	\$			
	Unlisted securities present value				
	Total investments			\$	
12.	<u>Fixed Assets</u>				
	Land				
	Building and improvements				
	Leasehold improvements				
	Machinery and equipment				
	Automotive equipment				
	Office furniture and fixtures				
	Other (list)				
	Total			\$	
	Less: accumulated depreciation			\$	
	Total fixed assets net				\$
13.	<u>Other Assets</u>				
	Loans receivable				
	officers				
	employees				
	shareholders				
	Cash surrender value of officers' life insurance				
	Organization expense – net of amortization				
	Notes receivable – due after one year				
	Other (list)				
	Total Other Assets			\$	
14.	<u>TOTAL ASSETS</u>				\$

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
ATTACHMENT C – FINANCIAL INFORMATION**

**EIN:**

**LIABILITIES**

**Current Liabilities**

15.	Accounts payable		\$
16.	Loans from shareholders – due within one year		
17.	Notes payable – due within one year		
18.	Mortgage payable – due within one year		
19.	Other payables – due within one year (List)	\$	
	Total other payables – due within one year		
20.	Billings in excess of costs and estimated earnings		
21.	Accrued expenses payable	Salaries and wages Employees' benefits Insurance Other	
	Total accrued expenses payable		
22.	Dividends payable		
23.	Income taxes payable	State Federal Other	
	Total income taxes payable		
24.	Total Current Liabilities		\$
25.	Deferred Income Taxes		
	Payable	State Federal Other	
	Total deferred income taxes		\$

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
ATTACHMENT C – FINANCIAL INFORMATION**

**EIN:**

26.	<u>Long Term Liabilities</u> Loans from shareholders – due after one year Notes payable – due after one year Mortgage – due after one year Other payables – due after one year (List)		
	Total long term liabilities	\$	
27.	<u>Other Liabilities</u> (List)		
	Total other liabilities	\$	
28.	<u>TOTAL LIABILITIES</u>		\$
<b><u>NET WORTH</u></b>			
29.	Net Worth (if proprietorship or partnership)	\$	
30.	Stockholders' Equity		
	Common stock issued and outstanding	\$	
	Preferred stock issued and outstanding		
	Retained earnings		
	Total	\$	
	Less: Treasury Stock		
31.	<b>TOTAL STOCKHOLDERS EQUITY</b>		\$
32.	<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>		\$



## **AGREEMENT BETWEEN OWNER AND CONTRACTOR**

This AGREEMENT made on the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_ by and between,  
 \_\_\_\_\_ (hereinafter called OWNER) and  
 \_\_\_\_\_ (hereinafter called the CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### **ARTICLE 1 – WORK**

The CONTRACTOR shall complete all Work specified or indicated in the Contract Documents. The Work is generally described as follows:

*Veteran's Road Culvert Replacement over Five Mile Creek*

### **ARTICLE 2 – ENGINEER**

The Project has been designed by Greenman-Pedersen, Inc. who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

### **ARTICLE 3 – CONTRACT TIME**

- 3.1. The Work will be substantially completed on or before **120 days after Notice to Proceed has been issued** and ready for final payment on or before **December 31, 2022**.
- 3.2. Liquidated Damages: OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that the OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed. They also recognize delays, expense and difficulties involved in proving the actual loss suffered by the OWNER when the Work is not completed on time. Accordingly, instead of requiring such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER Liquidated Damages assessed in accordance with the current NYSDOT Standard Specifications, Section 108-03 and/or Table 108-1 "Schedule of Liquidated Damages" included below. If Section 108-03 and/or Table 108-1 are amended during the project, the amended provision shall control. The Reference to the "Commissioner of Transportation" shall be read to mean OWNER.

<b>Table 108-1 - SCHEDULE OF LIQUIDATED DAMAGES</b>		
<b>Original Total Contract Bid Price</b>		<b>Liquidated Damages per Calendar Day</b>
<b>From More Than</b>	<b>To and Including</b>	
\$0	\$100,000	\$500
\$100,000	\$500,000	\$1,000
\$500,000	\$2,000,000	\$1,500
\$2,000,000	\$5,000,000	\$2,000
\$5,000,000	\$10,000,000	\$2,500
\$10,000,000	\$20,000,000	\$4,000
\$20,000,000	-	\$7,000

## ARTICLE 4 – CONTRACT PRICE

OWNER shall pay CONTRACTOR an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 4.1 and 4.2 below for completion of Work in accordance with the Contract Documents:

- 4.1. For lump sum items, payment will be based on the price bid and made in accordance with the specification. For all Unit Price items, the payment will be made based upon the bid unit price, for each separately identified unit price item, multiplied by the estimated quantity of that item as indicated in the Bid Sheets.

TOTAL OF ALL  
UNIT PRICES \_\_\_\_\_ \$ \_\_\_\_\_ dollars  
*(Use words)* *(figures)*

- 4.2. Estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by the ENGINEER.

## ARTICLE 5 – PAYMENTS

- 5.1. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by the ENGINEER, on or about the 10<sup>th</sup> day of each month during construction as provided in paragraphs 5.1.1 and 5.1.2 below. All such payments will be measured by the number of units completed.

5.1.1. As the work progresses in accordance with the contract and in a manner that is satisfactory to the OWNER, the OWNER hereby agrees to make payments to the CONTRACTOR therefore, based upon the proposal attached hereto and made a part hereof, as follows: The OWNER shall once in each month and on such days as it may fix, determine the quantity of work completed and of material which has actually been put in place in accordance with the terms and conditions of the contract, during the preceding month, and compute the value thereof and pay to the CONTRACTOR the monies due as determined by the ENGINEER. No monthly payment shall be rendered unless the value of the work completed equals 5% of the contract amount or \$1,000, whichever is the lesser. Semi-monthly payments may be rendered provided (a) the value of work performed in two successive weeks is more than \$50,000 or (b) the ENGINEER deems it to be in the best interest of the OWNER to do so. The CONTRACTOR shall not hold any retainage from any Subcontractor.

5.1.2. When in the opinion of the ENGINEER, a CONTRACTOR has fully performed the work under the contract, the ENGINEER shall recommend to the OWNER the acceptance of work so completed. If the OWNER accepts the recommendation of the ENGINEER, he/she shall thereupon by letter notify the CONTRACTOR, with copies to the other interested parties, of such acceptance. Prior to the final acceptance of the work by the OWNER, the contract work may be inspected, accepted and approved by other agencies and/or municipalities who will have jurisdiction of the work after final acceptance.

- 5.2. The final payment shall be made upon final completion and acceptance of the work by the OWNER and as recommended by the ENGINEER.

## ARTICLE 6 – INTEREST

All monies not paid when due shall bear interest at the statutory rate of New York State.

## ARTICLE 7 – CONTRACTOR REPRESENTATIONS

In order to induce the OWNER to enter into this Agreement the CONTRACTOR makes the following representations:

- 7.1. CONTRACTOR has examined and carefully studied the Contract Documents (including Addenda listed in Article 8) and other related data identified in the Bidding Documents including “technical data.”
- 7.2. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance or furnishing of the Work.
- 7.3. CONTRACTOR is familiar with and will comply with all federal, state and local Laws and Regulations that may affect, progress, performance and furnishing of the Work.
- 7.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities). CONTRACTOR acknowledges that such reports and drawing are not Contract Documents and may not be complete for CONTRACTOR’S purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations test, studies and data concerning conditions (surface, subsurface, Underground Facilities) at or contiguous to the site or otherwise which may affect the cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR and safety precautions, and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, test, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- 7.5. CONTRACTOR is aware of the general nature of the work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
- 7.6. CONTRACTOR has correlated the information known to the CONTRACTOR, information and observation obtained from visits to the site, reports, and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- 7.7. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to the CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## ARTICLE 8 – CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between Owner and the Contractor concerning the Work consist of the following:

- 8.1. This Agreement
- 8.2. Performance, Payment and other Bonds
- 8.3. Notice to Proceed
- 8.4. All technical specification as set forth in the Table of Contents
- 8.5. Drawings consisting of a cover sheet and sheets numbered 2 through 28, inclusive with each sheet bearing the following general title: **Veteran's Road Culvert Replacement over Five Mile Creek; PIN 1761.09**
- 8.6. Addenda numbers \_\_\_\_\_ to \_\_\_\_\_, inclusive
- 8.7. CONTRACTOR's Bid Pages as set forth in the Bidders Checklist
- 8.8. Documentation submitted by CONTRACTOR prior to Notice of Award
- 8.9. Additional State and Federal Conditions
- 8.10. State and/or Federal Prevailing Wage Schedules, as applicable
- 8.11. All other documents set forth in this project manual except Supplemental Information Available to Bidders
- 8.12. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All written Amendments and other documents amending, modifying or supplementing the Contract Documents.

## ARTICLE 9 – MISCELLANEOUS

- 9.1. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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 the Contract Documents.
- 9.2. Neither the Owner nor the Contractor shall, without the prior written consent of the other, assign or sublet in whole or in part his interest under any of the Contract Documents and, specifically, the Contractor shall not assign any monies due or to become due without the prior written consent of the Owner.
- 9.3. The Owner and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and unenforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 9.5. OTHER PROVISIONS: IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR, or identified by ENGINEER on their behalf.

This Agreement will be effective on \_\_\_\_\_ 20\_\_\_\_\_

OWNER \_\_\_\_\_

CONTRACTOR \_\_\_\_\_

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

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

[COPORATE SEAL]

[CORPORATE SEAL]

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Address for giving notices

Address for giving notices

\_\_\_\_\_  
\_\_\_\_\_  
(If OWNER is a public body, attached evidence of  
authority to sign and resolution or other documents  
authorizing execution of Agreement

\_\_\_\_\_  
\_\_\_\_\_  
License No. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Agent for services of process: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(If CONTRACTOR is a corporation, attach  
evidence of authority to sign).

ACKNOWLEDGMENT OF TOWN*(a)**(b) State of New York} ss**(c) Town of Ticonderoga} ss*

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared Mark Wright, Supervisor, Town of Ticonderoga, New York, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and that said \_\_\_\_\_ duly acknowledged to me that he executed the same pursuant to the power and authority vested in them by the Town of Ticonderoga, and that by their signature on the instrument he/she executed the instrument pursuant to the authority vested in them.

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

ACKNOWLEDGMENT OF CONTRACTOR*State of \_\_\_\_\_} ss**County of \_\_\_\_\_} ss*

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally came and appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, who, being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_ and that he/she is the \_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_ the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation, that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he/she signed his/her name thereto by like order.

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

# CONSTRUCTION PAYMENT BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address)

SURETY (Name and Principal Place of Business):

OWNER (Name and Address)

CONSTRUCTION CONTRACT

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

Description (Name and Location):

BOND

Date (not earlier than Construction Contract Date): \_\_\_\_\_ Amount: \_\_\_\_\_

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company

(Corp Seal)

SURETY

Company

(Corp Seal)

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

Name and Title:

Name and Title:

CONTRACTOR AS PRINCIPAL

Company

(Corp Seal)

SURETY

Company

(Corp Seal)

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

Name and Title:

Name and Title:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies and hold harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials, or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands liens or suits to the Contractor and the Surety, and provided there is not Owner Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
  - 4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  - 4.2 Claimants who do not have a direct contract with the Contractor:
    1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
    2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
    3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given to the Contractor to the Surety that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
  - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
  - 6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amount owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract area dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any claimant under this Bond, and shall have under this Bond no obligations to make payments to give notices on behalf of, or otherwise have obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner, or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this bond has been furnished to comply with a statutory or other legal requirements in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirements shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. Definitions.
  - 15.1 Claimant: An individual or entity have a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
  - 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
  - 15.3 Owner Default: Failure of the Owner, which as neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with other terms thereof.



# Construction Performance Bond

Any singular reference to Contractor, Surety, Owner of other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER (Name and Address):

CONSTRUCTION CONTRACT  
Date: Amount:  
Description (Name and Location):

BOND  
Date (Not earlier than Construction Contract Date):  
Amount:  
Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Construction Payment Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR AS PRINCIPAL  
Company: (Corp. Seal)  
  
Signature: \_\_\_\_\_  
Name and Title:

SURETY  
Company: (Corp. Seal)  
  
Signature: \_\_\_\_\_  
Name and Title:  
(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL  
Company: (Corp. Seal)  
  
Signature: \_\_\_\_\_  
Name and Title:

SURETY  
Company: (Corp. Seal)  
  
Signature: \_\_\_\_\_  
Name and Title:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
  2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
  3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
    - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner and the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any subsequently to declare a Contractor Default; and
    - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and
    - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
  4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
    - 4.1 Arrange for the Contractor, with Consent of the Owner, to perform and complete the Construction Contract; or
    - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
    - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for Contract or performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the Contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or
    - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances.
      1. After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefore to the Owner; or
      2. Deny liability in whole or in part and notify the Owner citing reasons therefor.
  5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
  6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract.
- To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
- 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract:
  - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
  - 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
  7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
  8. The Surety hereby waives notice of any change, include changes of time to the Construction Contract or to related subcontracts, purchase orders and other obligations.
  9. Any proceeding, legal, or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by the law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
  10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
  11. When this bond has been furnished to comply with a statutory or other legal requirements in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirements shall be deemed deleted here from and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
  12. Definitions.
    - 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amount received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduce by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
    - 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
    - 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
    - 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract to perform and complete or comply with other terms thereof.

# **APPENDIX 12-1**

## **CONSTRUCTION CONTRACT REQUIREMENTS**

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ALL FORMS MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS AND MUST BE INCLUDED IN EACH BID PROPOSAL.

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION (FHWA Section 1273 X)**

- A. The prospective bidder certifies to the best of its knowledge and belief that they and their Principals:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
  2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
  3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with the commission of any of the offenses enumerated in paragraph (A)(2) of this certification; and
  4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
- B. Where the Bidder is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING(FHWA 1273 Section XI)**

- A. The prospective bidder certifies, by signing and submitting this bid or proposal, to the best of his/her knowledge and belief, that:
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. The prospective bidder also agrees by submitting his/her bid or proposal that he/she shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that such subrecipients shall certify and disclose accordingly.

**THESE MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS AND MUST BE INCLUDED IN EACH BID PROPOSAL.**

**FALSE CLAIMS CERTIFICATION (31 USC §3729, NYS Finance Law Article 13)**

Under the Federal False Claims Act, 31 U.S. Code §3729, any person or entity who knowingly presents, or causes to be presented to the Federal Government, a false or fraudulent claim for payment or approval is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages the Government sustains.

Under the New York State False Claims Act, NYS Finance Law Article 13, any person or entity who knowingly presents or causes to be presented to the State of New York or Local Governments within the State of New York, a false or fraudulent claim for payment or approval is liable to the Government for a civil penalty of not less than \$6,000 and not more than \$12,000, plus three times the amount of damages the Government sustains.

“Knowingly” is defined as (1) actual knowledge; (2) acting in deliberate ignorance of the truth or falsity of information; or (3) acting in reckless disregard of the truth or falsity of information. No proof of specific intent to defraud is required.

The Contractor to whom the above-identified contract is to be awarded does hereby certify to the New York State Department of Transportation that it understands the prohibitions under the Federal and New York State False Claims acts and that it has not and will not submit or cause to be submitted any fraudulent claims in the submission of this bid or in connection with the above-identified contract. The Contractor further certifies that it understands retaliatory actions against employees and officers who initiate a *qui tam* (public) action on behalf of the government or cooperate in the investigation of a false claim are prohibited and are subject to an assessment of damages and penalties under the provisions of the Federal and New York State False Claims Acts.

**THIS MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS AND MUST BE INCLUDED IN EACH BID PROPOSAL.**

**NON-COLLUSIVE BIDDING CERTIFICATION**  
**(NYS Finance Law §139-d and General Municipal Law §103-d)**

1. By submission of this bid:

(a) Each bidder and each person signing on behalf of any 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 its knowledge and belief:

- (1) 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;
- (2) 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
- (3) 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.

(b) A bid shall not be considered for award nor shall any award be made where (a)(1)(2) and (3) 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, therefore. Where (a)(1)(2) and (3) above have not been complied with, the bid shall not be considered for award, nor shall any award be made unless the head of the purchasing unit of the state, public department, or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that the 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 subparagraph one (a).

2. Any bid hereafter made to the state or any public department, agency, or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, or regulation, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized by the board of directors of the bidder and such authorization shall be deemed to have included 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."

**STATE NON-COLLUSIVE BIDDING CERTIFICATIONS MUST BE INCLUDED IN EVERY BID  
 PROPOSAL REGARDLESS OF WHETHER NYSDOT SPECIFICATIONS OR LOCAL  
 SPECIFICATIONS ARE USED.**



**NON-COLLUSIVE BIDDING CERTIFICATION (2 CFR 1200)**

"By submission of this bid, the Bidder does hereby tender to the Owner this sworn statement pursuant to Section 1128 of Title 23, U. S. Code-Highways and does hereby certify, in conformance with said Section 112 of Title 23, U. S. Code-Highways that the said Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the above contract."

The signatory to the proposal, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, his/her company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (of five percent or more ownership):

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency,
2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any Federal agency within the past three years,
3. Does not have a proposed debarment pending; and
4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

EXCEPTIONS: The Contractor should list any relevant information, attaching additional sheets to the proposal if necessary. (Exceptions will not necessarily result in disapproval but will be considered in determining responsibility. For any exception noted, the Contractor should indicate to whom it applies, the initiating agency, and the dates of actions. Providing false information may result in criminal prosecution or administrative sanctions).

**FEDERAL NON-COLLUSIVE BIDDING CERTIFICATION MUST BE INCLUDED IN EVERY BID PROPOSAL REGARDLESS OF WHETHER NYSDOT SPECIFICATIONS OR LOCAL SPECIFICATIONS ARE USED.**

**REPORTING VIOLATIONS OF NON-COLLUSIVE BIDDING PROCEDURES,  
MISCONDUCT OR OTHER PROHIBITED CONTRACT ACTIVITIES**

**US DEPARTMENT OF TRANSPORTATION  
OFFICE OF INSPECTOR GENERAL - FRAUD, WASTE & ABUSE HOTLINE**

The U.S. Department of Transportation (USDOT) Office of Inspector General (OIG) maintains a Hotline for receiving allegations of fraud, waste, abuse, or mismanagement in USDOT programs or operations. Persons with knowledge of bid collusion (i.e., contractors, suppliers, work persons, etc.), or other questionable contract related practices (inadequate materials, poor workmanship, theft of materials, etc.), are encouraged to report such activities by calling the Hotline at 1-800-424-9071, emailing [hotline@oig.dot.gov](mailto:hotline@oig.dot.gov), or writing to the USDOT Inspector General, 1200 New Jersey Ave SE, West Bldg. 7th Floor, Washington, DC 20590. Allegations may be reported 24 hours a day, seven days a week by DOT employees, contractors, or the general public.

**NEW YORK STATE OFFICE OF THE INSPECTOR GENERAL HOTLINE**

The New York State Office of the Inspector General maintains a Hotline for receiving allegations of governmental misconduct. Reports of New York State governmental misconduct may be made in strict confidence to the Toll-Free 24-hour Statewide HOTLINE at 1-800-DO RIGHT (1-800-367-4448), the online complaint form at [www.ig.ny.gov](http://www.ig.ny.gov) or in writing to the New York State Office of the Inspector General, Empire State Plaza, Agency Building 2 - 16th Floor, Albany, New York 12223.

**THIS PAGE MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS AND MUST BE INCLUDED  
IN EACH BID PROPOSAL.**

## GOALS FOR EQUAL EMPLOYMENT OPPORTUNITY (EEO) PARTICIPATION

The Contractor shall follow the requirements of NYSDOT Standard Specification §102-11 *Equal Employment Opportunity Requirements*. The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, which is the county or counties in which the work is located, are as follows:

GOALS FOR PARTICIPATION OF MINORITIES					
COUNTY	%	COUNTY	%	COUNTY	%
Albany	3.2	Herkimer	2.1	Richmond	Table
Allegany	6.3	Jefferson	2.5	Rockland	22.6
Broome	1.1	Kings	Table	St. Lawrence	2.5
Bronx	Table	Lewis	2.5	Saratoga	3.2
Cattaraugus	6.3	Livingston	5.3	Schenectady	3.2
Cayuga	2.5	Madison	3.8	Schoharie	2.6
Chautauqua	6.3	Monroe	5.3	Schuyler	1.2
Chemung	2.2	Montgomery	3.2	Seneca	5.9
Chenango	1.2	Nassau	5.8	Steuben	1.2
Clinton	2.6	New York	Table	Suffolk	5.8
Columbia	2.6	Niagara	7.7	Sullivan	17.0
Cortland	2.5	Oneida	2.1	Tioga	1.1
Delaware	1.2	Onondaga	3.8	Tompkins	1.2
Dutchess	6.4	Ontario	5.3	Ulster	17.0
Erie	7.7	Orange	17.0	Warren	2.6
Essex	2.6	Orleans	5.3	Washington	2.6
Franklin	2.5	Oswego	3.8	Wayne	5.3
Fulton	2.6	Otsego	1.2	Westchester	22.6
Genesee	5.9	Putnam	22.6	Wyoming	6.3
Greene	2.6	Queens	Table	Yates	5.9
Hamilton	2.6	Rensselaer	3.2		

(45 FR 65976 – 10/3/1980)

GOALS FOR PARTICIPATION OF MINORITIES BRONX, KINGS, NEW YORK, QUEENS, AND RICHMOND COUNTIES			
Electricians	9.0 to 10.2	Bricklayers	13.4 to 15.5
Carpenters	27.6 to 32.0	Asbestos workers	22.8 to 28.0
Steam fitters	12.2 to 13.5	Roofers	6.3 to 7.5
Metal lathers	24.6 to 25.6	Iron workers (ornamental)	22.4 to 23.0
Painters	26.0 to 28.6	Cement masons	23.0 to 27.0
Operating engineers	25.6 to 26.0	Glaziers	16.0 to 20.0
Plumbers	12.0 to 14.5	Plasterers	15.8 to 18.0
Iron workers (structural)	25.9 to 32.0	Teamsters	22.0 to 22.5
Elevator constructors	5.5 to 6.5	Boilermakers	13.0 to 15.5
		All others	16.4 to 17.5

(43 FR 14888 – 4/7/1978)

## GOAL FOR PARTICIPATION OF WOMEN

The goal for the participation of women is 6.9%.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted). If the Contractor performs construction work outside of New York State, it shall apply the goals established for the covered area where the work is actually performed.

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

### ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include

roadways functionally classified as local roads or rural minor collectors.

## II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA

requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will

have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

## **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical

area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such

labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

#### **8. Reasonable Accommodation for Applicants / Employees with Disabilities:**

The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

#### **9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:**

The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### **10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;



and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The

contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon

Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only

need to include an individually identifying number for each employee ( e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

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

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no

deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

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

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If

the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the

particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the

contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## **V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of

work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

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

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

## **VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-



aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

#### **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to

material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

## **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

## **X. CERTIFICATION REGARDING DEBARMENT, INELIGIBILITY AND SUSPENSION, VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

### **1. Instructions for Certification – First**

### **Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered

Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions,” provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective

participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public

(Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,"

without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary**

#### **Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

#### **XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or

attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

#### **ATTACHMENT A EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons

regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any

qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**SPECIAL NOTE****NYSDOL STATE PREVAILING WAGE RATES**

The contractor shall ensure that workers are paid the appropriate wages and supplemental (fringe) benefits. Throughout the contract, the Contractor shall obtain and pay workers in accordance with periodic wage rate schedule updates from the NYS Department of Labor (NYSDOL). Wage rate amendments and supplements are available on the NYSDOL website at <https://www.labor.ny.gov/home/>. All changes or clarification of labor classification(s) and applicability of prevailing wage rates shall be obtained in writing from the Office of the Director, NYSDOL Bureau of Public Work.

The NYSDOL prevailing wage rate schedule for this contract has been determined and is available on the internet. The prevailing wage rate schedule is accessed by visiting the NYSDOL website, navigating to the appropriate web page and entering the Prevailing Rate Case No. (PRC#). The PRC# is 2021003116. The wage rate schedule for this project can be found at the following link: <https://applications.labor.ny.gov/wpp/showFindProject.do?method=showIt>



# INCORPORATION OF NYSDOT STANDARD SPECIFICATIONS

## NYSDOT STANDARD SPECIFICATIONS

- Except as modified herein, the current Edition of the Standard Specifications, Construction and Materials (Section 100 and Sections 200-700) issued by the New York State Department of Transportation, Office of Engineering, including all revisions and addenda issued by NYSDOT prior to the date the Notice to Bidders is advertised, hereinafter referred to as the NYSDOT Standard Specifications, shall govern the work to be done where referred to on the plans and in these specifications. If a conflict exists between the NYSDOT Standard Specifications and these Contract Documents, the NYSDOT Standard Specification shall govern.

## BASIC MODIFICATIONS

- Where the NYSDOT is mentioned in any capacity (including, but not limited to, Department, State, Commissioner of Transportation, DOT, or Director(s) of its subdivisions) as an approving authority with regard to materials, fabrication, inspections or other approvals, the approving authority shall be changed to the OWNER. This change shall be made in all of the documents pertaining to this contract.
- Unless otherwise described in the Contract Documents, neither the State of New York nor the NYSDOT are parties to this agreement.
- Where the Deputy Chief Engineer (DCE) for any department is mentioned as an approving authority, the approving authority shall be changed to the “Engineer of Record” defined as the Engineer that has signed and sealed construction plans and specifications.
- In the Materials subheadings of the Technical Specifications of the contract documents and the latest edition of the NYSDOT Standard Specifications, the following shall apply:
  - Any references to materials testing by the Department or its representative shall be interpreted to mean by the Contractor, the Owner or its representative. This interpretation also applies to any testing or sampling to be obtained in the presence of a Department representative.
- Any reference to NYSDOT Standard Specifications is limited in scope to technical engineering and construction work, materials, details, procedures, etc. All references to the State or the NYSDOT or administrative officers or employees thereof are null and void with respect to legal or contractual responsibilities.

**Post Award Forms**

PROJECT: \_\_\_\_\_

DATE OF ISSUANCE: \_\_\_\_\_ EFFECTIVE DATE: \_\_\_\_\_

OWNER: \_\_\_\_\_

OWNER'S Contract No. \_\_\_\_\_

CONTRACTOR \_\_\_\_\_ ENGINEER Greenman-Pedersen, Inc (GPI)

You are directed to make the following changes in the Contract Documents.

Description: \_\_\_\_\_

Reason for Change Order: \_\_\_\_\_

Attachments: \_\_\_\_\_

<b>CHANGE ORDER IN CONTRACT PRICE:</b>	<b>CHANGE IN CONTRACT TIMES:</b>
Original Contract Price:	Original Contract Times
\$ _____	Substantial Completion: _____ (days or dates)
Net changes from previous Change Orders No. _____ to _____	Net changes from previous Change Orders No. _____ to _____
\$ _____	\$ _____ days
Contract price prior to this Change Order:	Contract Times prior to this Change Order
\$ _____	Substantial Completion: _____
Net increase (decrease) of this Change Orders	Net increase (decrease) of this Change Orders
\$ _____	_____ days
Contract price with all approved Change Orders:	Contract Times with all approved Change Orders
\$ _____	Substantial Completion: _____

This change order represents full and complete compensation for all costs relative to the change itself and all other impacts on the project. Contractor hereby acknowledges that it has considered and priced into this change order impacts beyond the scope of the individual change order and waives all claims otherwise.

**RECOMMENDED:****APPROVED:****ACCEPTED:**

BY: \_\_\_\_\_ BY: \_\_\_\_\_ BY: \_\_\_\_\_  
 Engineer (Authorized Signature) Owner (Authorized Signature) Contractor (Authorized Signature)

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

**ACCEPTED:**

BY: \_\_\_\_\_  
 NYSDOT (Authorized Signature)

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

EJCDC NO. 1910-8-B (1990 Edition)

Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America

**NOTICE OF AWARD**

Dated: \_\_\_\_\_, 20 \_\_\_\_

TO: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PROJECT: \_\_\_\_\_

OWNER'S CONTRACT NO. \_\_\_\_\_

CONTRACT FOR \_\_\_\_\_

(Insert name of Contract as it appears in the Bidding Documents)

You are notified that your Bid dated \_\_\_\_\_, 20\_\_\_\_ for the above Contract has been considered. You are the apparent Successful Bidder and have been awarded a contract for \_\_\_\_\_

(Indicate total Work, alternates or sections or Work awarded)

The Contract Price  
of your contract is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).  
(figures)

[Insert appropriate data in re Unit Prices. Change language for Cost-Plus contracts.]

\_\_\_\_\_ copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

\_\_\_\_\_ sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within fifteen days of the date of this Notice of Award, that is by \_\_\_\_\_, 20\_\_\_\_.

1. You must deliver to the OWNER fully executed counterparts of the Agreement including all the Contract Documents. This includes the triplicate sets of Drawings. Each of the Contract Documents must bear your signature on (the cover) (every) page (pages \_\_\_\_\_).
2. You must deliver with the executed Agreement the contract Security (Bonds) as specified in the Instructions to Bidders (paragraph 18).

3. (List other conditions precedents).

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Failure to comply with these conditions within the time specified will entitle OWNER to consider your bid in default, to annul this Notice of Award and to declare your Bid Security forfeited.

Within ten days after you comply with the above conditions. OWNER will return to you one fully signed counterpart of the Agreement the Contract Documents attached.

\_\_\_\_\_  
(OWNER)

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

(AUTHORIZED SIGNATURE)

\_\_\_\_\_  
(TITLE)

#### ACCEPTANCE OF AWARD

\_\_\_\_\_  
(CONTRACTOR)

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

(AUTHORIZED SIGNATURE)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(DATE)

COPY to ENGINEER  
(Use Certified Mail.  
Return Receipt Requested)

**NOTICE TO PROCEED**

Dated: \_\_\_\_\_, 20 \_\_\_\_

TO: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PROJECT: \_\_\_\_\_

OWNER's CONTRACT NO. \_\_\_\_\_

CONTRACT FOR \_\_\_\_\_

(Insert name of Contract as it appears in the Bidding Documents)

You are notified that the Contract Times under the above contract will commence to run on \_\_\_, 20\_\_\_. By that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 3 of the Agreement the dates of Substantial Completion and completion and readiness for final payment are \_\_\_, 20\_\_\_ and \_\_\_, 20\_\_\_.

Before you may start any Work, you and Owner must each deliver to the other (with copies to ENGINEER and other identified additional insureds) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also before you may start any Work at the site, you must (add other requirements)

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

\_\_\_\_\_  
(OWNER)By: \_\_\_\_\_  
(AUTHORIZED SIGNATURE)\_\_\_\_\_  
(TITLE)**ACCEPTANCE OF AWARD**By: \_\_\_\_\_  
(CONTRACTOR)\_\_\_\_\_  
(AUTHORIZED SIGNATURE)\_\_\_\_\_  
(TITLE)\_\_\_\_\_  
(DATE)

Copy to ENGINEER  
 (Use Certified Mail,  
 Return Receipt Requested)

**Technical Specifications**

**GENERAL SPECIAL NOTES**  
**VETERAN'S CULVERT REPLACEMENT OVER FIVE MILE CREEK**

**A. EXISTING PRIVATE PROPERTY MARKERS:**

The Contractor's attention is directed to the fact that any existing iron pins, stakes, survey monuments or other markers defining property lines which may be disturbed during construction, shall be properly tied into fixed reference points before being disturbed and accurately reestablished to their proper position upon completion of the work. The cost of survey to tie and reestablish property marker locations shall be included in the lump sum price bid for item 625.01 – Survey and Stakeout.

**B. ITEM 625.01 – SURVEY AND STAKEOUT**

In addition to the proposed work required under Item 625.01 – Survey and Stakeout, the Contractor may also be required to provide for the specific layout of existing and proposed roadway boundaries for use by the utility companies if they are performing utility relocations within the Contract limits. The price bid for Item 625.01 – Survey and Stakeout, shall include all work necessary for the survey and stakeout required for the utility relocations.

**C. COORDINATION WITH EMERGENCY RESPONSE SERVICES:**

The volunteer emergency response services servicing this area shall be given a minimum of two (2) weeks advance notice of changes in all traffic patterns, including lane closures, necessary to meet construction requirements. Such other agencies including school districts, disaster relief, etc. shall be notified by published notice prior to the inception of any changes in the traffic patterns. The Contractor shall notify the Engineer in a timely manner of any changes in the traffic patterns so the Engineer can make advance notifications.

**D. COORDINATION WITH OTHER CONSTRUCTION CONTRACTS**

The Contractor shall be aware of any other construction contracts within the area which may be occurring along Town, County or State highways. The Engineer will maintain contact with those projects. The Engineer shall coordinate closures between the projects. Any cost due to work modifications shall be included in other items of work.

**E. CONTRACTOR SUBMITTALS**

The Contractor shall include a Letter of Transmittal, which includes a uniquely identifiable transmittal number for each transmittal being sent, on all submittals to the County. All shop drawing transmittals shall also carry a uniquely identifiable transmittal number and letter from the Contractor.

**F. WINTER SHUTDOWN**

Prior to a winter shutdown (if necessary), the Contractor shall be required to do the following:

1. Provide asphalt wedges, with suitable bond breakers at all locations there is a difference in the elevation between asphalt courses. Payment shall be included under Item 619.01 – Work Zone Traffic Control.
2. No delineation devices (i.e. Reflectorized plastic drums, traffic cones, etc.) shall be left in place during winter shutdown. All drop-offs shall be graded to 1 on 4 slopes or as directed by the Engineer.
3. Provide full pavement delineation using Reflectorized pavement marking paint, conforming to Section 640 of the Standard Specifications. Payment shall be included under Item 619.01 – Work Zone Traffic Control.



**GENERAL SPECIAL NOTES**  
**VETERAN'S CULVERT REPLACEMENT OVER FIVE MILE CREEK**

**G. MATERIAL STOCKPILES**

The Contractor shall not stockpile earth or other materials in a manner conducive to erosion, or in areas likely to cause high turbidity runoff during storm events. All exposed soils shall be re-vegetated in a timely manner to further reduce potential erosion effects.

