

TOWN OF WILLSBORO
5 FARRELL ROAD, WILLSBORO, NY 12996



Request for Proposal
Veterans Memorial Monument Design Project

PROJECT NUMBER: P-0064-2017

DATE ISSUED: May 25st, 2018

UPDATED:

ADDENDUM #1: May 31st, 2018 for SDVOB Inclusions

ADDENDUM #2: June 6th, 2018 for redaction of "Design-Build" references.

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REQUEST FOR PROPOSALS – WILLSBORO MONUMENT RECONSTRUCTION

NOTICE IS HEREBY GIVEN, that the Undersigned, on behalf of the Town of Willsboro, will accept proposals **until 2:00 P.M. on Friday June 15th 2018** for **Willsboro Monument Reconstruction Design Services.**

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

The Town is an equal opportunity employer. **Minority and Women-Owned Business Enterprises (M/WBE) businesses and Section 3 businesses are strongly encouraged to participate in this Dormitory Authority of the State of New York (DASNY) funded project. Requirements for the DASNY funding compliance can be found here:**

- <https://esd.ny.gov/mwbe/programmandate.html>
- <https://www.dasny.org/tools-forms/forms>

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

The Town reserves the right to except any and all proposal(s), reject any and all proposals not considered to be in the best interest of the Town, and to waive any technical or formal defect in the proposals which is considered by the Town to be merely irregular, immaterial, or unsubstantial. Please contact the Essex County Planning Office (518) 873-3426 or CommunityResources@co.essex.ny.us for additional information concerning the Proposals. Specifications may be obtained at the **NYS Contract Reporter account:**

- <https://www.nyscr.ny.gov/agency/index.cfm>
- *Search: "Essex County Comm. Resources"*

All proposals submitted in response to this notice shall be marked "**WILLSBORO MONUMENT RECONSTRUCTION**" clearly on email traffic and/or the outside of the envelope containing your electronic/digital response files.

Published: May 25st, 2018

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

INTRODUCTION

A. Overview

This Request for Proposals (“RFP”) is being issued by the **TOWN OF WILLSBORO** (“the Town”) for professional design services for the **VETERANS MONUMENT RECONSTRUCTION** of the existing Veterans Memorial. The project will be executed by a Design and then Construction Bidding by separate Notice. The project will be funded by the Town and the **Dormitory Authority of New York State (“DASNY”)**.

The Town is seeking to encourage participation by respondents who are DBE/MBE/WBE, Section 3 and/or Veterans’ business enterprises. Companies with demonstrated experience in ***monument design services*** interested in making their services available to the Town are invited to respond to this RFP. “Respondents” means the companies or individuals that submit proposals in response to this RFP. It is understood that the selected Respondent acting as an individual, partnership, corporation or other legal entity, is licensed to provide such services in New York State. The Respondent shall be financially solvent and each of its members if a joint venture, its employees, agents or sub-consultants of any tier shall be competent to perform the services required under this RFP document.

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

B. Time of Response

Respondents will have approximately three (3) weeks to provide a response to this RFP. The Town and resources from Essex County will review the proposals and respond within two (2) weeks of RFP closure, after Town Board Meetings are held

1. RFP Posted: **Friday, May 25th, 2018**
2. Responses Due: **Friday, June 15th by 2:00 pm.**
3. Town Board Proposal Review: **June 15th – June 22nd 2018**
4. Contract Awarded estimated: **July 9th 2018 (Normal Board Meeting)**

C. Contract Negotiations

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

D. Contract Execution

Once the contract Terms and Conditions have been approved, the final contract cannot be executed until any applicable program requirements are completed and provided as part of the contract

documents, such as the EEO, M/WBE Plans, SDVOB, Section 3 or other required forms and plans, etc. Once these have been provided the Town Board will execute the final contracts with the Respondent

E. Term of Contract

Any contract awarded pursuant to this RFP solicitation shall be for a contract period **beginning no later than 7/01/18** and will expire upon completion of the projects' administrative close out. Substantial completion of the construction of the project must be completed **no later than 8/01/19**, and administrative closeout must be complete **no later than 9/01/19**.

F. Additional Requirements

- Anti-Lobbying Policy
- Non-Collusive Bidding Certification (Appendix H)
- Vendor Responsibility Questionnaire – if over \$100,000.00 in contract value (Appendix F)

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

PROFESSIONAL SERVICE REQUIREMENTS

A. Scope of Work

The Veterans Monument was built in 1959 by local veterans, it is located along the Boquet River. It is significant historically for the Burgoyne encampment during the Revolutionary War and the Battle of Willsboro Falls in the War of 1812. The location of the Monument is a designated battle field. The Monument was constructed after World War II and the Korean Conflict, although the Monument includes plaques and monuments from all wars. The Monument is used for the Town of Willsboro's Memorial Day Ceremony for the past 60 years. The location of the monument is in an area that is seen by anyone traveling through the town. The current condition of the structure is very frail; it is slowly deteriorating and is in much need of repair. It is made with granite, mortar and sand. **The Town and the Monument Reconstruction Committee is looking for a committed and experienced design firm to address the current state of the memorial by developing a plan on various designs to present to the Committee, and then commence construction upon design selection.** (Attached are pictures of the existing Memorial in Appendix B)

Recipients will provide a Cost Proposal according to the Tasks listed below and also in in the "Consultant Deliverables" Table in **Appendix K**; additionally, the services and deliverables in each Phase are listed in "Draft Form of Contract", **Appendix L, Exhibit A "Contractor Services"**.

Overview of Tasks:

- **General Requirements:**
 - Respondents shall produce and manage the Project Schedule and be responsible for own deliverables to be complete such that reasonable time is allotted for construction.
 - Respondents shall be responsible for Project Management & coordinate at a minimum of (1) project meeting a month for each phase of the project with all stakeholders.
 - Ensure compliance with all funding program requirements. to include any necessary reporting.
 - Permitting activities must be done in coordination with the Town and Essex County support staff. DBC will be responsible for producing documents to support all necessary permits.
 - Permits are identified on **Task 3 of Appendix K, "Consultant Deliverables"**.
 - *Include "Mileage" fees in this LS category.*
- **Schematic Designs: (30% completion to completely support permitting processes)**
 - Any required surveys, Preliminary Designs and Schematic Designs shall be completed at the end of this deliverable and will be sufficient to complete any and all local permitting requirements completed.
 - Respondent shall present a minimum of three (3) design concepts and construction estimates to the Town and the Monument Reconstruction Committee for selection and approval.

- **Final Designs:** *(100% complete & approvable for Regulatory/Funding Agency reviews)*
 - Present regulatory / funding agency compliant final designs and final construction estimates to the Committee for commissioning the Construction Phase Activities.
- **Construction:**
 - Respondents shall source and prepare material procurements such that the Town can procure all construction materials on the municipal tax exemption.
 - Respondents shall provide progress billing on a monthly basis for approval by the Town Board, such that the review of invoices can be completed at Regular Town Board Meetings.
 - Respondents shall organize and lead the Preconstruction Meeting and keep Meeting Minutes during all Construction Phase and Post Construction activities.
 - Respondents shall also ensure the project meets the established schedule and budget constraints.
 - Respondents shall ensure that the project is constructed as designed and meets all codes and regulations.
 - Respondents shall cause to complete the As Built Construction Drawings & Construction Photos and provide to the Town.
 - Respondents shall also ensure that all project close out documents are complete and in order for auditing and/or archival.

B. Quality of Work

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

C. Records

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

All reports, documents, information, presentations, electronic drawings, and other materials prepared by the award recipient in connection with this Agreement are the Owner's sole property in which the award recipient has no proprietary or other rights or interests. All reports, documents, information and any materials or equipment furnished to the award recipient by the Owner shall remain the sole property of the owner and except for the award recipient's limited possession of the purpose of carrying out the Work, shall be returned to the Owner at the conclusion of the Agreement. **Nothing written in this paragraph, however, will be interpreted to forbid the award recipient from retaining a single copy of the information for its files.**

D. Other Requirements

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

SUBMITTAL REQUIREMENTS

A. Preliminary Requirements

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

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

B. Letter of Interest

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

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

C. Main Proposal

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

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

1. **Qualifications Proposal:** Provide a synopsis of the years of experience and detailed qualifications in performing the range of similar professional services in compliance with applicable standards, including team's resumes. Respondents should provide narrative examples of three (3) projects in detail that are similar in nature to projects described in the RFP (see "References"). References for similar projects and portfolio vignettes will be reviewed to evaluate the level of experience.
2. **Technical Proposal:**
 - a. **Project Management Plan:** Discuss approach to the project in terms of understanding of the established Scope and Deliverables execution, with regard to any constraints identified in this RFP, to include any applicable funding requirements. Provide a plan for engaging the Town's project team and regulatory agencies required. Provide the number of full-time and part-time employees, partnerships or subconsultants proposed and their value to the project.
 - b. **Schedule:** Capacity to complete the scope of work within the defined period of performance: **July 2018 – August 2019**. The successful Respondent will have a detailed project schedule & work plan to illustrate the ability complete the work with respect to constraints, either stated or assumed. The Schedule Proposal must include a Gantt chart to illustrate your proposed schedule.
 - c. **Funding Agency Experience:** **DASNY-funded Construction Projects.**
3. **Cost Proposal:**
 - a. Cost will not be the primary factor in the selection of firm. The proposed price will be graded based upon the following formula:
$$\text{Average Bid} / \text{Your Price} = X \text{ (whereby } X \text{ cannot exceed } 100\%)$$
$$X * 15 \text{ points} = \text{Points awarded based on cost}$$
 - b. This should include the lump sum/unit rates for different Tasks, per the table provided in Appendix K, "Deliverables Table". Respondents should include a description of the costs

and detail proposals for cost savings in their Proposal. Labor cost estimates will include payments of prevailing wage rates as determined by the NYS Department of Labor and Industries as applicable (such as Survey work for example).

