

REQUEST FOR PROPOSALS

NOTICE IS HEREBY GIVEN; that the Undersigned, on behalf of the Town Board of Essex, will accept sealed proposals at the Town of Essex until 4:00 P.M. on February 10, 2017 for Engineering Services.

Specifications are available by contacting the Town of Essex, 2313 Main Street, Essex, NY or by calling 518-963-4287. Specifications are also available on the website at the Essex County website: www.co.essex.ny.us.

All proposals submitted in response to this notice shall be marked "SEALED PROPOSAL – ESSEX WATER PROJECT ENGINEERING SERVICES" clearly on the outside of the envelope.

Dated: January 12, 2017

Edward J. Gardner, Supervisor

Town of Essex

A. General Information

The Town of Essex is requesting proposals from qualified Architectural and/or Engineering consultants to complete the design, permitting and construction drawings including any requisite tests & surveys for the work for an Upgrade to the Water Filtration System.

Funding for this project is through the NYS Environmental Facilities Corporation.

Proposal submissions must be received no later than 4:00 P.M. on February 10, 2017 and should be submitted to:

Ed Gardner, Supervisor
2313 Main Street, P.O. Box 355
Essex, NY 12936

Two (2) hard copies and one (1) CD or USB copy of each proposal must be received in a sealed package with the designation "SEALED PROPOSAL – ESSEX WATER PROJECT ENGINEERING SERVICES" conspicuously marked on the outer envelope. All proposals will be opened and logged in on the above stated date and time. All proposals submitted will be a matter of public record.

During the evaluation process, the Town reserves the right, where it may serve the Town's best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions.

The Town of Essex will not be liable for any costs incurred by firms associated with the development or delivery of proposals.

A Pre-bid conference will be held on January 27, 2017 at the Town Hall in Essex at 10:00 AM.

The Proposal will be evaluated based on the criteria stated in Evaluation Criteria of RFP Guidelines and Requirements.

The Town of Essex reserves the right to reject any or all proposals or portions thereof to accept a proposal or portion thereof and to waive any informality. Potential proposers are strongly encouraged to inspect the project site and review preliminary engineering documents.

B. Term of Engagement

Project completion December 31, 2017.

C. Project Description

The Town of Essex, NY is seeking requests for proposals to upgrade the water filtration and treatment systems. Presently the water is drawn from Lake Champlain with two pumps and then it is filtered through two DE filters. The water is then chlorinated, passed through our chlorine contact tank has zinc orthophosphate added and is pumped into our distribution system and storage tank.

The Town has drilled two wells that will handle our needs for most of the year but will need to blend in lake water during our peak season and for unusual situations and emergency backup. All systems must meet DOH, DEC and the Environmental Protection Agency standards. The system services approximately 177 users.

The area where the filter plant is located is part of a National Register Historic District and all work must blend in and not greatly change to appearance of the site which is also a lake front park. In addition, since the site is within a National Register Historic District and designated Parkland, park-related amenities, such as restrooms, drinking fountain, and possibly other amenities are likely to be required to satisfy Parks and Recreation (SHPO) requirements. We plan on adding a seasonal bathroom with a grinder pump to pump those wastes and the wastes from the water treatment system up to a sewer collection line near the park. A manhole will be required where the piping joins. All work must be approved by the Town Board as well as any permitting agencies, including SHPO and any other agencies that chose to be involved during the SEQRA review.

D. Scope of Work to be performed

All Engineering Services and Deliverables will be developed in conformity with 10 State Standards and approved by NYSDOH, NYS EFC, USEPA and others as required.

Comply with State, Federal, and Local Regulations, including Clean Water Act, Seqra, NEPA EPA, Freshwater Wetlands, Town of Essex, DOT, DOH, Army Corps, Davis Bacon Labor Standards, Conflict of interests, EEO, M/WBE, etc.