**H. MATERIAL DISPOSAL**

The Contractor is advised there are no disposal sites within the project available for disposal of excess material. The Contractor shall remove all excess material from the site. Any material stockpiled awaiting disposal shall be stockpiled in upland areas, and be suitably stabilized so that it cannot re-enter any waterway or wetland.

**I. EROSION CONTROL DEVICES**

The Contractor shall ensure that all synthetic erosion control devices, which are intended for temporary use during construction, are completely removed and properly disposed of after site stabilization has occurred. Only natural fiber materials, which will degrade over time, may be used as permanent measures, or if used temporarily may be abandoned in place.

**J. ITEM 610.1601 – TURF ESTABLISHMENT - ROADSIDE**

Seeding is required for long term stabilization as determined by the Engineer.

The Contractor's attention is alerted to the added requirements and stipulations of this Item. The price per square yard of Seed and Mulch – Temporary, includes all cost associated with being able to provide a quality mulch cover, spread in a uniform layer to protect the existing soil layer. Mulching of areas larger than 120 square yards must be completed using mechanical spreaders or blowers, and tacking of the mulch will be required to hold it in place.

Under no condition shall any area of unprotected erodible earth material exposed by clearing and grubbing, excavation, fill or other work within the ROW be left in an unprotected condition for a period greater than 2 days unless according to the Contractor's schedule submitted to the Engineer, the Contractor plans to resume work on that portion of the area within 14 days from which the activity temporarily ceased. However, any portion of an area on which clearing and grubbing, excavation, fill or other work within the ROW had permanently ceased shall be stabilized by either temporary or permanent means. The Contractor will also be aware of impending weather conditions and the need to apply mulch on areas that work is progressing in order to meet the requirements of Section 209 of the Standard Specifications.

Mulching on this project is the primary erosion prevention method to be used. It is included to satisfy permit conditions and other Regulations needed to complete the work proposed in this project. Mulching plays a major role in maintaining the water quality of water bodies and wetlands.

**SPECIAL NOTE**  
**EMERGENCY CONTACTS**

The Contractor shall employ, for the duration of the Contract a telephone answering service to meet the requirements stated in Section 107-05 of the Standard Specifications.

The answering service shall be equipped to receive calls on a 24-hour basis and promptly contact Contractor personnel with the authority and capacity to mobilize forces to respond to an emergency.

The following action shall be taken after an emergency call is received.

A. During Normal Work Hours:

1. The Contractor's responsible person shall respond to the person or agency that initiated the call within 20 minutes from the time the answering service received the call.
2. Immediately following the return call to the initiator, he should contact the Engineer advising of the situation and what action he plans to take. If the Engineer is not reachable at the Project Field Office, he should leave a message on the Engineer's answering machine and contact Essex County at (518) 873-3746 with the same information.
3. The Contractor shall respond to the emergency and make the follow-up confirmatory calls as directed by the Engineer or Essex County.

B. During Non-Working Hours:

1. The Contractor's responsible person shall respond to the person or agency that initiated the call within 20 minutes from the time his answering service received the call. If the call initiated from a person or agency other than Essex County, the contractor shall immediately notify the Engineer of the situation and the action planned by contacting Greenman-Pedersen, Inc. at (518) 453-9431 and leaving a message.
2. If work is required at the project site, the Contractor's responsible person shall be at the site within one hour from the time of the initiator's original call.
3. Follow-up call within two hours of the original call shall be made to the original caller, Essex County and to Greenman-Pedersen, Inc. advising the status of the emergency and the actions taken. At the same time, a message shall be left on the Engineer's field office answering machine with the same information.

## US CUSTOMARY ASPHALT PRICE ADJUSTMENT

ASPHALT PRICE ADJUSTMENT <sup>1</sup> CONVERSION FACTORS		
MATERIAL DESCRIPTION	CONVERSION FACTOR	ITEM NUMBER <sup>2</sup>
Bituminous Stabilized Course	0.065 t PGB/yd <sup>3</sup>	302.01
Asphalt Treated Permeable Base, Type 2	0.035 t PGB/t	402.01190X, 404.01190X
Shim Course	0.0825 t PGB/t	402.05890X, 404.05890X
6.3 Top Course	0.067 t PGB/t	402.06XXXX, 404.06XXXX
9.5 Top Course, T&L, Shoulder Course	0.062 t PGB/t	402.09XXXX, 402.41890X, 404.09XXXX, 404.41890X
12.5 Top Course, T&L, Shoulder Course	0.055 t PGB/t	402.12XXXX, 402.42890X, 404.12XXXX, 404.42890X
19 Binder Course	0.049 t PGB/t	402.19XXXX, 402.43890X, 404.19XXXX, 404.43890X
25 Binder Course	0.045 t PGB/t	402.25XXXX, 402.44890X, 404.25XXXX, 404.44890X
37.5 Base Course	0.040 t PGB/t	402.37XXXX, 404.37XXXX
Paver Placed Surface Treatment, Types A, B, and C	0.064 t PGB/t	415.0X0F0118
Micro-Surfacing, Quick-Set Slurry	0.078 t PGB/t	413.0X0F0118, 414.0X0F0118
Straight Tack Coat	0.0026 t PGB/gal	407.0103
Asphaltic Sealants (ASTM 6690)	0.0027 t PGB/gal	402.75XXXX18, 402.76XX0018
Chip Seal	0.0027 t PGB/gal	410.30, 410.02030006
Asphalt Emulsion for Cold Recycling	0.0027 t PGB/gal	416.02XX00RR, 416.20XX00RR, 416.2X, 416.21XX00RR
Fog Seal and Dilute Tack Coat	0.0016 t PGB/gal	407.0102407.01XXXXRR, 410.40, 416.30, 416.040000RR, 416.300000RR
PG Binder for Cold Recycling	0.0043 t PGB/gal	416.22, 416.030000RR, 416.22000018
Asphaltic Sealant – Clean & Seal	0.00004 t PGB/LF 0.225 t PGB/LNMI	402.76XX0008, 412.76XX0001
Asphaltic Sealant – Treating Cracks	0.240 t PGB/LNMI	412.76040001
Asphaltic Sealant – Rout & Seal	0.00005 t PGB/LF 0.270 t PGB/LNMI	402.760100RR, 412.760100RR, 412.760300RR
Repair of HMA Pavement, Temporary Asphalt	See Note 4	633.14, 633.15, 633.16, 619.06xx
Truing and Leveling, Asphalt Sidewalks, Driveways, Bike Paths, Gutters	See Note 5	402.01790X, 402.01890X, 404.01790X, 404.01890X, 608.020102, 624.02XXXX
Waterproof Bridge Deck Overlay	0.0725 t PGB/t	402.907X0X18

## US CUSTOMARY ASPHALT PRICE ADJUSTMENT

### ASPHALT PRICE ADJUSTMENT<sup>1</sup> CONVERSION FACTORS

#### Notes:

1. In accordance with Standard Specification §698-3.01, the index value for the asphalt price adjustment is the average posted price of Performance Graded Binder (PGB) for the month of bid letting.
2. Item Number - This is the contract pay item number under which these materials are most frequently paid. Unless indicated otherwise, materials similar to those indicated under the column entitled "Material Description" are also eligible for adjustment using the factor listed for a similar material with the same pay unit regardless of the actual contract pay item number.
3. Quality Adjustment Items (402/404/608/624) are not eligible for asphalt price adjustment.
4. Asphalt Price Adjustment Conversion Factor based on unit of TON of asphalt placed, not the pay unit of this item. The conversion factor for HMA Pavement Repair and Temporary Asphalt will be based on the actual asphalt mixture used.
5. The conversion factor for Truing and Leveling, Driveways, and other items that allow asphalt mix options, will be based on the actual asphalt mixtures used.
6. A two-digit suffix (RR) at the end of a contract pay item indicates a special specification.
7. The conversion factors for HMA mixed with slag shall be increased by 25%.
8. t = ton; LF = linear feet; LNMI = lane miles

## US CUSTOMARY FUEL PRICE ADJUSTMENT

FUEL PRICE ADJUSTMENT <sup>1</sup> CONVERSION FACTORS		
MATERIAL DESCRIPTION	CONVERSION FACTOR	ITEM NUMBER <sup>2</sup>
Unclassified Excavation	0.35 gal/yd <sup>3</sup>	203.02
Embankment	0.10 gal/yd <sup>3</sup>	203.03, 620.XX
Fill	0.45 gal/yd <sup>3</sup>	203.05, 203.06, 203.07, 203.08XX, 203.20, 203.21, 203.25
Controlled Low Strength Material	1.00 gal/yd <sup>3</sup>	204.01, 204.02, 204.03, 204.04
Trench/Culvert/Structure Excavation	0.50 gal/yd <sup>3</sup>	206.01, 206.0201
Bituminous Stabilized Course	1.40 gal/yd <sup>3</sup>	302.01, 307.01
Subbase Course	1.00 gal/yd <sup>3</sup>	304 Items
Asphalt Mixtures	2.50 gal/ton	402 Items <sup>3</sup> , 404 Items <sup>3</sup> , 405.01, 608.020102 <sup>3</sup> , 619.0601 <sup>4</sup> , 624.02XXXX <sup>3,4</sup> , 633.14 <sup>3,4</sup> , 633.15 <sup>3,4</sup> , 633.16 <sup>3,4</sup>
Milling	0.10 gal/yd <sup>2</sup>	490 Items
Portland Cement Concrete Pavement	1.00 gal/yd <sup>3</sup>	502 Items <sup>3</sup> , 503.1010, 503.1011, 503.1012
Fill Type Retaining Walls	0.45 gal/yd <sup>3</sup>	554.30XX <sup>5</sup> , 554.31 <sup>5</sup> , 554.4X <sup>5</sup>
Footing Concrete & Concrete for Structures – All classes	1.00 gal/yd <sup>3</sup>	555 Items, 582.05
Approach Slabs	0.33 gal/yd <sup>2</sup>	557.2001, 557.2002, 557.2003, 557.2009, 557.22
Structural Slabs with bottom formwork	0.25 gal/yd <sup>2</sup>	557.01XX, 557.07, 557.30, 557.41XX
Structural Slabs - no bottom formwork	0.15 gal/yd <sup>2</sup>	557.05XX, 557.09, 557.43XX
Class D and Overlay Concrete	0.05 gal/yd <sup>2</sup>	557.13, 584 Items
Concrete Barrier, Type A	0.16 gal/ft	606.3001, 606.3021, 606.3031
Concrete Barrier, Type B	0.19 gal/ft	569.01, 606.3002, 606.3022, 606.3032
Concrete Barrier, Type C	0.22 gal/ft	606.3003, 606.3023, 606.3033
Concrete Barrier, Half Section	0.11 gal/ft	569.02, 569.06, 606.3004, 606.3024, 606.3034
Concrete Barrier, Single Slope	0.23 gal/ft	569.05, 569.07, 606.3041, 606.3043, 606.3044
Concrete Barrier Texas & Wide, Single Slope	0.28 gal/ft	569.08, 606.3051, 606.3053, 606.3054
Concrete Barrier Half Section, Single Slope	0.17 gal/ft	569.04, 606.3061, 606.3063, 606.3064
Vertical Faced Concrete Parapet	0.10 gal/ft	569.03
Gravel, Stone, Slag	1.00 gal/yd <sup>3</sup>	411.01, 411.02, 411.03, 623.1X
Concrete Sidewalks and Driveways	1.00 gal/yd <sup>3</sup>	608.01XX
Topsoil	0.45 gal/yd <sup>3</sup>	610.10, 610.11XX, 610.14XX
Turf Establishment - Performance	0.05 gal/yd <sup>2</sup>	610.16010020

**US CUSTOMARY FUEL PRICE ADJUSTMENT****FUEL PRICE ADJUSTMENT<sup>1</sup> CONVERSION FACTORS****Notes:**

1. In accordance with Standard Specification §698-3.02, the index value for the fuel price adjustment is the posted price for the month of bid letting.
2. Item Number - This is the contract pay item number under which these materials are most frequently paid. Unless indicated otherwise, materials similar to those indicated under the column entitled "Material Description" are also eligible for adjustment using the factor listed for a similar material with the same pay units regardless of the actual contract pay item number.
3. Quality Adjustment Items (402/404/502/608/624) are not eligible for fuel price adjustment.
4. Fuel Price Adjustment Conversion Factor based on units of TONS of asphalt placed, not the pay units of this item.
5. Fuel Price Adjustment Conversion Factor based on units of CY of backfill paid under this item, not the pay units of this item.

**SPECIAL NOTES**  
**GREEN CONSTRUCTION REQUIREMENTS**

**ULTRALOW SULFUR DIESEL FUEL**

In order to reduce diesel emissions, the Contractor shall use Ultra Low Sulfur Diesel (ULSD) fuel to operate all diesel engines used to complete the work that will operate for 10 hours or more on the contract site. ULSD fuel requirements shall apply to:

- All diesel engines/equipment.
- Stationary and mobile equipment.
- Owned, leased and rented equipment.

The hours the piece of equipment is used to complete the work is defined as the actual time the engine is running. The time may be continuous or discontinuous and includes warm-up periods idling, in traffic periods, etc.

The term "Contractor" is intended to mean both Prime Contractors and Subcontractors. Materials delivery vehicles not owned by the Contractor/Subcontractor are exempt from this requirement, but should minimize idling time at construction sites when ever possible.

The Contractor will be notified when any diesel powered construction equipment is in noncompliance. Non-compliance shall be corrected within a 24-hour period.

**SPECIAL NOTES**  
**GREEN CONSTRUCTION REQUIREMENTS**

**CONTROLLING EXPOSURE TO DIESEL EXHAUST**

The Contractor shall exercise measures to protect “Sensitive Receptors” from the impacts of diesel exhaust fumes. Sensitive Receptors include, but are not limited to: hospitals, schools, daycare facilities, building fresh air or ventilation intakes, elderly housing or convalescent facilities. The Contractor shall ensure that diesel powered engines are located away from building air conditioners and windows.

The goal is to minimize exposure of Sensitive Receptors in close proximity to diesel exhaust, in terms of both concentration and time. In general, close proximity is defined as within 15 meters of a Sensitive Receptor. Mitigation techniques include positioning stationary equipment exhausts greater than 15 meters from Sensitive Receptors, extension of equipment exhausts through the use of flexible tubing; protecting building air intakes; and the use of moving operations.

Idling time for diesel powered equipment shall be limited to three consecutive minutes for Delivery and dump trucks and all other diesel powered equipment except as follows:

- When a “mobile source” (vehicle) is forced to remain motionless because of traffic conditions or mechanical difficulties over which the operator has no control.
- When it is necessary to operate a loading, unloading or processing device.
- When the outdoor temperature is less than -3°C (27°F).
- When the “mobile source” is being repaired.

Arrow panels and portable variable message signs shall be solar powered wherever possible or practical.

Whenever possible and practicable, the Contractor shall establish staging areas for diesel powered vehicles waiting to load or unload materials at the work site. Such areas shall be located where diesel emissions have the least impact on Sensitive Receptors and the general public.



## **SPECIAL NOTES**

### **GREEN CONSTRUCTION REQUIREMENTS**

#### **DUST CONTROL**

The Contractor shall minimize dust from disturbed soil surfaces or other materials that can cause off-site damage, health hazards and traffic safety problems. Dusty conditions resulting from the Contractor's operations shall be corrected at no additional cost to the State. Buffer areas of vegetation should be left where practical. Water quality shall be considered when selecting materials for dust control. An approved dust palliative may be used in conformance with applicable conditions placed on its use. A list of acceptable dust palliatives is available at:

[www.nysdot.gov/divisions/engineering/technical-services/geotechnical-engineering-bureau/dust-palliatives](http://www.nysdot.gov/divisions/engineering/technical-services/geotechnical-engineering-bureau/dust-palliatives)

For areas not subject to traffic, products and materials may be applied or placed on soil surfaces to prevent airborne migration of soil particles, including:

- Vegetative Cover—provides the most practical method of dust control.
- Mulch (including rolled erosion control products)—provides a fast, effective method of dust control.
- Spray Adhesives—Generally composed of polymers in a liquid or solid form mixed with water to form an emulsion that is sprayed on the soil surface. The mixing ratios and application rates will be in accordance with the manufacturer's recommendations for the specific soils on the site. Adhesives shall not be applied to wet soils or if there is a probability of precipitation within 48 hours.
- For areas subject to traffic (traveling public or construction traffic) products and materials may be applied or placed on soil surfaces to prevent airborne migration of soil particles, including:
- Water Sprinkling—The site may be sprayed with water until the surface is wet. This is especially effective on haul roads and access routes.
- Polymer Additives—Polymers shall be mixed with water and applied to the driving surface using mixing ratios and application rates in accordance with the manufacturer's recommendations. No application of the polymer will be made if there is a probability of precipitation within 48 hours of its proposed use. Any polymers must be used in accordance with the NYSDEC issued "Conditions for Use" and "Application Instructions." This information can be obtained from the NYSDEC website.
- Barriers—Woven geotextiles or stone can be placed on the driving surface to effectively reduce dust throw and particle migration on haul roads.
- Windbreak—A silt fence or similar barrier can control air currents at horizontal intervals equal to ten times the barrier height. Preserve existing vegetation that acts as a wind barrier as much as practical.
- Wheel Washing—Mechanical or manual wet-method cleaning of on-road construction vehicle tires prior to leaving site.

## **SPECIAL NOTE**

### **SUPERPAVE HOT MIX ASPHALT PERFORMANCE SPECIFICATION**

#### **PG BINDER AND MIX DESIGN LEVEL**

Use a **PG 64S-22** meeting the requirements of AASHTO M 332, *Standard Specification for Performance Graded Asphalt Binder using Multiple Stress Creep Recovery (MSCR)*, for the production of hot mix asphalt mixtures for this project. Terminal blend Crumb Rubber Modifier (CRM) may be used to meet the stated requirements. Handling of the modified HMA shall be discussed at pre-construction and pre-paving meetings.

When terminal blend CRM PG binder is used, the following shall apply:

- Crumb rubber particles shall be finer than #30 sieve size.
- The CRM PG binder shall be storage-stable and homogeneous.
- The Dynamic Shear Rheometer (DSR) shall be set at a 2-mm gap.
- The CRM PG binder shall be 99% free of particles retained on the 600µm sieve as tested in accordance with Section 5.4 of M 332.

Use of polyphosphoric acid (PPA) to modify the PG binder properties is prohibited for mixtures under this contract. This prohibition also applies to the use of PPA as a cross-linking agent for polymer modification.

#### **MIX DESIGN**

The mixture designs must be developed in accordance with the criteria specified in the HMA items that are appropriate for an Estimated Traffic Level of **<0.3** Million 18-kip ESALs.

#### **MOISTURE SUSCEPTIBILITY TESTING**

Any HMA mix design where the primary aggregate component by weight is granite or crushed gravel will be subject to moisture susceptibility testing by the producer during design, unless this requirement is waived by the Regional Materials Engineer (RME). Tensile strength ratio (TSR) testing may be required by the RME when there is a change to the asphalt binder source. Moisture susceptibility will be determined by calculating the TSR of each specimen according to AASHTO T 283, *Resistance of Compacted Asphalt Mixtures to Moisture-Induced Damage*, except as modified in Section VI.D. of NYSDOT Materials Method 5.16.

If the TSR of the HMA gyratory specimens is less than 80% as required in AASHTO M 323, *Standard Specification for Superpave Volumetric Mix Design*, corrective action is required. Corrective action to improve the moisture susceptibility of the HMA mixture can include the use of anti-strip additives or blending of other aggregate materials to reduce the proportion of granite or gravel aggregates in the mix. When corrective action is necessary, any changes made to the design must be noted on the Job Mix

**SPECIAL NOTE****SUPERPAVE HOT MIX ASPHALT PERFORMANCE  
SPECIFICATION**

Formula, and all other volumetric and mechanical properties must be evaluated for compliance with NYSDOT Materials Method 5.16 using a one-point design. The results must be reported to the RME prior to production.

**VIBRATORY COMPACTION**

Vibratory compaction is NOT permitted when compacting hot mix asphalt courses on structural bridge decks, including culvert structures with less than 2 ft of cover measured from the top of the top slab to top of the pavement.

**SPECIAL SPECIFICATIONS: (P.I.N. 1761.09)**

The following items are special specifications:

<b><u>Item</u></b>	<b><u>Description</u></b>
584.50010018	THIN POLYMER (EPOXY) OVERLAYS FOR STRUCTURAL SLABS
627.50140008	CUTTING PAVEMENT
663.29010407	TEMPORARY WATER MAIN – 04 NPS

## **ITEM 584.50010018 – THIN POLYMER (EPOXY) OVERLAYS FOR STRUCTURAL SLABS**

### **DESCRIPTION**

Furnish and apply a two course thin polymer (epoxy) overlay wearing surface on an existing bridge deck surface in accordance with the Contract Documents and as directed by the Engineer.

### **MATERIALS**

- A. Thin Polymer (Epoxy) Overlay System.** Shall meet Materials Requirements of 734-01.
- B. Packaging and Shipment.** All components shall be shipped in appropriate containers, bearing the manufacturer's label specifying date of manufacture, batch number, brand name, quantity, and date of expiration or shelf life.

### **CONSTRUCTION DETAILS**

- A. General.** The Materials Details and Material Safety Data Sheets (MSDS) for the thin polymer (epoxy) overlay system are readily available on the Department Approved List on the internet @ [www.dot.ny.gov](http://www.dot.ny.gov) under Approved List of Materials and Equipment. The materials details will provide the following:

- Product Information
- Surface Preparation
- Application Procedure
- Curing Procedure

For Epoxy and Aggregate Suppliers, use NYSDOT Materials and Equipments Approved List: Thin Polymer (Epoxy) Overlays for Structural Slabs

A technical representative from the overlay manufacturer shall be on-site during all phases of the work to make recommendations and to facilitate the overlay installation. This shall include, but not be limited to, surface preparation, deck surface repairs, overlay application, and overlay cure.

Contractor shall provide adequate shielding to protect traffic and surrounding environment from rebound and dust during surface preparation and shot-blast cleaning work. Any spent shot blast beads, shot blast waste shall be removed from the project by the end of the day.

Contractor shall provide suitable coverings (e.g. heavy duty drop cloths) during overlay application to protect all exposed areas not to be overlaid, such as curbs, sidewalks, parapets, expansion joints, etc. Any damage or defacement resulting from this application shall be thoroughly cleaned and/or repaired to the Engineer's satisfaction and at no additional cost to the State.

- B. Storage of Materials.** All materials will be stored in accordance with the Materials Details.

## **ITEM 584.50010018 – THIN POLYMER (EPOXY) OVERLAYS FOR STRUCTURAL SLABS**

### **C. Installation Procedure:**

**1. Surface Preparation.** The Contractor will perform all necessary deck repair work prior to placement of the epoxy overlay. Once the required repair area(s) have been identified, confer with the preapproved selected supplier of the Thin Polymer (Epoxy) Overlay system to ensure that the repair material is compatible with the selected system. Allow for all repair materials to properly cure prior to placement of Thin Polymer (Epoxy) Overlay system. The deck repairs will be made where indicated on the plans or where directed by the Engineer. Repairs will be paid for under the appropriate structural concrete removal item. Concrete patches will be completely cured prior to placement of the epoxy overlay. After deck repairs are completed, cured and prior to placement of the overlay, the Contractor will blast the entire deck surface to remove asphaltic materials, oil, grease, dirt, sealers, rust, laitance, curing compounds, paint and weak concrete materials that would inhibit successful bonding of the epoxy overlay to the wearing surface.

Automatic shot-blast units will use a vacuum to recover spent abrasives. Magnetic rollers or other devices will be used to remove any spent shot remaining on the deck after vacuuming. Traffic paint lines shall be completely removed prior to placement of the overlay and reapplied upon completion of the overlay. Freshly repaired and cured concrete areas will be cleaned per Section 584-3.02A of the Standard Specifications. All steel surfaces that will be in contact with the overlay will be cleaned according to SSPC-SP No.10, Near-White Blast Cleaning. A profile of CSP5-6 is desired

The bridge deck surface must be dry prior to the application of the thin polymer (epoxy) overlay system. No visible moisture shall be present on the bridge deck at the time of placement. Prior to overlay application, moisture content reading must be  $\leq 5.0\%$  using a moisture meter, or you can use ASTM D4263 - Indicating Moisture in Concrete by the Plastic Sheet Method for a minimum of 2 hours. If using ASTM D4263, no visible moisture is considered acceptable.

*Do not apply overlay if rain is expected during installation or curing time.*

**Bond Strength to structure:** Acceptability of the surface preparation may be determined by the use of a vertical axis pull bond test. Test shall be performed in accordance to ACI 503R-30 or ASTM C1583/C1583M and shall have a minimum bond strength of 250 psi or achieve failure of the concrete. The test should be performed every 100 linear feet (LF) minimum or 300 LF maximum. Minimum 4 pull-off tests are required per structure. The Engineer will determine the test locations or per manufacturer representative recommendation.

Immediately prior to application of the overlay, the Contractor shall request and receive approval to proceed from the Engineer to assure that the surface is acceptable for application of the thin polymer (epoxy) overlay.

## **ITEM 584.50010018 – THIN POLYMER (EPOXY) OVERLAYS FOR STRUCTURAL SLABS**

**2. Application** The thin polymer (epoxy) overlay shall be applied in accordance with this specification and the Manufacturer Materials Detail Sheets (MDS).

**Epoxy Resin Application Rate:**

Course #1: Epoxy rate is 30 ft<sup>2</sup>/gal

Course #2: Epoxy rate is 20 ft<sup>2</sup>/gal

**Aggregate Application Rate:** Approximately ~ 1.5 lb/ft<sup>2</sup> or to refusal per course.

The two courses of the thin polymer (epoxy) overlay shall be applied within 24 hours following final surface preparation. If the overlay is not applied within 24 hours, or the accepted prepared surface is opened to traffic and/or contaminated in any way, the pavement shall be re-cleaned to the satisfaction of the Engineer at no additional cost to the State. Traffic may be allowed prior to completion of 2<sup>nd</sup> course at discretion of EIC and manufacture's representative.

Expansion joints shall be protected from contaminants by masking or other methods as approved by the Engineer. Consult with manufacturer's representative and approved Material Details to address details at joints and drainage structures. The Contractor will demonstrate that these requirements are met to the Engineer's satisfaction.

**3. Finishing** The Contractor shall use methods and equipment for finishing the overlay materials in accordance with the Materials Details. The completed overlay surface shall be free of any smooth or "glassy" areas such as those resulting from insufficient quantities of surface aggregate. Contractor shall repair such surfaces as recommended by the manufacturer and approved by the Engineer at no additional cost to the State.

**4. Surface and Thickness Requirements.** The specified thickness requirements will be verified by the manufacturer's representative to the Engineer's satisfaction.

- D. Curing.** The thin polymer (epoxy) overlay will be cured before subjecting it to traffic or any loads that would damage the overlay. Cure time is dependent upon both ambient and deck temperatures. Material shall not be placed if ambient temperature is less than 50°F or is expected to fall below 50°F during the placement period. The degree of cure and suitability of the overlay for traffic loads shall be determined by the manufacturer representative and approved by the Engineer.

### **METHOD OF MEASUREMENT**

This work will be measured as the number of square feet of thin polymer (epoxy) overlay system satisfactorily applied as determined by deck measurements and as shown in the Contract Documents.

### **BASIS OF PAYMENT**

The unit price bid per square foot shall include the cost of all labor, materials and equipment necessary to satisfactorily complete the work. The unit price bid shall include the cost of having the epoxy overlay manufacturer's representative onsite during the work as required.

**ITEM 627.50140008 - CUTTING PAVEMENT****DESCRIPTION:**

The contractor shall cut existing asphalt pavement, concrete pavement, asphalt surface course, or asphalt concrete overlay on concrete pavement at the locations indicated and detailed on the plans and as directed by the Engineer.

**MATERIALS:**

None specified.

**CONSTRUCTION DETAILS:**

Existing pavement and overlay shall be cut perpendicular to the roadway surface along neat lines, and to the depth indicated on the plans and typical sections, using appropriate equipment. After the pavement has been cut through, the Contractor may use pry bars, pneumatic tools or other methods, to pry loose the pavement to be removed from the pavement that is to remain. A pavement breaker may be used to break up the pavement to be removed after the pavement has been completely cut through and completely free from the pavement to remain.

When pavement cutting is called for in the Contract documents, if a neat vertical face with minimal shatter is obtained by performing an adjacent operation (such as milling) which eliminates the need to perform a separate pavement cutting operation, payment will be made for both the pavement cutting item and the item for the adjacent operation.

Any existing pavements and curbs not indicated to be removed that are damaged by the contractor's operations, shall be repaired at no additional cost to the State. Pavement cutting that the contractor chooses to do for his/her own convenience shall not receive any additional payment from the State.

**METHOD OF MEASUREMENT:**

The quantity to be measured will be the number of linear feet of pavement cutting satisfactorily completed.

**BASIS OF PAYMENT:**

The unit price bid per linear foot of pavement cutting shall include the cost of all labor, materials, and equipment necessary to satisfactorily complete the work.

Payment for prying, breaking, removal and disposal of cut pavement shall be made through other appropriate items.



## **ITEM 663.2901XX07 - TEMPORARY WATER MAIN**

### **DESCRIPTION**

This work shall consist of furnishing, installing, testing, supporting, restraining, disinfecting, and removing a temporary water main in accordance with the contract documents and as directed by the Engineer. This work will also include tapping, isolating, and capping the existing main.

### **MATERIALS**

Unless otherwise specified in the plans the pipe material will be at the discretion of the contractor and shall conform to Material Section 722 – WATER SUPPLY.

### **CONSTRUCTION DETAILS**

The work includes everything necessary for the installation etc of a temporary water main. The appropriate parts of Section 663 – WATER SUPPLY UTILITIES shall apply as directed by the Engineer and the owner of the water system. The temporary water main shall be installed as shown on the plans and as directed by the Engineer. All Hydrostatic testing and disinfection shall be in accordance with section 663 of the standard specifications, as well as any special notes in the plans and proposal.

Removal of the temporary water main shall be in accordance with Section 663-3.02 of the Standard Specifications and shall not be removed until the permanent water main is installed and in operation.

### **METHOD OF MEASUREMENT**

The quantity to be measured for payment will be in feet of laying length to the nearest ½ foot. No deduction in measurement will be made for the length of fittings.

### **BASIS OF PAYMENT**

Payment for the temporary water main shall include the cost of furnishing all labor, materials, and equipment necessary to satisfactorily complete the work. Excavation and backfill is also included.

Progress payments will be made at the unit bid for 80 percent of the quantity after the temporary water main is installed, tested, and satisfactorily operating. The remaining 20 percent will be paid upon removal.

#### **Payment will be made under:**

<b>Item No.</b>	<b>Item Description</b>	<b>Pay Unit</b>
663.2901XX07	Temporary Water Main (XX NPS)	Foot

#### **NOTE:**

XX Denotes Nominal Pipe Size (NPS) of water main. For 4 NPS, 6 NPS, 8 NPS, 10 NPS & 12 NPS water mains, XX is 04, 06, 08, 10, & 12 respectively.

## **Supplemental Information**

**EXHIBIT C****INSURANCE REQUIREMENTS – PUBLIC WORKS CONTRACTORS**

I. The Contractor and each of its subcontractors shall procure and maintain during the entire term of the contract the following required insurance:

- **Commercial General Liability Insurance**  
\$1,000,000 per occurrence / \$2,000,000 aggregate, including coverage for liability assumed by contract, completed operations, explosion, collapse, underground hazard and products liability.
- **Automobile Liability**  
\$1,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.
- **Workers' Compensation**  
Statutory Workers' Compensation and Employers' Liability Insurance for all employees.
- **Owners & Contractors Protective Liability Insurance**  
\$2,000,000 per occurrence / \$2,000,000 aggregate.
- **Excess/Umbrella Liability Insurance**  
\$1,000,000 per occurrence / \$2,000,000 aggregate.

II. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the Contractor hereby agrees to name the Town as:

- an additional insured on the Contractor's Commercial General Liability, Automobile Liability and Excess/Umbrella Liability insurance policies, and
- a named insured on the Owners & Contractors Protective Liability Insurance Policy.

III. The policy/policies of insurance furnished by the Contractor shall:

- be from an A.M. Best rated "A" New York State licensed insurer; and
- contain a 30-day notice of cancellation

IV. The Contractor agrees to indemnify the Town for any applicable deductibles.

V. Contractor acknowledges that failure to obtain such insurance on behalf of the Town constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the Town. Prior to commencement of work or use of facilities, the Contractor shall provide to the Town proof that such requirements have been met by furnishing certificate(s) of such insurance, and the declarations pages from the policies of such insurance. The failure of the Town to object to the contents of the certificate(s) and/or declarations pages, or the absence of same, shall not be deemed a waiver of any and all rights held by the Town.

VI. All certificates of insurance will provide 30 days notice to the Town of cancellation or non-renewal.

VII. Contractor and subcontractor waives all rights of subrogation against the owner and will have the General Liability, Umbrella Liability Workers' Compensation policies endorsed setting forth this Waiver of Subrogation.

VIII. All policies will also contain no exclusions with respect to Section 240 and 241 of the NYS Labor Law.

IX. The Town shall be listed as an additional insured on a primary and non-contributory basis.

X. All Contractors Subcontractors shall comply with these provisions and shall list the Town as additional insured on a primary and non-contributory basis.

## **APPENDIX D - STANDARD CLAUSES FOR TOWN CONTRACTS**

### **1. Independent Contractor Status**

The parties each acknowledge, covenant and agree that the relationship of the Contractor to the Town shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, further covenants and agrees that it:

- (a) will conduct itself in accordance with its status as an independent contractor;
- (b) will neither hold itself out as nor claim to be an officer or employee of the Town; and
- (c) will not make any claim, demand or application for any right or privilege applicable to an officer or employee of the Town, including but not limited to workers' compensation benefits, unemployment insurance benefits, social security coverage or retirement membership or credits.

### **2. Contractor To Comply With Laws/Regulations**

The Contractor shall at all times comply with all applicable state and federal laws, rules and regulations governing the performance and rendition of the services to be furnished under this agreement.

### **3. Licenses, Permits, Etc.**

The Contractor shall, during the term of this agreement, obtain and keep in full force and effect any and all licenses, permits and certificates required by any governmental authority having jurisdiction over the rendition and performance of the services to be furnished by the Contractor under this agreement.