SELECTION PROCESS

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

EVALUATION CRITERIA AND SCORING

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

The point system is to evaluate the experience and capacity of the Respondent.

- *Respondents will be awarded up to 15 Points for Completeness of Response.*

- *Respondents will be awarded up to 25 Points for Qualifications Proposal.*

- *Respondents will be awarded up to 45 Points for the Technical Proposal:*
 - *Project Management Plan: 15 Points*
 - *Schedule: 15 Points*
 - *Public Funding Experience: 15 Points*
 -

- *Respondents will be awarded up to 25 Points for Cost Proposal.*

QUESTIONS

Questions regarding this RFP should be submitted in writing via email to Essex County Community Resources at (CommunityResources@co.essex.ny.us) between the hours of 0900 – 1500 *only*. Any resulting Addenda will be posted to the NYS Contract Reporter and the Essex County Procurement Department's Bids website.

Site Visits regarding the RFP should be submitted via phone call to **Supervisor Gilliland @ (518) 963-8668** between the hours of **0800 – 1400 *only***.

SUBMITTAL DUE DATE

Responses to this RFP are due by 2:00pm on Friday, June 15th, 2018.

RFP responses must be submitted via electronic PDF sent to the following web address:

<https://app.smartsheet.com/b/form/16335ac1995e4b4aa76633b27a7fa8b4>

The Town will select a consultant on/about **July 9th, 2018** at a Normal Board Meeting.

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

Essex County Office of Community Resources

7533 Court Street – PO Box 217

Elizabethtown, NY 12932

CommunityResources@co.essex.ny.us

(518) 873-3426

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

RFP SUBMITTAL REQUIREMENTS CHECKLIST

FORMS FROM RFQ PACKAGE TO RETURN:

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

FOR THE RESPONDENT TO PROVIDE:

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

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

APPENDIX A: FUNDING PROGRAM REQUIREMENTS

This project is subject to **30% M/WBE participation goal, and 3% SDVOB participation goal**. Please see links below for additoinal reference:

* https://cdn.esd.ny.gov/MWBE/Data/NYS_EXECUTIVE_LAW_ARTICLE_15-A.pdf

*<https://esd.ny.gov/mwbe/programmandate.html>

* <https://www.dasny.org/services/diversity-inclusion/mwsbe-resources>

* <https://www.dasny.org/opportunities/rfps-bids/dasny-mwsbe-registry>

Respondents must show thier proposed compliance by providing thier planned M/WBE partnerships should they be selected for the contract award with the Town. Upon Notification of Award (NOA), successful Respondetns will be provided with necessary forms to provide program compliance plans in order to complete the contract for services.

APPENDIX B: PROJECT REFERENCE DATA



APPENDIX C: REFERENCES

CERTIFICATION OF EXPERIENCE

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

NAMES OF BUSINESS: _____ CONTACT NAME: _____

ADDRESS: _____

AMOUNT OF CONTRACT: _____ TELEPHONE NO.: _____

TYPE OF WORK: _____ FAX NO.: _____

EMAIL ADDRESS: _____

NAMES OF BUSINESS: _____ CONTACT NAME: _____

ADDRESS: _____

AMOUNT OF CONTRACT: _____ TELEPHONE NO.: _____

TYPE OF WORK: _____ FAX NO.: _____

EMAIL ADDRESS: _____

NAMES OF BUSINESS: _____ CONTACT NAME: _____

ADDRESS: _____

AMOUNT OF CONTRACT: _____ TELEPHONE NO.: _____

TYPE OF WORK: _____ FAX NO.: _____

EMAIL ADDRESS: _____

NAMES OF BUSINESS: _____ CONTACT NAME: _____

ADDRESS: _____

AMOUNT OF CONTRACT: _____ TELEPHONE NO.: _____

TYPE OF WORK: _____ FAX NO.: _____

EMAIL ADDRESS: _____

NAMES OF BUSINESS: _____ CONTACT NAME: _____

ADDRESS: _____

AMOUNT OF CONTRACT: _____ TELEPHONE NO.: _____

TYPE OF WORK: _____ FAX NO.: _____

EMAIL ADDRESS: _____

NAMES OF BUSINESS: _____ CONTACT NAME: _____

ADDRESS: _____

AMOUNT OF CONTRACT: _____ TELEPHONE NO.: _____

TYPE OF WORK: _____ FAX NO.: _____

EMAIL ADDRESS: _____

APPENDIX D: CONFLICT OF INTEREST STATEMENT

APPENDIX D: CONFLICT OF INTEREST STATEMENT

_____ (“Respondent”)

Conflict of Interest Statement

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

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

Now this is to certify that I, except as described below, am not now nor at any time during the past year have been:

- 1) A participant, directly or indirectly, in any arrangement, agreement, investment, or other activity with any vendor, supplier, or other party; doing business with the [the Town] which has resulted or could result in person benefit to me.
- 2) A recipient, directly or indirectly, of any salary payments or loans or gifts of any kind or any free service or discounts or other fees from or on behalf of any person or organization engaged in any transaction with the [the Town].

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

Respondent: _____

Date: _____

Signature: _____

Printed name: _____

Address: _____

Telephone: _____

APPENDIX E: CERTIFICATE OF AUTHORITY

CERTIFICATE OF AUTHORITY

I, _____
(Officer other than officer executing proposal documents)

certify that I am the _____ of the _____
(Title) (Name of Contractor)

_____ a corporation, duly organized and in good standing under the

(Law under which organized, e.g., the New York Business Corporation Law)

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

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

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

Signature Corporate Seal

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

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

Notary Public County

APPENDIX F: VENDOR RESPONSIBILITY QUESTIONNAIRE

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

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

COMPLETION & CERTIFICATION

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

NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

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

DEFINITIONS

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

RESPONSES

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

REPORTING ENTITY

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

ASSOCIATED ENTITY

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

STRUCTURE OF THE QUESTIONNAIRE

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

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

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

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

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

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

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

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

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

INSTRUCTIONS FOR SECTIONS III THROUGH VII

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

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

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

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

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

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

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

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

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

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

XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE		
Name	Telephone	Fax
	ext.	
Title	Email	

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

Certification

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

The undersigned certifies that he/she:

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

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

Sworn to before me this _____ day of _____, 20__;

_____ Notary Public

CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT

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

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

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

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

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

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

SIGNED

SWORN to before me this _____ day of _____, 20__

Notary Public

NON-COLLUSIVE BIDDING CERTIFICATION

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

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

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

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

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

Name of Bidder: _____
(print full legal name)

Date Signed: _____ Signature: _____

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

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

APPENDIX G: W-9 FORM

Request for Taxpayer Identification Number and Certification

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

Print or type
See Specific Instructions on page 2.

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

Part I Taxpayer Identification Number (TIN)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="10" style="text-align: center;">Social security number</td> </tr> <tr> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%;"></td> <td style="width: 20%; text-align: center;">-</td> <td style="width: 20%;"></td> <td style="width: 20%;"></td> <td style="width: 20%;"></td> <td style="width: 20%;"></td> <td style="width: 20%;"></td> <td style="width: 20%;"></td> <td style="width: 20%;"></td> </tr> </table> <p style="text-align: center; margin: 5px 0;">OR</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="10" style="text-align: center;">Employer identification number</td> </tr> <tr> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%;"></td> <td style="width: 20%; text-align: center;">-</td> <td style="width: 20%;"></td> <td style="width: 20%;"></td> <td style="width: 20%;"></td> <td style="width: 20%;"></td> <td style="width: 20%;"></td> <td style="width: 20%;"></td> <td style="width: 20%;"></td> </tr> </table>	Social security number												-								Employer identification number												-							
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Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3. Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.																																									

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

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

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

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

Purpose of Form

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Backup Withholding

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

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

Payments you receive will be subject to backup withholding if:

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

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

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

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

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

Also see *Special rules for partnerships* above.

What is FATCA reporting?

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

Updating Your Information

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

Penalties

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

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

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

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

Specific Instructions

Line 1

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

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

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

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

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

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

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

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

Line 2

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

Line 3

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

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

Line 4, Exemptions

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

Exempt payee code.

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

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

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

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

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

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

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

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

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

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

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

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

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

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

G—A real estate investment trust

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

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

J—A bank as defined in section 581

K—A broker

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

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

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

Line 5

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

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

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

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

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

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

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

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

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

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

Part II. Certification

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

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

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

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

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

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

² Circle the minor's name and furnish the minor's SSN.

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

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

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

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

Secure Your Tax Records from Identity Theft

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

To reduce your risk:

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

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

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

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

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

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

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

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

Visit IRS.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

APPENDIX H: NON-COLLUSION AFFIDAVIT

NON-COLLUSION AFFIDAVIT

The undersigned bidder or agent, being duly sworn on oath, says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He/She further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee gift, commission or thing of value on account of such sale.

OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID FOR PUBLIC WORKS ARE TRUE AND CORRECT.

Dated this ___ day of _____, _____

(Name of Organization)

(Title of Person Signing)

(Signature)

ACKNOWLEDGEMENT

STATE OF _____)
) ss
COUNTY OF _____)

Before me, a Notary Public, personally appeared the above named and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to me this _____ day of _____, _____.