The work involves participation in meetings as requested by the Town of Essex, including Public Water Committees, Pre-Bid, Pre-Construction, and Job Meetings.
Conduct as necessary all survey and subsurface boring requirements.

The Town desires the firm to provide the following:

Schematic design phase:

- 1st schematic design meeting – Meet with Town representatives to discuss current selected alternative, additional concepts or additional features and code requirements. Prepare Pre-Schematic Drawings, Preliminary Design Conceptual Renderings and cost estimates, including options for the preferred alternative described in the project description. This includes any map areas of disturbance and cost estimated to determine proper alternatives and refinement of the project scope within budget limitations.

Obtain consensus on preliminary design option with Town Board and jurisdictional agencies (DOH, SHPO, etc.)

Construction Documents / permitting phase:

- Complete construction documents and specifications for:
 - Site Survey
 - Civil/Site Work
 - Structural
 - Architectural
 - Plumbing
 - HVAC
 - Electrical
 - Water Treatment
- As necessary to obtain permits from all regulatory agencies having jurisdiction.
- Architect / Engineer should include all meetings as necessary with Town of Essex representatives to complete this phase.
- Prepare required technical documents for permitting and environmental clearances, including any subsurface archaeological assessments required by OPRHP.

Bid Phase:

- The Town will bid the project.
- The Town will accept the drawings and specifications in electronic format for bidding.
- Architect / engineer to attend a pre-bid meeting.
- Architect / Engineer to answer bidder questions and to prepare addendums as necessary to answers to bidder questions

Construction Phase:

- Architect / Engineer to review / approve contractor product submittals.
- Construction Management.
- Architect / Engineer to attend preconstruction meeting.
- Architect / Engineer to provide quality control / quality assurance inspections during construction phase.
- Architect / Engineer to complete punch list inspection including preparation of a punch list for each contractor.
- Construction Surveying
- Materials testing for Project Construction.
- Provide As-Built Drawings to the Town in Electronic Format.

TIME REQUIREMENTS

A. Calendar

The following is a list of key dates for this project:

Request for Proposals issued: January 12, 2017

Due date for Proposals: February 10, 2017

B. Notification and Contract Dates

Selection firm notified: _____, 2017

Contract Date: _____, 2017

C. Project Completion Dates

Schematic Design Phase Portion: Due within 30 days of execution of contract

Construction Document Phase: Due within 45 days of completion of Schematic Design Phase

Project to Go Out to Bid: _____, 2017

PROPOSAL REQUIREMENTS

A. General Requirements

1. Inquiries – Inquiries concerning the request for proposals and the subject of the request for proposals must be made in writing to:

Edward Gardner
2313 Main Street, P.O. Box 355
Essex, NY 12936

By fax to (518)963-4288 or by e-mail at the following address: ed4essex1@gmail.com

2. Time and Acceptance – Each proposal must state that it is a firm proposal that may be accepted within a period of sixty (60) days. Although the contract is expected to be awarded prior to that time, the sixty (60) day period is requested in order to allow for unforeseen delay.
3. Safeguarding of "Confidential" Information – Any trade secrets or other data which the proposer does not wish disclosed to other than Town personnel involved in the evaluation or contract administration will be kept confidential if identified as follows: Each page shall be identified in boldface at the top and bottom as "Confidential"; and any section of the proposal, which is to remain confidential, should, in addition, be so marked in boldface on the title page of that section. Net cost information may not be deemed confidential.
4. Cost for proposal preparation – Any costs incurred by a proposer in preparing or submitting proposals are the proposer's sole responsibility. The Town will not reimburse any proposer for any costs incurred prior to award.
5. Declination to Submit Proposal – Any organization which receives a copy of this RFP but which declines to submit a proposal is requested to notify the Town by phone or in writing of such declination.
6. Exceptions – Any exceptions to terms, conditions, or other requirements in any part of the RFP must be clearly pointed out in a distinct section of the appropriate costs proposal or technical proposal. Otherwise, the Town will consider that all items proposed are in strict compliance with the RFP, and the successful proposer will be responsible for compliance.
7. Advertising – In submitting its proposal, the proposer agrees not to use the results there from as a part of any news release or commercial advertising without writing approval of the Town.
8. Confidentiality of Proposals – In submitting a proposal, the proposer agrees not to discuss or otherwise reveal his technical or cost information to any other sources,

government or private, until after the award of the contract. Proposers not in compliance with this provision may be disqualified, at the option of the Town from contract award. Only discussions authorized by the Town are exempt from this provision.