### **4. Termination**

This agreement may be terminated without cause by either party upon 30 days prior written notice, and upon such termination neither party shall have any claim or cause of action against the other except for services actually performed and mileage expenses actually incurred prior to such termination. Notwithstanding the foregoing, this agreement may be immediately terminated by the Town:

- (a) for the Contractor's breach of this agreement, by serving written notice of such termination stating the nature of the breach upon the Contractor by personal delivery or by certified mail, return receipt requested, and upon such termination either party shall have such rights and remedies against the other as provided by law; or
- (b) upon the reduction or discontinuance of funding by the State or Federal governments to be used in furnishing some or all of the work, labor and/or services provided for under this agreement, and upon such termination neither party shall have any claim or cause of action against the other except for services actually performed and expenses (if the same are to be paid under this agreement) actually incurred prior to such termination.

### **5. Defense & Indemnification**

The Contractor shall defend, indemnify and hold harmless the Town to the fullest extent allowed by law, and notwithstanding any insurance requirements, from and against any and all liability, losses, claims, actions, demands, damages, expenses, suits, judgments, orders, causes of action and claims, including but not limited to attorney's fees, legal costs, and all other costs of defense, by reason of any liability whatsoever imposed by law or otherwise upon the Town for damages to person, property or of any other kind in nature, including but not limited to those for bodily injury, property damage, death arising out of or in connection with its officers, employees, agents, contractors, sub-contractors, guests or invitees negligence or its/their performance or failure to perform this agreement. This language shall be inserted by

Contractor in all agreements between Contractor and its subcontractors and subcontractors will indemnify and hold harmless the Town pursuant to its terms.

6. **Discrimination Prohibited**

The services to be furnished and rendered under this agreement by the Contractor shall be available to any and all residents of the Town 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.

7. **Non-Discrimination In Employment**

The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, 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 or distribution of materials, equipment or supplies, (c) for building service, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin:

- (1) discriminate in hiring against any citizen who is qualified and available to perform the work; or
- (2) discriminate against or intimidate any employee hired for the performance of work under this contract.

The Contractor agrees to be subject to fines of \$50.00 per person per day for any violation of this paragraph, as well as to possible termination of this contract or forfeiture of all moneys due hereunder for a second or subsequent violation.

8. **Damage/Injury To Persons & Property**

The Contractor shall promptly advise the Town of all damages to property of the Town or of others, or of injuries incurred by persons other than employees of the Contractor, in any manner relating, either directly or indirectly, to the performance of this agreement.

9. **Records**

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter collectively "the Records") in accordance with the following requirements:

- (a) the Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter;
- (b) the Town Auditor, State Comptroller, the Attorney General or any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

The Town shall take reasonable steps to protect from public disclosure any of the records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate Town official, in writing, that said records should not be disclosed; and (ii) 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 adversely affect, the Town's right to discovery in any pending or future litigation.

10. **Claims For Payment**

All invoices or claims for which payment is sought from the Town must be submitted in accordance with the following:

- (a) each claim for payment must include
  - (1) an invoice detailing the claim,
  - (2) copies of all documentation supporting the claim,
  - (3) a properly completed Town standard voucher, which includes
    - (i) the Town contract number under which payment is being claimed, **AND**
    - (ii) the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. *[Failure to include this number or numbers will prevent and preclude payment by the Town; except that where the payee does not have such number or numbers, the payee, on the invoice or Town voucher, must give the reason or reasons why the payee does not have such number or numbers and such reasons constitute a valid excuse under law.]*
- (b) Unless otherwise provided in this agreement, each claim for payment must be submitted to the Town no later than 30 days after the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.
- (c) Notwithstanding any other provision of this agreement, no claim for payment shall be valid, and the Town shall not be liable for payment thereof, unless it is submitted to the Town within 30 days of the close of the calendar year in which the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.
- (d) Unless otherwise provided in this agreement, the requirements of this paragraph 10, and/or of any other provisions of this agreement which supersede the same, shall constitute conditions precedent to the Town's payment obligation, and failure to comply with any or all of said requirements shall entitle the Town to deny payment.
- (e) As a further condition of payment, each claim of payment shall be accompanied by a Contractor and Sub-Contractor Progress Payment Waiver, Release and Discharge, and each Final Payment shall be accompanied by a Contractor and Sub-Contractor Final Payment, Waiver and Release form. As well as a Contractor Affidavit relative to Final Payment. Copies of these forms are attached and made a part hereof. (Please disregard if these forms do not pertain).

11. **Consent**

In the event that State or Federal law requires the recipient of services to be furnished and rendered under this agreement to give his/her prior consent thereto, the contractor shall obtain such person's consent and furnish proof thereof to the Town.

12. **Executory Clause**

The Town shall have no liability under this contract to the Contractor or to anyone else beyond the funds appropriated and available for this contract.

13. **Public Work & Building Service Contract Requirements**

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof:

- (a) neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said

- statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department; and
- (b) the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

14. **Public Work Contracts – Hazardous Substances**

If this is a contract for public work, the Contractor agrees as follows:

- (a) the Contractor acknowledges that the Town uses and/or produces various substances which may be classified as hazardous under OSHA's Hazard Communication Standard;
- (b) the Contractor recognizes the use of said substances by the Town and acknowledges that the Town has provided, or upon request will provide, the Contractor with a description of such substances which may be present in the area of the Town's facility/facilities to which the Contractor may have accessed during the performance of this contract;
- (c) the Contractor acknowledges that the Town has provided, or upon request will provide, suggestions for appropriate protective measures which should be observed when the Contractor is in the area of any such hazardous substances;
- (d) the Contractor agrees to be solely responsible for providing training and information to its employees regarding any such hazardous substances, as well as of any protective measures suggested by the Town;
- (e) the Contractor agrees to be solely responsible to ensure that the Contractor's employees observe protective measures during the performance of their duties in the performance of the contract, and that all such protective measures will be at least as stringent as those suggested or which would have been suggested by the Town;
- (f) in the event that the Contractor's performance of the work under this contract requires the use of any hazardous substances, the Contractor shall notify the Town in advance of bringing in and/or using such substances in or upon Town property and suggest to the Town appropriate measures to be observed by the Town, its officers and employees, and/or the public; and
- (g) in the event the Contractor fails in whole or in part to comply with the terms of this paragraph, the Town shall have the right to interrupt the Contractor's work and/or terminate this contract, and the Contractor shall be prohibited from renewing such work until all applicable safety and health procedures and practices are implemented by the Contractor.

15. **Disputes**

Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be heard in the Essex County Supreme Court or any other court of competent jurisdiction within Essex County, New York.

16. **Non-Assignment**

This agreement may not be assigned, subcontracted, transferred, conveyed, sublet or otherwise disposed of in whole or in part, by the Contractor, without the prior written consent of the Town, and any attempts to assign the contract without the Town's written consent are null and void.

17. **No Collusion**

If this contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that:

- (a) its bid was arrived at independently and without collusion aimed at restricting competition; and
- (b) at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the Town a non-collusive bidding certification on Contractor's behalf.

18. **International Boycott**

In accordance with Section 220-f of the Labor Law, if this contract exceeds \$5,000.00, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation, has participated, is participating, or shall participate in an International boycott in violation of the federal Export Administration Act of 1979, or regulations thereunder. If such contractor, or any of the aforesaid affiliates of Contractor, is convicted, or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the Town Supervisor within five (5) business days of such conviction, determination or disposition of appeal.

19. **Town's Rights of Set-Off**

The Town shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Town's option to withhold for the purposes of set-off any moneys due to the Contractor under this agreement up to any amounts due and owing to the Town with regard to this contract, any other contract with any Town department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Town for any other reason, including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The Town shall exercise its set-off rights in accordance with normal Town practices, including, in cases of set-off pursuant to an audit, the acceptance of such audit by the Town Board of Supervisors or its designated representative.

20. **Contractor Defined**

Whenever the term "Contractor" is used in this agreement, such term shall include and apply to all employees, all officers, directors and agents, if any, of the Contractor.

21. **Amendment**

This agreement may not be amended, modified or renewed except by written agreement signed by the Contractor and the Town.

22. **Ownership Of Work Products**

All final and written or tangible work products completed by the Contractor shall belong to the Town. In the event of premature discontinuance of performance, the Contractor agrees to deliver all existing products and data files to the Town.

23. **Executive Order Debarment/Suspension**

In the event that this contract involves the Contractor furnishing goods and services in excess of \$100,000.00, or constitutes a subaward to subrecipients, under any Federal program, grant or other funding source, then by executing this agreement the Contractor certifies that neither it nor any of its principals are suspended or debarred within the scope or meaning of Executive Orders 12549 and 12689, any Federal or State regulation implementing or codifying the same, or any other Federal or State law, rule or regulation.



24. **Health Insurance Portability and Accountability Act of 1996 (HIPAA)**

In the event that this contract involves the use or disclosure of protected health information within the meaning or application of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the regulations thereunder, the following provisions of this paragraph shall apply.

- (a) **Definitions.** The terms used, but not otherwise defined, in this Agreement shall have the same meaning as given such terms in 45 CFR §160.103 and §164.501, as the same may be amended from time to time, including but not limited to the following.
- (1) "Business Associate" shall mean the Contractor, its officers, employees, agents and subcontractors.
  - (2) "Covered Entity" shall mean the Town of \_\_\_\_\_ (the "Town"), its departments, agencies, officers and employees.
  - (3) "Individual" shall have the same meaning as given such term in 45 CFR §164.501 and shall also include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
  - (4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.
  - (5) "Protected Health Information" shall have the same meaning as given such term in 45 CFR §164.501, limited to the information created or received by Contractor from or on behalf of the Town.
  - (6) "Required by law" shall have the same meaning as given such term in 45 CFR §164.501.
  - (7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- (b) **Obligations and Activities of Contractor.**  
Contractor agrees to:
- (1) not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law;
  - (2) use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement;
  - (3) mitigate, to the extent practicable, any harmful effect that is known, should have been known, and/or discovered to/by Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement;
  - (4) report to the Town any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware;
  - (5) ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of the Town agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information;
  - (6) provide access, at the request of the Town, and in the time and manner designated by the Town or the Secretary, to Protected Health Information in a Designated Record Set, to the Town or, as directed by the Town, to an Individual in order to meet the requirements under 45 CFR §164.524;
  - (7) make any amendment(s) to Protected Health Information in a Designated Record Set that the Town directs or agrees to pursuant to 45 CFR §164.526 at the request of the Town or an Individual, and in the time and manner designated by the Town or the Secretary;

(8) make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, the Town available to the Town, and/or to the Secretary, in a time and manner designated by the Town or by the Secretary, for purposes of the Secretary determining the Town's compliance with the Privacy Rule;

(9) document such disclosures of Protected Health Information and information related to such disclosures as would be required for the Town to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528;

(10) provide to the Town or an Individual, in time and manner designated by the Town or the Secretary, information collected in accordance with the above subparagraph (b)(9) of this Agreement, to permit the Town to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(c) Permitted Uses and Disclosures by Contractor.

Except as otherwise limited in this Agreement, Contractor may use or disclose Protected Health Information on behalf of, or to provide services to, the persons entitled to services under this Agreement:

(1) solely for the purposes of performing Contractor's obligations under this Agreement, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by the Town or the minimum necessary policies and procedures of the Town; or

(2) provided that such use or disclosures are required by law; or

(3) Contractor

(A) obtains written authorization(s) from the individual to which the information pertains permitting the specific uses or disclosures of such information to third persons,

(B) represents and agrees in writing with such individual that the information to be used and/or disclosed will remain confidential and used or further disclosed only as required by law or for the purposes specified in the written authorization(s), and

(C) such third persons agree in writing to notify the Town as soon as practicable and in writing of any instances of which such third person(s) is/are aware in which the confidentiality of the information has been breached; or

(4) provide Data Aggregation services to the Town as permitted by 42 CFR §164.504(e)(2)(i)(B); or

(5) report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

(d) Town To Inform Contractor of Privacy Practices and Restrictions.

The Town agrees to notify the Contractor of any

(1) limitation(s) in its notice of privacy practices of the Town in accordance with 45 CFR §164.520, to the extent that such limitation may affect the Contractor's use or disclosure of Protected Health Information;

(2) changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Contractor's use or disclosure of Protected Health Information; and/or

(3) restriction to the use or disclosure of Protected Health Information that the Town

has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Contractor's use or disclosure of Protected Health Information.

(e) Permissible Requests by Town.

The Town shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Town; except that in the event that the services to be furnished by the Contractor under this Agreement requires data aggregation by the Contractor, the Contractor may use or disclose protected health information for such data aggregation or management and administrative activities of Contractor.

(f) Survival of Provisions.

The obligations of the Contractor under this paragraph 24 shall survive the expiration of the term of this Agreement and/or the termination of this Agreement, and said obligations shall remain effective and shall not terminate until all of the Protected Health Information provided by the Town to Contractor, or created or received by Contractor on behalf of the Town, is destroyed or returned to the Town, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in subparagraph (g) below.

(g) Return or Destruction of Protected Health Information.

Except as otherwise provided below, upon termination of this Agreement for any reason, Contractor shall return or destroy all Protected Health Information received from the Town, or created or received by Contractor on behalf of the Town. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.

In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to the Town notification of the conditions that make return or destruction infeasible. Upon determination by the Town that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information.

(h) Termination for Cause.

Upon the Town's knowledge of a material breach of this paragraph by Contractor, the Town shall:

- (1) either:
  - (A) provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement within the time specified by the Town, or
  - (B) immediately terminate this Agreement if cure is not possible; and
- (2) report the violation to the Secretary.

(i) Miscellaneous.

- (1) Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- (2) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Town to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Contractor under this paragraph 24 of this Agreement shall survive the termination of this Agreement.

(4) Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Town to comply with the Privacy Rule.

25. **Severability**

If any term or provision of this agreement or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and every other term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

26. **Entire Agreement**

This agreement is the entire agreement between the parties, and the same shall be construed in accordance with the laws of the State of New York.

27. **For Medicaid/Federal Health Care Related Work**

**Excluded/Debarred Party Clause**

The Vendor/Contractor represents and warrants that it, nor its employees or contractors, are not excluded from participation, and is not otherwise ineligible to participate, in a "federal health care program" as defined in 42 U.S.C. § 1320a-7b(f) or in any other government payment program.

In the event Vendor/Contractor, or one of its employees or contractors, is excluded from participation, or becomes otherwise ineligible to participate in any such program during the Term, Vendor/Contractor will notify the Town in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to the Vendor/Contractor, the Town reserves the right to immediately cease contracting with the Vendor/Contractor.

If Vendor/Contractor is an Employment Agency, the Vendor/Contractor represents and warrants that its employees and contractors are not excluded from participation in a "federal health care program" as defined in 42 U.S.C. § 1320a-7b(f) or debarred from participation in any federal or other program.

- The Vendor/Contractor further represents and warrants it will, at a minimum, check monthly all of its employees and subcontractors against:
- The General Services Administration's Federal Excluded Party List System (or any successor system,
- The United States Department of Health and Human Services' Office of the Inspector General's Lists of Excluded Individuals and Entities or any successor list,

The New York State Department of Health's Office of the Medicaid Inspector General's list of Restricted, Terminated or Excluded Individuals or Entities.

In the event an excluded party is discovered the Vendor/Contractor will notify the County in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to the Vendor/Contractor, the County reserves the right to immediately cease contracting with the Vendor/Contractor.

28. **Cooperative Purchasing (Piggybacking)**

Pursuant to General Municipal Law §103 and County Law §408-a, any political sub-

division or fire company (as both are defined in Section 100 of the GML) or district authorized to make purchases of apparatus, materials, equipment or supplies, or to contract for services related to the installation, maintenance or repair of apparatus, materials, equipment and supplies may make said purchases under this existing contract (Piggyback) provided, and on condition that this present contract was **LET TO THE LOWEST RESPONSIBLE BIDDER**. Therefore all terms and conditions under this contract are extended to other political sub-divisions and governmental entities.

Purchases under this contract by any other political sub-division other than the Town shall be pursuant to the terms and conditions of Resolution No. \_\_\_\_ of 20\_\_ dated \_\_\_\_\_, 20\_\_.

29. **New York State Sexual Harassment Laws**

Contractor certifies as to its self or its own organization, under penalty of perjury, that Contractor has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the New York State Labor Law. A model policy and training has been created by the New York State Department of Labor and can be found here:  
<https://www.ny.gov/programs/combating-sexual-harassment-workplace>.

CONTRACTOR PROGRESS PAYMENT WAIVER, RELEASE AND DISCHARGE

PROJECT: \_\_\_\_\_

OWNER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

WITNESSETH:

The above-named Contractor, hereinafter referred to as the "Releasor", does, for and on behalf of itself, its' successors, assigns and all parties claiming any interest or right through the Releasor, hereby warrant, covenant and agree as follows:

1. Releasor is/was a Contractor relative to the above-referenced Project pursuant to a contract or other relationship for the performing and/or furnishing of work, labor, services, materials and/or equipment at the Project site or to be incorporated in said Project.

2. Whenever the term "Releasor" is used in this instrument such term shall mean: (a) the above-named Contractor, its, successors and assigns; (b) any and all sureties and all other guarantors of the Releasor on any payment, performance, labor and/or material bond or other undertaking; (c) all parties claiming any interest or right through the Releasor, including but not limited to subcontractors and suppliers; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).

3. Whenever the term "Releasees" is used in this instrument such term shall mean: (a) the above-named Owner, its' successors and assigns; (b) the Project Architect/Engineer; and (c) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a) and (b).

4. For and in consideration of the sum of \$\_\_\_\_\_, and other good and valuable consideration, which sum is acknowledged as being the full and total amount due or allegedly due or owing from the Releasees to the Releasor as of the date hereof, and the receipt of such payment being hereby acknowledged, the Releasor does waive, release and discharge the Releasees from any and all causes of action, suits, debts, claims, liens, accounts, bonds, contracts, damages, encumbrances, judgments and demands whatsoever and of every kind and nature, in law or in equity, which against the Releasees, jointly and/or severally, the Releasor ever had, now has, or might hereafter have, relating directly or indirectly to the work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or incorporated or to be incorporated in said Project, as of the date hereof, including but not in any manner limited to the right of the Releasor to assert, file or claim any lien or other security interest in or upon the real and/or personal property of the Releasees.

5. The Releasor hereby agree to defend, indemnify, and hold harmless the Releasees from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party for work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or which should have been so furnished or performed, or incorporated or to be incorporated in said Project, as of the date hereof, by the Releasor or by any other party claiming any interest or right through the Releasor.

6. The Releasor hereby certifies and warrants that it has fully paid for all work, labor, services, materials and/or equipment provided to it in connection with the Project and/or any contract relating thereto.

7. The Releasor hereby grants to the Releasees the right to review and audit any and books and records of the Releasor at any time for verification.

IN WITNESS WHEREOF this instrument has been executed this \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Releasor

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

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

I, \_\_\_\_\_, being duly sworn, depose and say that: I reside at \_\_\_\_\_, and I hereby sign this instrument under penalty of perjury; I am the of the Releasor identified herein; I am fully authorized to execute this instrument on behalf of the Releasor; and I hereby affirm that the statements contained in this instrument are true and correct.

\_\_\_\_\_  
Vendor/Releasor Agent Sign Here

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

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

CONTRACTOR FINAL PAYMENT WAIVER, RELEASE AND DISCHARGE

PROJECT: \_\_\_\_\_

OWNER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

WITNESSETH:

The above-named Contractor, hereinafter referred to as the "Releasor", does, for and on behalf of itself, its' successors, assigns and all parties claiming any interest or right through the Releasor, hereby warrants, covenants and agrees as follows:

1. Releasor is/was a Contractor relative to the above-referenced Project pursuant to a contract or other relationship for the performing and/or furnishing of work, labor, services, materials and/or equipment at the Project site or to be incorporated in said Project.

2 Whenever the term "Releasor" is used in this instrument such term shall mean: (a) the above- named Contractor, its, successors and assigns; (b) any and all sureties and all other guarantors of the Releasor on any payment, performance, labor and/or material bond or other undertaking; (c) all parties claiming any interest or right through the Releasor, including but not limited to subcontractors and suppliers; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).

3. Whenever the term "Releasees" is used in this instrument such term shall mean: (a) the above-named Owner, its' successors and assigns; (b) Essex County, its agencies and departments (including but not limited to its Office for the Aging); and (c) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a) and (b).

4. For and in consideration of the sum of \$\_\_\_\_\_, and other good and valuable consideration, which sum is acknowledged as being the full, final and total amount due or allegedly due or owing from the Releasees to the Releasor as of the date hereof, and the receipt of such payment being hereby acknowledged, the Releasor does waive, release and discharge the Releasees from any and all causes of action, suits, debts, claims, liens, accounts, bonds, contracts, damages, encumbrances, judgments and demands whatsoever and of every kind and nature, in law or in equity, which against the Releasees, jointly and/or severally, the Releasor ever had, now has, or might hereafter have, relating directly or indirectly to the work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or incorporated or to be incorporated in said Project, as of the date hereof, including but not in any manner limited to the right of the Releasor to assert, file or claim any lien or other security interest in or upon the real and/or personal property of the Releasees.

5. The Releasor hereby agree to defend, indemnify, and hold harmless the Releasees from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party for work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or which should have been so furnished or performed, or incorporated or to be incorporated in said Project, as of the date hereof, by the Releasor or by any other party claiming any interest or right through the Releasor.



6. The Releasor hereby certifies and warrants that it has fully paid for all work, labor, services, materials and/or equipment provided to it in connection with the Project and/or any contract relating thereto.

7. The Releasor hereby grants to the Releasees the right to review and audit any and books and records of the Releasor at any time for verification.

IN WITNESS WHEREOF this instrument has been executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Releasor

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

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

I, \_\_\_\_\_, being duly sworn, depose and say that: I reside at \_\_\_\_\_, and I hereby sign this instrument under penalty of perjury; I am the of the Releasor identified herein; I am fully authorized to execute this instrument on behalf of the Releasor; and I hereby affirm that the statements contained in this instrument are true and correct.

\_\_\_\_\_  
Vendor/Releasor Agent Sign Here

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

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

CONTRACTORS AFFIDAVIT RELATIVE TO FINAL PAYMENT

PROJECT: \_\_\_\_\_

OWNER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

W I T N E S S E T H :

The herein below designated representative of the Contractor being duly sworn deposes and states:

1. He is duly authorized to sign this Affidavit on behalf of the Contractor.
2. That all payrolls, bills for materials and equipment, and other indebtedness connection with the work for which the County or the County's property might be responsible or encumbered have been paid or otherwise satisfied and there remain no further indebtedness or bills outstanding.
3. Attached hereto and made a part hereof is a valid certificate of insurance evidencing that insurance required by the contract documents will remain in full force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to the owner.
4. Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the contract documents.
5. Attached hereto and made a part hereof at Schedule B is a detailed list of all sub-contractors and material suppliers.
6. Contractor warrants and represents that all sub-contractors, material suppliers and fringe benefit trust funds for employees of contractor and sub-contractors on the portion of the project encompassed by the work, as well as all workers and persons employed in connection therewith have been paid in full for all labor and work and materials furnished.
7. Contractor releases and waives any and all public improvement lien rights which contractor has against the County.

IN WITNESS WHEREOF deponent has executed this Document on this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Contractor

By: \_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

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

I, \_\_\_\_\_, being duly sworn, depose and say that: I reside at \_\_\_\_\_, and I hereby sign this instrument under penalty of perjury; I am the of the Releasor identified herein; I am fully authorized to execute this instrument on behalf of the Releasor; and I hereby affirm that the statements contained in this instrument are true and correct.

\_\_\_\_\_  
 Vendor/Releasor Agent Sign Here

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

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

SUBCONTRACTOR/SUPPLIER PROGRESS PAYMENT WAIVER, RELEASE AND DISCHARGE

PROJECT: \_\_\_\_\_

OWNER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

SUBCONTRACTOR/SUPPLIER: \_\_\_\_\_

W I T N E S S E T H :

The above-named Subcontractor/Supplier, hereinafter referred to as the "Releasor", does, for and on behalf of itself, its, successors, assigns and all parties claiming any interest or right through the Releasor, hereby warrants, covenants and agrees as follows:

1. Releasor is/was a subcontractor/supplier to the Contractor above-named relative to the above-referenced Project pursuant to a contract or other relationship for the performing and/or furnishing of work, labor, services, materials and/or equipment at the Project site or to be incorporated in said Project.

2. Whenever the term "Releasor" is used in this instrument such term shall mean: (a) the above-named Subcontractor/Supplier, its' successors and assigns; (b) any and all sureties and all other guarantors of the Releasor on any payment, performance, labor and/or material bond or other undertaking; (c) all parties claiming any interest or right through the Releasor; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).

3. Whenever the term "Releasees" is used in this instrument such term shall mean: (a) the above-named Contractor and all of its, sureties and other guarantors on any payment, performance, labor and/or material bond or other undertaking; (b) the abovenamed Owner, its, successors and assigns; (c) the Project Architect/Engineer; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).

4. For and in consideration of the sum of \$\_\_\_\_\_, and other good and valuable consideration, which sum is acknowledged as being the full and total amount due or allegedly due or owing from the Releasees to the Releasor as of the date hereof, and the receipt of such payment being hereby acknowledged, the Releasor does waive, release and discharge the Releasees from any and all causes of action, suits, debts, claims, liens, accounts, bonds, contracts, damages, encumbrances, judgments and demands whatsoever and of every kind and nature, in law or in equity, which against the Releasees, jointly and/or severally, the Releasor ever had, now has, or might hereafter have, relating directly or indirectly to the work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or incorporated or to be incorporated in said Project, as of the date hereof, including but not in any manner limited to the right of the Releasor to assert, file or claim any lien or other security interest in or upon the real and/or personal property of the Releasees.

5. The Releasor hereby agree to defend, indemnify, and hold harmless the Releasees from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party for work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or which should have been so furnished

or performed, or incorporated or to be incorporated in said Project, as of the date hereof, by the Releasor or by any other party claiming any interest or right through the Releasor.

6. The Releasor hereby certifies and warrants that it has fully paid for all work, labor, services, materials and/or equipment provided to it in connection with the Project and/or any contract relating thereto.

7. The Releasor hereby grants to the Releasees the right to review and audit any and books and records of the Releasor at any time for verification.

IN WITNESS WHEREOF this instrument has been executed this \_\_\_\_ day of \_\_\_\_  
\_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Releasor

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

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

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

I, \_\_\_\_\_, being duly sworn, depose and say that: I reside at \_\_\_\_\_, and I hereby sign this instrument under penalty of perjury; I am the of the Releasor identified herein; I am fully authorized to execute this instrument on behalf of the Releasor; and I hereby affirm that the statements contained in this instrument are true and correct.

\_\_\_\_\_  
Vendor/Releasor Agent Sign Here

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

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

SUBCONTRACTOR/SUPPLIER FINAL WAIVER, RELEASE AND DISCHARGE

PROJECT: \_\_\_\_\_

OWNER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

SUBCONTRACTOR/SUPPLIER: \_\_\_\_\_

W I T N E S S E T H :

The above-named Subcontractor/Supplier, hereinafter referred to as the "Releasor", does, for and on behalf of itself, its, successors, assigns and all parties claiming any interest or right through the Releasor, hereby warrants, covenants and agrees as follows:

1. Releasor is/was a subcontractor/supplier to the Contractor above-named relative to the above-referenced Project pursuant to a contract or other relationship for the performing and/or furnishing of work, labor, services, materials and/or equipment at the Project site or to be incorporated in said Project.

2. Whenever the term "Releasor" is used in this instrument such term shall mean: (a) the above-named Subcontractor/Supplier, its' successors and assigns; (b) any and all sureties and all other guarantors of the Releasor on any payment, performance, labor and/or material bond or other undertaking; (c) all parties claiming any interest or right through the Releasor; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).

3. Whenever the term "Releasees" is used in this instrument such term shall mean: (a) the above-named Contractor and all of its, sureties and other guarantors on any payment, performance, labor and/or material bond or other undertaking; (b) the abovenamed Owner, its, successors and assigns; (c) the Project Architect/Engineer; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).

4. For and in consideration of the sum of \$\_\_\_\_\_, and other good and valuable consideration, which sum is acknowledged as being the full, final and total amount due or allegedly due or owing from the Releasees to the Releasor as of the date hereof, and the receipt of such payment being hereby acknowledged, the Releasor does waive, release and discharge the Releasees from any and all causes of action, suits, debts, claims, liens, accounts, bonds, contracts, damages, encumbrances, judgments and demands whatsoever and of every kind and nature, in law or in equity, which against the Releasees, jointly and/or severally, the Releasor ever had, now has, or might hereafter have, relating directly or indirectly to the work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or incorporated or to be incorporated in said Project, as of the date hereof, including but not in any manner limited to the right of the Releasor to assert, file or claim any lien or other security interest in or upon the real and/or personal property of the Releasees.

5. The Releasor hereby agree to defend, indemnify, and hold harmless the Releasees from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party for work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or which should have been so furnished

or performed, or incorporated or to be incorporated in said Project, as of the date hereof, by the Releasor or by any other party claiming any interest or right through the Releasor.

6. The Releasor hereby certifies and warrants that it has fully paid for all work, labor, services, materials and/or equipment provided to it in connection with the Project and/or any contract relating thereto.

7. The Releasor hereby grants to the Releasees the right to review and audit any and books and records of the Releasor at any time for verification.

IN WITNESS WHEREOF this instrument has been executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Releasor

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

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, being duly sworn, depose and say that: I reside at \_\_\_\_\_, and I hereby sign this instrument under penalty of perjury; I am the of the Releasor identified herein; I am fully authorized to execute this instrument on behalf of the Releasor; and I hereby affirm that the statements contained in this instrument are true and correct.

\_\_\_\_\_  
Vendor/Releasor Agent Sign Here

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

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

## APPENDIX E

### GENERAL SPECIFICATIONS FOR PROCUREMENT CONTRACTS



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## **PART I**

### ***General Provisions***

**1. APPLICABILITY** The terms and conditions set forth herein are expressly incorporated in and applicable to all procurements and resulting procurement contracts let by the Town where incorporated by reference in its Bid Documents. The provisions herein shall govern such procurement or contract unless expressly modified or amended by the terms of a Bid Specifications, or a negotiated Contract/Clarification document, if any. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

**2. GOVERNING LAW** The laws of the State of New York shall govern and apply to the procurement, any resulting contract and for determinations in a court of competent jurisdiction in New York of any and all disputes, litigation or interpretations arising from or connected with the procurement or contract, except where expressly superseded in a specific contract letting or where the Federal supremacy clause requires otherwise. These specifications are modeled after and upon the specifications developed and used by the New York State Office of General Services for procurements by New York State.

**3. APPENDIX A / INSURANCE** The mandatory terms for all Town contracts are expressly incorporated herein and in all bid documents and/or resulting contracts, such terms being set forth in Appendix A (*Standard Clauses for Town Contracts*). Insurance requirements are also attached and incorporated herein.

**4. ETHICS COMPLIANCE** All Bidders/Contractors and their employees must comply with the requirements of the *General Municipal Law*, the *Public Officers Law*, and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State and/or municipalities. In signing the bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving the Town and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

**5. CONFLICT OF CLAUSES** Conflicts between procurement or contract documents shall be resolved in the following order of precedence:

**(a) Appendix A** (*Standard Clauses for Town Contracts*)

**(b) Contract/Clarification Documents** Writing(s) setting forth the final agreements, clarifications, terms, statement of work and/or modifications between the Bid Documents and Contractors Bid or Mini-bid.

**(c) Bid Documents** - Bid Specifications prepared by the Town

**(d) Contractors Bid or Proposal**

## **6. DEFINITIONS**

Terms used in this document shall have the following meanings:

**AGENCY OR AGENCIES** The Town, acting by or through one or more departments, boards, commissions, offices or institutions of the Town.

**ANCILLARY PRODUCT:** Product which is purchased or licensed on a restricted use basis in conjunction with the principal manufacturers Product being acquired (e.g. may be used only in combination, or by educational institutions for research use).

**AUTHORIZED USER(S)** Agencies, or any other entity authorized by the Town to participate in Town

procurement contracts (including but not limited to political subdivisions, public authorities, school districts and public benefit corporations), provided that each such Agency or other entity shall be held solely responsible for liabilities or payments due as a result of its participation. The term “Authorized User” shall include “Licensees.”

**BID OR BID PROPOSAL** An offer or proposal submitted by a Bidder to furnish a described product or a solution or means of achieving a practical end, at a stated price for the stated contract term.

**BIDDER** Any individual or other legal entity, (including but not limited to partnership, firm or corporation) which submits a bid in response to a Bid Solicitation. The term Bidder shall also include “offeror” and/or “contractor”.

**BID DOCUMENTS** Writings setting forth the scope, terms, conditions and technical specifications for a procurement of Product. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference, e.g. Appendix A (*Standard Clauses for NYS Contracts*), Appendix B, (*General Specifications*). Where these General Specifications are incorporated in negotiated contracts which have not been competitively bid, the term “Bid Documents” shall be deemed to refer to the terms and conditions set forth in the negotiated contract.

**BID SOLICITATION** The notice or advertisement of an intent to purchase a specified Product by or on behalf of Authorized User(s).

**BID SPECIFICATION** A written description drafted by the Town or an authorized user setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a commodity or construction item, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work. Where these *General Specifications* are incorporated in negotiated contracts which have not been competitively bid, the term “Bid Specifications” shall be deemed to refer to the terms and conditions set forth in the negotiated contract.

**CONTRACT** The writing(s) which contain the agreement of the Commissioner and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law.

**CONTRACT AWARD NOTIFICATION** An announcement to Authorized Users that a contract has been established.

**CONTRACTOR** Any successful Bidder(s) to whom a contract has been awarded by the Purchasing Agent. The term “Contractor” includes Licensors.

**EMERGENCY** An urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

**ERROR CORRECTIONS** Machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.

**GROUP** A classification of Product (commodities, services or technology).

**INVITATION FOR BIDS (IFB)** A type of Bid Document which is most typically used where requirements can be stated and award will be made to the lowest responsive bid submitted by the most responsible Bidder(s).

**LATE BID** For purposes of bid openings held and conducted by the Town Purchasing Agent, a bid not received in such place as may be designated on the Bid Specifications or in the Office of the Town Purchasing Agent, at or before the date and time established in the Bid Specifications for the bid opening.