Notary Public Signature

My Commission Expires: _____

APPENDIX I: IRAN DIVESTMENT ACT COMPLIANCE

IRAN DIVESTMENT ACT CERTIFICATION

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

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

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

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

AGENCY reserves the right to reject any bid or request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

Signature: _____

Print Name: _____

Title: _____

Company Name: _____

Date: : _____

APPENDIX J: <INTENTIONALLY LEFT BLANK>

APPENDIX K: DELIVERABLES TABLE

DELIVERABLES	FEE PROPOSED:	HOURS OF LABOR:
GENERAL REQUIREMENTS		
Task 1) Project Schedule		
Task 2) Project Management & Coordination Meetings (<i>incl. MILEAGE</i>)		
Task 3) Funding Program compliance & reporting throughout Project		
Task 4) Project Permitting		
<i>Task 4.1) Local Agency Permitting: County Highway, Zoning, etc.</i>		
<i>Task 4.2) State Agency Permitting: NYS DOT, NYS DEC, NYS DOH, NYS DOL, APA, SHPO, THPO, etc.</i>		
SCHEMATIC DESIGN PHASE		
Task 5) Data Collection & Review (not Surveys)		
Task 6) Preliminary Designs (<i>Basis of Design for Owner / Regulatory approval</i>)		
Task 7) Schematic Designs (<i>30% Designs to support full permitting</i>)		
FINAL DESIGN PHASE		
Task 8) Final Designs (<i>100% completion for Funding/Regulatory approval</i>)		
Task 9) Regulatory Agency Coordination for Plans & Specs		
CONSTRUCTION PHASE		
Task 10) Preconstruction Kick-Off Meeting		
Task 11) Construction Period Services: Admin Labor		
Task 12) Construction Period Services: Construction Labor		
Task 13) Construction Period Services: Construction Materials		
POST CONSTRUCTION PHASE		
Task 14) Post Construction Site Restoration		
Task 15) As-Built Construction Drawings		

APPENDIX L: DRAFT FORM OF CONTRACT (EJCDC)

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

AGREEMENT BETWEEN OWNER AND CONSULTANT FOR PROFESSIONAL SERVICES

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Consulting Services Agreements, 2013 Edition.

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**AGREEMENT
BETWEEN OWNER AND CONSULTANT
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of [] (“Effective Date”) between

THE TOWN OF WILLSBORO, NY (“Owner”) and

[] (“Consultant”).

Owner's Project, of which Consultant's services under this Agreement are a part, is generally identified as follows:

TOWN OF WILLSBORO VETERANS MONUMENT RECONSTRUCTION (“Project”).

Other terms used in this Agreement are defined in **Article 7**.

Consultant's services under this Agreement are generally identified as follows:

1. **PROVIDE SCHEMATIC DESIGN CONCEPTS & ESTIMATES TO THE TOWN COMMITTEE FOR DESIGN SELECTION**
2. **PROVIDE FINALIZED DESIGNS & ESTIMATES FOR CONSTRUCTION BIDDING.**
3. **PROVIDE BIDDING SERVICES FOR CONSTRUCTOR SELECTION.**
4. **PROVIDE CONSTRUCTION PERIOD SERVICES FOR OWNER.**
5. **COMPLY WITH ANY AND ALL APPLICABLE FUNDING AGENCY REQUIREMENTS.**

Owner and Consultant further agree as follows:

ARTICLE 1 – SERVICES OF CONSULTANT

1.01 *Scope*

- A. Consultant shall provide, or cause to be provided, the services set forth herein, *in the originating Proposal* and in **Exhibit A**.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in **Exhibit B**.
- B. Owner shall pay Consultant as set forth in **Article 4 and Exhibit C**.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Consultant pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Consultant pursuant to this Agreement. Consultant may use and rely upon such requirements, programs,

instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

- D. Owner shall give prompt written notice to Consultant whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of Consultant's services;
 2. the presence at the Site of any Constituent of Concern; or
 3. any relevant, material defect or nonconformance in: (a) Consultant's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Consultant is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Consultant shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in **Exhibit A and Exhibit L**, and are hereby agreed to be reasonable.
- B. If, through no fault of Consultant, such periods of time or dates are changed, or the orderly and continuous progress of Consultant's services is impaired, or Consultant's services are delayed or suspended, then the time for completion of Consultant's services, and the rates and amounts of Consultant's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Consultant's services, then the time for completion of Consultant's services, and the rates and amounts of Consultant's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Consultant's performance of its services.
- E. **If Consultant fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.**

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Consultant shall prepare invoices in accordance with its standard invoicing practices and the terms of **Exhibit C**. Consultant shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within **thirty (30) days** of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Consultant and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Consultant for services and expenses within **thirty (30) days** after receipt of Consultant's invoice, then:
 - 1. amounts due Consultant will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said **thirtieth (30) day**; and
 - 2. Consultant may, after giving **seven (7) days** written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Consultant for any such suspension.
 - 3. **Exceptions to this section apply when the Consultant fails to provide funding agency required reports and/or documents that are complete and on time; if these reports are not supplied as required and further specified in the Attachments hereto, the Owner reserves the right to withhold payment without penalty by the Consultant to ensure that project costs are compliant per the specified funding agency program requirements.**
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Consultant in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of **Paragraph 4.01**.
- ~~D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Consultant's services or compensation under this Agreement, then Consultant may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Consultant for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Consultant is entitled under the terms of **Exhibit C**.~~

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Consultant's opinions (if any) of probable Construction Cost are to be made on the basis of Consultant's experience, qualifications, and general familiarity with the construction industry. However, because Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Consultant. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Consultant, such Construction Cost limit and a statement of Consultant's rights and responsibilities with respect thereto will be specifically set forth in **Exhibit F** to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Consultant with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Consultant assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional Consulting and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Consultant.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Consultant's services. Consultant shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Consultant may retain such Consultants as Consultant deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in **Paragraph 6.01.A**, Consultant and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Consultant and Owner shall comply with applicable Laws and Regulations.
 - 2. Consultant shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Consultant's performance of services under this Agreement and that Owner provides to Consultant in writing, subject to the standard of care set forth in **Paragraph 6.01.A**, and to the extent compliance is not inconsistent with professional practice requirements.
 - a. Articles 8 & 9 NYS Labor Law: Public Works Building & Service Contracts
 - b. Section 220-f of NYS Labor Law: International Boycotts

- c. Debarment/Suspension:
 - 1) Exec. Order 12549 & 12689
 - 2) 42 USC ss 1320a-7b(f)
- d. HIPA Act of 1996
- 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Consultant's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Consultant after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Consultant shall not be required to sign any document, no matter by whom requested, that would result in the Consultant having to certify, guarantee, or warrant the existence of conditions whose existence the Consultant cannot ascertain. Owner agrees not to make resolution of any dispute with the Consultant or payment of any amount due to the Consultant in any way contingent upon the Consultant signing any such document.
- G. **The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Consultants Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.**
- H. Consultant shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Consultant have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Consultant shall not be responsible for the acts or omissions of any Constructor.
- I. Consultant neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Consultant shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Consultant or its Consultants.
- K. Consultant is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

- L. Consultant's services do not include providing legal advice or representation.
- M. Consultant's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Consultant, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Consultant has been informed in writing.
- O. The parties each acknowledge, covenant and agree that the relationship of the Consultant to the Owner shall be of an independent contractor. The Consultant, in accordance with its status as an independent contractor, further covenants and agrees that it
 - 1. will conduct itself in accordance with its status as an independent contractor;
 - 2. will neither hold itself out as nor claim to be an officer or employee of the Owner;
 - 3. will not make any claim, demand, or application for any right of privilege applicable to an officer or an employee of the Owner, including but not limited to workers compensation benefits, unemployment insurance benefits, social security coverage or retirement membership or credits.
- P. The Consultant shall, during the term of this agreement, obtain and keep in full force and effect any and all licenses, permits and certifications required by any governmental authority having jurisdiction over the rendition and performance of the services to be furnished by the Consultant under this agreement.

6.02 *Design Without Construction Phase Services*

- A. Consultant shall be responsible only for those Construction Phase services expressly required of Consultant in **Exhibit A, Paragraph A1.05**. With the exception of such expressly required services, Consultant shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, Consulting, and professional services. Owner waives all claims against the Consultant that may be connected in any way to Construction Phase administrative, Consulting, or professional services except for those services that are expressly required of Consultant in **Exhibit A**.

6.03 *Use of Documents*

- ~~A. All Documents are instruments of service, and Consultant shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Consultant) whether or not the Project is completed.~~

- B. The Consultant is to maintain all books, documents, papers, account records and other evidence pertaining to this work ***and to make such materials available*** at their respective offices at all reasonable times during the agreement and **for a period up to seven (7) years from the date of final payment under the agreement.**
- C. **All reports, documents, information, presentations, electronic drawings, and other materials prepared by Consultant and its' subconsultants in connection with this Agreement are the Owner's sole property in which the Consultant has no proprietary or other rights or interests.** All reports, documents, information and any materials or equipment furnished to the Consultant by the Owner shall remain the sole property of the Owner and except for the Consultant's limited possession of the purpose of carrying out each Agreement, shall be returned to the Owner at the conclusion of each Agreement. **Nothing written in this paragraph, however, will be interpreted to forbid the Consultant from retaining a single copy of the information for its files.**
- D. If Consultant is required to prepare or furnish Drawings and/or Specifications under this Agreement, Consultant shall deliver to Owner at least **two (2)** original printed record versions of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations, and further provide electronic copies of the appropriate file type (e.g., PDF, JPEG, DWG, etc.) upon completion of the project and upon payment in full to the Consultant.
- E. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Consultant grants Owner a ~~limited~~ **unmitigated** license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Consultant of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Consultant, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Consultant; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Consultant, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Consultant or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Consultant and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Consultant; and (4) such limited license to Owner shall not create any rights in third parties. **THIS PROVISION SHALL NOT APPLY TO SURVEY AND MAPPING PRODUCTS THAT WILL REMAIN THE PROPERTY OF THE OWNER AT PROJECT COMPLETION.**
- F. If Consultant at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Consultant at rates or in an amount to be agreed upon by Owner and Consultant.