9. Right to Submitted Materials – All responses, inquires, or correspondence relating to or in reference to this RFP, and all other reports, charts, display, schedules, exhibits and other documentation submitted by the proposers, will become the property of the Town when received.
10. Legal Compliance – Under penalty of perjury, the signed of any proposal submitted in response to this RFP thereby certifies that this proposal has not been arrived at collusively nor otherwise in violation of any Federal or State laws, rules or regulations.
11. Proposer's Representatives – Proposers shall submit the name, address, and telephone number of the person(s) with the authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.
12. Submission of Proposals - The following material is required to be received by February 10, 2017 for a proposing firm to be considered:
 - a. Four (4) copies (Four hard copies) of the "Technical" proposal to include the following:
 - (i) Title Page – Title page showing the request for proposals subject; the firm's name; the name, address, and telephone number of the contract person; and the date of the proposal.
 - (ii) Table of Contents
 - (iii) Transmittal Letter – A signed letter of transmittal briefly stating the proposer's understanding of the work to be done, the commitment to perform the work within the time period, a statement why the firm believes itself to be best qualified to perform the services, and a statement that the proposal is a firm and irrevocable offer.
 - (iv) Detailed Proposal – The detailed proposal should follow the order set forth in Section B (Technical Proposal) of this request for proposals.
 - b. The proposer should send four (4) copies of its "Cost" proposal as described below.
 - c. Proposers should send the completed "Technical" and "Cost" proposals under separate cover to the above address.

B. Technical Proposal

1. General Requirements – The purpose of the proposal is to demonstrate the qualifications, competence and capacity of the proposers in conformity with the requirements of this request for proposals. 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 company. It should also specify a project approach that will meet the request for proposal 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 subjects, item Nos. 2 through 5, must be included. They represent the criteria against which the proposal will be evaluated.

2. Company Overview & Qualifications – Proposer must have extensive experience in engineering services. The Vendor must provide a brief, general background description of the organization. An affirmative statement should be included that the firm and all assigned key professional staff are properly licensed to practice in New York State.
3. Project Team Staffing – Include biographies and relevant experience of key staff and management personnel. List the personnel who would work on this project along with their qualifications and relevant experience. Include the name, address, telephone number, facsimile number, e-mail and primary contact person. If a joint venture or consultant team is proposed, state this information for each of the participating firms and each firm's responsibility for the completion of work. Describe how the team will work together in the preparation of the deliverables.
4. Prior Projects with the Town of Essex - List separately all project within the last three (3) years, for the Town by type of project. Indicate the scope of work, date, and the name and telephone number of the principal client contact.
5. Similar Projects With Other Entities – List the most significant projects (minimum – 3) performed in the last five (5) years that are similar to the project described in this request for proposal. Indicate the scope of the project, date, and the name and telephone number of the principal client contact.
6. References – The Proposer shall provide three references (names, physical and e-mail addresses, telephone numbers and contact persons) for comparable work by your firm and by the team members (sub-consultants) Provide a brief description and magnitude of the services provided for each reference.
7. Brief Narrative describing the approach to the Scope of Services – Describe how the Consultant has approached completing other projects of a similar nature. If a Consultant Team will perform services describe how the team has worked together through the management and oversight processes as well as in the preparation of deliverables. If

anew member of a Consultant team will perform a certain service, describe how they have worked with other Consultants in managing and implementing similar projects.