**LETTER OF ACCEPTANCE** A letter to the successful Bidder(s) indicating acceptance of its bid in response to a solicitation. Unless otherwise specified, the issuance of a Letter of Acceptance forms a contract but is not an order for Product, and Contractor should not take any action with respect to actual contract deliveries except on the basis of Purchase Orders sent from Authorized User(s).

**LICENSED SOFTWARE** Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes ancillary products, error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g. patches, fixes, PTFs, programs, code or data conversion, or custom programming).

**LICENSEE** The Town, or one or more Agencies or Authorized Users who acquire Product from Contractor by execution of a license in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User(s) on whose behalf the license was executed who took receipt of the Product, and who shall be solely responsible for performance and liabilities incurred.

**LICENSOR** A Contractor who transfers rights in proprietary Product to Authorized Users in accordance with the rights and obligations specified in the Contract.

**MULTIPLE AWARD** A determination and award of a contract in the discretion of the Purchasing Agent to more than one responsive and responsible Bidder who meets the requirements of a specification, where the multiple award is made on the grounds set forth in the Bid Document in order to satisfy multiple factors and needs of Authorized Users (e.g., complexity of items, various manufacturers, differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, geographic location or other pertinent factors).

**NEW PRODUCT RELEASES (Product Revisions)** Any commercially released revisions to the version of a Product as may be generally offered and available to Authorized Users. New releases involve a substantial revision of functionality from a previously released version of the Product.

**PROCUREMENT RECORD** Documentation by the Town Purchasing Agent of the decisions made and approach taken during the procurement process.

**PRODUCT** A deliverable under any Bid or Contract which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

**PURCHASE ORDER** The Town's fiscal form or format which is used when making a purchase.

**REQUEST FOR PROPOSALS (RFP)** A type of Bid Document which is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the method of award is "best value", as defined by the Town's Procurement Policy and New York Law.

**REQUEST FOR QUOTATION (RFQ)** A type of Bid Document which can be used when a formal bid opening is not required (e.g. discretionary, sole source, single source or emergency purchases).

**RESPONSIBLE BIDDER** A Bidder that is determined to have skill, judgment and integrity, and that is found to be competent, reliable, experienced and qualified financially, as determined by the Town

Purchasing Agent.

**RESPONSIVE BIDDER** A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the Purchasing Agent.

**SINGLE SOURCE** A procurement where two or more offerors can supply the required Product, and the Purchasing Agent may award the contract to one Bidder over the other.

**SOLE SOURCE** A procurement where only one offeror is capable of supplying the required Product.

### ***Bid Submission***

**7. BID LANGUAGE & CURRENCY** All offers (tenders), and all information and Product documentation required by the solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$ US). Any offers (tenders) submitted which do not meet the above criteria will be rejected.

**8. BID OPENING** Bids may, as applicable, be opened publicly. The Purchasing Agent reserves the right at anytime to postpone or cancel a scheduled bid opening.

**9. BID SUBMISSION** The submission of a bid will be construed to mean that the bidder is fully informed as to the extent and character of the supplies, material, or equipment required and a representation that the bidder can furnish the supplies, materials, or equipment satisfactorily in complete compliance with the specifications.

All bids shall comply with the following:

**(a)** Bids are to be packaged, sealed and submitted to the location stated in the Bid Specifications. Bidders are solely responsible for timely delivery of their bids to the location set forth in the Bid Specifications prior to the stated bid opening date/time.

**(b)** A bid return envelope, if provided with the Bid Specifications, should be used with the bid sealed inside. If the bid response does not fit into the envelope, the bid envelope should be taped onto the outside of the sealed box or package with the bid inside. If using a commercial delivery company which requires use of their shipping package or envelope, Bidders sealed bid, labeled as detailed below, should be placed within the shippers sealed envelope to ensure that the bid is not prematurely opened. All bids must have a label on the outside of the package or shipping container outlining the following information:

**“BID ENCLOSED”** (bold print, all capitals)  
IFB or RFP Number  
Bid Submission date and time

In the event that a Bidder fails to provide such information on the return bid envelope or shipping material, the Town reserves the right to open the shipping package or envelope to determine the proper bid number or Product group, and the date and time of bid opening. Bidder shall have no claim against the receiving entity arising from such opening and such opening shall not affect the validity of the bid or the procurement. Notwithstanding the Town’s right to open a bid to ascertain the foregoing information, Bidder assumes all risk of late delivery associated with the bid not being identified, packaged or labeled in accordance with the foregoing requirements.

**10. FACSIMILE SUBMISSIONS** Unless specifically authorized by the terms of the Bid Specifications, facsimile bids ARE PROHIBITED AND SHALL NOT BE ACCEPTED. Where the bid specifications are silent as to the submission of bids by facsimile, no fax bids shall be permitted or accepted. Where specifically authorized, the following rules and conditions apply:

- (a) FAX number(s) indicated in the Bid Specifications must be used.
- (b) Access to the facsimile machine(s) is on a "first come, first serve" basis, and the Purchasing Agent bears no liability or responsibility and makes no guarantee whatsoever with respect to the Bidders access to such equipment at any specific time.
- (c) Bidders are solely responsible for submission and receipt of the entire facsimile bid by the Town Purchasing Agent prior to bid opening and must include on the first page of the transmission the total number of pages transmitted in the bid, including the cover page. Incomplete, ambiguous or unreadable transmissions in whole or in part may be rejected at the sole discretion of the Purchasing Agent.
- (d) Facsimile bids are fully governed by all conditions outlined in the Bid Documents and must be submitted on forms or in the format required in the Bid Specifications, including the executed signature page and acknowledgment.

**11. AUTHENTICATION OF FACSIMILE BIDS** The act of submitting a bid by facsimile transmission, when, as and if specifically authorized, including an executed signature page, shall be deemed a confirming act by Bidder which authenticates the signing of the bid.

**12. LATE BIDS** Any bid received at the specified location after the time specified will be considered a late bid. A late bid shall not be considered for award unless acceptance of the late bid is in the best interests of the Town and either (a) no timely bids meeting the requirements of the Bid Documents are received, or (b) in the case of a multiple award, an insufficient number of timely bids were received to satisfy the multiple award. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Town, shall not excuse late bid submissions. Otherwise, all late bids will not be considered and will be returned unopened to the bidder. The bidder assumes the risk of any delay in the mail or in the handling of the mail by employees of the Town. Whether sent by mail or by means of personal delivery, the bidder assumes responsibility for having his bid deposited on time at the place specified.

**13. BID CONTENTS** Bids must be complete and legible. All bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified in the Bid Specifications. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by the Purchasing Agent or may be grounds for rejection of the bid. Changes, corrections and/or use of white-out in the bid or Bidders response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their bids before submission, as amendments to bids or requests for withdrawal of bids received by the Purchasing Agent after the time specified for the bid opening, may not be considered. All lines must have an indication of bidders response whether it be "o", "N/A" or a dollar figure. All lines must be filled in to indicate bidder acknowledgment of the request. Bids that do not have all applicable lines filled in on bid sheet may be disqualified as a non-responsive bid. The Purchasing Agent shall not assume there is "no charge" when lines are left empty.

Bidders must submit with bid detailed specifications, circulars, warranties and all necessary data on items he proposes to furnish. This information must show clearly that the item offered meets all detailed specifications herein. The Purchasing Agent reserves the right to reject any bid if its compliance with the specifications is not clearly evident. If item offered differs from the provisions contained in these specifications such differences must be explained in detail, and bid will receive careful consideration if such deviations do not depart from the intent of these specifications and are to the best interests of the Town as interpreted by the Town.

It is the responsibility of the bidder to offer a product that meets the specifications of the manufacturer model as listed.



All stock electrical items must be listed and approved by Underwriters' Laboratories, Inc.

**14. EXTRANEIOUS TERMS** Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the bid non-responsive and may result in rejection of the bid.

**Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) which are attached or referenced with the submission shall not be considered part of the bid, but shall be deemed included for informational or promotional purposes only.**

Only those extraneous terms which meet all the following requirements will be considered as having been submitted as part of the Bid:

- (a) Each proposed extraneous term (addition, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and
- (b) The writing must identify the particular specification requirement (if any) which Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- (c) The Bidder shall enumerate the proposed addition, counteroffer, modification or deviation from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed "material," shall be incorporated into a contract unless the Purchasing Agent expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s).

**15. CONFIDENTIAL / TRADE SECRET MATERIALS** Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the *Freedom of Information Law* must request the exemption in writing, setting forth the reasons for the claimed exemption, at the time of submission. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.

**16. PREVAILING WAGE RATES - Public Works and Building Services Contracts** If any portion of work being bid is subject to the prevailing wage rate provisions of Labor Law, the following shall apply:

**(a) "Public Works" and "Building Services" – Definitions**

**i. Public Works** *Labor Law* Article 8 applies to contracts for public improvement in which laborers, workers or mechanics are employed on a "public works" project (distinguished from public "procurement" or "service" contracts). The State, a public benefit corporation, a municipal corporation (including a school district), or a commission appointed by law must be a party to the contract. The wage and hours provision applies to any work performed by contractor or subcontractors.

**ii. Building Services** *Labor Law* Article 9 applies to contracts for building service work over \$1,500 with a public agency, which 1) involve the care or maintenance of an existing building, or 2) involve the transportation of office furniture or equipment to or from such building, or 3) involve the transportation and delivery of fossil fuel to such building, and 4) the principal purpose of which is to furnish services through use of building service employees.

**(b) Prevailing Wage Rate Applicable to Bid Submissions** A copy of the applicable prevailing wage rates to be paid or provided are attached to this solicitation. Bidders must submit bids

which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Where the Bid Documents require the Bidder to enumerate hourly wage rates in the bid, Bidders may not submit bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. **Bids which fail to comply with this requirement will be disqualified.**

**(c) Wage Rate Payments / Changes During Contract Term** The wages to be paid under any resulting contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the contract term that apply to the classes of individuals supplied by the contractor on any projects which result from this contract which are subject to the provisions of the *Labor Law*. Contractor is solely liable for and must pay such required prevailing wage adjustments during the contract term as required by law.

**(d) Public Posting & Certified Payroll Records** In compliance with Article 8, Section 220 of the *Labor Law*, as amended by Chapter 565 of the Laws of 1997:

**i. Posting** The Contractor must publicly post on the work site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.

**ii. Payroll Records** Contractors and sub-contractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.

**iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only** Contractors and sub-contractors on public works projects must submit monthly payroll transcripts to the Town which has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For mini-bid solicitations, the payroll records must be submitted to the entity preparing the agency mini-bid project specification. For "agency specific" bids, the payroll records should be submitted to the entity issuing the purchase order. For all other Town procurement contracts, such records should be submitted to the individual agency issuing the purchase order(s) for the work. Upon mutual agreement of the Contractor and the Town, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor so long as: 1) the contractor/subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the contractor or subcontractor attesting to the truth and accuracy of the records accompanies the disk. **This provision does not apply to building services contracts.**

**iv. Records Retention** Contractors and subcontractors must preserve such certified transcripts for a period of three years from the date of completion of work on the awarded contract.

**(e) Days Labor - Defined for Article 8, Public Works (For Purposes of Article 8 of the Labor Law)** No laborer, worker or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do all or part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the Town Purchasing Agent for the preservation of the contract site or for the protection of the life and limb of the persons using the contract site.

## 17. TAXES

(a) Unless otherwise specified in the Bid Specifications or set forth in this clause, the quoted bid price includes all taxes applicable to the transaction.

(b) Purchases made by the Town and certain non-Town Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a Town Agency or the invoice forwarded to authorize payment for such items will be sufficient evidence that the sale by the Contractor was made to the Town, an exempt organization under Section 1116 (a) (1) of the *Tax Law*. Non-Town Authorized Users must offer their own proof of exemption where required. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor. For tax free transactions under the Internal Revenue Code, the Town Registration Number is \_\_\_\_\_.

(c) Purchases by Authorized Users other than the Town may be subject to such taxes, and in those instances the tax should be computed based on the bid price and added to the invoice submitted to such entity for payment.

**18. EXPENSES PRIOR TO AWARD** The Town is not liable for any costs incurred by a Bidder in the preparation and production of a bid or for any work performed prior to contract award and/or issuance of an approved Purchase Order.

**19. ADVERTISING BID RESULTS** A Bidder in submitting a bid agrees not to use the results therefrom as a part of any commercial advertising without the prior written approval of the Purchasing Agent. In addition to any other sanctions or remedies available to it in law or equity, the Purchasing Agent may suspend from bidding on its requirements or terminate a contract of any Bidder/Contractor who violates the terms of this clause.

## 20. PRODUCT REFERENCES

(a) **“Or Equal”** On all Bid Specifications the words “or equal” are understood to apply where a copyright brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Purchasing Agents decision as to acceptance of the Product as equal shall be final.

(b) **Discrepancies in References** In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products therein which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

**21. RECYCLED OR RECOVERED MATERIALS** Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the “Warranties & Guaranties” set forth below.

Refurbished or remanufactured components or items may only be accepted at the discretion of the Purchasing Agent, or upon the conditions set forth in the Bid Specifications.

Items with recycled, recovered, refurbished or remanufactured content must be identified in the bid or will be deemed new Product.

**22. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS** Bids offering Products which are manufactured or produced in public institutions will be rejected.

### **23. PRICING**

**(a) Unit Pricing** If required by the Bid Specifications, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places for each item, in the bid. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Purchasing Agent, such unit pricing is obviously erroneous.

**(b) Net Pricing** Prices must be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject only to the cash discount. If the award is to be made on another basis, transportation and other charges must be prepaid by the Contractor and added to the invoice as a separate item, unless otherwise required in the Bid Specifications.

**(c) “No Charge” Bid** When bids are requested on a number of Products as a group or Lot, a Bidder desiring to bid “no charge” on a Product in the grouping or Lot must clearly indicate such. Otherwise, such bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Purchasing Agent.

If a price is written in numbers and alpha, the alpha will govern.

Prices shall be net FOB any point in the Town, Essex County New York. Price quoted shall include all delivery costs. Prices shall be net, including transportation and delivery charges fully prepaid by the successful bidder to destination indicated in the proposal. If award is made on any other basis, transportation charges must be prepaid by the successful bidder and added to the invoice as a separate item. In any case, title shall not pass until items have been delivered and accepted by the Town.

### **24. DRAWINGS**

**(a) Drawings Submitted With Bid** When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Purchasing Agent, be considered a part of the bid and of any resulting contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

**(b) Drawings Submitted During the Contract Term** Where required by the Bid Specifications to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall be required to develop, maintain, deliver and update such drawings on an ongoing basis at no additional charge. Contractor shall be responsible for updating drawings and plans during the contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized Users representative as required by the Bid Specifications. Where required, Contractor shall furnish to Authorized User in a timely manner the required drawings representing the then current, “as modified” condition of all product included in the scope of work.

**(c) Accuracy of Drawings Submitted** All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing product, services or installation, or carrying out any other requirements of the intended scope of work.

**25. SITE INSPECTION** Where Bidder is required by the Bid Specifications to deliver or install Product, or to service installed product(s) or equipment, Bidder shall be given an opportunity and shall be required to inspect the site prior to submission of the Bid, including environmental or other conditions or pre-existing deficiencies in the installed product, equipment or environment, which may affect Bidders ability to deliver, install or otherwise provide the required product. All inquiries regarding such conditions may only be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed, and to have included the costs of repair in its bid. Bidder must provide a detailed explanation of work intended to be performed under this clause. Bidder shall be required to remedy any pre-existing deficiencies or conditions at the commencement of the contract term. Reimbursement for the cost of repairing the conditions or deficiencies shall be separately enumerated in the bid.

## **26. SAMPLES**

**(a) Standard Samples** Bid Specifications may indicate that the Product to be purchased must be equal to a standard sample on display in a place designated by the Purchasing Agent and such sample will be made available to the Bidder for examination prior to the opening date. Failure by the Bidder to examine such sample shall not entitle the Bidder to any relief from the conditions imposed by the Bid Documents.

**(b) Bidder Supplied Samples** The Purchasing Agent reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidders name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate bid or the Town contract reference.

A sample may be held by the Purchasing Agent during the entire term of the contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period the sample, where feasible, will be returned as instructed by the Bidder, at the Bidders expense and risk. Where the Bidder has failed to fully instruct the Purchasing Agent as to the return of the sample (i.e. mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

**(c) Enhanced Samples** When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractors default, the Purchasing Agent may procure a commodity substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

**(d) Conformance with Sample(s)** Submission of a sample (whether or not such sample is tested by, or for, the Purchasing Agent) and approval thereof shall not relieve the Contractor from full compliance with all conditions and terms, performance related and otherwise, specified

in the Bid Documents. If in the judgment of the Purchasing Agent the sample or product submitted is not in accordance with the specifications or testing requirements prescribed in the Bid Documents, the Purchasing Agent may reject the bid. If an award has been made, the Purchasing Agent may cancel the contract at the expense of the Contractor.

**(e) Testing** All samples are subject to tests in the manner and place designated by the Purchasing Agent, either prior to or after contract award. Unless otherwise stated in the Bid Specifications, Bidder Samples consumed or rendered useless by testing will not be returned to the Bidder.

**27. ADDENDA / INTERPRETATION** No verbal interpretation of the intent of any of the specifications or other Contract Documents will be made before receipt of bids. Requests for interpretations prior to receipt of bids must be presented, in writing, to the \_\_\_\_\_, \_\_\_\_\_, NY \_\_\_\_\_, and to be given consideration must be received by the Purchasing Agent at least seven (7) days prior to the date set for the opening of bids.

Any interpretation, and any additional information or instruction will, if issued, be in the form of a written Addendum or Addenda sent to all holders of Contract Documents at the addresses furnished therefor, at least five (5) days prior to the date of the opening of bids.

Failure of any bidder to receive any Addenda shall not relieve such bidder from any obligation under this bid as submitted. All Addenda so issued shall become a part of the Contract Documents.

### ***Bid Evaluation***

**28. BID EVALUATION** The Purchasing Agent reserves the right to accept or reject any and all bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if the Purchasing Agent determines the best interests of the Town will be served. The Purchasing Agent, in his/her sole discretion, may accept or reject illegible, incomplete or vague bids and his/her decision shall be final. A conditional or revocable bid which clearly communicates the terms or limitations of acceptance may be considered and contract award may be made in compliance with the Bidders conditional or revocable terms in the offer.

Where a bidder is requested to submit a bid on individual items and/or on a total sum or sums, the right is reserved to award bids on individual items or on total sums. The Town reserves the right to award in whole or in part based on the lowest responsible bid.

The following three items will automatically render a bid unacceptable to the Town:

- a. Failure to sign bid proposal page.
- b. Failure to include necessary bid deposit (as required).
- c. Failure to sign and submit non-collusive bidding certificate.

It shall be fully understood that any deviations from the inclusion of the above items will be grounds to see the bid as non-compliant and will not be considered for award.

The Purchasing Agent reserves the right to reject such bids, as in his opinion, are incomplete, conditional, obscure, or which contain irregularities of any kind including unbalanced bids. One in which the amount bid for one or more separate items is substantially out of line with the current market prices for the materials and/or work covered thereby.

**29. CONDITIONAL BID** Unless the Bid Specifications provides otherwise, a bid is not rendered non-responsive if the Bidder specifies that the award will be accepted only on all or a specified group of items or Product included in the specification. It is understood that nothing herein shall be deemed to change or alter the method of award contained in the Bid Documents.

**30. CLARIFICATIONS / REVISIONS** Prior to award, the Purchasing Agent reserves the right to seek clarifications, request bid revisions, or to request any information deemed necessary for proper evaluation of bids from all Bidders deemed to be eligible for contract award. Failure to provide requested information may result in rejection of the bid.

**31. PROMPT PAYMENT DISCOUNTS** While prompt payment discounts will not be considered in determining the low bid, the Purchasing Agent may consider any prompt payment discount in resolving bids which are otherwise tied. However, any notation indicating that the price is net, (e.g. net 30 days), shall be understood to mean only that no prompt payment discount is offered by the Bidder. The imposition of service, interest, or other charges, except pursuant to the provisions of Article 11\_A of the *State Finance Law*, which are applicable in any case, may render the bid non-responsive and may be cause for its rejection.

**32. EQUIVALENT OR IDENTICAL BIDS** In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent bids as to pricing or other factors, the decision of the Purchasing Agent to award a contract to one or more of such Bidders shall be final.

**33. PERFORMANCE QUALIFICATIONS** The Purchasing Agent reserves the right to investigate or inspect at any time whether or not the Product, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Documents. Contractor shall at all times during the contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Purchasing Agent, to present evidence of experience, ability and financial standing, as well as a statement as to plant, machinery and capacity of the manufacturer for the production, distribution and servicing of the Product bid. If the Purchasing Agent determines that the conditions and terms of the Bid Documents or Contract are not complied with, or that items or Product proposed to be furnished do not meet the specified requirements, or that the qualifications, financial standing or facilities are not satisfactory, or that performance is untimely, the Purchasing Agent may reject such bid or terminate the contract. Nothing in the foregoing shall mean or imply that it is obligatory upon the Purchasing Agent to make an investigation either before or after award of a contract, but should such investigation be made, it in no way relieves the Bidder/Contractor from fulfilling all requirements and conditions of the contract.

**34. DISQUALIFICATION FOR PAST PERFORMANCE** Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidders employment, has previously failed to perform satisfactorily in connection with public bidding or contracts.

**35. QUANTITY CHANGES PRIOR TO AWARD** The Purchasing Agent reserves the right, at any time prior to the award of a specific quantity contract, to alter in good faith the quantities listed in the Bid Specifications to conform with requirements. In the event such right is exercised, the lowest responsible Bidder meeting specifications will be advised of the revised requirements and afforded an opportunity to extend or reduce its bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its bid price may result in the rejection of its bid and the award of such contract to the lowest responsible Bidder who accepts the revised requirements.

**36. RELEASE OF BID EVALUATION MATERIALS** Requests concerning the evaluation of bids may be submitted under the *Freedom of Information Law*. Information, other than the Bid Tabulation, shall be released as required by law after contract award. Written requests should be directed to the Purchasing Agent.

**37. TIME FRAME FOR OFFERS** The Purchasing Agent reserves the right to make awards within sixty (60) days after the date of the bid opening, during which period, bids must remain firm and cannot be withdrawn. If, however, an award is not made within the sixty (60) day period, bids shall remain firm until such later time as either a contract is awarded or the Bidder delivers to the Purchasing Agent

written notice of the withdrawal of its bid. Any bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Purchasing Agent, be accepted or rejected.

## **TERMS & CONDITIONS**

**38. CONTRACT CREATION / EXECUTION** Except as may be otherwise provided by law or by the Purchasing Agent, upon receipt of all required approvals a Contract shall be deemed executed and created with the successful Bidder(s) upon the Purchasing Agent's mailing or electronic communication to the address on the bid of (a) a Letter of Acceptance and (b) a fully executed contract, or (c) a Purchase Order authorized by the Purchasing Agent.

**39. COMPLIANCE WITH LAWS, ETC.** The Bidder shall comply with all the provisions of the laws of the State of New York and of the United States of America which affect municipalities and municipal contracts, and any and all State and Federal rules and regulation, and of amendments and additions thereto, insofar as the same shall be applicable to any contract awarded hereunder with the same force and effect as if set forth at length herein. The Bidder's special attention is called to the following laws: *General Municipal Law* Section 1-03-d, *State Finance Law* Section 167-b prohibiting the purchase of tropical hardwood products, and the New York State Public Employee Safety & Health Act of 1980.

**40. MODIFICATION OF TERMS** The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Purchasing Agent and Contractor.

The Contractor may, however, offer Authorized User(s) more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Authorized User(s) and Purchasing Agent by the Contractor.

Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Purchasing Agent or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized Users subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

**41. SCOPE CHANGES** The Purchasing Agent reserves the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the contract specifications, such changes to be within the general scope of the contract. The Purchasing Agent may make an equitable adjustment in the contract price or delivery date if the change affects the cost or time of performance.

With respect to any specific quantity stated in the contract, the Purchasing Agent reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the contract. Notwithstanding the foregoing, the Purchasing Agent may purchase greater or lesser percentages of contract quantities should the Purchasing Agent and Contractor so agree.

**42. ESTIMATED QUANTITY CONTRACTS** Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the contract term. No guarantee of any estimated quantity(s) is implied or given. Unless otherwise set forth in the Bid Specifications, contracts for services and technology are completely voluntary as to use, and therefore no quantities are guaranteed.



**43. BEST PRICING OFFER** During the contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this contract vehicle upon the same or similar terms and conditions as that of this contract at a lower price, the price under this contract shall be immediately reduced to the lower price.

**44. PURCHASE ORDERS** Unless otherwise authorized in writing by the Purchasing Agent, no Products are to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User requiring the Product. Unless terminated or canceled pursuant to the authority vested in the Purchasing Agent, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the contract period, addressed to the Contractor at the address set forth in the Contract for receipt of orders, or in the Contract Award Notification.

All Purchase Orders issued pursuant to contracts let by the Purchasing Agent must bear the appropriate contract number and, if necessary, required State approvals. Unless otherwise specified, all Purchase Orders against centralized contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the vendors order form, confirmation or acknowledgment, and the contract terms shall be resolved in favor of the terms most favorable to the Authorized User.

If, with respect to an agency specific contract, a Purchase Order is not received within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, the Contractor shall promptly notify the appropriate purchasing officer in the Town. Failure to timely notify such officer may, in the discretion of the Purchasing Agent and without cost to the State, result in the canceling of such requirement by the Purchasing Agent with, at the Purchasing Agents discretion, a corresponding reduction in the contract quantity and price.

**45. PRODUCT DELIVERY** It shall be understood that with respect to contract deliveries, time is of the essence. Delivery must be made as ordered and in accordance with the terms of the contract. Unless otherwise specified in the Bid Specifications, delivery shall be made within thirty calendar days after receipt of a purchase order by the Contractor. The decision of the Purchasing Agent as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Purchasing Agent and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of the time for delivery must be requested in writing by the Contractor and approved in writing by the Purchasing Agent. Failure to meet such time schedule may be grounds for cancellation of the order or, in the Purchasing Agents discretion, the Contract.

The Town must be notified twenty-four (24) hours in advance of delivery. The Town reserves the right to deny acceptance of delivery if this notice is not given, at no cost to the Town.

The successful bidder shall be responsible for delivery of items in good condition at point of destination, and shall file with the carrier all claims for breakage, imperfections, and other losses, which will be deducted from invoices. The Purchasing Agent will note for the benefit of successful bidder when packages are not received in good condition. Carton shall be labeled with purchase order or contract number, successful bidders name and general statement of contents. Failure to comply with this condition shall be considered sufficient reason for refusal to accept the goods.

Unless otherwise stated in the specifications, all items must be delivered into and placed at a point within the building as directed by the shipping instructions or the Purchasing Agent. The successful bidder will be required to furnish proof of delivery in every instance.

Unloading and placing of equipment and furniture is the responsibility of the successful bidder, and the Town accepts no responsibility for unloading and placing of equipment. Any costs incurred due to the failure of the successful bidder to comply with this requirement will be charged to him. No help for unloading will be provided by the Town, and suppliers should notify their truckers accordingly.

All deliveries shall be accompanied by delivery tickets or packing slips. Ticket shall contain the following information for each item delivered:

Contract Number and/or Purchase Order Number  
 Name of Article  
 Item Number (if applicable)  
 Quantity  
 Name of the Successful Bidder

**46. SATURDAY & HOLIDAY DELIVERIES** Unless otherwise specified in the Bid Specifications or by an Authorized User, deliveries will not be scheduled for Saturdays, Sundays or legal holidays observed by the State of New York except of Product for daily consumption or where an emergency exists or the delivery is a replacement or is late, in which event the convenience of the Authorized User shall govern.

#### **47. SHIPPING / RECEIPT OF PRODUCT**

**(a) Packaging** Tangible Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases or other types of containers. The container shall become and remain the property of the receiving entity unless otherwise specified in the contract documents.

**(b) Shipping Charges** Contractor shall be responsible for insuring that the Bill of Lading states "charges prepaid" for all shipments. Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be FOB Destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. Shipping point plus transportation charges are understood to not relieve the contractor from responsibility for safe and proper delivery notwithstanding the Authorized Users payment of transportation charges.

**(c) Receipt of Product** The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the Authorized User. Any losses resulting from the Contractors failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

**48. TITLE AND RISK OF LOSS** Notwithstanding the form of shipment, title and risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g. signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product which is substandard or does not comply with the Contract terms, may be rejected or accepted on an adjusted price basis, as determined by the Purchasing Agent.

**49. RE-WEIGHING PRODUCT** Deliveries are subject to re-weighing at the point of destination by the receiving entity. If shrinkage occurs which exceeds that normally allowable in the trade, the receiving entity shall have the option to require delivery of the difference in quantity, or to reduce the payment accordingly.

**50. PRODUCT SUBSTITUTION** In the event a specified manufacturers Product listed in the

Contractors Bid becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Force Majeure Clause below) a Product deemed by the Purchasing Agent to be the equal or better of the specified commodity or service must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product prior to the Purchasing Agents approval may be cause for cancellation of contract.

**51. REJECTED PRODUCT** When Products are rejected, they must be removed by the Contractor from the premises of the receiving entity within ten days of notification of rejection by Authorized User. Upon rejection notification, risk of loss of rejected or non-conforming Product shall remain on Contractor. Rejected items not removed by the Contractor within ten days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of the items as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition.

**52. INSTALLATION** Where installation is required, Bidder shall be responsible for placing and installing the equipment in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects which would mar the appearance of the equipment or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or replace the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site to its original condition. Work shall be performed so as to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

**53. REPAIRED OR REPLACED PRODUCT / COMPONENTS** Where the Contractor is required to repair, replace or substitute Product or components under the Contract, the repaired, replaced or substituted Product shall be subject to all terms and conditions for new Product set forth in the contract, including product warranties.

**54. ON-SITE STORAGE** Materials, equipment or supplies may be stored at the Town/s or Authorized User's site at the Contractors sole risk and only with the approval of, as the case may be, the Town or the Authorized User.

**55. EMPLOYEES / SUBCONTRACTORS / AGENTS** All employees, subcontractors or agents performing work under the contract must be trained technicians who meet or exceed the technical and training qualifications set forth in the Bid Specifications or the Bid, whichever is greater, and must comply with all rules and requirements of the Contract. The Purchasing Agent reserves the right to conduct a security background check or otherwise approve any employee or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause, including but not limited to, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized Users security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the contract terms. The Purchasing Agent reserves the right to reject and/or bar from the facility for cause any employee, subcontractor, or agents of the Contractor.

**56. ASSIGNMENT / SUBCONTRACTORS** The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract, other than the assignment of the right to receive moneys due, without the prior written consent of Town. Prior to

an assignment of the right to receive moneys becoming effective, Contractor shall file a written notice of such assignment simultaneously with the Town and participating Authorized User(s).

The Purchasing Agent reserves the right to reject any proposed subcontractor, assignee or supplier for bona fide business reasons, which may include, but are not limited to: that the proposed transferee is on the Department of Labors list of companies with which New York State cannot do business; the Purchasing Agent determines that the company is not qualified; unsatisfactory contract performance or service has been previously provided; or attempts were not made to solicit minority and womens business enterprises (M/WBE) bidders for the subcontract.

**57. PERFORMANCE / BID BOND** The Town reserves the right to require the Bidder/Contractor to furnish without additional cost, a performance, payment or bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the contract, whenever the Purchasing Agent in his/her sole discretion deems such bond or security to be in the Towns best interest. Where required, such bond or other security shall be in the form prescribed by the Purchasing Agent.

## **58. STOP / SUSPENSION OF WORK**

**(a) Stop Work Order** The Purchasing Agent reserves the right to stop the work covered by this contract at any time that the successful Contractor becomes unable or incapable of performing the work or meeting any requirements or qualifications set forth in the contract. In the event of such stopping, the Purchasing Agent shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful Contractor shall be liable for any such cost on account thereof.

**(b) Suspension of Work Order** The Purchasing Agent, in his/her sole discretion, reserves the right to suspend any or all activities under this contract, at anytime, in the best interests of the State or Issuing Entity. In the event of such suspension, the contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on Town spending, declaration of emergency, or other such circumstances. Upon issuance of such suspension of work, the Contractor is not to accept any purchase orders, as specified in the Suspension Order. Activity may resume at such time as the Purchasing Agent issues a formal written notice authorizing a resumption of work.

**59. CANCELLATION** A contract may be canceled by the Purchasing Agent, and/or an Authorized User may cancel its participation, license or service order under the contract, at the Contractors expense upon non-performance, or upon a determination that Contractor is non-responsive, or non-responsible.

**60. FORCE MAJEURE** The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor negligence of the Contractor, its officers, employees or agents contributed to such delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires or floods, or other similar cause beyond the control of the Contractor, or for any of the foregoing which affect subcontractors or suppliers and no alternate source of supply is available to the Contractor. In such event, Contractor shall notify the Purchasing Agent, by certified or registered mail, of the delay or potential delay and the cause(s) thereof either (a) within ten (10) calendar days after the cause which creates or will create the delay first arose if the Contractor could reasonably foresee that a delay could occur by reason thereof, or (b), if delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe a delay could result. The foregoing shall constitute the Contractors sole remedy or excuse with respect to such delay. In the event performance is suspended or delayed, in whole or in part, by reason of any of the aforesaid causes or occurrences and proper notification is given the Purchasing Agent, any performance so suspended or delayed shall be performed by the Contractor at no increased cost, promptly after such disabilities have ceased to exist unless it is determined in the sole discretion of the Purchasing Agent

that the delay will significantly impair the value of the contract to the Town or to Authorized Users, whereupon the Purchasing Agent may:

- (a) Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to Town Agencies with respect to Product subjected to allocation; and/or
- (b) Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the contract quantity; or
- (c) Terminate the contract or the portion thereof which is subject to delivery delays, and thereby discharge any unexecuted portion of the contract or the relative part thereof.

**61. CONTRACT BILLINGS** Contractor shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billings for Agencies must contain all information required by the Town Treasurer and/or Auditor. The Town Treasurer shall render payment for Agency purchases, and such payment shall be made in accordance with ordinary Town procedures and practices. Payment of contract purchases made by Authorized Users other than Agencies shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User.