6.04 *Electronic Transmittals*

- A. Owner and Consultant may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital

format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Consultant shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Consultant shall procure and maintain insurance as set forth in **Exhibit G**. Consultant shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Consultant.
- B. Owner shall procure and maintain insurance as set forth in **Exhibit G**. Owner shall cause Consultant and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Consultant's interests in the Project. Owner shall require Contractor to cause Consultant and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Consultant shall each deliver to the other certificates of insurance evidencing the coverages indicated in **Exhibit G**. Such certificates shall be furnished prior to commencement of Consultant's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Consultant or its Consultants. Owner and Consultant waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Consultant shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least **ten (10) days** prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.

- G. At any time, Owner may request that Consultant or its Consultants, at Consultants' sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in **Exhibit G**. If so requested by Owner, and if commercially available, Consultant shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and **Exhibit G** will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to **ninety (90) days** upon **seven (7) days** written notice to Consultant.
2. *By Consultant:* Consultant may, after giving **seven (7) days** written notice to Owner, suspend services under this Agreement if Owner has failed to pay Consultant for invoiced services and expenses, as set forth in **Paragraph 4.02.B**, or in response to the presence of Constituents of Concern at the Site, as set forth in **Paragraph 6.10.D**.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
 - a. by either party upon **thirty (30) days** written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Consultant:
 - 1) upon **seven (7) days** written notice if Owner demands that Consultant furnish or perform services contrary to Consultant's responsibilities as a licensed professional; or
 - 2) upon **seven (7) days** written notice if the Consultant's services for the Project are delayed or suspended for more than **ninety (90) days** for reasons beyond Consultant's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in **Paragraph 6.10.D**.
 - 3) **In the event of such termination, Consultant is still liable to provide any project drawings, specifications, mapping and any other developed Work that the Owner has paid for in the period of performance.**
 - 4) ~~Consultant shall have no liability to Owner on account of such termination.~~
 - c. Notwithstanding the foregoing, this Agreement will not terminate under **Paragraph 6.06.B.1.a** if the party receiving such notice begins, within **seven (7) days** of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than **thirty (30) days** of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such **thirty (30) day** period, and if such party has

diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, **sixty (60) days** after the date of receipt of the notice.

2. For convenience, by Owner effective upon Consultant's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under **Paragraph 6.06.B** may set the effective date of termination at a time up to **thirty (30) days** later than otherwise provided to allow Consultant to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
 1. In the event of any termination under **Paragraph 6.06**, Consultant will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred ~~through~~ **up to** the effective date of termination. Upon making such payment, Owner shall have the ~~limited~~ **unmitigated** right to the use of Documents, at Owner's sole risk, subject to the provisions of **Paragraph 6.03**.
 - ~~2. In the event of termination by Owner for convenience or by Consultant for cause, Consultant shall be entitled, in addition to invoicing for those items identified in **Paragraph 6.06.D.1**, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Consultant's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in **Exhibit C**.~~

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located: **TOWN OF WILLSBORO, ESSEX COUNTY, NEW YORK.**

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Consultant are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Consultant (and to the extent permitted by **Paragraph 6.08.B** the assigns of Owner and Consultant) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Consultant to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Consultant and not for the benefit of any other party.
 3. Owner agrees that the substance of the provisions of this **Paragraph 6.08.C** shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Consultant agree to negotiate all disputes between them in good faith for a period of **thirty (30) days** from the date of notice prior to invoking the procedures of **Exhibit H** or other provisions of this Agreement or exercising their rights at law.
- B. **After the thirty (30) day period for mutual negotiation has expired or the process has failed, then disputes, including breach or alleged breach thereof, may not be submitted to binding arbitration. Instead, the dispute must be heard in the Essex County Supreme Court or any other court of competent jurisdiction within Essex County, NY.**
- ~~C. If the parties fail to resolve a dispute through negotiation under **Paragraph 6.09.A**, then either or both may invoke the procedures of **Exhibit H**. If **Exhibit H** is not included, or if no dispute resolution method is specified in **Exhibit H**, then the parties may exercise their rights at law.~~

6.10 *Environmental Condition of Site*

- A. Owner represents to Consultant that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Consultant, exist at or adjacent to the Site.
- B. If Consultant encounters or learns of an undisclosed Constituent of Concern at the Site, then Consultant shall notify (1) Owner and (2) appropriate governmental officials if Consultant reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Consultant's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Consultant or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Consultant may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.

- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Consultant's services under this Agreement, then the Consultant shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on **seven (7) days'** notice.
- F. Owner acknowledges that Consultant is performing professional services for Owner and that Consultant is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Consultant's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Consultant:* To the fullest extent permitted by Laws and Regulations, Consultant shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, members, partners, agents, employees, or Consultants. ~~This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Consultant in Exhibit I, "Limitations of Liability."~~
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Consultant and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations ~~and to the extent (if any) required in Exhibit I, "Limitations of Liability."~~
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Consultant and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall

not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Consultant, and all other negligent entities and individuals.

~~F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Consultant waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.~~

6.12 *Records Retention*

- A. Consultant shall establish and maintain complete and accurate books, records, documents, accounts & other evidence directly pertinent to performance under this contract of the Consultant on file in legible form, for a period of **six (6) years** following completion or termination of its services under each Task Order **plus the year in which the Work was completed**; all Documents, records (including cost records), and design calculations related to Consultant's services or pertinent to Consultant's performance under this Agreement.
- B. Upon Owner's request, Consultant shall provide access to the Records during normal business hours at an office of the Consultant in the State of New York; if not such office is available, then at a mutually agreeable venue for the purposes of inspection, auditing and copying. Consultant will also ensure the ability to send and utilize electronic/digital files of the same of more efficient transference of Records, per **Paragraph 6.04**. ~~a copy of any such item to Owner at cost.~~
- C. The Owner shall take reasonable steps to protect from public disclosure any of the records which are exempt from disclosure under Section 87 of the Public Officers Law (The "Statute") provided that: (1) the Consultant shall timely inform an appropriate Owner official, in writing, that said records should not be disclosed; and (2) said records shall be sufficiently identified and designation of said records as exempt under the statute is reasonable. Nothing contained herein shall diminish, or in any way affect, the Owners' right to discovery in any pending or future litigation.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Consultant, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.
- F. *Discrimination Prohibited:* The services to be furnished and rendered under this agreement by the Consultant shall be available to any and all residents of Essex County without regard to race, color, creed, sex, religion, national or ethnic origin, handicap, or source of payment; and under no circumstances shall a resident's financial ability to pay for the services provided be considered unless such consideration is allowed by State and/or Federal law, rule, or regulation.
- G. *Non-Discrimination in Employment:* The consultant will not discriminate against any employee or applicant for employment because of race, color, creed, sex, religion, national or ethnic origin, disability, or marital status. In the event that this is a contract to be performed in whole or in part within the State of New York for (a) the construction, alteration or repair of any public building or public work, (b) for the manufacture, sale or distribution of materials, equipment or supplies, (c) for building service, the Consultant agrees that neither it nor its subcontractors shall, by any race, color, creed, sex, religion, national or ethnic origin, handicap, or marital status:
 - a. Discriminate in hiring against any citizen who is qualified and available to perform the work; or
 - b. Discriminate against or intimidate any employee hired for the performance of work under the contract.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—The services to be performed for or furnished to Owner by Consultant in accordance with Part 2 of Exhibit A of this Agreement.
 3. *Agreement*—This written contract for professional services between Owner and Consultant, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 4. *Application for Payment*—The form acceptable to Consultant which is to be used by Contractor during the course of the Work in requesting progress or final payments and

which is to be accompanied by such supporting documentation as is required by the Construction Contract.

5. *Basic Services*—The services to be performed for or furnished to Owner by Consultant in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Consultant concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Consultant under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Consultant or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with

the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Consultant, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Consultant to furnish services with respect to this Project as Consultant's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Consultant to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Consultant*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Consultant which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Consultant's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by Consultants, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Consultant under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Consultant as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as

delivered to Consultant and annotated by Contractor to show changes made during construction.

26. *Reimbursable Expenses*—The expenses incurred directly by Consultant in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Consultant assigned to assist Consultant at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Consultant, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Consultant or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way,

compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Consultant, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*:

- A. Exhibit A, Consultant's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Consultant for Services and Reimbursable Expenses.
- ~~D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.~~
- E. Exhibit E, EJCDC Notice of Acceptability of Work.
- ~~F. Exhibit F, Construction Cost Limit.~~
- G. Exhibit G, Insurance.
- ~~H. Exhibit H, Dispute Resolution.~~
- ~~I. Exhibit I, Limitations of Liability.~~
- J. Exhibit J, Special Provisions.
- K. Exhibit K, EJCDC Amendment to Owner-Consultant Agreement.
- L. **Exhibit L, Project Schedule (from Consultant Proposal)**
- M. **Exhibit M, Funding Agency Requirements**
- N. **Exhibit N, EJCDC Contractor Payment Application**

O. **Exhibit O, Project Closeout Checklist**

P. **Exhibit P, Consultant's Originating Proposal**

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Consultant and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of **Exhibit K** to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Consultant and Owner shall designate specific individuals to act as Consultant's and Owner's representatives with respect to the services to be performed or furnished by Consultant and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Consultant's Certifications*

- A. Consultant certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this **Paragraph 8.04**:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: **TOWN OF WILLSBORO**

Consultant: [REDACTED]

By: _____

By: [REDACTED] _____

Print name: **HON. SHAUN GILLILAND**

Print name: [REDACTED]

Title: **TOWN SUPERVISOR**

Title: [REDACTED] _____

Date Signed: _____

Date Signed: _____

Consultant License or Firm's Certificate No. (if required):

[REDACTED]

State of: [REDACTED] _____

Address for Owner's receipt of notices:

Address for Consultant's receipt of notices:

[REDACTED] _____

POB 370

Willsboro, NY 12996

Designated Representative (**Paragraph 8.03.A**):

Designated Representative (**Paragraph 8.03.A**):

Rob Wick, PMP

[REDACTED] _____

Title: **Project Management Specialist**

Title: [REDACTED] _____

Phone Number: **(518) 873-3426**

Phone Number: [REDACTED] _____

E-Mail Address: **rwick@co.essex.ny.us**

E-Mail Address: [REDACTED] _____

This is **EXHIBIT A**, consisting of **17** pages, referred to in and part of the **Agreement between Owner and Consultant for Professional Services** dated [REDACTED].