8. Time Frame – The Proposer shall provide to the Town of Essex substantiated evidence that their firm or team is capable of providing sufficient personnel for the time period to compete the project.

NO DOLLARS SHOULD BE INCLUDED IN THE TECHNICAL PROPOSAL

C. Sealed Dollar Cost Bid- Forms Provided

The cost proposal must include a detailed breakdown of tasks and associated hours (task-hour breakdown) to demonstrate the anticipated levels of effort and an understanding of the resource needs of the project as well as the total estimated fee. The fee proposal shall clearly indicate sub-consultant costs associated with each task.

1. Cost Plus Fixed Fee – The dollar cost bid should conform to the Cost Plus Fixed Fee Proposal which identifies the specific tasks or goals and specifies the end product. The contractor is required to complete and deliver the specified end product within the estimated cost.

The Town will not be responsible for expenses incurred in preparing and submitting the technical proposal or the dollar cost bid. Such costs should not be included in the proposal.

The first page of the dollar cost bid should include the following information:

- a. Name of Firm.
 - b. Certification that the person signing the proposal is entitled to represent the firm, empowered to submit the bid, and authorized to sign a contract with the Town.
 - c. Billing Rates of all employees of the Consultant engaged on this project.
2. Manner of Payment – Monthly Progress Payments, not to exceed the Cost Plus Fixed Fee, will be made in accordance with Items I and II as follows:

Item I: Billing Rates of all employees of the Consultant engaged directly on this Project.

Item II: Direct cost reimbursement for expenses incurred by the Consultant in direct connection with the service being provided including, but not limited to mileage, telephone, reproduction, computer time, and cost of outside professional and/or technical services along with out-of-pocket expense at cost, that are not applicable to general overhead. Travel will be reimbursed in accordance with I.R.S. established guidelines.

Fee Proposal Forms

Firm:

Branch (if multiple Overhead Rates):

Hourly Rates for Proposed Disciplines to Meet Scope of Work:

Position	Unburdened Hourly labor Rate \$	Overhead Rate %	Profit %	Total Hourly Rate \$
Principal	\$			\$
Project Engineer	\$			\$
Engineer	\$			\$
CAD Designer/ GIS technician	\$			\$
Construction Inspector	\$			\$
	\$			\$
	\$			\$
	\$			\$
Sub consultant Contract	\$			\$
	\$			\$
	\$			\$
	\$			\$
Materials	NA		NA	NA

Formula \$ LR x % OR x % Profit = \$ Total Hourly Rate

Please attach additional similarly formatted sheets as required for all disciplines offered and Overhead Rates for Branches if applicable.

Hourly rate will be multiplied by the Overhead rate and then by the Profit to produce the hourly rate for each discipline.

Firm Authorized Signature Date:

EVALUATION PROCEDURES

A. Review of Proposals

The Selection Committee will review qualifications of the proposals. Companies with unacceptably low technical qualifications will be eliminated from further consideration.

After the qualifications for each firm has been established, the dollar cost bid will be examined.

The Town reserves the rights to retain all proposals submitted and use any idea in a proposal regardless of whether that proposal is selected.

B. Evaluation Criteria

Proposals will be evaluated using three sets of criteria. Firms meeting the mandatory criteria will have their proposals evaluated and scored for both technical qualifications and price. The following represent the principal selection criteria that will be considered during the evaluation process.

1. Mandatory Elements

- a. The firm is licensed to practice in New York State.
- b. The firm adheres to the instructions in this request for proposal on preparing and submitting the proposal.
- c. The firm has ten years of experience in Public Works.