Submission of an invoice and payment thereof shall not preclude the Purchasing Agent from reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the bid and award documents.

**62. DEFAULT - AUTHORIZED USER** An Authorized Users breach shall not be deemed a breach of the centralized contract. In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to both the Purchasing Agent and the Authorized Users purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future contract payments.

Notwithstanding the foregoing, the Contractor shall, at least 10 days prior to declaring a breach of contract by any Authorized User, by certified or registered mail, notify both the Purchasing Agent and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared. It is understood, however, that if the Contractors basis for declaring a breach is insufficient, the Contractors declaration of breach and failure to service an Authorized User shall constitute a breach of its contract and the Town or Authorized User may thereafter utilize any remedy available at law or equity.

### **63. INTEREST ON LATE PAYMENTS**

- (a) **Town Agencies** The payment of interest on certain payments due and owed by a Town agency may be made in accordance with Section 3-a of the *General Municipal Law* at the rate of three percent (3%) per annum.
- (b) **By Non-Town Agencies** The terms of Article 11-A apply only to procurements by and the consequent payment obligations of the Town. Neither expressly nor by any implication is the Town responsible for payments on any purchases made by a Non-Town Agency Authorized User.
- (c) **By Contractor** Should the Contractor be liable for any payments to the Town hereunder, interest, late payment charges and collection fee charges will be determined and assessed

pursuant to Section 18 of the *State Finance Law* to the same extent as though the contract was with the State of New York rather than the Town.

**64. REMEDIES FOR BREACH** It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

**(a) Cover / Substitute Performance** Upon the failure of the Contractor to properly perform within the time specified, failure to provide acceptable service, to make immediate replacement of rejected Product when so requested, or upon the revocation of the Contract by the Purchasing Agent for cause, or upon repudiation of the contract by the Contractor, the Purchasing Agent may, with or without formally bidding same:

i. Purchase from other sources to replace the Product rejected, revoked, not timely delivered or repudiated; or

ii. If after making reasonable attempts, under the circumstances then existing, to timely provide acceptable service or acquire replacement product of equal or comparable quality, the Purchasing Agent is unsuccessful, the Purchasing Agent may acquire acceptable service or replacement product of lesser or greater quality.

Such purchases may, in the discretion of the Purchasing Agent, be deducted from the contract quantity.

**(b) Withhold Payment** In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Purchasing Agent. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.

**(c) Reimbursement of Costs Incurred** The Contractor agrees to reimburse the Town and/or Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the Town or Authorized User in connection therewith, including reasonable attorneys fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the contract, the Purchasing Agent may authorize an ordering Authorized User to rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments due or to become due the Contractor on the same or another transaction.

**(d) Deduction / Credit** Sums due as a result of these remedies may be deducted or offset by the Town or Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Town or Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Purchasing Agent reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc. which arise from the administration of the contract.

**65. ASSIGNMENT OF CLAIM** Contractor hereby assigns to the Town any and all its claims for overcharges associated with this contract which may arise under the antitrust laws of the United States, 15 U.S.C. Section 1, *et seq.* and the antitrust laws of the State of New York, *General Business Law*

Section 340, *et seq.*

**66. TOXIC SUBSTANCES** Each Contractor furnishing a toxic substance as defined by Section 875 of the *Labor Law*, shall provide such Authorized User with not less than two copies of a material safety data sheet, which sheet shall include for each such substance the information outlined in Section 876 of the *Labor Law*.

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the user agency representative.

**67. INDEPENDENT CONTRACTOR** It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of the Town or Authorized User, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this contract, to maintain at Contractors expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including workers compensation, disability and unemployment insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

**68. SECURITY / CONFIDENTIALITY** Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Town and any Authorized User(s) in performance of the Contract.

Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, subcontractors, officers, or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the Town or any Authorized User hereunder or received from another third party, will not be divulged to any third parties. Contractor shall not be required to keep confidential any such confidential material which is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Town or Authorized User, or otherwise obtained under the Freedom of Information Act or other applicable New York State Laws and Regulations. This warranty shall survive termination of this Contract for a period of five (5) years. Contractor further agrees to take appropriate steps to instruct its personnel, agents, officers and any subcontractors regarding the obligations arising under this clause to insure such confidentiality.

**69. COOPERATION WITH THIRD PARTIES** The Contractor shall be responsible for fully cooperating with any third party agents, including but not limited to subcontractors of the Authorized User, relating to delivery of product or coordination of services.

**70. CONTRACT TERM - EXTENSION** In addition to any stated renewal periods in the Contract, any contract or unit portion thereof let by the Purchasing Agent may be extended by the Purchasing Agent for an additional period(s) of up to one year (cumulatively) with the written concurrence of the Contractor.

**71. WARRANTIES & GUARANTEES** Contractor hereby warrants and guarantees:

- (a) To fully defend, indemnify and save harmless the Town, Authorized Users and their respective officers, agents and employees from suits, actions, damages and costs of every name and description arising out of the acts or omissions of Contractor, its officers, employees, subcontractors, partners, or agents, in any performance under this contract including: i) personal injury, damage to real or personal tangible or intangible property, without limitation; ii) negligence, either active or passive, without limitation, or iii) infringement of any law or of a United States Letter Patent with respect to the Products furnished, or of any copyright,

trademark, trade secret or other third party intellectual proprietary rights, without limitation, provided that the Town or Authorized User shall give Contractor: (a) prompt written notice of any action, claim or threat of infringement suit, or other suit, promptness of which shall be established by Authorized User upon the furnishing of written notice and verified receipt, (b) the opportunity to take over, settle or defend such action, claim or suit at Bidders sole expense, and (c) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the Town or Authorized User may require Bidder/Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Purchasing Agent shall require.

**(b)** Contractor warrants full ownership, clear title free of all liens, or perpetual license rights to any Products transferred to Authorized User under this Contract, and Contractor shall be solely liable for any costs of acquisition associated therewith without limitation. Contractor warrants that Authorized User will have undisturbed, peaceful use of the Products, including, without limitation, software, object or source codes, custom programming or third party intellectual property rights incorporated or embedded therein, and training modules or Documentation. Contractor fully indemnifies the Town and Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.

**(c)** To pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the contract.

**(d)** Unless recycled or recovered materials are available in accordance with the "Recycled & Recovered Materials" clause, Product offered shall be standard new equipment, current model of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturers recommendations and standard practice. Every Product, including any substituted or replacement unit delivered, must be guaranteed against faulty material and workmanship for a period of one year from and after the date the unit is accepted unless otherwise specified by the Town or Authorized User. Notwithstanding the foregoing, when the manufacturers standard guarantee for Product or any component thereof exceeds one year, the longer guarantee period shall apply to such unit or component thereof delivered under this contract. Furthermore, the Contractor agrees to extend its warranty period with regard to any Product delivered by the cumulative periods of time, after notification, during which the Product requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers or employees. If during the regular or extended warranty periods faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective goods during the warranty periods shall be borne solely by the Contractor, and the Town or Authorized User shall in no event be liable or responsible therefore. This warranty shall survive any termination of the contract in accordance with the warranty term.

**(e)** Where the provision of services requires the replacement or repair of Product, any replaced or repaired component, part or Product shall be new and shall, if available, be replaced by the original manufacturers component, part or Product. All proposed substitutes for the original manufacturers installed Product must be approved by the Authorized User before installation. The Product or part shall be equal to or of better quality than the original Product being replaced. Any Product replaced by the Contractor under the contract shall be guaranteed for one (1) year from the date of replacement and replaced at no cost to the Authorized User if found defective during that time.

**(f)** Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Purchasing Agent that it meets or exceeds all requirements of the bid and any applicable laws, including but not limited to, permits, insurance coverage,



licensing, proof of coverage for workman's compensation, and shall provide such proof as required by the Purchasing Agent. Failure to do so may constitute grounds for the Town to cancel or suspend this contract, in whole or in part, or to take any other action deemed necessary by the Purchasing Agent.

The Contractor further warrants and guarantees:

- i. His/Her/Its products against defective material or workmanship and to repair or replace any damages or marring occasioned in transit.
- ii. To furnish adequate protection from damage for all work and repair damages of any kind for which he or his workmen are responsible, to the building or equipment, to his own work, or to the work of other successful bidders.
- iii. To carry adequate insurance to protect the Town from loss in case of accident, fire, theft, etc.
- iv. That all deliveries will be equal to the accepted bid sample.
- v. That the equipment delivered is standard, new, latest model of regular stock product or as required by the specifications; also that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice. Every unit delivered must be guaranteed against faulty material and workmanship for a period of at least one year from date of delivery. If during this period such faults develop, the successful bidder agrees to replace the unit or the part affected without cost to the Town. Any merchandise provided under the contract which is or becomes defective during the guarantee period shall be replaced by the successful bidder free of charge with the specific understanding that all replacements shall carry the same guarantee as the original equipment. The successful bidder shall make any such replacement immediately upon receiving notice from the Town.
- vi. That all manufacturers product warranties and guarantees shall be furnished to the Town, and that the Town's rights thereunder shall not be in any way impaired or limited.

## GENERAL

**72. APPLICABILITY** In addition to the terms contained in **Part I (General - All Procurements)**, the terms contained in **Part II (Software & Technology Procurements)** apply to software and technology procurements.

## **73. DEFINITIONS - Part II**

**DOCUMENTATION** The complete set of manuals (e.g. user, installation, instruction or diagnostic manuals) in either hard or electronic copy, necessary to enable an Authorized User to properly test, install, operate and enjoy full use of the Product in accordance with the license rights.

**ENTERPRISE** The business operations in the United States of a Licensee or Enterprise Participant, without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of Licensee or Enterprise Participant. For the Town, "business operations" shall be defined as the business operations of all Agencies, as defined in Part I.

**ENTERPRISE LICENSE** A contract which grants Enterprise Participants unlimited license rights to access, use and/or execute Product within the Enterprise.

**ENTERPRISE PARTICIPANTS** One or more Licensees, as defined in Part I, participating in an Enterprise License.

**LICENSE EFFECTIVE DATE** The date Product is delivered to an Authorized User. Where a License involves Licensees right to copy a previously licensed and delivered Master Copy of a Program, the license effective date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

**LOGICAL PARTITION** A subset of the processing power within a CEC which has been divided through hardware and/or software means (i.e. *Processor Resources/System Manager* [PR/SM]) so as to limit the total processing power which is accessible by an operating system image by individual users or individual software products.

**OBJECT CODE** The machine executable code that can be directly executed by a computers central processing unit(s).

**PHYSICAL PARTITION** A subset of the processing power within a CEC which has been derived through hardware means so as to limit the total processing power accessible by an operating system image by individual users or individual Products.

**SITE** The location (street address) where Product will be executed.

**SOURCE CODE** The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine Object Code.

**TERMS OF LICENSE** The terms and conditions set forth in the Contract which are in effect and applicable to a Product order at the time of order placement, and only such additional terms as are consistent therewith or more advantageous to the Authorized User as are set forth on the individual Product order form executed and approved by both Authorized User and Contractor.

**VIRUS** Any computer code, whether or not written or conceived by Contractor, which disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

## **TERMS AND CONDITIONS**

**74. SOFTWARE LICENSE GRANT** *Unless otherwise set forth in the Bid Specifications or Contract, where Product is acquired on a licensed based the following shall constitute the license grant:*

(a) **License Scope** Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product with other product within its business enterprise in the United States. Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the product, provided that any modifications, however extensive, shall not diminish manufacturers proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

(b) **License Term** The license term shall commence upon the License Effective Date. Where the terms of license permit licensing on a non-perpetual basis, the license term stated in the Contract shall be extended by the time periods allowed for testing and acceptance.

(c) **Licensed Documentation** Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full

use of the Product. If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractors expense: a) One (1) hard copy and One (1) Master Electronic Copy of the Documentation in diskette or CD-ROM format; or b) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License – 1 copy per License
- Concurrent Users – 8 copies per site
- Processing Capacity – 8 copies per site

**(d) Product Use** Product may be accessed, used, executed, reproduced, displayed, performed by Licensee to service all Authorized Users of the machine on which Product is installed, up to the capacity measured by the applicable licensing unit stated in the terms of license (i.e. payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation).

**(e) Permitted License Transfers** As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated Authorized User site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior site. There shall be no additional license or other transfer fees due Contractor, provided that: i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site. (e.g., named users, seats, or MIPS); and ii) that, if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee.

**(f) Restricted Use By Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties** Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and 2) such party has executed, or agrees to execute, the Product manufacturers standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("NonDisclosure Agreement"); and 3) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third partys compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the Town or Licensee.

Any third party with whom a Licensee has a relationship for a state function or business operation, shall have the temporary right to use Product (using, for example, but not limited to, JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the stated function or business activity.

**(g) Archival Back-Up and Disaster Recovery** Licensee may use and copy the Product and related Documentation in connection with: 1) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore

backup(s) or to initiate disaster recovery procedures for its platform or operating systems; 2) reproducing a reasonable number of copies of the Product and related documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; 3) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed under paragraph (F) above. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

**(h) Confidentiality Restrictions** The Product is a trade secret and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the terms of license. Licensee will not remove or destroy any proprietary markings of Contractor.

**(i) Restricted Use by Licensee** Except as expressly authorized by the terms of license, Licensee shall not:

- a. Copy the Product;
- b. Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;
- c. Distribute, disclose, market, rent, lease or transfer to any third party any portion of the Product or the Documentation, or use the Product or Documentation in any service bureau arrangement;
- d. Disclose the results of Product performance benchmarks to any third party who is not an Authorized User without prior notice to Contractor;
- e. Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

**75. ENTERPRISE LICENSE OPTION FOR SOFTWARE** Multiple Authorized Users may license any Product offered under the Contract on behalf of their collective business operations. An Enterprise License shall incorporate the terms set forth in this Part II and the pricing set forth in the Contract, and additionally the following terms:

**(a) Enterprise – Defined** Any Authorized User may be an Enterprise Participant. Enterprise Participants will be enumerated in the Enterprise License, including: i) contact name, ship to and main billing address of each Enterprise Participant, ii) street address of the included End User sites of each Enterprise Participant. The originally defined Enterprise may be modified at any time thereafter, including deletion or addition of Enterprise Participants, sites ownership to locations, provided that Contractor is given written notice and that any additional capacity required by such addition is licensed in accordance with the Enterprise License terms.

**(b) Product Use** Product licensed under this Enterprise Option shall be licensed with the rights set forth in this Part II, without reference to a specific designated system or Licensee, up to the maximum licensed capacity. Product may be used and freely transferable anywhere within the defined Enterprise, including higher or lower performance machines, and Enterprise Participants will not incur an increase in license, support or other charges provided that the aggregate utilization of the Product does not exceed the aggregate Enterprise Licensed capacity.

**(c) Submission of Orders, Billing and Usage Reporting** An Enterprise may be established for order placement and billing as either a “single” or “multiple” point of contact, at Licensees option. Where designated as a “single”, one Enterprise Participant shall be designated as the lead agency and central point for submission of Purchase Orders, usage reporting and billing. Where designated as “multiple” point of contact, each designated Enterprise Participant shall be responsible for submission of Purchase Orders, reporting and billing with regard to its use of Enterprise Licensed Product. For either single or multiple point of contact Enterprises, a) Contractor agrees to hold each Enterprise Participant solely responsible for payment and performance; and b) Contractor shall be responsible for furnishing an annual report to each designated point of contact summarizing overall Enterprise License activity for the preceding twelve months.

**(d) Shipping / Delivery** Contractor shall be responsible for delivery of Master Copies of Enterprise Licensed Product and documentation to Enterprise Participants. Within either “Single” or “Multiple” Enterprise Licenses, shipping and delivery of Master Copies of Product and Documentation shall be the responsibility of Contractor to each “ship to” location specified on the Purchase Order(s). Distribution and installation of Enterprise Licensed Product to End Users at a site shall be the responsibility of the Licensee.

**(e) Enterprise Operating Systems** Unless otherwise specified by the parties, up to ten (10) hardware/operating system combinations for Product shall be included at no additional charge. The initial ten hardware/operating systems may be specified at any time within five (5) years of the Enterprise License effective date. Additional hardware/operating systems beyond the initial ten (10) may be specified at anytime by the Enterprise, however if additional copies of Product are required for hardware/operating systems beyond the initial ten, the cost for such systems will be as mutually agreed between the parties.

**(f) Product Acceptance** Each Enterprise Participant shall have a right of acceptance, as set forth above in this Part II, only for the first copy of Product for its site(s).

**(g) Enterprise Fees** Enterprise License Fees shall be set forth in the Contract. Notwithstanding the foregoing, the Product license fees for additional copies or units of capacity for Enterprise licensed Product shall not increase by more than six percent (6%) annually each year during the Enterprise License term. Contractor may offer additional discounts/incentives for Enterprise Participants as may be mutually agreed between the parties. Enterprise Participants shall be entitled to aggregate the volume of all Enterprise Participants for purposes of establishing any applicable discounts under the Contract, and Enterprise Licensed Volume shall be aggregated with volume of non-Enterprise Licensed Product otherwise purchased under the centralized Contract. Upon termination of the Enterprise, Enterprise Participants have the right to acquire additional capacity or users at the Enterprise License price for twelve months after the termination of the Enterprise License.

**(h) Technical Support** Unless otherwise mutually agreed, technical support is optional and may be elected individually by Product by each Enterprise Participant. Where an Enterprise Participant is under a current maintenance or technical support contract, such Enterprise Participant shall be entitled to credit any support paid covering any portion of the Enterprise License Term to the fees due under the Enterprise license.

Enterprise Participants shall have the right to partially or wholly de-support a subset of unused Enterprise licensed capacity upon written notice to Contractor at the end of any then - current technical support term without penalty or charge. The capacity for a Program license which has been de-supported must remain inactive and may not be used within the Enterprise unless technical support for such capacity has been reinstated. In the event of de-support, Contractor reserves the right to reasonably determine compatibility of future releases or new programs prior to shipment.

(i) **Merger of Two or More Enterprises** Two or more Enterprises may be merged to form a larger Enterprise for the purpose of sharing and exchanging data at no additional license fee provided that participants give Contractor notice of such merger and that the combined capacity does not exceed the maximum capacity of the individual licenses.

(j) **“Nested” Enterprises** Individual Enterprise License participant(s) may license additional capacity or products for the specific use of a subset of the larger enterprise. Said participant(s) must certify in writing to Contractor that such use is only by the enumerated subset of participants.

(k) **Default** A default by any Enterprise Participant shall entitle the Contractor to the remedies against such participant under the Contract, but shall not be deemed a default by the remaining non-defaulting Enterprise Participants.

**76. PRODUCT ACCEPTANCE** Unless otherwise provided in the Bid Specifications, the Town and/or Authorized User(s) shall have sixty (60) days from delivery to accept Product. Failure to provide notice of acceptance or rejection by the end of the period provided for under this clause would constitute acceptance by the Town or Authorized User(s) as of the expiration of that period.

Unless otherwise provided in the Bid Specifications, The Town or Authorized User shall have the option to run acceptance testing on the Product prior to acceptance, such tests and data sets to be specified by User. Where using its own data or tests, The Town or Authorized User must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Town or Authorized User, and shall be made part of the Contractors standard documentation. The test data shall remain accessible to the Town or Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within sixty (60) days from delivery, and the Contractor or Product is responsible for the delay, The Town or Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for another sixty (60) day increment. The Town or Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Town or Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the the Town or Authorized Users agents or employees. Said costs shall be limited to fees paid to Contractor, if any, or any liability for costs incurred at the direction or recommendation of Contractor.

**77. AUDIT OF LICENSED PRODUCT USAGE** Contractor shall have the right to periodically audit, at its expense, use of licensed Product at any site where a copy of the Product resides provided that: i) Contractor gives Licensee or Enterprise Participants at least thirty (30) days advance notice, ii) such audit is conducted during such party's normal business hours iii) each Licensee or Enterprise Participant is entitled to designate a representative who shall be entitled to participant and simultaneously review all information obtained by the audit, and shall be entitled to copies of all reports, data or information obtained by the Contractor; and iv) if the audit shows that such party is not in compliance such party shall be liable for the unlicensed capacity and shall be required to purchase the additional units or rights necessary to bring it into compliance.

**78. OWNERSHIP / TITLE TO CUSTOM PRODUCTS OR PROGRAMMING** Where contract deliverables include custom products or programming, title, rights and interests to such Product(s) shall

be determined as follows:

**(a) Definitions**

**Product** For purposes of this section, the term “Product” shall have the meaning set forth in Part I of these *General Specifications*, which includes, but is not limited to: software applications or programming, programming tools, documentation (including user or training manuals), modules, interfaces, templates, and other elements such as utilities, subroutines, algorithms, formulas, source code, object code, reports, drawings, or data.

**“Existing Product”** is defined as any proprietary material(s) existing or developed independently and not at the expense of Licensee.

**“Custom Product”** is defined as any material(s), exclusive of Existing Product, created, prepared, written, compiled or developed by Contractor, or anyone acting on his behalf for The Town or Authorized User pursuant to the Contract.

**(b) Contractor or Third Party Manufacturers Title to Existing Product** Title to Existing Product(s) does not transfer. With respect to such Existing Product(s), whether embedded in or operating in conjunction with Custom Product, Contractor warrants: a) all right, title and interest in Contractor Existing Product(s); or b) all license rights, title and interest in third party Existing Product(s), which include the right to grant to The Town or Authorized User an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute Existing Product(s). Contractor hereby grants a irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute Existing Product(s) embedded in or transferred for use in conjunction with Custom Product(s). The Licensee agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the license granted under this paragraph prior to distribution or use.

**(c) Title to Custom Product** Title to Custom Product(s), excluding Existing Product, shall be deemed the sole and exclusive property of the Town or Authorized User, who shall have all right, title and interest (including ownership and copyrights). For the purposes of the federal copyright law, execution of this contract shall constitute an assignment of all right, title and interest in the Custom Product(s) by Contractor to the Town or Authorized User. The Town or Authorized User, in its sole discretion, reserves the right to sell Custom Product or to license them on an exclusive or non-exclusive basis to Contractor or other Third Parties. Contractor hereby agrees to take all necessary and appropriate steps to ensure that Custom Product is protected against unauthorized use, execution, reproduction, display, performance, or distribution by or through Contractor, its partners or agents. Notwithstanding this reservation of title, Contractor shall not be precluded from using the related or underlying general knowledge, skills and experience developed in the course of providing the Custom Product in the course of Contractor’s business.

**(d) Acquisitions Funded By Tax Exempt Financing** In addition to the foregoing rights under a, b and c, the sale or licensing of Custom Product or rights therein shall not occur until such Product or rights are or become useable, and shall be at fair market value which shall be determined at the time of sale or licensing. Any such transfer shall be pursuant to a separate written agreement. If the Contract deliverables are to be funded through tax exempt financing, the Town or Authorized User may assign to a Trustee or other entity for security purposes Town or Authorized Users ownership and license rights in Custom and Existing Products. Contractor will cooperate with the Town or Authorized User to execute such other documents as may be appropriate to achieve the objectives of this paragraph.

**(e) Other Acquisitions (Not Funded by Tax Exempt Financing)** In addition to the rights set forth above (paragraphs “a”, “b” and “c”), the Town or Authorized User reserves the right to transfer any or all rights to Custom Materials on an exclusive or non-exclusive basis. Where such transfer (sale

or licensing) is provided in the Bid Specifications, Contractor shall include a purchase price for such rights in its bid. Such price shall be offered as a deduction from Contractor's overall Bid or Project Bid price, and shall be weighted as set forth in the bid evaluation criteria, if any. Such rights shall transfer to the successful Bidder/Contractor upon successful completion and acceptance by the Town or Authorized User of all contract deliverables. Contractor will cooperate with the Town or Authorized User to execute such other documents as may be appropriate to achieve the objectives of this paragraph.

**79. PROOF OF LICENSE** The Contractor must provide to each Licensee who places a Product order either: a) the Product manufacturer's certified License Confirmation Certificates in the name of each such Licensee; or b) a written confirmation from the Product manufacturer accepting Contractor's Product invoice as proof of license. Bidder or Contractor shall submit a sample manufacturer's certificate, or alternatively such written confirmation from the manufacturer, with the Bid or Contract. Such certificates must be in a form acceptable to the Licensee.

**80. PRODUCT VERSION** Product orders shall be deemed to reference Manufacturers most recently released model or version of the Product at time of delivery, unless an earlier model or version is specifically requested in writing by the Town or Authorized User and Contractor is willing to provide such version.

**81. MIGRATION TO CENTRALIZED CONTRACT** The Town or Authorized User may obtain additional Product authorized under this contract, (e.g., licensed capacity upgrades, new releases, documentation, maintenance, consulting or training) whether or not Product was initially obtained independently of this contract. The Town or Authorized Users election to obtain additional Product shall not operate to diminish, alter or extinguish rights previously granted.

**82. NOTICE OF PRODUCT DISCONTINUANCE** In the event that a Product manufacturer proposes to discontinue maintenance or support for Product, Contractor shall (1) notify the Town and each Authorized User in writing of the intended discontinuance, and (2) continue to provide maintenance and support for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than eighteen (18) months from the date of notice, and (3) at The Town or Authorized Users option, either a) provided that the Town or Authorized User is under maintenance, provide the Town or Authorized User with either a Product replacement with equivalent functionality at no additional charge, or b) provide Town or Authorized User with the source code for Licensed Product at no additional charge to enable it to continue use and maintenance of the Product.

**83. REINSTATEMENT OF MAINTENANCE** The Town or Authorized User shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon written notice to Contractor. In the event that The Town or Authorized User discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor at rates which would have been due under the contract for the period of time that such maintenance had lapsed, or for twelve months, whichever is less.

**84. NO HARDSTOP / PASSIVE LICENSE MONITORING** Contractor hereby represents, warrants and covenants that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs", "time locks", or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that in the event of a breach or alleged breach of this provision that The Town or Authorized User shall not have an adequate remedy at law, including monetary damages, and that The Town or Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which The Town or Authorized User shall be entitled.



**85. ADDITIONAL WARRANTIES / GUARANTEES** Where Contractor or Product manufacturer offers additional or more advantageous warranties than set forth herein, Contractor shall offer or pass through any additional or more advantageous warranties to The Town or Authorized Users. In addition to the "Warranties/Guarantees" set forth in Part I, Contractor makes the following warranties.

**(a) Product Performance Warranty** Contractor represents and warrants that the Products delivered pursuant to this contract conform to the manufacturers specifications, performance standards, and documentation and that the documentation fully describes the proper procedure for using the Products in an efficient manner. Contractor does not warrant that software is error-free.

In the event that Contractor does not remedy a substantial breach of this warranty within the cure period, Licensee shall also have the right to terminate any payments due Contractor, with a refund of the any fees prospectively paid from the date of breach.

**(b) Year 2000 Warranty** For all procurements of Product, Contractor must furnish a warranty statement in accordance with the NYS Standard Year 2000 Warranty Compliance Statement set forth in Part I at the time of bid for agency specific contracts or product order for centralized contracts.

**(c) Virus Warranty** Contractor represents and warrants that Licensed Software contains no known viruses. Bidder is not responsible for viruses introduced at Licensees site. For purposes of this provision, "Virus" shall have the meaning set forth in Part II, "Definitions".

A breach of any of the foregoing shall be deemed a material breach of the Contract or any License granted thereunder. The defaulting party shall be given written notice of a warranty breach under this section and shall have a thirty (30) day period to cure such breach.

**86. INDEMINIFICATION THE WARRANTIES SET FORTH IN THESE GENERAL SPECIFICATIONS (PARTS I and II) ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

Contractor shall defend, indemnify and save harmless the Town and Authorized Users from suits, actions, claims, damages and costs arising under or connected to Contractors actions, and except where express loss liabilities set forth elsewhere in the Contract provide for a higher loss limitation liability than as set forth in this paragraph, or where such express provisions impose Contractor liability on "without limitation", the total liability of Contractor for such claim(s), regardless of the nature and basis for the claim, shall not exceed two (2) times the fees paid for the applicable Product. For any suit, action, claim, damages or costs arising under or are connected to personal injury or property damage, or breach of the title, patent and copyright warranties, Contractor shall be fully liable without limitation.

The Town or Authorized User may retain such moneys from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted by or against the Town or Authorized User, provided however, that Contractor shall not indemnify each such entity to the extent that any claim, loss or damages arising hereunder is caused by the negligence act or failure to act of said entity.

**87. SOURCE CODE ESCROW FOR LICENSED PRODUCTS** If source code or source code escrow is offered by either Contractor or Product manufacturer/developer to any other commercial customers, Contractor either: i) will provide Licensee with the Source Code for the Product; or ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the Town, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the Town, or iii) will certify to the Town that the

Product manufacturer/developer has named the Town, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the Town and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above. Contractor shall identify the escrow agent upon commencement of the contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.

The Town may release the Source Code to Licensees under this Contract who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.

## ESSEX COUNTY DEPARTMENT OF PUBLIC WORKS

## SECTION 331413 - PUBLIC WATER UTILITY DISTRIBUTION PIPING

## PART 1 - GENERAL

## 1.1 SUMMARY

## A. Section Includes:

1. Pipe and fittings for public potable water line.
2. Adapters and Couplings.

## B. Related Requirements:

1. Section 331419 - Valves and Hydrants for Water Utility Service: Fire hydrants, valves, and valve boxes for fire hydrant and water main installations.
2. Section 331900 - Water Utility Metering Equipment: Positive displacement meters as required by this Section.

## 1.2 UNIT PRICE - MEASUREMENT AND PAYMENT

## A. Pipe and Fittings:

1. Pipe Basis of Measurement: By linear foot.
2. Fittings Basis of Payment: By Each. Inclusive of entire assembly.

## B. Valves:

1. Basis of Measurement: By each. Inclusive of entire assembly.

## C. Meters:

1. Basis of Measurement: By each.
2. Basis of Payment: Includes meter, fittings, and accessories.

## D. Taps:

1. Basis of Measurement: By each.
2. Basis of Payment: Includes tapping sleeve, tapping valves, and accessories.

## 1.3 REFERENCE STANDARDS

## A. American Association of State Highway and Transportation Officials:

1. AASHTO T 180 - Standard Method of Test for Moisture-Density Relations of Soils Using a 4.54-kg (10-lb) Rammer and a 457-mm (18-in.) Drop.

## B. American Society of Mechanical Engineers:

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1. ASME B16.1 - Gray Iron Pipe Flanges and Flanged Fittings: Classes 25, 125, and 250.

### C. ASTM International:

1. ASTM A36/A36M - Standard Specification for Carbon Structural Steel.
2. ASTM A123 (/A123M - Standard Specification for Zinc (Hot-Dip Galvanized) Coatings on Iron and Steel Products).
3. ASTM A307 - Standard Specification for Carbon Steel Bolts, Studs, and Threaded Rod 60 000 PSI Tensile Strength.
4. ASTM D698 - Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12 400 ft-lbf/ft<sup>3</sup> (600 kN-m/m<sup>3</sup>).
5. ASTM D1557 - Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf/ft<sup>3</sup> (2,700 kN-m/m<sup>3</sup>).
6. ASTM D1785 - Standard Specification for Poly(Vinyl Chloride) (PVC) Plastic Pipe, Schedules 40, 80, and 120.
7. ASTM D2241 - Standard Specification for Poly(Vinyl Chloride) (PVC) Pressure-Rated Pipe (SDR Series).
8. ASTM D3035 - Standard Specification for Polyethylene (PE) Plastic Pipe (DR-PR) Based on Controlled Outside Diameter.
9. ASTM D3139 - Standard Specification for Joints for Plastic Pressure Pipes Using Flexible Elastomeric Seals.
10. ASTM D6938 - Standard Test Method for In-Place Density and Water Content of Soil and Soil-Aggregate by Nuclear Methods (Shallow Depth).
11. ASTM F477 - Standard Specification for Elastomeric Seals (Gaskets) for Joining Plastic Pipe.

### D. American Water Works Association:

1. AWWA C104 - Cement-Mortar Lining for Ductile-Iron Pipe and Fittings.
2. AWWA C105 - Polyethylene Encasement for Ductile-Iron Pipe Systems.
3. AWWA C110 - Ductile-Iron and Gray-Iron Fittings.
4. AWWA C111 - Rubber-Gasket Joints for Ductile-Iron Pressure Pipe and Fittings.
5. AWWA C115 - Flanged Ductile-Iron Pipe with Ductile-Iron or Gray-Iron Threaded Flanges.
6. AWWA C151 - Ductile-Iron Pipe, Centrifugally Cast.
7. AWWA C153 - Ductile-Iron Compact Fittings.
8. AWWA C200 - Steel Water Pipe, 6 In. (150 mm) and Larger.
9. AWWA C203 - Coal-Tar Protective Coatings and Linings for Steel Water Pipe.
10. AWWA C205 - Cement-Mortar Protective Lining and Coating for Steel Water Pipe - 4 In. (100 mm) and Larger - Shop Applied.
11. AWWA C206 - Field Welding of Steel Water Pipe.
12. AWWA C207 - Steel Pipe Flanges for Waterworks Service, Sizes 4 In. Through 144 In. (100 mm Through 3,600 mm).
13. AWWA C208 - Dimensions for Fabricated Steel Water Pipe Fittings.
14. AWWA C213 - Fusion-Bonded Epoxy Coatings and Linings for Steel Water Pipe and Fittings.
15. AWWA C300 - Reinforced Concrete Pressure Pipe, Steel-Cylinder Type.
16. AWWA C301 - Prestressed Concrete Pressure Pipe, Steel-Cylinder Type.
17. AWWA C500 - Metal-Seated Gate Valves for Water Supply Service.
18. AWWA C600 - Installation of Ductile-Iron Mains and Their Appurtenances.