Consultant's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Consultant shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 General Requirements:

A. Consultant shall provide:

1. *Project Schedule.*

- a. Produce a project schedule in Gantt chart format at the start of the project as a baseline and continue to keep the schedule updated throughout project.
- b. Provide updates to the Owner for any changes to the schedule that may impact the timely execution of the project per the terms of the contract.

2. *Project & Program Management:*

- a. Conduct a minimum of **one (1) project meeting per month** through all phases of design and construction; Consultant will notify Owner of any additional meetings required, whether they be informal, formal or official Board Meetings to pass various Resolutions.
- b. Consultant will keep all meeting minutes and distribute to attendees.
- c. Produce all necessary documents for supporting the permitting necessary for the project.
- d. Consultant will coordinate with Owner (or Owner's Designated Representative) for necessary permits.
- e. Ensure Consultant's own contract is compliant by the Owners' funding program requirements, and produce all necessary reports required.

3. *Project Permitting (these are not inclusive; may vary or change during the project):*

- a. Local Agency Permitting: County Highway, Zoning, etc.
- b. State Agency Permitting: APA, NYS DEC, NYS DOH, NYS DOL, NYS DOT, SHPO, THPO, SEQ, etc.
- c. Federal Permitting Agencies: ACOE, EPA, FEMA, HUD, NEPA, USFWS, etc.

Exhibit A – Consultant's Services

EJCDC® E-500, Agreement Between Owner and Consultant for Professional Services.

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Study and Report Phase

B. ~~Consultant shall:~~

- ~~1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
 - ~~a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions:~~
 - ~~b. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Consultant's study and evaluation, or are such that it will be necessary for Consultant to identify, study, and evaluate multiple potential solutions.~~
 - ~~c. If it is necessary for Consultant to identify, study, and evaluate multiple potential solutions, then identify [] *[insert specific number]* alternative solutions potentially available to Owner, unless Owner and Consultant mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.~~~~
- ~~2. Identify potential solution(s) to meet Owner's Project requirements, as needed.~~
- ~~3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.~~
- ~~4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.~~
- ~~5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Consultant additional Project related data and information, for Consultant's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.~~
- ~~6. After consultation with Owner, recommend to Owner the solution(s) which in Consultant's judgment meet Owner's requirements for the Project.~~
- ~~7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Consultant, including but not limited to mitigating measures identified in an environmental assessment for the Project.~~
- ~~8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed to requirements, considerations involved, and Consultant's recommended solution(s). For each recommended solution Consultant will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Consultant and its Consultants; and, on the basis of information furnished by~~

~~Owner, a tabulation of other items and services included within the definition of Total Project Costs.~~

- ~~9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.~~
 - ~~10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."~~
 - ~~11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.~~
 - ~~12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.~~
 - ~~13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.~~
 - ~~14. Perform or provide the following other Study and Report Phase tasks or deliverables:
[] [List any such tasks or deliverables here.]~~
 - ~~15. Furnish [] review copies of the Report and any other Study and Report Phase deliverables to Owner within [] days of the Effective Date and review it with Owner. Within [] days of receipt, Owner shall submit to Consultant any comments regarding the furnished items.~~
 - ~~16. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish [] copies of the revised Report and any other Study and Report Phase deliverables to the Owner within [] days of receipt of Owner's comments.~~
- ~~C. Consultant's services under the Study and Report Phase will be considered complete on the date when Consultant has delivered to Owner the revised Report and any other Study and Report Phase deliverables.~~

A1.02 *Schematic Design Phase (30% completion to completely support permitting processes)*

- ~~A. After acceptance by Owner of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Consultant and Owner shall discuss and resolve any necessary revisions to Consultant's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Consultant's services, resulting from the selected~~

Exhibit A – Consultant's Services

EJCDC® E-500, Agreement Between Owner and Consultant for Professional Services.

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~~solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Consultant shall:~~

1. Prepare Schematic Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
2. In preparing the Schematic Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
3. Provide necessary field surveys and topographic and utility mapping for Consultant's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Consultant **based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data,"** as set forth in **Paragraph A1.01.A.12** above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Consultant contacting utility owners and obtaining available information.
4. Visit the Site as needed to prepare the Schematic Design Phase documents.
5. Advise Owner if additional reports, data, information, or services of the types described in **Exhibit B** are necessary and assist Owner in obtaining such reports, data, information, or services.
6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
7. Based on the information contained in the Schematic Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Consultant to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.
9. Perform or provide the following other Schematic Design Phase tasks or deliverables:

COORDINATE WITH THE OWNER AND OWNER'S PROJECT TEAM TO SUPPORT EFFORTS IN ACHIEVING ANY AND ALL PERMITTING NECESSARY FOR

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PROJECT TO REGULATORY AND FUNDING AGENCIES, PRIOR TO FINAL DESIGN AND IN TIME TO SUPPORT BIDDING OF CONSTRUCTION, PER EXHIBIT L, "PROJECT SCHEDULE".

FINAL DESIGN SHALL NOT COMMENCE UNTIL ALL DOCUMENTS ARE PROVIDED TO OWNER FOR ALL NECESSARY PERMITTING.

10. Furnish **two [2]** review copies of the Schematic Design Phase documents, opinion of probable Construction Cost, and any other Schematic Design Phase deliverables to Owner within **thirty [30]** days of authorization to proceed with this phase, and review them with Owner. Within **ten [10]** days of receipt, Owner shall submit to Consultant any comments regarding the furnished items.
 11. Revise the Schematic Design Phase documents, opinion of probable Construction Cost, and any other Schematic Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner **two [2] copies** of the revised Schematic Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within **fifteen [15] days** after receipt of Owner's comments.
- B. Consultant's services under the Schematic Design Phase will be considered complete on the date when Consultant has delivered to Owner the revised Schematic Design Phase documents, revised opinion of probable Construction Cost, and any other Schematic Design Phase deliverables.
- A1.03 *Final Design Phase (100% complete & approvable for Regulatory/Funding Agency reviews)*
- A. After acceptance by Owner of the Schematic Design Phase documents, revised opinion of probable Construction Cost as determined in the Schematic Design Phase, and any other Schematic Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Consultant shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
 5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Consultant, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall

supersede any conflicting protocols previously established for transmittals between Owner and Consultant.

6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
9. Perform or provide the following other Final Design Phase tasks or deliverables: **PROVIDE A “FINAL APPROVABLE” SET OF PLANS & SPECS TO REGULATORY AND FUNDING AGENCIES IS SUCH TIME TO ALLOW FOR FORMAL REVIEW ACCEPTANCE PRIOR TO BIDDING CONSTRUCTION PROJECT.**

CONSULTANT WILL ACCOUNT FOR A MINIMUM OF SIX (6) WEEKS FOR REGULATORY / FUNDING AGENCIES TO REVIEW CONSTRUCTION DOCUMENTS IN THE PROJECT SCHEDULE.

10. Furnish for review by Owner, its legal counsel, and other advisors, **two [2] copies** of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within **forty-five [45] days** of authorization to proceed with the Final Design Phase, and review them with Owner. Within **fifteen [15] days** of receipt, Owner shall submit to Consultant any comments regarding the furnished items, and any instructions for revisions.
 11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit **two [2] final copies** of such documents to Owner within **twenty [20] days** after receipt of Owner’s comments and instructions.
- B. Consultant’s services under the Final Design Phase will be considered complete on the date when Consultant has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- C. In the event that the Work designed or specified by Consultant is to be performed or furnished under more than one prime contract, or if Consultant’s services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Consultant shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Consultant’s services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such

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services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

- D. The number of prime contracts for Work designed or specified by Consultant upon which the Consultant's compensation has been established under this Agreement is [1 - GENERAL CONTRACTOR]. If more prime contracts are awarded, Consultant shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase (incl. Program Compliant "Construction Documents")*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Consultant shall:
1. **Conduct a Pre-Bidding Conference and ensure all potential Bidders are cognizant of the Work that is to be Bid, and any special considerations, to include Funding Agency requirements.**
 2. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 3. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
 4. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 5. Consult with Owner as to the qualifications of prospective contractors.
 6. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 7. If the issued documents require, the Consultant shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of **Paragraph A2.02.A.2 of this Exhibit A.**
 8. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.

9. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and Consulting issues that arise during the negotiations.
10. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables:

ENSURE ALL CONSTRUCTION DOCUMENTS ARE COMPLIANT WITH FUNDING REQUIREMENTS, PER EXHIBIT M.

- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if **Exhibit F** is a part of this Agreement).