2. Firm's Experience and Background – (50 points)

- | | |
|---|----|
| • Experience of a similar type | 14 |
| • Proposed Team/Key Leadership Experience | 14 |
| • Project Management Ability & Financial Responsibility | 21 |
| • Understanding of the work to be performed | 21 |

3. Price – (30 points)

Cost will not be the primary factor in the selection of a firm. The proposed price will be graded based upon the following formula:

Average Bid/Your Bid = X (whereby X cannot exceed 100%)

$X * 30 \text{ points} = \text{Points awarded based on cost}$

Total Maximum Points

100

C. Oral Presentations

During the evaluation process, the Selection Committee at their discretion, may request any one or all firms to make oral presentations. Such presentations will provide firms with an opportunity to answer any questions that the Committee may have on a firm's proposal. Not all firms may be asked to make such oral presentations.

D. Final Selection

The Town will select a firm based upon the recommendation of the Selection Committee.

E. Right to Reject Proposals

Submission of a Proposal indicates acceptance by the firm of the conditions contained in this request for proposal unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the Town and the firm selected.

The Town reserves the right without prejudice to reject any or all proposals.

APPENDIX C
INSURANCE REQUIREMENTS - PROFESSIONAL SERVICE PROVIDERS

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

→ **Workers' Compensation**

Statutory Workers' Compensation and Employers' Liability Insurance for all employees, *except that in the event the Contractor has no employees and is exempt by law from having such insurance coverage the Contractor may provide an exemption statement.*

→ **Professional Liability Insurance**

\$1,000,000 per occurrence / \$2,000,000 aggregate for the negligent or wrongful professional acts of the Contractor.

→ **Commercial General Liability Insurance**

\$1,000,000 per occurrence/ \$2,000,000 aggregate.

II. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the Contractor hereby agrees (except as to workers' compensation insurance coverage) to either effectuate

- (a) the naming of the Town as an "additional insured as funding source for contract services" on the contractor's insurance policies, or
- (b) the inclusion of a contractual liability endorsement covering the Contractor's contract with the Town.

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

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

IV. In the event that the Contractor is unable to furnish professional liability insurance other than on a "claims made" basis, the Contractor shall procure and maintain a separate "tail" policy of such insurance providing the required coverage, or furnish proof of continuous coverage under the existing policy, for a period of one year and ninety days following the termination date of this contract.

V. The contractor agrees to indemnify the Town for any applicable deductibles.

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

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

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

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

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

APPENDIX D - STANDARD CLAUSES FOR TOWN CONTRACTS

1. Independent Contractor Status

The parties each acknowledge, covenant and agree that the relationship of the Contractor to the Town shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, further covenants and agrees that it:

- (a) will conduct itself in accordance with its status as an independent contractor;
- (b) will neither hold itself out as nor claim to be an officer or employee of the Town; and
- (c) will not make any claim, demand or application for any right or privilege applicable to an officer or employee of the Town, including but not limited to workers' compensation benefits, unemployment insurance benefits, social security coverage or retirement membership or credits.

2. Contractor To Comply With Laws/Regulations

The Contractor shall at all times comply with all applicable state and federal laws, rules and regulations governing the performance and rendition of the services to be furnished under this agreement.

3. Licenses, Permits, Etc.

The Contractor shall, during the term of this agreement, obtain and keep in full force and effect any and all licenses, permits and certificates required by any governmental authority having jurisdiction over the rendition and performance of the services to be furnished by the Contractor under this agreement.

4. Termination

This agreement may be terminated without cause by either party upon 30 days prior written notice, and upon such termination neither party shall have any claim or cause of action against the other except for services actually performed and mileage expenses actually incurred prior to such termination. Notwithstanding the foregoing, this agreement may be immediately terminated by the Town:

- (a) for the Contractor's breach of this agreement, by serving written notice of such termination stating the nature of the breach upon the Contractor by personal delivery or by certified mail, return receipt requested, and upon such termination either party shall have such rights and remedies against the other as provided by law; or
- (b) upon the reduction or discontinuance of funding by the State or Federal governments to be used in furnishing some or all of the work, labor and/or services provided for under this agreement, and upon such termination neither party shall have any claim or cause of action against the other except for services actually performed and expenses (if the same are to be paid under this agreement) actually incurred prior to such termination.