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19. AWWA C605 - Underground Installation of Polyvinyl Chloride (PVC) and Molecularly Oriented Polyvinyl Chloride (PVCO) Pressure Pipe and Fittings.
20. AWWA C606 - Grooved and Shouldered Joints.
21. AWWA C700 - Cold-Water Meters - Displacement Type, Metal Alloy Main Case.
22. AWWA C701 - Cold-Water Meters - Turbine Type, for Customer Service.
23. AWWA C702 - Cold-Water Meters - Compound Type.
24. AWWA C707 - Encoder-Type Remote-Registration Systems for Cold-Water Meters.
25. AWWA C900 - Polyvinyl Chloride (PVC) Pressure Pipe and Fabricated Fittings, 4 In. Through 12 In. (100 mm Through 300 mm), for Water Transmission and Distribution.
26. AWWA C901 - Polyethylene (PE) Pressure Pipe and Tubing, 1/2 In. (13 mm) Through 3 In. (76 mm), for Water Service.
27. AWWA C905 - Polyvinyl Chloride (PVC) Pressure Pipe and Fabricated Fittings, 14 In. Through 48 In. (350 mm Through 1,200 mm), for Water Transmission and Distribution.
28. AWWA M6 - Water Meters - Selection, Installation, Testing, and Maintenance.

E. Manufacturers Standardization Society of the Valve and Fittings Industry:

1. MSS SP-60 - Connecting Flange Joints between Tapping Sleeves and Tapping Valves.

F. National Fire Protection Association:

1. NFPA 24 - Standard for the Installation of Private Fire Service Mains and Their Appurtenances.

G. NSF International:

1. NSF 61 - Drinking Water System Components - Health Effects.
2. NSF 372 - Drinking Water System Components - Lead Content.

### 1.4 SUBMITTALS

- A. Section 013300 - Submittal Procedures: Requirements for submittals.
- B. Product Data: Submit manufacturer information regarding pipe materials, pipe fittings, valves and accessories.
- C. Manufacturer's Certificate: Certify that products meet or exceed specified requirements.
- D. Include separate Paragraphs for additional certifications.
- E. Qualifications Statements:
  1. Submit qualifications for manufacturer supplier.
- F. and enclosed drawing.

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### 1.5 QUALITY ASSURANCE

- A. Valves: Mark valve body with manufacturer's name and pressure rating.
- B. Materials in Contact with Potable Water: Certified according to NSF 61 and NSF 372.

### 1.6 QUALIFICATIONS

- A. Manufacturer: Company specializing in manufacturing products specified in this Section with minimum 10 years experience.

### 1.7 DELIVERY, STORAGE, AND HANDLING

- A. Section 016000 - Product Requirements: Requirements for transporting, handling, storing, and protecting products.
- B. Inspection: Accept materials on Site in manufacturer's original packaging and inspect for damage.
- C. Storage:
  - 1. Store materials according to manufacturer instructions.
  - 2. Block individual and stockpiled pipe lengths to prevent moving.
  - 3. Do not place pipe or pipe materials on private property or in areas obstructing pedestrian or vehicle traffic.
  - 4. Store PE and PVC materials out of sunlight.
- D. Protection:
  - 1. Protect materials from moisture and dust by storing in clean, dry location remote from construction operations areas.
  - 2. Provide additional protection according to manufacturer instructions.

### 1.8 WARRANTY

- A. Furnish **five** year manufacturer's warranty for valves.

## PART 2 - PRODUCTS

### 2.1 WATER PIPING

- A. Ductile-Iron Pipe: Restrained push on bell and spigot type insert with rubber gasket.
  - 1. Comply with AWWA C151.
  - 2. Bituminous Outside Coating: Comply with AWWA C151.
  - 3. Pipe Mortar Lining:

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- a. Comply with AWWA C104.
  - b. Thickness: Double.
- 4.
- 5. Pipe Class:
  - a. Comply with AWWA C151.
  - b. Class **52**
- 6. Fittings:
  - a. Material: **Ductile** iron; comply with AWWA C110.
  - b. Coating and Lining:
    - 1) Bituminous Coating: Comply with AWWA C110.
    - 2) Cement-Mortar Lining: Comply with AWWA C104; double thickness.
- 7. Joints:
  - a. Mechanical and Push-on Joints: Comply with AWWA C111.
  - b. Mechanical Joint
    - 1) Manufacturer: Romac Grip Ring Basis of Design (Ductile Iron)
    - 2) Gland: Ductile iron, meeting or exceeding ASTM A536, Grade 65-45-12
    - 3) Gasket: Standard MG gasket, meeting ANSI/AWWA C111/A21.11
    - 4) Ring: Ductile iron, heat treated for proper penetration of rigid pipe materials, conforming to ASTM A536, Grade 65-45-12.
    - 5) Bolts and Nuts: Standard MH tee bolts and nuts meeting ANSI/AWWA C111/A21.11.
    - 6) Performance:
      - a) Rated for pressure of pipe
      - b) FM approval at 175 psi (minimum)
      - c) UL listed for Ductile Iron pipe at 350 psi.
- B. Ductile Iron Flanged Fittings
  - 1. Bolts shall be accompanied by appropriately sized washers on both the bolt head
  - 2. and nut side of the connection.
  - 3. All hardware to be Type 316 stainless steel.
  - 4. Bolts and nuts shall be assembled with medium strength waterproof thread lock compound (Blue Loctite 242, Permatex, or equivalent MIL-SPEC S-46163A Type II, Grade N).
  - 5. Gaskets shall be ring type, minimum 1/16th inch thick, cloth inserted rubber
  - 6. gaskets.
  - 7. Flanges shall conform to AWWA Standard C115 (ANSI A21.15) with bolts provided in the size and number called for and in accordance with the American Standard with hexagonal nuts.
  - 8. For bolt sizes and lengths, the "Handbook of Cast Iron Pipe" should be consulted.
- C. Polyethylene Pipe – AWWA C906 (Insulated)

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1. Drinking Water Class Pipe Per: AWWA C906, ASTM F4710, ASTM D3350, PE3408/4710.
  - a. Working Pressure 200 psi.
  - b. DR Class 11.
  - c. Ductile Iron Pipe Size.
2. Permanent identification of piping service shall be provided by co-extruding, longitudinal blue stripes or solid blue into the pipes outside surface. The stripping material shall be the same material as the pipe except for color. Stripes printed or painted on the pipe outside surface shall not be acceptable.
3. Polyethylene pipe shall be equivalent to AWWA C906 PE3408/4710 DIPS – Municipal & Industrial Pipe, by Charter Plastics
4. Fittings:
  - a. Mechanical fittings used with polyethylene pipe shall be specifically designed for use with polyethylene pipe and will include restraints. At connection with ductile iron pipe, provide PE wall anchor, per pipe manufacturer, or “in-line” joint restraints.
  - b. Minimum size of wall anchor shall be determined by pipe manufacturer and be based on pipe size, length and rated working pressure.
  - c. Butt fusion welded mechanical joint adapters shall be used for mechanical joint connections. Mechanical joint adapters shall be provided with 304 S.S. backing rings and bolts. Provide minimum of 200’ of water main joints (each side of HDPE/D.I. connection points) with Field-Lok 350™ gaskets (or approved equal).
5. Provide as per manufacturer’s recommendations or as noted above (whichever is more restrictive).
6. Provide pipe stiffeners for all O.D. (compression-style) connections between HDPE and ductile iron pipe as per manufacturer’s requirements and as approved by Engineer.
7. Insulation: Insulation shall be a foam in place closed cell polyurethane which completely fills the annular space between the carrier pipe and the exterior casing. The insulation shall have the following properties:
  - a. Minimum Density (lb. /cu. ft.) 2.0 ASTM D-1621
  - b. 90-95 % Closed Cell ASTM D-2856
  - c. “K” Factor BTU/Hr. sq. ft. °F/in . . . 147 ASTM C-177
8. Insulation Exterior Casing: The casing shall be High Density Polyethylene (HDPE) with the following properties:
  - a. Resin Type III, Grade P34 ASTM D-3350
  - b. Tensile Yield Strength 3300 psi ASTM D-638
  - c. Ultimate Elongation 850% (min) ASTM D-638
  - d. Tangent Flexural Modules 175,000 psi ASTM D-790
9. Sub-assemblies:
  - a. Designated fittings shall be HDPE, factory insulated and fusion welded to the HDPE service pipe and sealed to the outer jacket.
  - b. Field installed fittings are insulated and sealed with Manufacturer supplied insulation kits.
    - 1) After thermal butt fusion welding and hydrostatic testing of the carrier pipe, HDPE jacketed straight field joints shall be insulated with polyurethane foam half-shells to the thickness specified, and sealed water-tight with a heat-shrink sleeve.



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## 2.2 FLANGED ADAPTER

- A. Manufacturers: Romac, Alpha restrained flanged coupling (basis of design) or equal.
- B. Performance:
  - 1. Working pressure equal to the rating of pipe up to 350 psi.
  - 2. 4 degrees of deflection per joint end
- C. Casting: Ductile Iron, meeting or exceeding the requirements of ASTM A536, grade 65-45-12.
- D. Grippers: Ductile Iron meeting or exceeding the requirements of ASTM A536, grade 65-45-12. Machine sharpened and heat treated. Xylan 1424 coated for superior corrosion resistance.
- E. Gaskets: SBR compound for water and sewer service per ASTM D2000, classified by UL to meet NSF61 or NBR compounded for water and sewer service per ASTM D2000, NSF 61 certified. O-ring style flange gasket, NBR in accordance with ASTM D2000, NSF61 certified.
- F. Draw Hooks: type 304 Stainless Steel.
- G. Bolts and Nuts: 5/8-11 bolts with heavy hex nuts. 304 stainless steel. Fasteners provided with anti-galling protection.
- H. Coatings: Flanged coupling body fusion bonded epoxy, NSF61 certified. End rings to be bonded polyester.

## 2.3 MECHANICAL JOINT COUPLING

- A. Manufacturers: Romac, Alpha restrained joint, extended range coupling (basis of design) or equal.
- B. Performance:
  - 1. Working pressure equal to the rating of pipe up to 350 psi.
  - 2. 4 degrees of deflection per joint end
- C. Casting: Ductile Iron, meeting or exceeding the requirements of ASTM A536, grade 65-45-12.
- D. Grippers: Ductile Iron meeting or exceeding the requirements of ASTM A536, grade 65-45-12. Machine sharpened and heat treated. Xylan 1424 coated for superior corrosion resistance.
- E. Gaskets: SBR compound for water and sewer service per ASTM D2000, classified by UL to meet NSF61 or NBR compounded for water and sewer service per ASTM D2000, NSF 61 certified. O-ring style flange gasket, NBR in accordance with ASTM D2000, NSF61 certified.
- F. Draw Hooks: type 304 Stainless Steel.
- G. Bolts and Nuts: 5/8-11 bolts with heavy hex nuts. 304 stainless steel. Fasteners provided with anti-galling protection.

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- H. Coatings: Flanged coupling body fusion bonded epoxy, NSF61 certified. End rings to be bonded polyester.

### 2.4 MECHANICAL JOINT ADAPTER

- A. Manufacture: Foster Adapter (Basis of Design) or equal.
- B. Mechanical joint (MJ) valves and fittings shall be connected using a bolt-through positive restraint mechanism manufactured of U. S. A. ductile iron conforming to ASTM A536, 65-45-12.
- C. The positive restraint device shall connect the valves and/or fittings at a linear distance not to exceed three (3) inches and without attachment to pipe.
- D. The device shall come complete with all accessories, including standard styrene butadiene rubber (SBR) MJ gaskets conforming to the latest revision of AWWA C111/ASTM F-477 and weathering steel (Corten) bolts conforming to AWWA C111/A21.11 and ASTM A242.
- E. Hardware: Type 316 Stainless Steel.
- F. The device shall be used with standard mechanical joint fittings (AWWA C110 or C153) and valves.

### 2.5 VALVES AND FIRE HYDRANTS

- A. As specified in Section 331419 - Valves and Hydrants for Water Utility Service.

### 2.6 FINISHES

- A. Steel: Hot-dip galvanized after fabrication, according to ASTM A123/A123M.
- B. Protective Coating: Coal-tar epoxy

### 2.7 ACCESSORIES

- A. Corporation Stops:
  - 1. Manufacturer: Muller 300 or equal.
  - 2. Comply with ASTM B62 and NSF/ANSI 372
  - 3. Body: Brass, Full port.
  - 4. Material Specifications:
    - a. Body - Bronze - ASTM B62 Alloy C83600.
    - b. Stem - Bronze - ASTM B62 Alloy C83600.
    - c. Cap - Bronze - ASTM B62 Alloy C83600.
    - d. Ball - Bronze - ASTM B62 Alloy C83600.
    - e. Ball Coating - PTFE - FDA Approved Coating.

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- f. Stem O-ring - ASTM D2000 EPDM Rubber.
  - g. Molded Rubber Seats - ASTM D2000 Nitrile (Buna-N) Rubber.
  - h. Pin - Stainless Steel, 300 Series.
- 5. Inlet End: Threaded for tapping according to AWWA C800, CC thread.
- 6. Outlet End: IP thread male connection.
- B. Corporation Plug
  - 1. Brass plug, lead free.
  - 2. IP threaded male connection.

## PART 3 - EXECUTION

### 3.1 EXAMINATION

- A. Verify that existing utility water main size, location, and invert are as indicated on Drawings.

### 3.2 PREPARATION

- A. Pipe Cutting:
  - 1. Cut pipe ends square, ream pipe and tube ends to full pipe diameter, and remove burrs.
  - 2. Use only equipment specifically designed for pipe cutting; use of chisels or hand saws is not permitted.
  - 3. Grind edges smooth with beveled end for push-on connections.
- B. Remove scale and dirt on inside and outside before assembly.
- C. Prepare pipe connections to equipment with flanges or unions.

### 3.3 INSTALLATION

- A. Bedding:
  - 1. Excavation:
    - a. Hand trim for accurate placement of pipe to elevations as indicated on Drawings.
  - 2. Dewater excavations to maintain dry conditions and to preserve final grades at bottom of excavation.
  - 3. Place bedding material at trench bottom, level fill materials in one continuous layer not exceeding [6] inches of compacted depth, and compact to [95] percent of maximum density.
- B. Piping:
  - 1. Comply with AWWA C600 and C605.
  - 2. Handle and assemble pipe according to manufacturer instructions.
  - 3. Steel Rods, Bolts, Lugs, and Brackets: Coat buried steel before backfilling.

## ESSEX COUNTY DEPARTMENT OF PUBLIC WORKS

4. Maintain [10] feet of horizontal separation between water main and sewer
  5. Ductile-Iron Piping and Fittings: Comply with AWWA C600.
  6. Flanged Joints: Do not use in underground installations except within structures.
  7. Route pipe in straight line, and re-lay pipe that is out of alignment or grade.
  8. High Points:
    - a. Install pipe with no high points.
    - b. If unforeseen field conditions arise that necessitate high points, install air-release valves .
  9. Bearing:
    - a. Maintain bearing along entire length of pipe.
    - b. Excavate bell holes to permit proper joint installation.
    - c. Do not lay pipe in wet or frozen trench.
  10. Prevent foreign material from entering pipe during placement.
  11. Allow for expansion and contraction without stressing pipe or joints.
  12. Close pipe openings with watertight plugs during Work stoppages.
  13. Install access fittings to permit disinfection of water system performed under Section **330110.58 - Disinfection of Water Utility Piping Systems**
  14. Cover:
    - a. Establish elevations of buried piping with not less than 6 feet of cover.
    - b. Measure depth of cover from final surface grade to top of pipe barrel.
- C. Valves and Hydrants: As specified in Section 331419 - Valves and Hydrants for Water Utility Service.
- D. Backfilling:
1. Backfill around sides and to top of pipe with cover fill in minimum lifts of [6] inches tamp in place, and compact to [95] percent of maximum density.
  2. **Place and compact material immediately adjacent to pipes to avoid damage to pipe and prevent pipe misalignment.**
  3. Maintain optimum moisture content of bedding material to attain required compaction density.
- E. Disinfection of Potable Water Piping Systems: As specified in Section 330110.58 - Disinfection of Water Utility Piping Systems.

### 3.4 FIELD QUALITY CONTROL

- A. Testing:
1. Pressure test piping system according to AWWA C600 and following:
    - a. Test Pressure: Not less than 200 psig (1 380 kPa) or 50 psi (345 kPa) in excess of maximum static pressure, whichever is greater.
    - b. Conduct hydrostatic test for a minimum of [two] hours.

## ESSEX COUNTY DEPARTMENT OF PUBLIC WORKS

- c. Slowly fill section to be tested with water; expel air from piping at high points.
  - d. Install corporation cocks at high points.
  - e. Close air vents and corporation cocks after air is expelled.
  - f. Raise pressure to specified test pressure.
  - g. Observe joints, fittings, and valves under test.
  - h. Remove and renew cracked pipes, joints, fittings, and valves showing visible leakage, and retest.
  - i. Correct visible deficiencies and continue testing at same test pressure for additional two hours to determine leakage rate.
  - j. Maintain pressure within plus or minus 5 psi (34.4 kPa) of test pressure.
  - k. Leakage is defined as quantity of water supplied to piping necessary to maintain test pressure during period of test.
  - l. Compute maximum allowable leakage using following formula:
    - 1)  $L = S \times D \times (P)^{(1/2)} / C$ .
    - 2) L = testing allowance, gph.
    - 3) S = length of pipe tested, feet.
    - 4) D = nominal diameter of pipe, inches.
    - 5) P = average test pressure during hydrostatic test, psig.
    - 6) C = 148,000.
  - m. If pipe under test contains sections of various diameters, calculate allowable leakage from sum of computed leakage for each size.
  - n. Leakage:
    - 1) If test of pipe indicates leakage greater than allowed, locate source of leakage, make corrections, and retest until leakage is within allowable limits.
    - 2) Correct visible leaks regardless of quantity of leakage.
2. Compaction Testing:
- a. Comply with **ASTM D1557, ASTM D698, AASHTO T 180, ASTM D6938**.
  - b. Frequency of Compaction Tests: 50 ft.
  - c. If tests indicate Work does not meet specified requirements, remove Work, replace, and retest.

END OF SECTION 331413



**DEPARTMENT OF THE ARMY**  
 U.S. Army Corps of Engineers, ATTN: CENAN-OP-RU  
 Upstate Regulatory Field Office  
 1 Buffington St., Building 10, 3<sup>rd</sup> Fl. North  
 Watervliet, New York 12189-4000

Upstate New York Section

**Sent By Email Only** on April 21, 2021

SUBJECT: Permit Application No. NAN-2021-00246-UPO  
 by Essex County DPW  
 Town of Ticonderoga, Essex County, New York

Mr. Robert Leveille  
 Essex County DPW  
 8053 U.S. Route 9  
 Elizabethtown, New York 12932

Dear Mr. Leveille:

This office has reviewed your Joint Application Form with PCN received March 3, 2021, and the additional information received on April 21, 2021, including the drawings prepared by Greenman-Pedersen, Inc. entitled, "Veteran's Road Culvert Replacement over Five Mile Creek", Sheet Nos. 1-45, which are all dated April 15, 2021. The submitted information describes a proposal that would consist of the following:

**The discharge of fill material into waters of the United States to facilitate the in-place replacement of an existing road crossing conveying Five Mile Creek beneath Veteran's Road at center coordinates 43°52'48.2"N 73°27'08.3"W. The existing 10'x10'5"x38.5LF concrete culvert will be replaced with a new 15'x10'7"x30.4LF concrete culvert with new U-shaped wingwalls. Approximately 10CY of riprap and native streambed material will be discharged below the OHWM of Five Mile Creek to complete the work. All heavy equipment will operate from dryland with sandbag cofferdams installed to create dry working conditions. All stockpiling and final disposal will occur in designated upland areas and will be properly secured to prevent return flows back to waters of the United States.**

Based upon the information provided, it appears that your proposed work may be authorized under Department of the Army nationwide general permit number: 3. The nationwide permits are prescribed as a Reissuance of Nationwide Permits in the Federal Register dated January 6, 2017 (82 FR 1860).

The work may be performed without further authorization from this office provided the activity complies with the terms and conditions of the Nationwide Permits (NWP) and the permit conditions listed in Section B, No. 3, Section C, any applicable New York District regional conditions, and any applicable regional conditions added by the State of New York. Please note that NWP General Condition No. 12 requires the installation and maintenance of proper soil erosion and sediment controls during construction.

PLEASE USE THE ABOVE 18-CHARACTER FILE NUMBER ON ALL CORRESPONDENCE WITH THIS OFFICE

The 2017 Nationwide Permits, including their final regional conditions, water quality certifications, and coastal zone concurrence statements are available at:

<http://www.nan.usace.army.mil/Missions/Regulatory/Nationwide-Permits/>

Please review and familiarize yourself with all relevant terms and conditions of the nationwide permit prior to proceeding with your project, and subsequently ensure you adhere to all conditions through the duration of the project. If you do not have internet access and require a specific paper copy, please contact the undersigned to request one be mailed to you. Please be sure to have your permit application number readily available when you call.

This verification will remain valid until March 18, 2022, if the activity complies with the terms of any subsequent modifications of the nationwide permit authorization. If the nationwide permits are suspended, revoked, or modified in such a way that the activity would no longer comply with the terms and conditions of a nationwide permit, and the proposed activity has commenced, or is under contract to commence, the permittee shall have 12 months from the date of such action to complete the activity.

Please note that this determination does not eliminate the need to obtain any other Federal, State, or local authorizations required by law for the above described work, including any required permit from the NYSDEC.

In order for us to better serve you, please complete our Customer Service Survey located at:

<http://www.nan.usace.army.mil/Missions/Regulatory/CustomerSurvey.aspx>

Any inquiries can be directed to the undersigned at (518) 308-9823 or by email at [Joseph.V.Podhirny@usace.army.mil](mailto:Joseph.V.Podhirny@usace.army.mil).

Sincerely,

Joseph V. Podhirny  
Project Manager/Ecologist  
Upstate New York Section

Cf: NYSDEC Region 5, Ray Brook  
Town of Ticonderoga  
M. Osterhout, P.E. – OSPA Engineering Services, P.C.



**DEPARTMENT OF THE ARMY**  
 U.S. Army Corps of Engineers, ATTN: CENAN-OP-RU  
 Upstate Regulatory Field Office  
 1 Buffington St., Building 10, 3<sup>rd</sup> Fl. North  
 Watervliet, New York 12189-4000

CENAN-OP-RU

**NATIONWIDE PERMIT COMPLIANCE CERTIFICATION AND REPORT FORM**

Permittee: Town of Ticonderoga Permit No. NAN-2021-00246-UPO

Date Permit Verification Issued: April 21, 2021

Location: Veteran's Road over Five Mile Creek, Town of Ticonderoga, Essex County, New York

Within 30 days of the completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the address at the bottom of this form.

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit, you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of said permit, and required mitigation was completed in accordance with the permit conditions.

Date Work Started: \_\_\_\_\_

Date Work Completed: \_\_\_\_\_

\_\_\_\_\_  
 Signature of Permittee

\_\_\_\_\_  
 Date

Fold this form into thirds, with the bottom third facing outward. Tape it together and mail to the address below  
 or **EMAIL TO:** [cenan.rfo@usace.army.mil](mailto:cenan.rfo@usace.army.mil)

Place Stamp  
 Here

**DEPARTMENT OF THE ARMY**  
 U.S. Army Corps of Engineers  
 ATTN: CENAN-OP-RU  
 Upstate Regulatory Field Office  
 1 Buffington St., Bldg. 10, 3<sup>rd</sup> Fl. North  
 Watervliet, New York 12189-4000



**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION****Division of Environmental Permits, Region 5**

1115 State Route 86, PO Box 296, Ray Brook, NY 12977-0296

P: (518) 897-1234 | F: (518) 897-1394

www.dec.ny.gov

April 30, 2021

**Sent Via Email Only**

Robert Leveille  
Essex County DPW  
8065 NYS RTE 9  
Elizabethtown, NY 12932

**Re: Veterans Road Culvert**  
**DEC #5-1548-00220/00003**  
**Ticonderoga (T) Essex County**

Dear Robert Leveille:

Enclosed is your permit which was issued in accordance with the applicable provisions of the Environmental Conservation Law. Questions regarding the terms of the permit should be directed to Thomas Shanahan at (518) 897-1291. Should your plans change, please contact this office to determine whether modifications of the permit are required.

Please note that it is the responsibility of the permittee and his agents to read and comply with all permit conditions. Carefully review the project sketches attached to this permit. Minor changes may have been made in the location or dimensions of your project, or additional materials (i.e. filter fabric or rock rip-rap) may have been included in the plans. Further, the permit is valid only for the activity expressly authorized. Work beyond the scope of the permit shall be considered as work without a permit. Any failure to comply with these terms may be treated as a violation of the Environmental Conservation Law. Work done under this permit is subject to inspection by Forest Rangers and Environmental Conservation Officers.

This permit does not eliminate the need to obtain approvals from other local or state agencies, or from the U.S. Army Corps of Engineers (USACOE). If your project is located within the Adirondack Park, approvals may be required from the Adirondack Park Agency (APA).

Sincerely,



Erin L. Burns  
Regional Permit Administrator

ec: Thomas Shanahan, DEC  
USACOE, NAN-2021-00246-UPO  
Joan Ducharme, OPP  
ECO Lt. Maxwell Nicols  
Melanie Osterhout, P.E.



Department of  
Environmental  
Conservation

**PERMIT**  
**Under the Environmental Conservation Law (ECL)**

**Permittee and Facility Information**

**Permit Issued To:**  
Essex County  
7551 Court St  
PO Box 217  
Elizabethtown, NY 12932

**Facility:**  
VETERANS RD BRIDGE AT FIVE MILE  
CREEK  
TICONDEROGA, NY 12883

**Facility Location:** in TICONDEROGA in ESSEX COUNTY

**Facility Principal Reference Point:** NYTM-E: 624.33      NYTM-N: 4859.71  
Latitude: 43°52'48.0" Longitude: 73°27'08.5"

**Authorized Activity:** Removal of existing 10' span three sided box culvert, and replacement with a new 15' span three sided concrete culvert. Approximately 10 cubic yards of rip rap and native streambed material will be placed below the mean high water level. All work shall be done in accordance with approved plans, attached to and made part of the permit.

**Permit Authorizations**

**Stream Disturbance - Under Article 15, Title 5**

Permit ID 5-1548-00220/00003

New Permit

Effective Date: 4/30/2021

Expiration Date: 10/1/2023

**NYSDEC Approval**

**By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.**

Permit Administrator: ERIN L BURNS, Deputy Regional Permit Administrator

Address:                NYSDEC Region 5 Headquarters  
                             1115 NYS ROUTE 86  
                             PO BOX 296  
                             RAY BROOK, NY 12977 -0296

Authorized Signature: 

Date 04/30 / 2021

## Permit Components

### NATURAL RESOURCE PERMIT CONDITIONS

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

### NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following Permits: STREAM DISTURBANCE

#### REPORTING AND RECORD KEEPING

- 1. Other Agency Approvals** This permit does not eliminate the need to obtain approvals from other local, state or federal agencies such as the Adirondack Park Agency (APA) for projects located within the Adirondack Park, the Lake George Park Commission (LGPC) for projects located in Lake George Park, the Hudson River-Black River Regulating District (HRBRRD) for projects located on Great Sacandaga Lake or the U.S. Army Corps of Engineers (USACE) for projects which are located in Federal waters or wetlands.
- 2. Floodplain Regulations** The project must meet all local and federal floodplain regulations and, if applicable, a written approval from the floodplain administrator must be kept on file.
- 3. Conformance With Plans** All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by GPI, received on March 3, 2021.
- 4. Notice of Intent to Commence Work** The permittee shall submit a Notice of Intent to Commence Work to Bureau of Fisheries at least 48 hours in advance of the time of commencement and shall also notify them promptly in writing of the completion of work.

#### PRE-CONSTRUCTION REQUIREMENTS

- 5. Prohibition Period for In-water Work** All in-water work, as well as any work that may result in the suspension of sediment, is prohibited during the trout and salmon spawning and incubation period commencing October 1 and ending April 30, unless prior project-specific approval is granted by the Department.
- 6. Precautions Against Contamination of Waters** All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

**7. Install and Maintain Erosion Controls** Staked straw bales, silt fence or other DEC-approved erosion control measures are to be installed on the downslope edge of any disturbed areas. This barrier to sediments is to be put in place before any disturbance of the ground occurs and is to be maintained in a functional condition until all disturbed ground is heavily vegetated or otherwise stabilized. All erosion control measures intended to stabilize the work site shall be completed by October 1st of any calendar year. If work authorized by this permit cannot be completed by October 1st, interim stabilization measures consisting of erosion control matting or mulching shall be installed by October 1st and maintained in an effective condition until such time as authorized work resumes in the spring. Upon completion of work and satisfactory stabilization of disturbed areas, all erosion controls shall be entirely removed immediately.

**8. Silt Screen** If turbidity may be created as a result of this project, a silt screen curtain (maximum opening of U.S. Sieve No. 70) continually weighted across the bottom and suspended on floats or staked upright must be positioned to surround the work site. The curtain must remain in place for at least 12 hours after completion of the project or longer, if necessary.

**9. No Impedance to Aquatic Organisms** Structures must not impede upstream and downstream migration of aquatic organisms.

**10. Return Stranded Fish** Any fish remaining in the dewatered area shall be returned to the stream, lake or wetland.

**11. Siltation Prevention Measures** Siltation prevention measures, such as silt fencing, sediment traps or settling basins, shall be installed and maintained during the project, to prevent movement of silt and turbid waters from the project site into any watercourse, stream, water body or wetland.

**12. Turbid Discharges** Visibly turbid discharges from land clearing, grading or excavation activities, or de-watering operations shall not enter the stream, navigable water, or wetland. Prior to entry into stream, navigable water or wetland, any such discharge shall be retained in an appropriately maintained upland settling basin; filtered through crushed stone, sand, straw bales, silt screening (maximum opening size of U.S. Sieve Number 20), etc.; or directed to a grassy upland area a sufficient distance from the stream to prevent change in turbidity of the receiving water.

## CONSTRUCTION REQUIREMENTS

**13. Cofferdam Specifications** Any temporary cofferdam shall be constructed of materials such as sheet piling, sandbags or clean #1 or larger stone that will not contribute to turbidity or siltation of the waterbody. Sandbags shall be of the filter fabric type, double bagged and individually tied to prevent sand leakage. They shall be placed and removed manually to prevent spillage. Only clean sand free of debris, silt, fine particles, or other foreign substances shall be used to fill the bags. The cofferdam shall be entirely removed immediately upon completion of work.

**14. Excavation for Authorized Structure Placement** Only that excavation minimally necessary for proper placement of the permitted structure is authorized. Excavation or, including but not limited to, dredging of waterway or freshwater wetland bottom sediments, for any purpose other than those authorized by this GP is expressly prohibited.

**15. Concrete Leachate** No wet or fresh concrete or leachate shall be allowed to escape into any wetlands or waters of New York State, nor shall washings from ready-mixed concrete trucks, mixers, or other devices be allowed to enter any wetland or waters. Only watertight or waterproof forms shall be used. Wet concrete shall not be poured to displace water within the forms.

**16. Culvert Slope** For streams which have a slope of three percent (3%) or less at the project area, the embedded culvert shall be installed with a zero percent (0%) slope. For streams which have a slope of more than 3% at the project area, a bottomless culvert or bridge must be installed. An individual permit is required for projects which deviate from this condition.

**17. Embed Culverts** All culverts with bottoms, including round culverts, must be installed so that at least 20% of the culvert's vertical height is embedded below the existing stream bed at the outlet end of the culvert. The streambed material that was excavated to accommodate culvert placement shall then be spread evenly throughout the bottom of the new culvert. If it is not practical to spread streambed material throughout the entire bottom of the new culvert, material must be spread in the culvert at the inlet and outlet ends gradually up to streambed elevation to promote natural deposition. Culverts with bottoms, including round culverts, shall not be installed if the placement is on bedrock.

**18. Maintain Channel Geometry** The stream channel bed width, depth and bank height immediately upstream and downstream of the project site shall be consistent with the average channel bed width of the stream. There shall be no widening or constriction of the stream channel bed through the road crossing, and no berms shall be constructed on the stream or river banks.

**19. Maintain Water Flow During Work** During periods of work activity, flow immediately downstream of the work site shall equal flow immediately upstream of the work site.

**20. No Machinery in Waterbody or Wetland** Machinery shall not be operated in or from any protected waterbody or in any portion of a regulated Freshwater Wetland without project-specific approval from the Department. However, with backhoes and similar heavy equipment, the bucket may enter the water or wetland, and is not considered operation in the water. Approval to operate machinery in or from the water shall be requested by checking "YES" following the question on the Authorization Form, and by providing written justification with submittal of the Form to the Regional Permit Administrator.

**21. Fill and Riprap at Culvert** Only compacted, clean earthen fill shall be used as backfill and fill around the culvert to minimize water infiltration around the culvert. Both ends of the culvert shall be adequately riprapped to prevent erosion and culvert failure during periods of high water flow.

**22. Materials Disposed at Upland Site** Any demolition debris, excess construction materials, and/or excess excavated materials shall be immediately and completely disposed of on an upland site more than 100 feet from any waterbody, including freshwater wetlands. These materials shall be suitably stabilized so as not to re-enter any water body, wetland, or wetland adjacent area.

**23. Stabilize Disturbed Areas** All disturbed stream banks **below** the normal high water elevation must be graded no steeper than 1 vertical to 2 horizontal slope, and adequately stabilized with stone riprap (native stone preferred). All other areas of soil disturbance **above** the ordinary high water elevation, or elsewhere, shall be seeded with a native perennial grass seed and mulched with straw within two (2) days of final grading. Mulch shall be maintained until suitable vegetative cover is established. Destroyed bank vegetation shall be replaced with shrub willow or silky dogwood plantings, for example, unless the natural growth disturbed consisted of species which immediately generate by "suckering."

**24. State Not Liable for Damage** The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

**25. State May Order Removal or Alteration of Work** If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.

**26. State May Require Site Restoration** If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may lawfully require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

### **GENERAL CONDITIONS - Apply to ALL Authorized Permits:**

**1. Facility Inspection by The Department** The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available



for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

**2. Relationship of this Permit to Other Department Orders and Determinations** Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

**3. Applications For Permit Renewals, Modifications or Transfers** The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator  
NYSDEC Region 5 Headquarters  
1115 NYS ROUTE 86  
PO BOX 296  
RAY BROOK, NY 12977 -0296

**4. Submission of Renewal Application** The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Stream Disturbance.

**5. Permit Modifications, Suspensions and Revocations by the Department** The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

**6. Permit Transfer** Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

## NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

### **Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification**

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

### **Item B: Permittee's Contractors to Comply with Permit**

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

### **Item C: Permittee Responsible for Obtaining Other Required Permits**

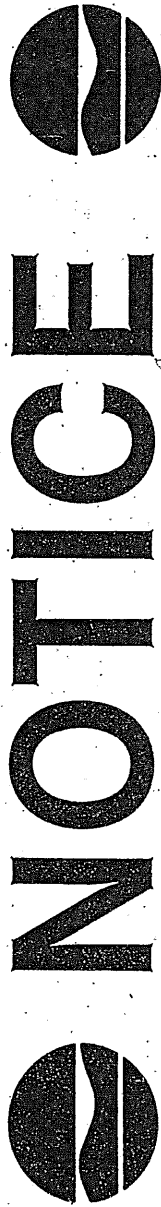
The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

### **Item D: No Right to Trespass or Interfere with Riparian Rights**

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.