A1.05 *Construction Phase*

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Consultant shall:
 1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Consultant shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Consultants Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Consultant in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Consultant, then Owner shall compensate Consultant for any related increases in the cost to provide Construction Phase services. Consultant shall not be required to furnish or perform services contrary to Consultant's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Consultant, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 2. ~~*Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Consultant and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in **Exhibit D**. The furnishing of such RPR's services will not limit, extend, or modify Consultant's responsibilities or authority except as expressly set forth in **Exhibit D**.~~
 3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in **Exhibit B, Paragraph B2.01**.
 4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site. **CONSULTANT WILL BE EXPECTED TO CITE ALL FUNDING REQUIREMENTS THE PROJECT MUST BE COMPLIANT TO ENSURE CONTRATOR(S) HAVE ALL NECESSARY AGENCY PLAN & REPORT FORMS TO POPULATE, PER EXHIBIT N.**
 5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data,

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drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Consultant during the Construction Phase and Post-Construction Phase.

6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Consultant and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Consultant, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Consultant's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Consultant deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Consultant, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Consultant in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Consultant's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Consultant will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Consultant shall keep Owner informed of the progress of the Work.
 - b. The purpose of Consultant's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Consultant to better carry out the duties and responsibilities assigned to and undertaken by Consultant during the Construction Phase, and, in addition, by the exercise of Consultant's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Consultant shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the

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Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Consultant neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

10. *Defective Work:* Reject Work if, on the basis of Consultant's observations, Consultant believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Consultant has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Non-reviewable Matters:* If a submitted matter in question concerns the Consultant's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other Consulting or technical matters, then Consultant will promptly give written notice to Owner and Contractor that Consultant will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Consultant may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the

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completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Consultant shall meet any Contractor's submittal schedule that Consultant has accepted.

18. *Substitutes and "Or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of **Paragraph A2.02.A.2 of this Exhibit A**.
19. *Inspections and Tests*:
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Consultant's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Consultant shall be entitled to rely on the results of such inspections and tests.
 - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims*: (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within **ten (10) days** after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part **such that the Owner can pay the Contractor within a thirty (30) day term from acceptance by Town Board**. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other Consulting or technical matters, then Consultant will notify the parties that the Consultant will not resolve the Change Proposal. (b) Provide information or data to Owner regarding Consulting or technical matters pertaining to Claims.
21. *Applications for Payment*: Based on Consultant's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Consultant recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Consultant's representation to Owner, based on such observations and review, that, to the best of Consultant's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction

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Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Consultant's responsibility to observe the Work. In the case of unit price Work, Consultant's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents). **Further, the Consultant will review Contractor Submittals for any funding agency plans or reports that are due on monthly/quarterly deliverables for compliance and acceptability, so ensure that all project costs are funding agency compliant.**

- b. By recommending payment, Consultant shall not thereby be deemed to have represented that observations made by Consultant to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Consultant in this Agreement. Neither Consultant's review of Contractor's Work for the purposes of recommending payments nor Consultant's recommendation of any payment including final payment will impose on Consultant responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Consultant to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; ~~to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances;~~ or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, **Record Drawings**, Samples, and other data approved as provided under **Paragraph A1.05.A.17**. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Consultant's review of record documents shall be to check that Contractor has submitted all pages. **Consultant shall ensure that all Project Closeout documents listed in Exhibit P, "Project Closeout Checklist", are secured prior to issuing the "Notice of Acceptability of Work". Provided in Exhibit E.**
23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining Consulting or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.

24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables: **ENSURE ALL DELIVERABLES THROUGH CONSTRUCTION ADMINISTRATION ARE COMPLIANT AND IN ACCORDANCE WITH FUNDING PROGRAM REQUIREMENTS, LISTED IN EXHIBIT M.**
25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Consultant may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Consultant shall also provide a notice to Owner and Contractor in the form attached hereto as **Exhibit E (“Notice of Acceptability of Work”)** that the Work is acceptable (subject to the provisions of the Notice and **Paragraph A1.05.A.21.b**) to the best of Consultant’s knowledge, information, and belief, and based on the extent of the services provided by Consultant under this Agreement.
26. *Standards for Certain Construction-Phase Decisions:* Consultant will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Consultant will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Consultant for final payment to Contractors. If the Project involves more than one prime contract as indicated in **Paragraph A1.03.D**, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of **Article 3**, Consultant shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Consultant shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with Owner, visit the Project within one month before the end of the Construction Contract’s correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
 3. Perform or provide the following other Post-Construction Phase tasks or deliverables:

ENSURE ALL NECESSARY DOCUMENTS ADDRESS FUNDING AGENCY REQUIREMENTS AS DEFINED IN EXHIBIT M.

- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Consultant shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in **Exhibit C**.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for ~~private or governmental grants, loans, or advances in connection with the Project;~~ preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, ~~or to verify the accuracy of drawings or other information furnished by Owner or others.~~
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Consultant, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Consultant's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in **Paragraph A1.01.A.1 and 2**.
 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Consultant.
 - ~~6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.~~

NOTE: A PRIMARY DELIVERABLE OF THIS CONTRACT IS TO PROVIDE OWNER AN ELECTRONIC SET OF PROJECT DESIGN DATA TO INCLUDE ANY MAPS, DESIGNS, SPECIFICATIONS, ETC. USED IN CONJUNCTION WITH ESTABLISHING CONSTRUCTION DOCUMENTS. OWNER WILL ESTABLISH THE FILE TYPE PREFERABLE; THIS ACTIVITY IS NOT SUBJECT TO INTERPRETATION AS AN "ADDITIONAL SERVICE".

7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - ~~b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the Consulting and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;~~
 - e. preparation of appraisals;
 - ~~d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;~~
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - ~~f. audits or inventories required in connection with construction performed or furnished by Owner.~~

NOTE: AS A PART OF THE CONSTRUCTION PHASE ADMINISTRATION SERVICES, THE CONSULTANT IS EXPECTED TO PROVIDE ANALYSIS OF THE CONTRACTOR'S MATERIALS AND QUANTITIES USAGE TO SUPPORT EACH PAYMENT APPLICATION REMITTED EACH MONTH AND NOT SUBJECT TO INTERPRETATION AS AN "ADDITIONAL SERVICE".

8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in **Exhibit B**, when Owner retains Consultant to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in **Paragraph A1.03. D**.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor and administering Owner's contract for such services.
11. Services during out-of-town travel required of Consultant, ***other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A)***.
- ~~12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value Consulting, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.~~

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13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by **Paragraph 5.02.A and Exhibit F**.
15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
- ~~17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.~~

NOTE: CONSULTANT SHALL CITE IN CONSTRUCTION DOCUMENTS THAT THE CONTRACTOR IS RESPONSIBLE TO PROVIDE RECORD DRAWINGS, AND CONSULTANT SHALL REVIEW FOR ACCURACY AND APPLY ANY NECESSARY MARKUPS, AS REQUIRED AS A NORMAL CONSTRUCTION PHASE SERVICES ACTIVITY, NOT SUBJECT TO INTERPRETATION AS "ADDITIONAL SERVICES".

- ~~18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.~~
- ~~19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.~~
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under **Paragraph A1.05.A.8**; any type of property surveys or related

Exhibit A – Consultant's Services

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Consultant services needed for the transfer of interests in real property; and providing other special field surveys.

27. Providing more extensive services required to enable Consultant to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Consultant not otherwise provided for in this Agreement.

A2.02 *Additional Services Not Requiring Owner's Written Authorization*

A. Consultant shall advise Owner that Consultant is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Consultant need not request or obtain specific advance written authorization from Owner. Consultant shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
- ~~2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.~~

NOTE: CONSULTANT SHALL COMMUNICATE TO OWNER ANY CHANGES TO THE PLANS & SPECIFICATIONS THAT RESULT IN PRODUCT CHANGES THAT DO NOT MEET THE EXISTING CONFIGURATION MANAGEMENT OR PRODUCT STANDARDS, PER THE ORIGINATING RFP, APPENDIX J.

3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.

Exhibit A – Consultant's Services

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7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Consultant and its staff with those terms of Owner's or Contractor's safety program provided to Consultant subsequent to the Effective Date that exceed those normally required of Consulting personnel by federal, State, or local safety authorities for similar construction sites.

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This is **EXHIBIT B**, consisting of **3** pages, referred to in and part of the **Agreement between Owner and Consultant for Professional Services** dated [REDACTED].

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Consultant with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Consultant regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Consultant to use copies already in Consultant's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Consultant to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other Consulting or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Consultant any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Consultant's assessment of initially-available Project information and data and upon Consultant's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Consultant to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.
 3. Utility and topographic mapping and surveys.

4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform services under the Agreement.
- F. Recognizing and acknowledging that Consultant's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Consultant reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- ~~G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Consultant with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.~~

NOTE: THE CONSULTANT SHALL PROVIDE AND/OR PROCURE AND NECESSARY TESTING THAT NEEDS TO OCCUR IN ORDER TO PRODUCE CONSTRUCTION DOCUMENTS. THE CONSULTANT SHALL CITE IN CONSTRUCTION DOCUMENTS THE REQUISITE CONSTRUCTION PERMITTING, AND THAT THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY CONSTRUCTION PHASE TESTING THAT IS NECESSARY.

- ~~H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Consultant and such reviews,~~

~~approvals, and consents from others as may be necessary for completion of each phase of the Project.~~

NOTE: THE CONSULTANT IS RESPONSIBLE TO WORK WITH OWNER RESOURCES TO SECURE ALL NECESSARY PERMITTING AND ENVIRONMENTAL APPROVALS FOR THE PROJECT. SUCH RESOURCES MAY BE THIRD PARTY GOVERNMENT AGENCIES.

- I. Advise Consultant of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value Consulting, and constructibility review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Consultant to represent Owner at the Site, define and set forth as an attachment to this **Exhibit B** the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Consultant.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Consultant, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Consultant as an attachment to this **Exhibit B** that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Consultant in writing of any specific requirements of safety or security programs that are applicable to Consultant, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Consultant (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Consultant regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in **Exhibit A**.
- O. Advise Consultant as to whether Consultant's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Consultant data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Consultant may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.

- S. Authorize Consultant to provide Additional Services as set forth in **Part 2 of Exhibit A** of the Agreement, as required.
- T. Perform or provide the following:

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This is **EXHIBIT C**, consisting of **2** pages, referred to in and part of the Agreement between Owner and Consultant for Professional Services dated [REDACTED].

Payments to Consultant for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment

A. Owner shall pay Consultant for Basic Services set forth in **Exhibit A**, *except for services of Consultant’s Resident Project Representative*, if any, as follows:

1. A Lump Sum amount of \$[REDACTED] based on the following estimated distribution of compensation:

- a. **General Requirements** \$[REDACTED]
- b. **Schematic Design Phase** \$[REDACTED]
- c. **Final Design Phase** \$[REDACTED]
- d. **Bidding and Negotiating Phase** \$[REDACTED]
- e. **Construction Phase** \$[REDACTED]

2. Consultant may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.

3. The Lump Sum includes compensation for Consultant’s services and services of Consultant’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.

4. In addition to the Lump Sum, Consultant is also entitled to reimbursement from Owner for the following **Reimbursable Expenses (see Appendix 1 for rates or charges)**: [REDACTED]

- a. **PRINTING:** \$_____
- b. **POSTAGE:** \$_____
- c. **PRODUCTION:** \$_____

5. The portion of the Lump Sum amount billed for Consultant's services will be based upon Consultant's estimate of the percentage of the total services actually completed during the billing period. If any Reimbursable Expenses are expressly allowed, Consultant may also bill for any such Reimbursable Expenses incurred during the billing period.
- B. *Period of Service:* The compensation amount stipulated in **Compensation Packet BC-1** is conditioned on a period of service **not exceeding June 30, 2020**. If such period of service is extended, the compensation amount for Consultant's services shall be appropriately adjusted.

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**COMPENSATION PACKET RPR-2:
Resident Project Representative—Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

~~C2.04—Compensation for Resident Project Representative Basic Services—Standard Hourly Rates
Method of Payment~~

~~A.—Owner shall pay Consultant for Resident Project Representative Basic Services as follows:~~

- ~~1.—Resident Project Representative Services:—For services of Consultant's Resident Project Representative under **Paragraph A1.05.A of Exhibit A**, an amount equal to the cumulative hours charged to the Project by each class of Consultant's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Consultant's Subconsultant's charges, if any. The total compensation under this paragraph is estimated to be \$[TBA] based upon full time RPR services on an eight hour workday, Monday through Friday, over an approximate **one hundred twenty (120) day** construction schedule.~~

~~B.—Compensation for Reimbursable Expenses:~~

- ~~1.—For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under **Paragraph C2.01**, and are directly related to the provision of Resident Project Representative or Post Construction Basic Services, Owner shall pay Consultant at the rates set forth in **Appendix 1 to this Exhibit C**.~~
- ~~2.—Reimbursable Expenses include the expenses identified in **Appendix 1** and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding related or other procurement documents, Construction Contract Documents, and similar Project related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.~~
- ~~3.—The amounts payable to Consultant for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Consultant, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of **1.1**, **AND LIMITED TO THE DELIVERABLES LISTED IN PARAGRAPH C2.01 OF EXHIBIT C**.~~
- ~~4.—The Reimbursable Expenses Schedule will be adjusted annually (**as of January 1st, 2019**) to reflect equitable changes in the compensation payable to Consultant.~~

~~C.—Other Provisions Concerning Payment Under this **Paragraph C2.04**:~~

- ~~1.—Whenever Consultant is entitled to compensation for the charges of Consultant's Consultants, those charges shall be the amounts billed by Consultant's Consultants to Consultant times a factor of **1.1**, **AND LIMITED TO THE DELIVERABLES LISTED IN PARAGRAPH C2.01 OF EXHIBIT C**.~~

Exhibit C – Compensation Packet RPR-2: Resident Project Representative Services—
Standard Hourly Rates Method of Payment.

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- ~~2. *Factors:* The external Reimbursable Expenses and Consultant's Subconsultant's factors include Consultant's overhead and profit associated with Consultant's responsibility for the administration of such services and costs.~~
- ~~3. *Estimated Compensation Amounts:*~~
- ~~a. Consultant's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Consultant under the Agreement.~~
 - ~~b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Consultant that the total compensation amount thus estimated will be exceeded, Consultant shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Consultant's services for Owner's convenience. Upon notice Owner and Consultant promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Consultant's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Consultant, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Consultant's services during negotiations and Consultant exceeds the estimated amount before Owner and Consultant have agreed to an increase in the compensation due Consultant or a reduction in the remaining services, then Consultant shall be paid for all services rendered hereunder.~~
- ~~4. To the extent necessary to verify Consultant's charges and upon Owner's timely request, Consultant shall make copies of such records available to Owner at cost.~~

**COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Consultant for Additional Services, if any, as follows:

1. *General:* For services of Consultant's personnel engaged directly on the Project pursuant to **Paragraph A2.01 or A2.02 of Exhibit A**, except for services as a consultant or witness under **Paragraph A2.01.A.20**, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Consultant's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Consultant's subconsultant's charges, if any.

B. *Compensation For Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under **Paragraph C2.01** and are directly related to the provision of Additional Services, Owner shall pay Consultant at the rates set forth in **Appendix 1 to this Exhibit C**.
2. Reimbursable Expenses include the expenses identified in **Appendix 1** and the following categories: transportation (including mileage), ~~lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges;~~ reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Consultant for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Consultant, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of **ONE POINT ONE [1.1], AND LIMITED TO THE DELIVERABLES LISTED IN PARAGRAPH C2.01 OF EXHIBIT C**.
4. The Reimbursable Expenses Schedule will be adjusted annually (**as of January 1st, 2019**) to reflect equitable changes in the compensation payable to Consultant.

C. *Other Provisions Concerning Payment for Additional Services:*

1. Whenever Consultant is entitled to compensation for the charges of Consultant's Consultants, those charges shall be the amounts billed by Consultant's Consultants to Consultant times a factor of **ONE POINT ONE [1.1], AND LIMITED TO THE DELIVERABLES LISTED IN PARAGRAPH C2.01 OF EXHIBIT C**.

Exhibit C – Compensation Packet AS-1: Additional Services –
Standard Hourly Rates Method of Payment.

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2. *Factors:* The external Reimbursable Expenses and Consultant's Subconsultant's Factors include Consultant's overhead and profit associated with Consultant's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Consultant's charges and upon Owner's timely request, Consultant shall make copies of such records available to Owner at cost.

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This is **Appendix 1 to EXHIBIT C**, consisting of **1** pages, referred to in and part of the **Agreement between Owner and Consultant for Professional Services** dated [REDACTED].

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per **Exhibit C**. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

(AS REFERENCED IN "GENERAL CONDITIONS" AND "BIDDING SERVICES")

BLACK AND WHITE PRODUCTION:	
8"x11" Prints/Copies	\$ TBA /page
11"x17" Prints/Copies	\$ TBA /page
24"X36" Prints/Copies	\$ TBA /page
Larger than 24"x36"	\$ TBA /page
COLOR PRODUCTION	
8"x11" Prints/Copies	\$ TBA /page
11"x17" Prints/Copies	\$ TBA /page
24"X36" Prints/Copies	\$ TBA /page
Larger than 24"x36"	\$ TBA /page
MISCELLANEOUS	
Subconsultant Fees	Cost + 10%
Postage	Cost
Mileage (auto)	\$ [REDACTED]/mile <i>(per current GSA Rates)</i>

This is **Appendix 2 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Consultant for Professional Services** dated [REDACTED].

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this **Appendix 2 to this Exhibit C** and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in **Article C2**.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

Billing Class VIII	\$[REDACTED]/hour
Billing Class VII	[REDACTED]/hour
Billing Class VI	[REDACTED]/hour
Billing Class V	[REDACTED]/hour
Billing Class IV	[REDACTED]/hour
Billing Class III	[REDACTED]/hour
Billing Class II	[REDACTED]/hour
Billing Class I	[REDACTED]/hour
Non-administrative Support Staff	[REDACTED]/hour

This is ~~EXHIBIT D~~, consisting of ~~5~~ pages, referred to in and part of the ~~Agreement between Owner and Consultant for Professional Services~~ dated []

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

~~ARTICLE 1 – SERVICES OF CONSULTANT~~

~~D1.01 – Resident Project Representative~~

- ~~A. UPON NOTIFICATION OF THIS SERVICE TO BE ADDED, NOT LATER THAN THE TIME OF BIDDING, Consultant shall furnish a Resident Project Representative (“RPR”) to assist Consultant in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Consultant’s representative at the Site, will act as directed by and under the supervision of Consultant, and will confer with Consultant regarding RPR’s actions.~~
- ~~B. Through RPR’s observations of the Work, including field checks of materials and installed equipment, Consultant shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Consultant shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Consultant (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor’s work in progress, for the coordination of the Constructors’ work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Consultant (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in **Exhibit A, Paragraph A1.05**, of this Agreement are applicable.~~
- ~~C. The duties and responsibilities of the RPR are as follows:~~
- ~~1. *General:* RPR’s dealings in matters pertaining to the Work in general shall be with Consultant and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Consultant.~~
 - ~~2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Consultant concerning acceptability of such schedules.~~
 - ~~3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project related meetings (but not including Contractor’s safety meetings), and as appropriate prepare and circulate copies of minutes thereof.~~

Exhibit D - Resident Project Representative.