New York State  
Department of Environmental Conservation



The Department of Environmental Conservation (DEC) has issued permit(s) pursuant to the Environmental Conservation Law for work being conducted at this site. For further information regarding the nature and extent of work approved and any Departmental conditions on it, contact the Regional Permit Administrator listed below. Please refer to the permit number shown when contacting the DEC.

Regional Permit Administrator

Permit Number 5-1548-00220/00003

Expiration Date October 1, 2023

Erin L. Burns

Deputy Regional Permit Administrator

NOTE: This notice is **NOT** a permit



## **NOTICE OF INTENT TO INITIATE PROJECT CONSTRUCTION**

**NOTE: This notice must be mailed or faxed to the appropriate Department of Environmental Conservation Office listed below. Notice must be received by the Department at least 48 hours prior to initiation of construction activities.**

**The following information is to be filled out by DEC:**

**DEC Permit #:** 5-1548-00220/00003  
**Permittee Name:** Essex County  
**Address:** 7551 Court Street  
 Elizabethtown, NY 12932

**Telephone Number:** (518) 873-3744

The following information must be completed by the Permittee:

I plan on initiating work on my project on \_\_\_\_\_  
 month/day/year

My contractor is: \_\_\_\_\_

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

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

**Please mail or FAX this form prior to initiating project to:**

  X   **NYSDEC**  
**Natural Resources Office**  
**PO Box 296, Route 86**  
**Ray Brook, NY 12977-0296**  
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**Natural Resources Office**  
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**Warrensburg, NY 12885-0220**  
**(518) 623-1240**  
**(518) 623-3603 FAX**

GROUND PENETRATING RADAR AND SEISMIC  
REFRACTION  
GEOPHYSICAL INVESTIGATION

VETERANS FARM ROAD  
OVER  
FIVE MILE RIVER  
TICONDEROGA, NEW YORK



Prepared for  
GREENMAN-PEDERSON, INC.  
MAY 2020

May 11, 2020

Ms. Sheri Kern, P.E.  
Structural Engineer  
Greenman-Pederson Incorporated (GPI)  
80 Wolf Road, Suite 300  
Albany, New York 12205

Subject: Proposal for Nondestructive/Geophysical Testing to locate the approximate bedrock elevations at a bridge located on Veterans Road crossing Five Mile River in Ticonderoga, NY

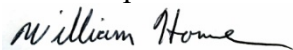
Dear Ms. Kern:

NDT Corporation conducted a Ground Penetrating Radar (GPR) and seismic refraction survey at the above referenced location to determine depth to rock/subsurface profile for a bridge replacement project. The fieldwork was conducted on May 5<sup>th</sup>, 2020 by NDT Corporation.

We thank you for the opportunity to perform this work and look forward to being of service to you in the future. If you have any questions or require additional information, call the undersigned at 978-573-1327.

Sincerely,

NDT Corporation



William Horne

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## **1.0 INTRODUCTION AND PURPOSE:**

NDT Corporation (NDT) conducted a Ground Penetrating Radar (GPR) and seismic refraction survey at Bridge No. 02128; Veterans Road crossing Five Mile River in Ticonderoga, NY to determine depth to rock/subsurface profile for a bridge replacement project. The fieldwork was conducted on May 5<sup>th</sup>, 2020 by NDT. NDT conducted this geophysical investigation to assist Greenman-Pederson, Inc. (GPI) in their effort to design a new 3-sided culvert on site.

## **2.0 LOCATION AND SURVEY CONTROL**

The general location of the project area for Bridge No. 02128; Veterans Road crossing Five Mile River in Ticonderoga, NY is shown in Figure 1. Seismic data was collected along 2 lines of coverage on the north side of the road; designated Line 1 west side of culvert (sta. 110 to 10) and Line 2 eastside of culvert (-10 to -110) and stationed by NDT -110 to 110. The centerline of the northern face of the bridge was used as our 0+00 station. GPR data was collected along the north (File 1) and south side (File 2) of the road in the grassy area between the roadway and the guardrails. Additional GPR data (File 3 and 4) were collected near the northwestern wing wall. Figure 2 shows the Seismic and GPR lines of coverage, red lines indicate seismic data, green lines indicate GPR data. GPR data collection was limited due to access and limited penetration on site.

All depth measurements were referenced to the top of road/asphalt elevation (Elev. 316), which is related to the Elevation Plot provided by GPI.

## **3.0 METHODS OF INVESTIGATION**

### **3.1 SEISMIC REFRACTION:**

Seismic refraction data was acquired with a 12-channel system with 5- and 10-foot geophone spacing, and seismic energy generated approximately every 50 feet with a sledgehammer. Seismic Refraction utilizes the natural energy transmitting properties of the soils and rocks and is based on the principle that the velocity at which seismic waves travel through the earth is a function of the physical properties (elastic moduli and Poisson's ratio) of the materials. Refracted compressional wave data are used to evaluate material types and thickness, profile top of bedrock, and to determine the approximate depth to layer interfaces. A more complete discussion of the seismic refraction survey method is included in Appendix 1.

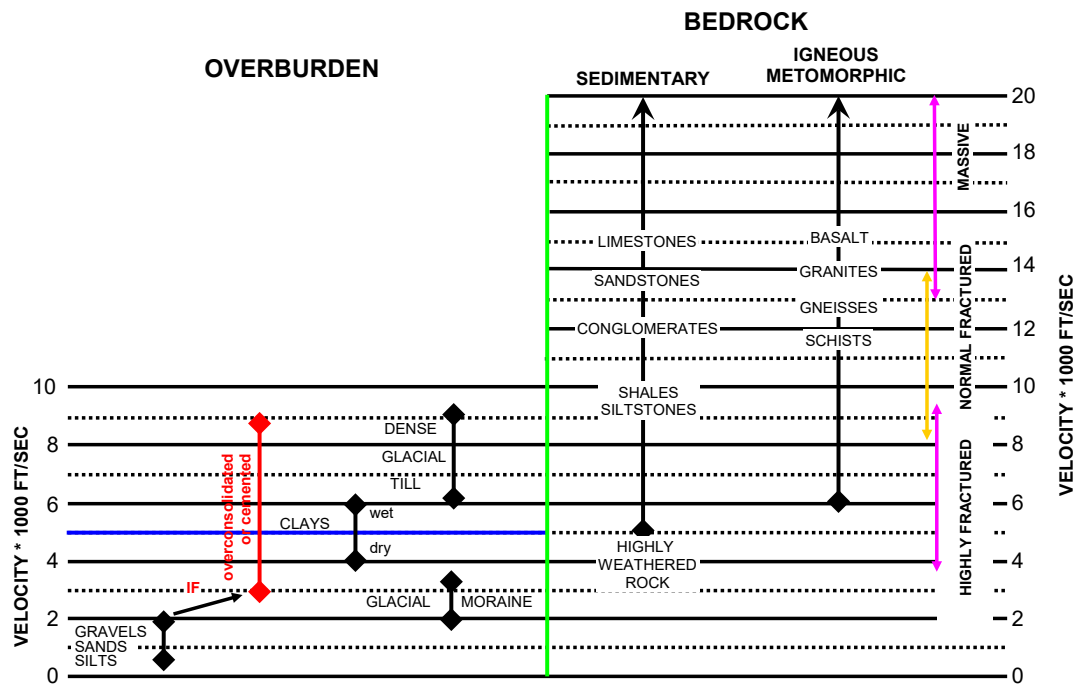
The seismic refraction data were interpreted using the critical distance method. Delayed bedrock wave arrivals were used to more accurately portray the bedrock surface between critical distance depth calculations. The delayed arrivals at individual geophone locations are an indicator of variability in the rock surface. Delayed arrivals indicate thicker overburden over the bedrock. Variations of 3+/- feet are not accurately profiled, particularly in shallow (less than 10 feet deep) bedrock areas.

Overburden with a 1,000-1,500+/- ft/sec velocity is consistent with normally consolidated soils/sands/fill material typical of natural soils, fluvial deposits, and/or construction fill. Till with a 2,600+/- ft/sec velocity value is consistent with unstratified glacial drift or ground moraine. These tills are typically deposited by receding glaciers consisting of an admixture of clays, sands and gravels with occasional and sometimes frequent boulders associated with an ablation till.

Overburden and till layers with “dry” velocities of less than 5,000 ft/sec are indistinguishable when saturated and assume the velocity of water 5,000+/- ft/sec when saturated.

Till with velocities between 6,000 to 8,000 ft/sec is consistent with an over-consolidated basil till. These tills consist of sands, gravel, and rocks/boulders which were deposited as the glaciers advanced. Subjected to the full weight and pressure of the glaciers these tills are very dense and are associated with split-spoon sampling of 30-50 blows per foot.

Bedrock velocities of less than 10,000 ft/sec are indicative of highly weathered and/or fractured rock typical of sedimentary and low-grade metamorphic rocks such as shales, silt stones and schists. Bedrock with a velocity of 10,000 to 15,000 ft/sec is indicative of competent bedrock that will require drilling and blasting for removal. This velocity range is typical of competent sedimentary and metamorphic rocks such as sandstones, limestones, schists, and gneisses. Bedrock velocities greater than 15,000 ft/sec are indicative of massive bedrock typical in metamorphic and igneous rocks such as gneisses, granites, and basalts.



### 3.2 Ground Penetrating Radar:

GPR data were acquired using a digital system coupled with a 200 & 400 MHz antenna. The 200 MHz antenna is high resolution which can have an approximate depth of investigation of 12 to 15 feet along the survey area. The 400 MHz antenna is high resolution which can have an approximate depth of investigation of 8 to 12 feet along the survey area. The actual depth of investigation is dependent on the soil types and moisture conditions. Depths of GPR investigation are usually deeper in dry sands and gravels than in moist silts and clays. The GPR method uses a pulsed electromagnetic signal that is transmitted to and reflected by a target back to the point of transmission. The electromagnetic wave transmission and reflection is dependent on the dielectric constant and conductivity (electrical) properties of the material(s) being investigated.

GPR reflectors are controlled by changes in moisture content, and electrical properties of soil/rock layers. When soil, till, and/or rock layers have differing moisture contents or electrical properties at these interfaces the GPR signal is reflected back at different rates/intensity. When layers have similar moisture/electrical properties it is possible there will be no change in signal reflection. Water/saltwater is highly conductive there for a water table will often reflect a high percentage of the GPR signal limiting the depth of penetration to this layer. Data penetration was limited to 7+/- feet at this site.

GPR signals are reflected by changes in materials, typically due to change in electrical/conductivity properties and/or moisture content, and the matrix of the material. Typically, construction fill and soils (when undisturbed) have a dry/well drained layered homogenous matrix which shows as smooth horizontal banding in GPR data. Ablation tills typically contain clays which retain moisture and are often comprised of sand/gravel/clay layers often with boulders included in the matrix. GPR data for tills are typically more reflective than fill and soils and the boulders are depicted by randomly spaced hyperbolas throughout the layer. Rock reflectors are often characterized as a change in material dependent on the conductivity of the rock type or an increased moisture layer; typically fracturing and an irregular surface are indicators of top of rock reflectors. A detailed discussion of the GPR Survey Method is included in Appendix 2.

#### **4.0 RESULTS:**

Seismic velocities in general consisted of a top, overburden layer with a velocity range of 1,000-1,500+/- ft. /sec (approximately 7-12+/- feet across the survey area). The river surface was measured to be 9.5 feet (approx. Elev. 305) below the road surface. The overburden and till/water saturated layers are underlain by bedrock with a velocity of approximately 10,000-12,000 ft. /sec.

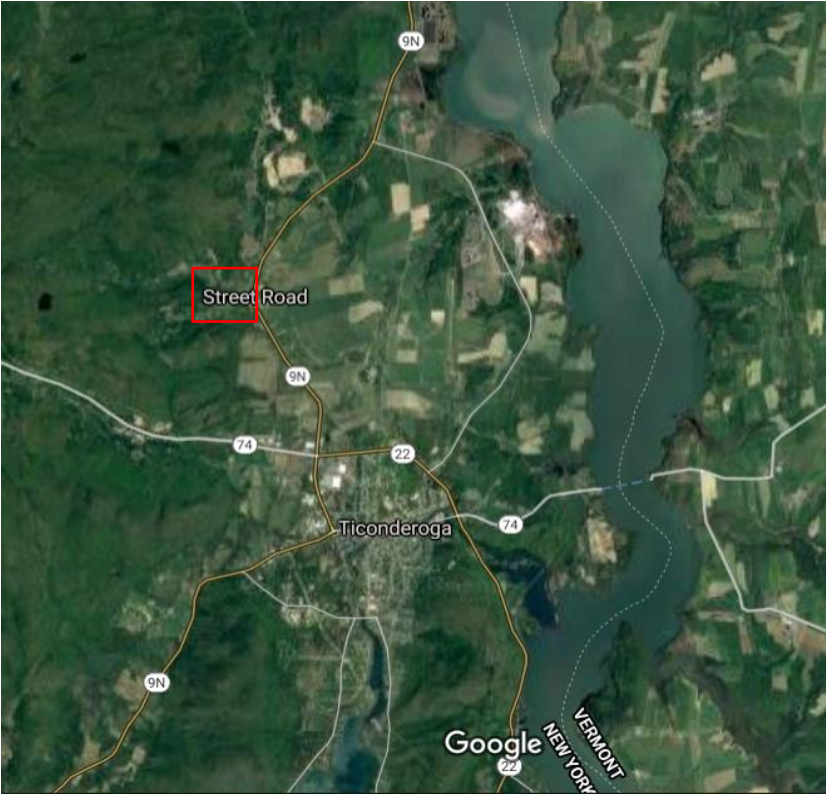
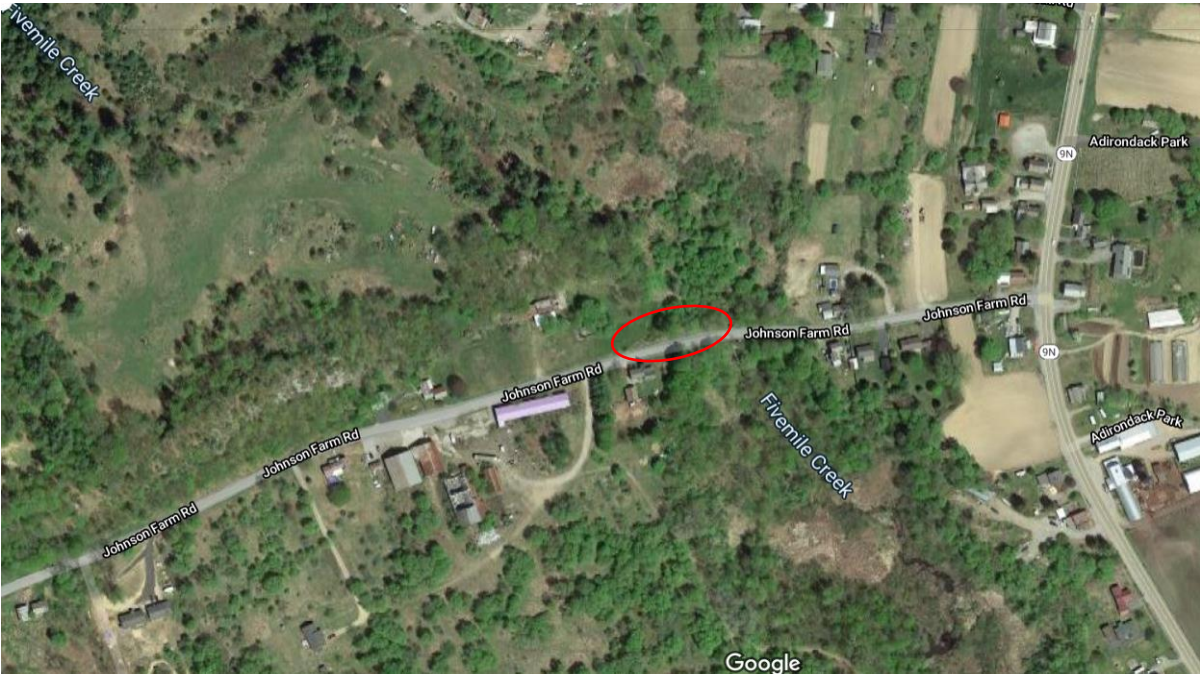
Overburden, with a 1,000-1,500 +/- ft. /sec velocity, are consistent with normally consolidated soils/sands/fill material typical of natural soils, fluvial deposits, and/or construction fill. These tills consist of an admixture of clays, sands and gravels with occasional and sometimes frequent boulders associated with an ablation till.

Top of bedrock surface shown on Figure 3 is an average rock surface, localized high and low areas exist. Definition of high and low areas is a function of the seismic spread length, number of “shots” taken, geophone spacing, velocity contrast, and the irregularity of the rock surface. Variations of 5+/- feet are not accurately profiled. The seismic profile in Figure 3 shows smooth changes in the rock surface data, which indicates that there is a high probability that vertical 3+/- foot changes are present.

The GPR signal penetration was limited to 7-7.5 feet. GPR data from File 1 and File 2 along the road surface did not detect a top of rock interface due to loss of signal penetration. GPR Files 3 and 4 collected on the north side of the culvert near the stream bed below the road surface from the wingwall north are shown on Figures 4 and 5. Each GPR record is annotated with dashed lines depicting change in material interfaces. The change in materials which are indicative of top of rock are shown as a dashed white line. Both records in this area indicate the bedrock to be 1-2.5' deep.



## FIGURES

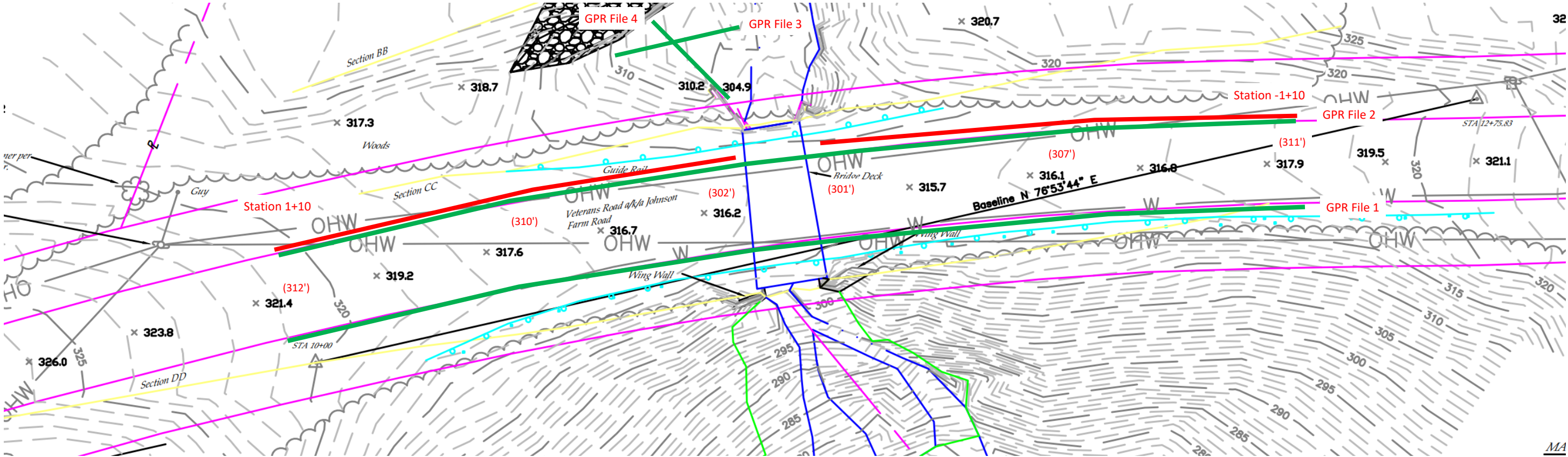


Non Destructive Geophysical Testing  
Veterans Road Bridge  
Ticonderoga, NY  
Prepared for  
Greenman-Pederson, Inc.  
by  
NDT Corporation

Area of Investigation

May  
2020

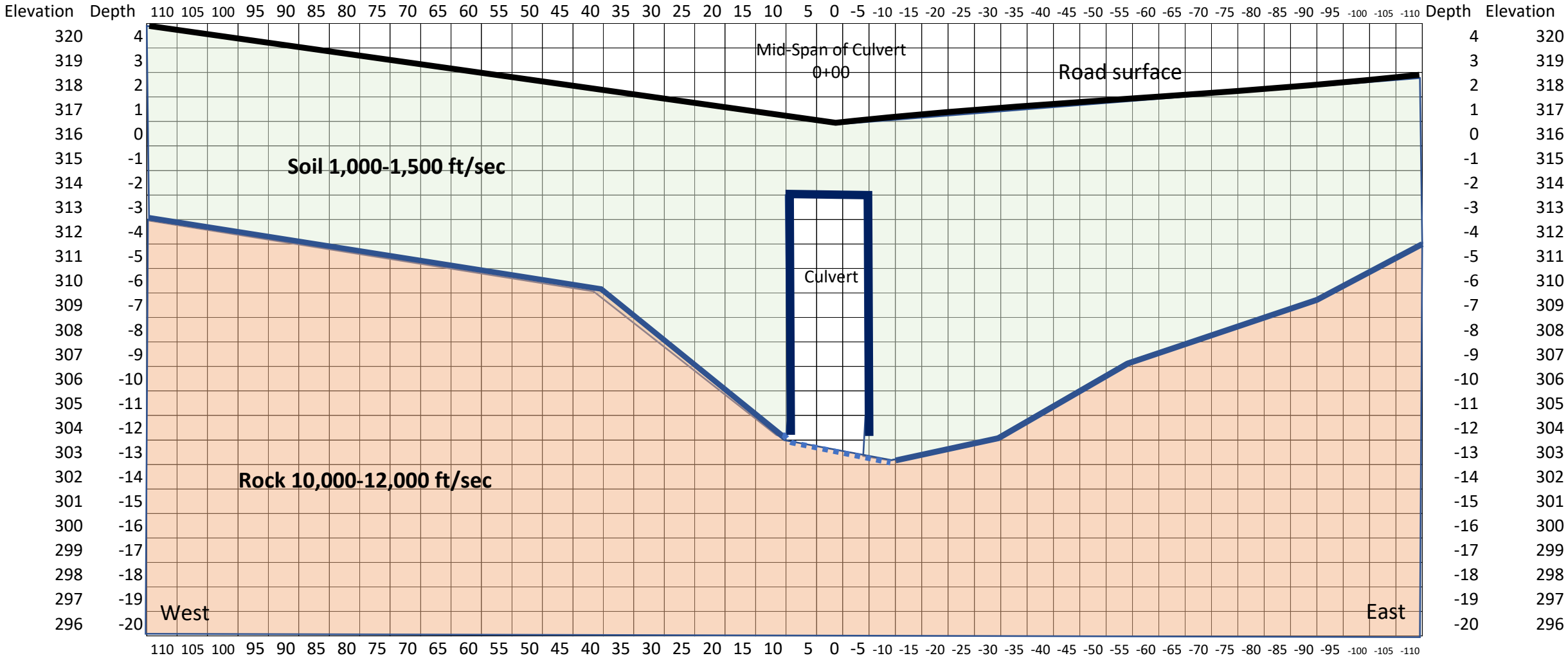
Figure 1



- GPR lines of Coverage with both the 200MHz and 400 MHz antennas
- Seismic Refraction lines of coverage
- (312') Depth of Rock Elevation estimated from the GPR and Seismic refraction data



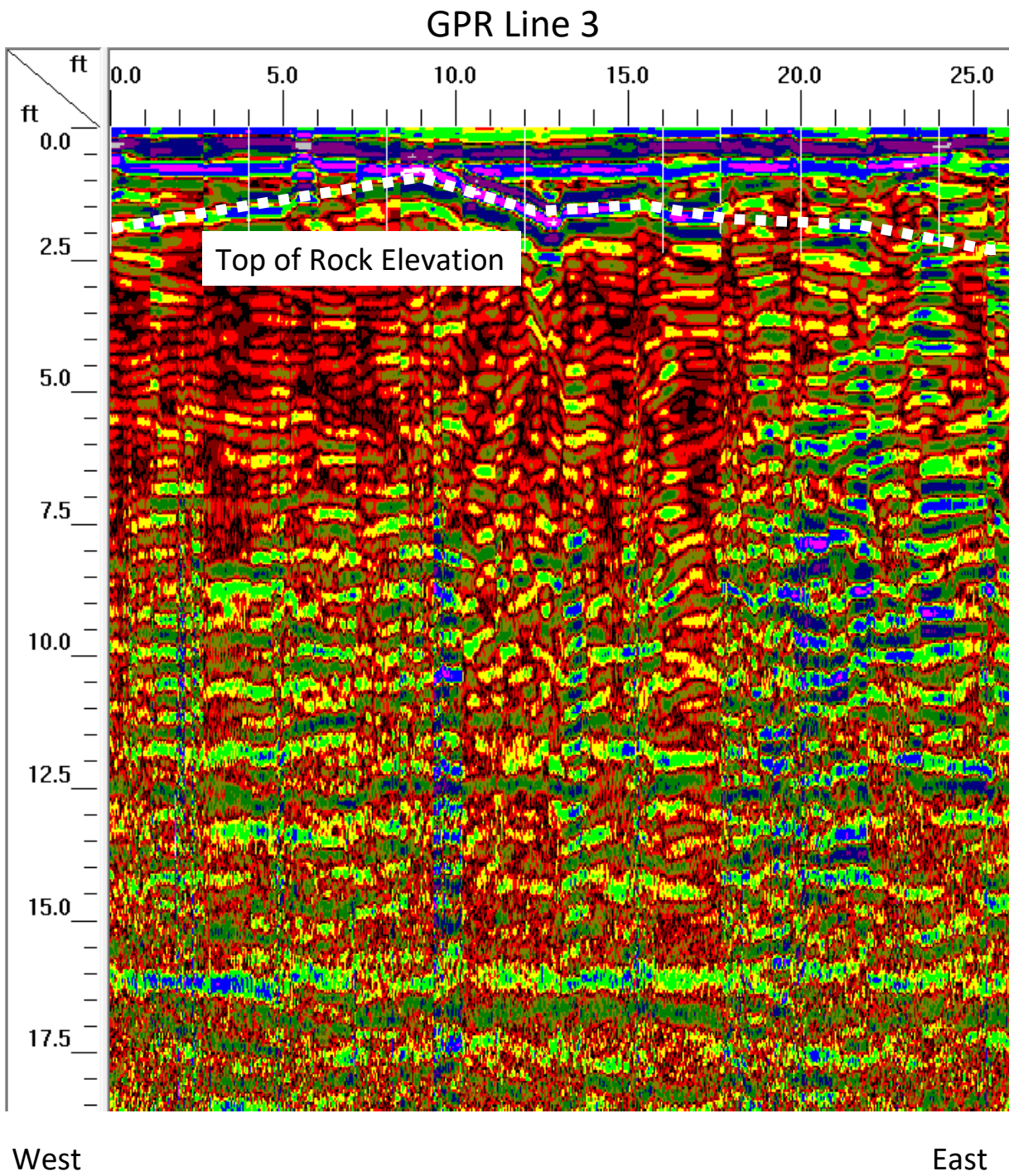
Non Destructive Geophysical Testing Vetrans Road Bridge Ticonderoga, NY Prepared for Greenman-Pederson, Inc. by NDT Corporation	Lines of Coverage	
	May 2020	Figure 2



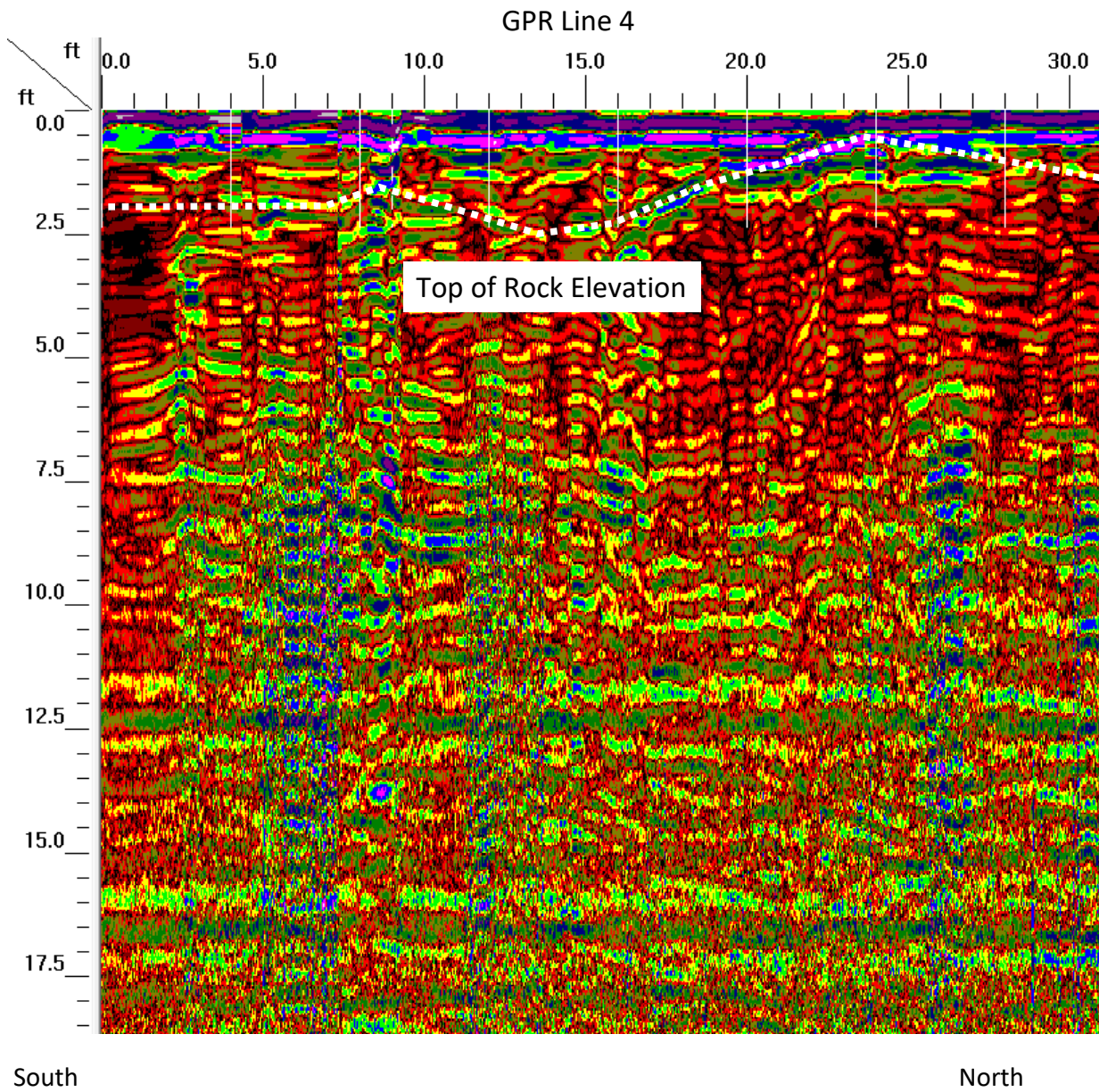
Seismic Refraction Profile North Edge of Road

Non Destructive Geophysical Testing Vetrans Road Bridge Ticonderoga, NY Prepared for Greenman-Pederson, Inc. by NDT Corporation	Seismic Refraction Profile Results	
	May 2020	Figure 3





<p>Non Destructive Geophysical Testing Vetrans Road Bridge Ticonderoga, NY Prepared for Greenman-Pederson, Inc. by NDT Corporation</p>	<p>Annotated GPR Line 3 Collected West to East</p>	
	<p>May 2020</p>	<p>Figure 4</p>



Non Destructive Geophysical Testing Vetrans Road Bridge Ticonderoga, NY Prepared for Greenman-Pederson, Inc. by NDT Corporation	Annotated GPR Line 4 Collected South to North	
	May 2020	Figure 5

# **APPENDIX 1**

## **SEISMIC REFRACTION**

## APPENDIX: SEISMIC REFRACTION

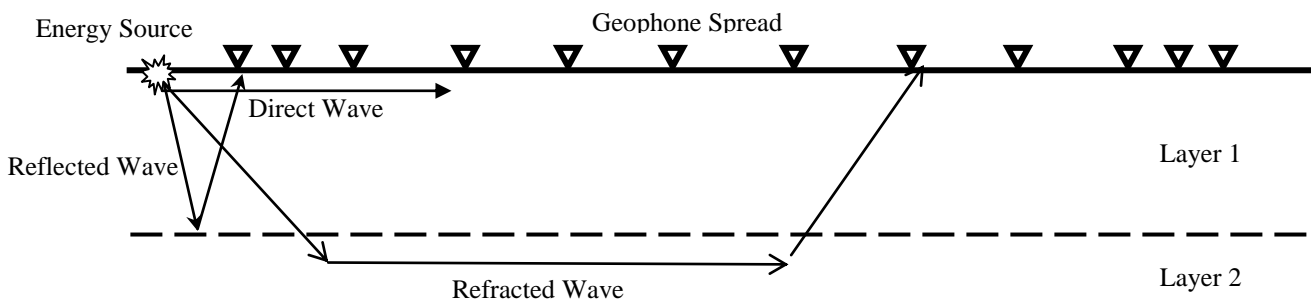
### OVERVIEW

Seismic exploration methods utilize the natural energy transmitting properties of the soils and rocks and are based on the principle that the velocity at which seismic waves travel through the earth is a function of the physical properties (elastic moduli and Poisson's ratio) of the materials. Energy is generated at the ends and at the center of the seismic spread. The geophone/hydrophone is in direct contact with the earth/water and converts the earth's motion resulting from the energy generation into electric signals with a voltage proportional to the particle velocity of the ground motion. The field operator can amplify and filter the seismic signals to minimize background noise. Data are recorded on magnetic disk and can be printed in the field. Interpretations are based on the time required for a seismic wave to travel from a source to a series of geophones/hydrophones located at specific intervals along the ground surface. The resultant seismic velocities are used for:

- \* Material identification.
- \* Stratigraphic correlation.
- \* Depth determinations.
- \* Calculation of elastic moduli values and Poisson's ratio.