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4.—*Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

5.—*Liaison:*

a.— Serve as Consultant's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.

b.— Assist Consultant in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-site operations.

c.— Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

6.—*Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Consultant regarding such RFIs. Report to Consultant when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Consultant's clarifications, interpretations, and decisions to Contractor. ,

7.—*Shop Drawings and Samples:*

a.— Record date of receipt of Samples and Contractor approved Shop Drawings.

b.— Receive Samples that are furnished at the Site by Contractor and notify Consultant of availability of Samples for examination.

c.— Advise Consultant and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor or has not been approved by Contractor or Consultant.

8.—*Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Consultant. Transmit Consultant's response (if any) to such suggestions to Contractor.

9.—*Review of Work; Defective Work:*

a.— Report to Consultant whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.

b.— Inform Consultant of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless

~~not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Consultant for addressing such Work; and~~

- ~~c. Advise Consultant of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.~~

~~10. *Inspections, Tests, and System Start-ups:*~~

- ~~a. Consult with Consultant in advance of scheduled inspections, tests, and systems start-ups.~~
- ~~b. Verify that tests, equipment, and systems start ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.~~
- ~~c. Observe, record, and report to Consultant appropriate details relative to the test procedures and systems start-ups.~~
- ~~d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.~~
- ~~e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Consultant.~~

~~11. *Records:*~~

- ~~a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Consultant's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project related documents.~~
- ~~b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Consultant.~~
- ~~c. Upon request from Owner to Consultant, photograph or video Work in progress or Site conditions.~~
- ~~d. Record and maintain accurate, up to date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.~~
- ~~e. Maintain records for use in preparing Project documentation.~~

f. ~~Upon completion of the Work, furnish original set of all RPR Project documentation to Consultant.~~

~~12. Reports:~~

- a. ~~Furnish to Consultant periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.~~
- b. ~~Draft and recommend to Consultant proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.~~
- c. ~~Furnish to Consultant and Owner copies of all inspection, test, and system start up reports.~~
- d. ~~Immediately inform Consultant of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.~~

~~13. Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Consultant, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.~~

~~14. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Consultant for review and forwarding to Owner prior to payment for that part of the Work.~~

~~15. Completion:~~

- a. ~~Participate in Consultant's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.~~
- b. ~~Participate in Consultant's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.~~
- c. ~~Observe whether all items on the final punch list have been completed or corrected and make recommendations to Consultant concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).~~

~~D. Resident Project Representative shall not:~~

- 1. ~~Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or equal" items).~~

Exhibit D - Resident Project Representative.

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- ~~2. Exceed limitations of Consultant's authority as set forth in this Agreement.~~
- ~~3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.~~
- ~~4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.~~
- ~~5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.~~
- ~~6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Consultant.~~
- ~~7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.~~
- ~~8. Authorize Owner to occupy the Project in whole or in part.~~

DRAFT

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Consultant for Professional Services** dated [REDACTED].



NOTICE OF ACCEPTABILITY OF WORK

PROJECT: WILLSBORO VETERANS MONUMENT RECONSTRUCTION

OWNER: TOWN OF WILLSBORO, NY

CONTRACTOR: TBA

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION: TBA

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT: TBA

CONSULTANT:

NOTICE DATE:

To:

Owner

And To:

Contractor

From:

Consultant

The Consultant hereby gives notice to the above Owner and Contractor that Consultant has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Consultant for Professional Services dated _____, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work (“Notice”) is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the Consulting profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Consultant’s professional opinion.
3. This Notice is given as to the best of Consultant’s knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Consultant has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor’s work) under Consultant’s Agreement with Owner, and applies only to facts that are within Consultant’s knowledge or could reasonably have been ascertained by Consultant as a result of carrying out the responsibilities specifically assigned to Consultant under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor’s performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner’s reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

This is ~~EXHIBIT F~~, consisting of ~~1~~ pages, referred to in and part of the Agreement between Owner and Consultant for Professional Services dated [] .

Construction Cost Limit

Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

~~F5.02 — Designing to Construction Cost Limit~~

- ~~A. — Owner and Consultant hereby agree to a Construction Cost limit in the amount of \$[] .~~
- ~~B. — A bidding or negotiating contingency of [] percent will be added to any Construction Cost limit established.~~
- ~~C. — The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.~~
- ~~D. — Consultant will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Consultant may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound Consulting practices, to bring the Project within the Construction Cost limit.~~
- ~~E. — If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Consultant. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.~~
- ~~F. — If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound Consulting practices. In the case of (3), Consultant shall modify the Construction Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. Owner shall pay Consultant's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Consultant on account of such services. The providing of such services will be the limit of Consultant's responsibility in this regard and, having done so, Consultant shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.~~

Exhibit F – Construction Cost Limit.

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This is **EXHIBIT G**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Consultant for Professional Services** dated [REDACTED].

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 *Insurance*

A. The limits of liability for the insurance required by **Paragraph 6.05.A and 6.05.B** of the Agreement are as follows:

1. By Consultant:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
 - 1) Bodily injury, each accident: \$100,000.00
 - 2) Bodily injury by disease, each employee: \$50,000.00
 - 3) Bodily injury/disease, aggregate: \$100,000.00
- c. General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000.00
 - 2) General Aggregate: \$2,000,000.00
- d. Excess or Umbrella Liability --
 - 1) Per Occurrence: \$1,000,000.00
 - 2) General Aggregate: \$1,000,000.00

Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): \$1,000,000.00
- e. Professional Liability --
 - 1) Each Claim Made \$1,000,000.00
 - 2) Annual Aggregate \$2,000,000.00
- f. Other (specify): \$[REDACTED]

2. **By Owner:**

a. Workers' Compensation:	Statutory
b. Employer's Liability --	
1) Bodily injury, Each Accident	\$100,000.00
2) Bodily injury by Disease, Each Employee	\$500,000.00
3) Bodily injury/Disease, Aggregate	\$100,000.00
c. General Liability --	
1) General Aggregate:	\$2,000,000.00
2) Each Occurrence (Bodily Injury and Property Damage):	\$1,000,000.00
d. Excess Umbrella Liability	
1) Per Occurrence:	\$1,000,000.00
2) General Aggregate:	\$1,000,000.00
Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):	\$1,000,000.00
e. Other (specify):	[\$]

B. *Additional Insureds:*

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:

a. [redacted]

Consultant

b. [redacted]

Consultant's Consultant

c. [redacted]

Consultant's Consultant

d. [redacted]

[other]

2. During the term of this Agreement the Consultant shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.

3. The Owner shall be listed on Consultant's general liability policy as provided in **Paragraph 6.05.A.**

This is **EXHIBIT H**, consisting of **2** pages, referred to in and part of the **Agreement between Owner and Consultant for Professional Services** dated [] .

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

[NOTE TO USER: Select one of the two alternatives provided.]

~~H6.08—Dispute Resolution~~

~~A. *Mediation:* Owner and Consultant agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by [here insert name of mediator, or mediation service]. Owner and Consultant agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.~~

~~{or}~~

~~A. *Arbitration:* All Disputes between Owner and Consultant shall be settled by arbitration in accordance with the [insert the name of a specified arbitration service or organization here] rules effective at the Effective Date, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Paragraph H6.09.A will be specifically enforceable under prevailing law of any court having jurisdiction.~~

~~1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the [specified arbitration service or organization]. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.~~

~~2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$[] (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$[] (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$[] (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.~~

~~3. The rules of any arbitration shall be supplemented to include the following: The award rendered by the arbitrators shall be in writing, and shall include (a) a precise breakdown of the award, and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.~~

Exhibit H - Dispute Resolution.

- ~~4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.~~
- ~~5. If a Dispute in question between Owner and Consultant involves the work of a Contractor, Subcontractor, or consultants to the Owner or Consultant (each a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Consultant may join such Joinable Party as a party to the arbitration between Owner and Consultant hereunder. Nothing in this Paragraph H6.09.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Consultant that does not otherwise exist.~~

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This is **EXHIBIT I**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Consultant for Professional Services** dated [].

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. ~~Limitation of Consultant's Liability~~

- ~~1. *Consultant's Liability Limited to Stated Amount, or Amount of Consultant's Compensation:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all injuries, claims, losses, expenses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project, Consultant's or its Consultants' services, or this Agreement, from any cause or causes whatsoever, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Consultant or Consultant's officers, directors, members, partners, agents, employees, or Consultants, shall not exceed the total amount of \$[] or the total compensation received by Consultant under this Agreement, whichever is greater. Higher limits are available for an additional fee.~~

- ~~2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Consultant and Consultant's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, including but not limited to:~~

~~**[NOTE TO USER: List here particular types of damages that may be of special concern because of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc.]**~~

- ~~B. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Consultant and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of Consultants, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or~~

Exhibit I - Limitations on Liability.

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~~destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.~~

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Exhibit I - Limitations on Liability.

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This is **EXHIBIT J**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Consultant for Professional Services** dated [].

Special Provisions

Paragraph(s) A. 1.03 of the Agreement is/are amended to include the following agreement(s) of the parties:

NONE

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This is **EXHIBIT K**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Consultant for Professional Services** dated [].

AMENDMENT TO OWNER-CONSULTANT AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Consultant Agreement:

Owner: **TOWN OF WILLSBORO, NY**

Consultant:

Project: **WILLSBORO VETERANS MONUMENT RECONSTRUCTION**

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- ___ Additional Services to be performed by Consultant
- ___ Modifications to services of Consultant
- ___ Modifications to responsibilities of Owner
- ___ Modifications of payment to Consultant
- ___ Modifications to time(s) for rendering services
- ___ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in **Exhibit C**.

Owner and Consultant hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER: TOWN OF WILLSBORO, NY

CONSULTANT: (TBA)

By: _____

By: _____

Print name: HON. SHAUN GILLILAND

Print name: _____

Title: TOWN SUPERVISOR

Title: _____

Date Signed: _____

Date Signed: _____

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