A variety of seismic wave types, differing in resultant particle motion, are generated by a near surface seismic energy source. The two types of seismic waves for seismic exploration are the compressional (P) wave and the shear (S) wave. Particle motion resulting from a (P-wave) is an oscillation, consisting of alternating compression and dilatation, orientated parallel to the direction of propagation. An S-wave causes particle motion transverse to the direction of propagation. The P-wave travels with a higher velocity of the two waves and is of greater importance for seismic surveying. The following discussions are concerned principally with P-waves.

Possible seismic wave paths include a direct wave path, a reflected wave path or a refracted wave path. These wave paths are illustrated in FIGURE A1. The different paths result in different travel times, so that the recorded seismic waveform will theoretically show three distinct wave arrivals. The direct and refracted wave paths are important to seismic refraction exploration while the reflected wave path is important for seismic reflection studies.



**FIGURE A1:**  
SEISMIC WAVE PATHS FOR DIRECT WAVE, REFLECTED WAVE AND REFRACTED WAVE ILLUSTRATING EFFECTS OF A BOUNDARY BETWEEN MATERIALS WITH DIFFERENT ELASTIC PROPERTIES



Seismic waves incident on the interface between materials of different elastic properties at what is termed the critical angle are refracted and travel along the top of the lower layer. The critical angle is a function of the seismic velocities of the two materials. These same waves are then refracted back to the surface at the same angle. The recorded arrival times of these refracted waves, because they depend on the properties and geometry of the subsurface, can be analyzed to produce a vertical profile of the subsurface. Information such as the number, thickness and depths of stratigraphic layers, as well as clues to the composition of these units can be ascertained.

The first arrivals at the geophones/hydrophones located near the energy source are direct waves that travel through the near surface. At greater distances, the first arrival is a refracted wave. Lower layers typically are higher velocity materials, therefore the refracted wave will overtake both the direct wave and the reflected wave, because of the time gained travelling through the higher velocity material compensates for the longer wave path. Depth computations are based on the ratio of the layer velocities and the distance from the energy source to the point where refracted wave arrivals over take direct arrivals.

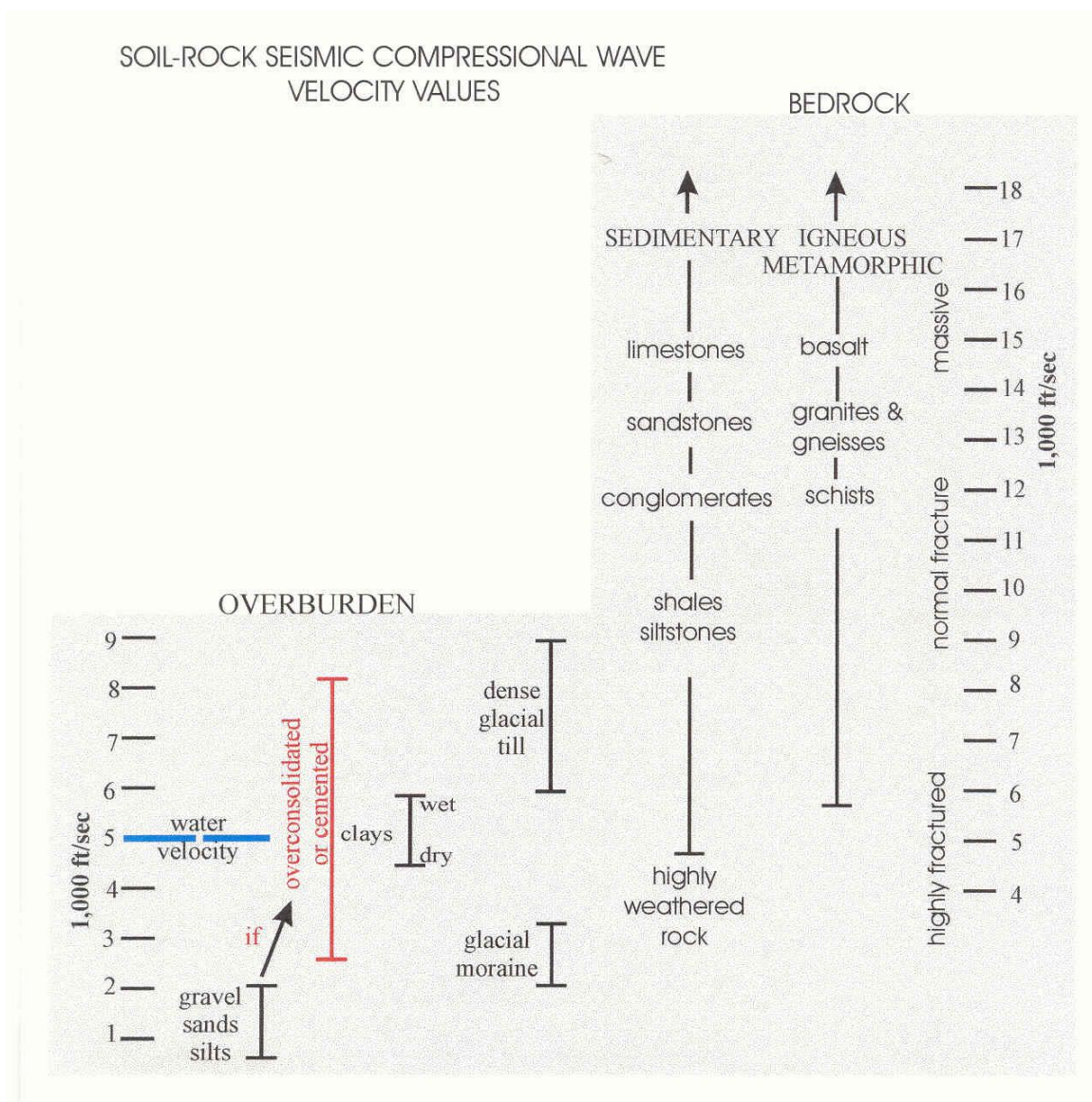
Although not the usual case, a constraint on refraction theory is that material velocities ideally should increase with depth. If a velocity inversion exists, i.e. where a higher velocity layer overlies a low velocity layer, depths and seismic velocities can be calculated but the uncertainty in calculations is increased unless borehole data are available.

## APPLICATIONS

Seismic refraction technique is an accurate and effective method for determining the thickness of subsurface geologic layers. Applications for engineering design, assessment, and remediation as well as ground water and hydrogeologic studies include:

- \* Continuous profiling of subsurface layers including the bedrock surface
- \* Water-table depth determinations
- \* Mapping and general identification of significant stratigraphic layers
- \* Detection of sinkholes and cavities
- \* Detection of bedrock fracture zones
- \* Detection of filled-in areas
- \* Elastic moduli and Poisson's ratio values for subsurface layers

Seismic refraction investigations are particularly useful because seismic velocities can be used for material identification. FIGURE A2 presents a guide to material identification based on P-wave seismic velocities. In rocks and compacted overburden material, the seismic waves travel from grain to grain so that the measured seismic velocity value is a direct function of the solid material. In porous or fractured rock and most overburden materials the seismic waves travel partly or wholly through the fluid between the grains.



**FIGURE A2:**  
GUIDE TO MATERIAL IDENTIFICATION BY P-WAVE VELOCITY

Seismic compressional wave velocities in unconsolidated deposits are significantly affected by water saturation. The seismic velocity values of unsaturated overburden materials such as gravels, sands and silts generally fall in the range of 1,000 to 2,000 ft/sec. When these materials are water saturated, that is when the space between individual grains are 100% filled with water, the seismic velocities range from 4,800 to 5,100 ft/sec, equivalent to the compressional P-wave velocity of sound in water. This is because the seismic wave assumes the velocity of the faster medium, that of water. Even a small decrease in the saturation level will substantially lower the measured P-wave velocity of

the material. Because of this velocity contrast between saturated and unsaturated materials, the water table acts as a strong refractor.

Seismic investigations over unconsolidated deposits are used to map stratigraphic discontinuities and to unravel the gross stratigraphy of the subsurface. These can be vertically as in the case of a dense till layer beneath a layer of saturated material or horizontally as in the case of the boundaries of a fill material. Often these boundaries represent significant hydrologic boundaries, such as those between aquifers and aquicludes.

A common use of seismic refraction is the determination of the thickness of a saturated layer in unconsolidated sediments and the depth to relatively impermeable bedrock or dense glacial till. Continuous subsurface profiles and even contour maps of the top of a particular horizon or layer of interest can be developed from a suite of seismic refraction data.

Bedrock velocities FIGURE A2 vary over a broad range depending on variables, which include:

- \* Rock type
- \* Density
- \* Degree of jointing/fracturing
- \* Degree of weathering

Fracturing and weathering generally reduce seismic velocity values in bedrock. Low velocity zones in seismic data must be evaluated carefully to determine if they are due to overburden conditions or fractured/weathered or perhaps even faulted bedrock.

#### EQUIPMENT:

The basic equipment necessary to conduct a seismic refraction investigation consists of:

- \* Energy source
- \* Seismometers (Geophones/Hydrophones)
- \* Seismic cables
- \* Seismograph

Energy sources used for seismic surveys are categorized as either non-explosive or explosive. The energy for a non-explosive seismic signal can be provided by one of the following:

- \* Sledge Hammer (very shallow penetration)
- \* Weight Drop
- \* Seisgun
- \* Airgun
- \* Sparker
- \* Vibrators (for reflection surveys)

Explosive sources can be categorized as:

- \* Dynamite
- \* Primers
- \* Blasting Agents

Choice of energy source is dependent on site conditions, depth of investigation, and seismic technique chosen as well as local restrictions. Explosive sources may be prohibited in urban areas where non-explosive sources can be routinely used. Deeper investigations usually require a larger energy source: therefore, explosives may be required for sufficient penetration.

Geophones/Hydrophones are sensitive vibration detectors, which convert ground motion to an electric voltage for recording the seismic wave arrivals. Seismic cables, which link the geophones/hydrophones and seismograph are generally fabricated with pre-measured locations for the geophones/hydrophones and shot point definitions.

The seismograph can be single channel or multi-channel, although, multi-channel seismographs (12 to 24 channels) are preferred and necessary for all but the simplest of very shallow surveys. The seismograph, amplifies (increases the voltage output of the geophones), conditions/filters the data, and produces analog and digital archives of the data. The analog archive is in the form of a thermal print of the data, which can be printed directly after acquisition in the field. The digital archive is stored on magnetic disk and can be used for subsequent computer processing and enable more extensive and detailed interpretation of seismic data.

#### ACQUISITION CONSIDERATIONS:

Several concerns arise before data collection, which must be addressed before of any seismic survey:

- \* Geophone spacing and Spread length
- \* Energy Source (discussed above)
- \* On-site utilities and cultural features (buildings, high tension lines, buried utilities, etc.)
- \* Vibration generating activities
- \* Geology
- \* Topography

To acquire seismic refraction data, a specific number of geophones are spaced at regular intervals along a straight line on the ground surface; this line is commonly referred to as a seismic spread. The length of spread determines the depth of penetration; a longer spread is required for a greater depth of penetration. Spread length should be approximately three to five times the required depth of penetration. Required resolution will control the number of geophones in each spread and the distance between each geophone. Closer spacings and more geophones usually result in more detail and greater resolution.

Cultural effects such as vibration generating activities, on-site utilities, and building affect where data can be acquired, and where lines/spreads are located. High volume traffic areas may require nighttime acquisition. If the survey is to be conducted near a

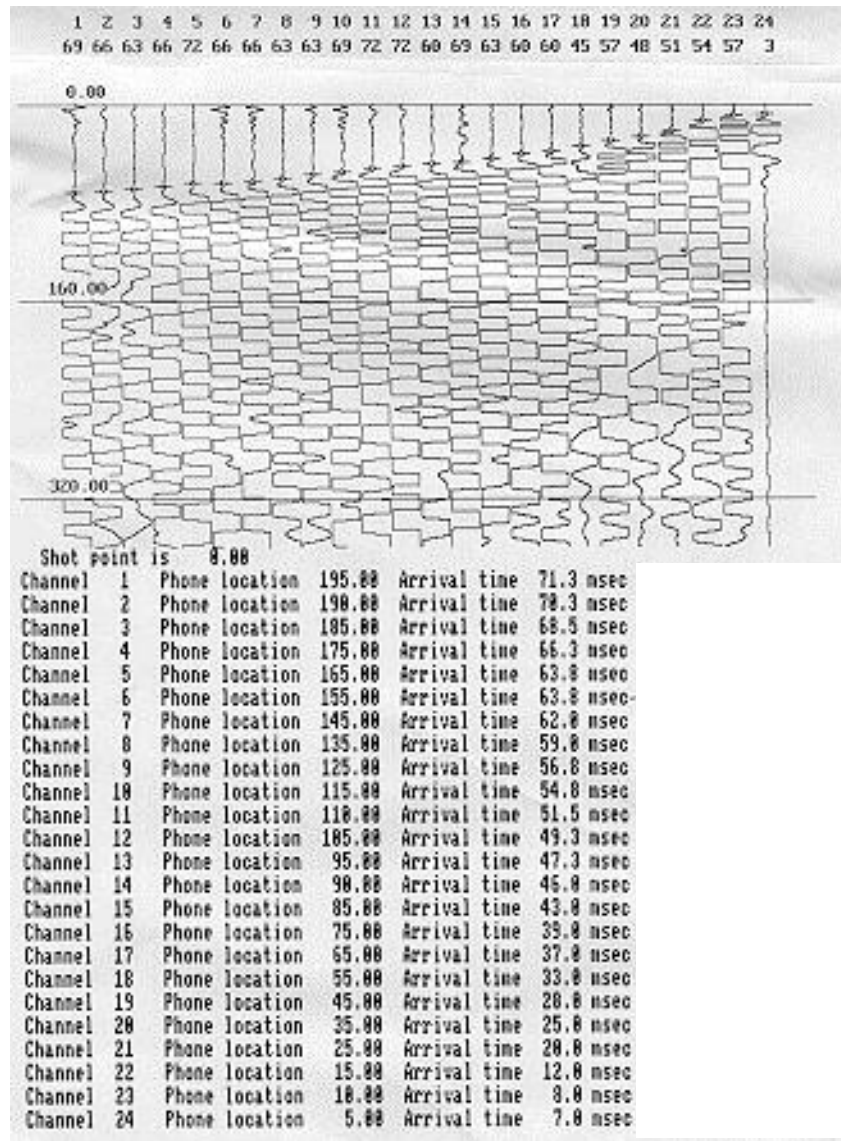
building where vibration-sensitive manufacturing is conducted, data acquisition may be constrained to particular time intervals and appropriate energy sources must be used. Over head and buried utilities must be located and avoided, for both safety and induced electrical noise concerns. Since the seismic method measures ground vibration, it is inherently sensitive to noise from a variety of sources such as traffic, wind, rain etc. Signal Enhancement, such as record stacking, accomplished by adding a number of seismic signals from a repeated source, causes the seismic signal to “grow” out of the noise level, permitting operation in noisier environments and at greater source to phone spacings.

Knowledge of site geology can be used to determine the energy source. Some geologic materials, such as loose, unsaturated alluvium, do not transmit seismic energy as well and a powerful energy source may be required. Geologic conditions also dictate whether or not drilled shotholes are required. Site geology can also dictate the positioning of seismic lines/spreads. Where a bedrock depression of a feature is suspected, seismic lines should be orientated perpendicular to the suspected trend of the feature. Seismic cross profiles may be necessary to confirm depths to a particular refracting horizon.

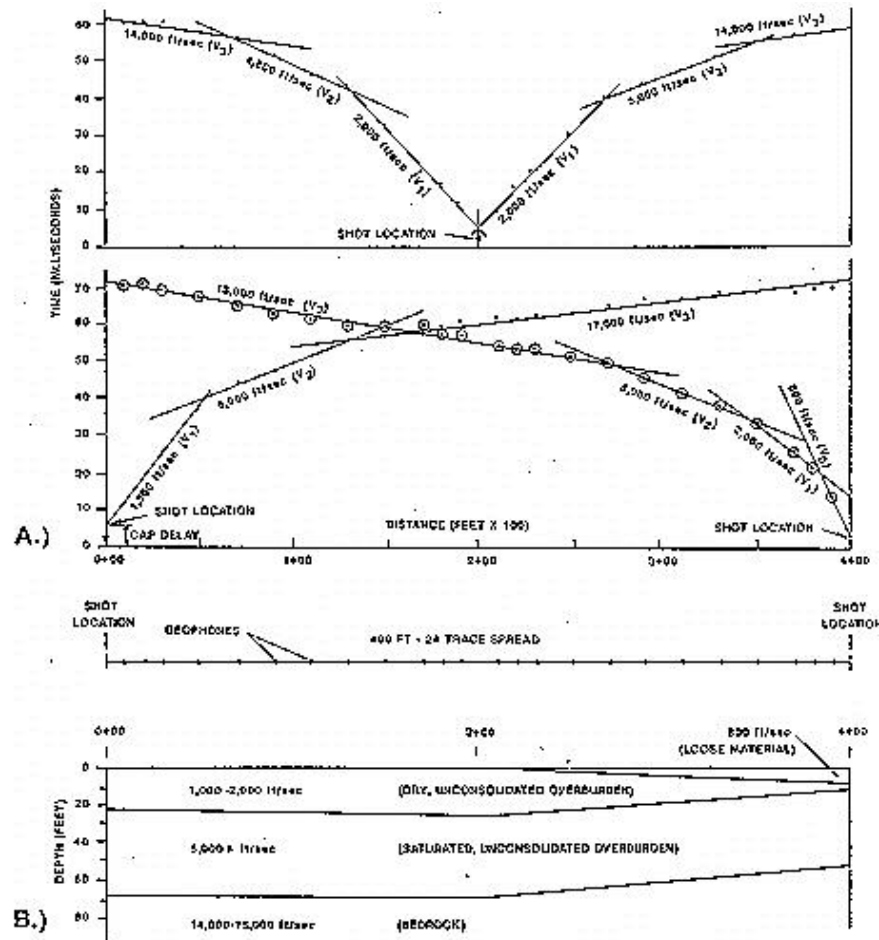
The topography of a site dictates whether or not surveyed elevations are required. If possible, refraction profile lines should be positioned along level topography. For highly variable topography, a continuous elevation profile may be required to ensure sufficiently accurate cross-sections and to permit the use of time corrections in the interpretation of the refraction data.

#### DATA PRESENTATION AND INTERPETATION:

Interpretation of seismic refraction data involves solving a number of mathematical equations with the refraction data as it is presented on a travel-time versus distance chart. Seismic refraction data FIGURE A3 can be processed by plotting the “First Arrival” travel times at each geophone location. The preferred format of data presentation is a graph (Travel Time Plot) illustrated in FIGURE A4, in which travel time in milliseconds is plotted against source-receiver distance. From such a chart, the velocities of each layer can be obtained directly from the increase slope of each straight-line segment. Using the velocities the critical angle of refraction for each boundary can be calculated using Snell’s Law. Then, utilizing these velocities, and angles and the recorded distances to crossover points (where line segments cross); the depths and thickness of each layer can be calculated using simple geometric relationships.



**FIGURE A3:**  
TYPICAL 24 CHANNEL ANALOG SEISMIC REFRACTION RECORD, WITH FIRST ARRIVAL TIMES



**FIGURE A4:**

A: TRAVEL-TIME PLOTS; UPPER PLOT IS A CENTER SHOT, LOWER PLOT IS TWO END SHOTS  
 B: RESULTING PROFILE OF SUBSURFACE MATERIALS SHOWING INTERFACE BETWEEN DIFFERENT SEISMIC VELOCITY LAYERS

The results of any seismic survey, refraction or reflection are usually presented in profile form showing elevations of seismic horizons/layers. Data acquired on a grid basis can be contoured and used to construct isopach maps. Seismic velocities and therefore, generalized material identifications should be presented on refraction profiles along with any test borings used for correlation to establish confidence in the overall subsurface data, both seismic and borings.

Where profiles indicate dipping boundaries, calculation of dips, true depths and true velocities involve more complicated equations. Further more, corrections for differing elevations and varying thicknesses of weathered zones must often be made. Fracturing and weathering generally reduce seismic velocity values in bedrock. Consequently, travel-time plots with late arrivals must be evaluated carefully to determine if the late arrival times (slower velocities) are due to overburden conditions or fractured/weathered bedrock.

Very thin layers or low velocity zones often complicate the travel-time chart as well. Although not the usual case, one constraint on refraction theory is that material velocities ideally should increase with depth. If a velocity inversion exists, i.e. where a higher velocity layer overlies a low velocity layer, depths and seismic velocities can be calculated but the uncertainty in calculations is increased unless borehole velocity data are available.

#### ADVANTAGES AND LIMITATIONS:

The seismic refraction technique, when properly employed, is the most accurate of the geophysical methods for determining subsurface layering and materials. It is extremely effective in that as much as 2,000 linear feet or more of profiling can be acquired in a field day. The resulting profiles can be used to minimize drilling and place drilling at locations where borehole information will be maximized resulting in cost-effective exploration. A standard drilling program runs the risk of missing key locations due to drillhole spacing. This risk is substantially reduced when refraction is used.

In summary, the advantages and limitations of the seismic techniques are:

##### Advantages:

- \* Material identification
- \* Subsurface data over broader areas at less cost than drilling
- \* Relatively accurate depth determination
- \* Correlation between drillholes
- \* Preliminary results available almost immediately
- \* Rapid data processing

##### Limitations:

- \* As depth of interest and geophone spacing increases, resolution decreases
- \* Thin layers may be undetected
- \* Velocity inversions may add uncertainty to calculations
- \* Susceptible to noise interference in urban areas, which require use of grounded cables and equipment, signal enhancement and alternative energy sources.



## **APPENDIX 2**

### **GPR METHOD OF INVESTIGATION**

## APPENDIX: GROUND PENETRATING RADAR

Ground Penetrating Radar (GPR) is an electrical geophysical method for evaluating subsurface conditions by transmitting high frequency electromagnetic waves into the ground and detecting the energy reflected back to the surface. Electromagnetic signals are transmitted from the antenna (transmitter and receiver) at ground surface and reflected back to the antenna from interfaces with differing electrical (dielectric constant and conductivity) properties. The greater the contrast in the electrical properties between two materials, the more energy that is reflected to the surface and the more defined results are.

### GPR SYSTEM:

GPR systems consist of: Control unit (pulse transmitter, digital recorder, data storage, monitor); and an antenna(s) and survey wheel.



The GPR control unit is a computer which controls data acquisition parameters, such as sampling rate, range, gain control, filtering, etc. The Control Unit also visually displays the data, digitally archives the data, and allows for play back of the data.

Coaxial cable connects the control unit to the antenna. The antenna(s) are sealed and shielded in fiberglass housing.. Selection of the antenna is dictated by the requirements of the survey. For high resolution, near-surface data, a high frequency antenna is used; for deeper penetration investigation, a lower frequency antenna is used. Typically the 100 to 400 MHz antennas are used for geologic surveys; 400 to 900MHz are used for utility, near surface voiding settlement, foundation, etc surveys while the 900 to 1500 MHz are used for concrete reinforcing assessment.

### APPLICATIONS

Ground Penetrating Radar (GPR) can be used to locate underground pipes, buried drums, foundations, voids in rock and concrete, soil settlement, determine stratigraphy, depth to water table, buried artifacts, filled excavations, and locate voids/settlement behind walls and under floor slabs, etc. GPR is also a good tool for evaluating concrete structures such as

bridges, walls, beams, ceilings, etc where the GPR can locate rebar and conduits, quantify rebar spacing, cover variability over reinforcing, and concrete thickness.

GPR reflections typically occur at subsurface discontinuities such as:

- Buried metal objects (utilities, tanks, reinforcing)
- Open and water filled voids
- Water table
- Soil stratification
- Seepage paths
- Bedrock fractures

#### DEPTH OF PENETRATION AND LIMITATIONS

The depth of penetration of GPR is site specific, limited by the attenuation of the electromagnetic energy. Signal attenuation is controlled by four different mechanisms:

- Scattering: energy losses due to scattering occur when signals are dispersed in random directions, away from the receiving antenna, by closely spaced rebar or large irregular shaped objects, such as boulders or tree stumps.
- High conductivity layers: the greater the conductivity values of materials at a site, the more signal attenuation or less penetration. (Mineral content, high moisture content, water table, metal plates, etc.)

Signal penetration is also dependent on the frequency of the antenna. High frequency antennas have shallow penetration and high resolution. Low frequency antennas have greater depths of penetration, but the resolution of small and near surface targets is reduced. Listed below are antenna frequency, approximate depths of penetration and typical application. (Depths of penetration are in ideal conditions if a highly conductive layer, such as a brackish water table, steel plate, etc., is present all antennas will be limited to the depth of this layer.)

1500 and 1600 MHz	+/-2 feet	Asphalt/Concrete thickness Wire mesh/rebar/conduit location Voiding within and behind structures
900 MHz	3-5 feet	Concrete thickness Rebar and utility location Voiding within and behind structures
400 MHz	10-15 feet	Concrete/Masonry thickness Utility location Soil settlement/sinkhole development Geologic and Environmental mapping Archaeological Surveys
200 MHz	25-30	Soil settlement/sinkhole development

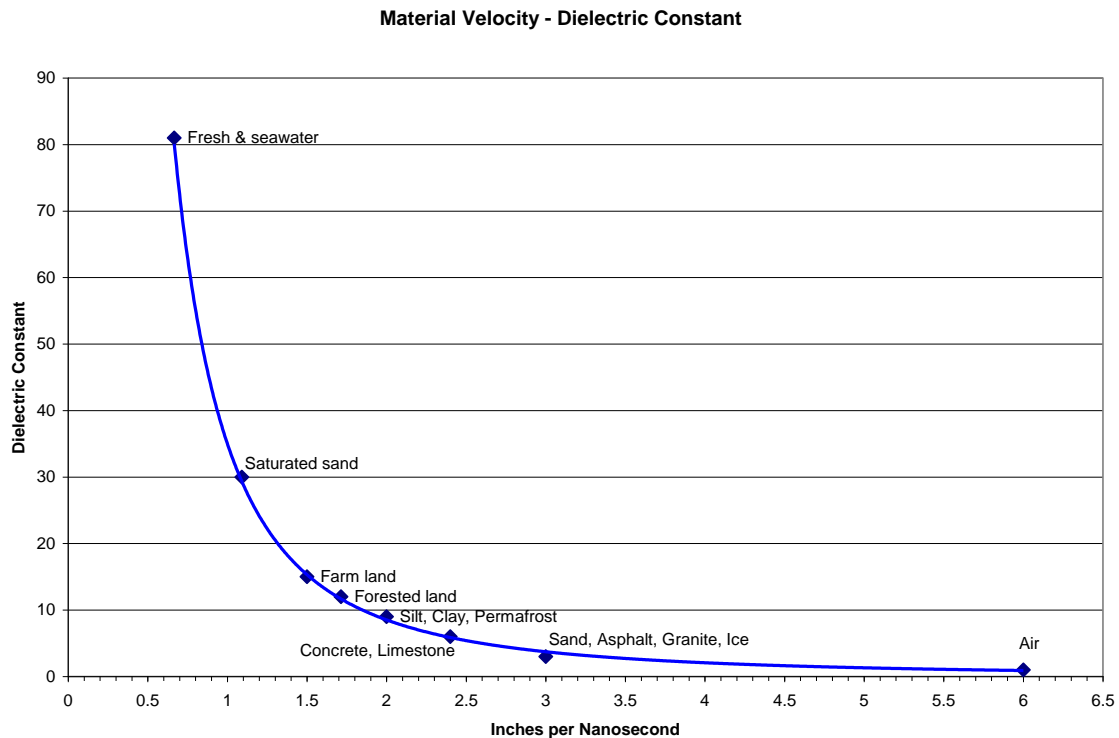
## Geologic and Environmental mapping Archaeological Surveys

100 MHz

+/-50

Soil settlement/sinkhole development  
Geologic and Environmental mapping  
Archaeological Surveys

Depth of investigation can be estimated using material dielectric constants and the diagram shown below. Typically 2 inches per nanosecond can be used as an average signal velocity for most materials and sites. When available an onsite depth calibration can be conducted to determine the electrical properties (speed of the signal) of the materials at the site. Depth calibrations typically consist of collecting GPR data over a metal target with a known depth. Known utilities, and buried metal plates are good targets for calibrations. GPR surveys can be very effective when coupled with other geophysical surveys and/or ground truth methods to verify, correlate and extrapolate GPR results. GPR surveys are a fast and cost effective method to collect data over large or obstructed sites, and isolate anomalies and areas where borings or other methods can be focused for the best interest of a project.

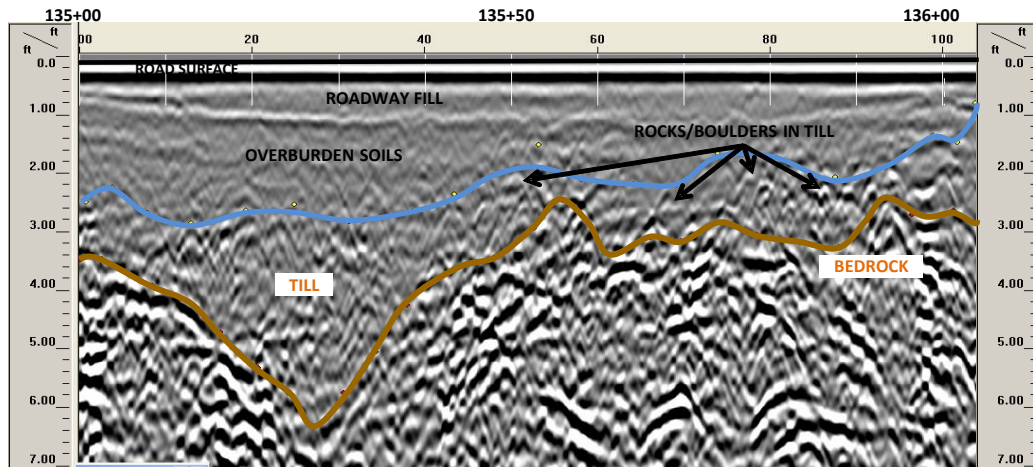


### ACQUISITION AND INTERPRETATION:

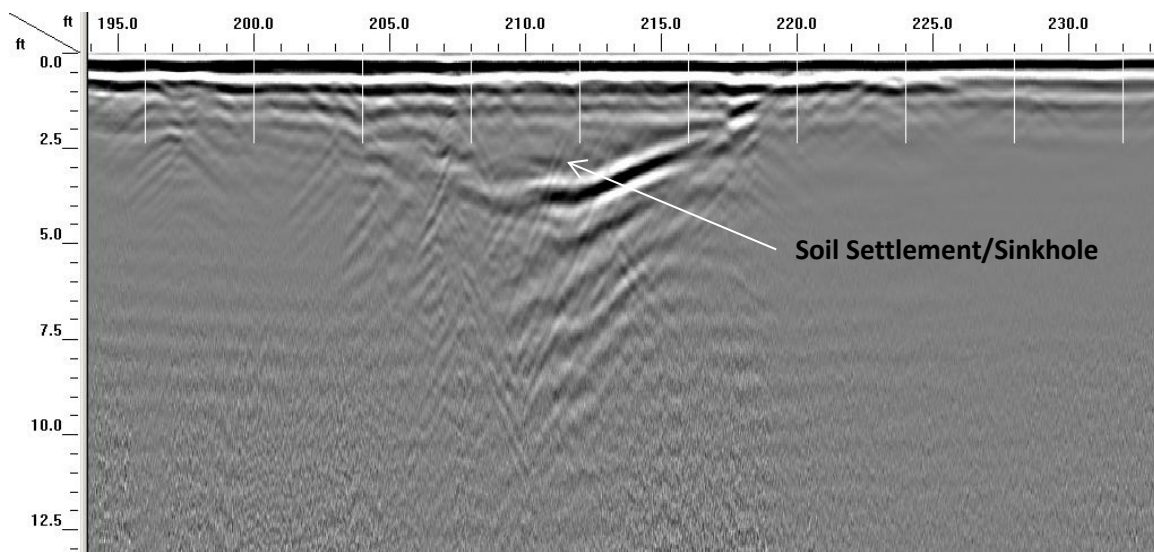
Radar data are typically acquired at a slow walking speed along a grid pattern of survey lines or a series of parallel lines. Data is displayed on LCD screen for field verification and quality control of results and digitally saved. Calibrated measuring wheels are used to automatically added footage/station markers to the digital data. The saved data can be printed or post processed.

Interpretation of GPR data is subjective. GPR results should be verified with borings or test pits. GPR lines indicate a cross-section in time/depth along a survey line.

Natural soils or fill placed in lifts during construction retain moisture between material interfaces and typically have horizontal or near horizontal bedding planes. These conditions cause a change in conductivity which shows as continuous reflective layers on GPR data. The strength of a reflected signal and/or the continuity of the reflector across the record may be indicative of a stratigraphic contact, water table, top of rock, back of wall/slab.



Locations where GPR data indicate these horizontal bedding planes/layers are sloping, draped or disturbed can be indication of soil settlement, trenching and/or voiding. Areas where GPR data is less reflective, indicating fine soil materials (clays and silts) have been washed or eroded away or areas that are more reflective, indicating loose soil conditions where moisture has accumulated are also indicative of and associated with settlement, sinkholes, and voiding.



Often point targets, such as reinforcing, buried utilities, boulders, create a distinctive parabolic feature on GPR records. Point targets trending perpendicular to the direction of the line of coverage are detected, therefore to detect longitudinal reinforcing a transverse line of data would be collected and to detect transverse reinforcing, a longitudinal line of data would be collected. Plotting point targets of similar signal strength, depth, and shape located along the grid of GPR lines give the trend and location of individual utilities and/or reinforcing.