5. Defense & Indemnification

The Contractor shall defend, indemnify and hold harmless the Town to the fullest extent allowed by law from and against any and all liability, suits, judgments, orders, causes of action and claims, including but not limited to those for bodily injury, property damage, death, and reasonable attorney's fees, arising out of or in connection with the Contractor's negligence and/or its performance or failure to perform this agreement.

6. Discrimination Prohibited

The services to be furnished and rendered under this agreement by the Contractor shall

be available to any and all residents of the Town without regard to race, color, creed, sex, religion, national or ethnic origin, handicap, or source of payment; and under no circumstances shall a resident's financial ability to pay for the services provided be considered unless such consideration is allowed by State and/or Federal law, rule or regulation.

7. **Non-Discrimination In Employment**

The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. In the event that this is a contract to be performed in whole or in part within the State of New York for (a) the construction, alteration or repair of any public building or public work, (b) for the manufacture, sale or distribution of materials, equipment or supplies, (c) for building service, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin:

- (1) discriminate in hiring against any citizen who is qualified and available to perform the work; or
- (2) discriminate against or intimidate any employee hired for the performance of work under this contract.

The Contractor agrees to be subject to fines of \$50.00 per person per day for any violation of this paragraph, as well as to possible termination of this contract or forfeiture of all moneys due hereunder for a second or subsequent violation.

8. **Damage/Injury To Persons & Property**

The Contractor shall promptly advise the Town of all damages to property of the Town or of others, or of injuries incurred by persons other than employees of the Contractor, in any manner relating, either directly or indirectly, to the performance of this agreement.

9. **Records**

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter collectively "the Records") in accordance with the following requirements:

- (a) the Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter;
- (b) the Town Auditor, State Comptroller, the Attorney General or any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

The Town shall take reasonable steps to protect from public disclosure any of the records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate Town official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified and designation of said records as exempt under the statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Town's right to discovery in any pending or future litigation.

10. **Claims For Payment**

All invoices or claims for which payment is sought from the Town must be submitted in accordance with the following:

- (a) each claim for payment must include
 - (1) an invoice detailing the claim,
 - (2) copies of all documentation supporting the claim,
 - (3) a properly completed Town standard voucher, which includes
 - (i) the Town contract number under which payment is being claimed, **AND**
 - (ii) the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. *[Failure to include this number or numbers will prevent and preclude payment by the Town; except that where the payee does not have such number or numbers, the payee, on the invoice or Town voucher, must give the reason or reasons why the payee does not have such number or numbers and such reasons constitute a valid excuse under law.]*
- (b) Unless otherwise provided in this agreement, each claim for payment must be submitted to the Town no later than 30 days after the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.
- (c) Notwithstanding any other provision of this agreement, no claim for payment shall be valid, and the Town shall not be liable for payment thereof, unless it is submitted to the Town within 30 days of the close of the calendar year in which the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.
- (d) Unless otherwise provided in this agreement, the requirements of this paragraph 10, and/or of any other provisions of this agreement which supersede the same, shall constitute conditions precedent to the Town's payment obligation, and failure to comply with any or all of said requirements shall entitle the Town to deny payment.
- (e) As a further condition of payment, each claim of payment shall be accompanied by a Contractor and Sub-Contractor Progress Payment Waiver, Release and Discharge, and each Final Payment shall be accompanied by a Contractor and Sub-Contractor Final Payment, Waiver and Release form. As well as a Contractor Affidavit relative to Final Payment. Copies of these forms are attached and made a part hereof.

11. **Consent**

In the event that State or Federal law requires the recipient of services to be furnished and rendered under this agreement to give his/her prior consent thereto, the contractor shall obtain such person's consent and furnish proof thereof to the Town.

12. **Executory Clause**

The Town shall have no liability under this contract to the Contractor or to anyone else beyond the funds appropriated and available for this contract.

13. **Public Work & Building Service Contract Requirements**

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof:

- (a) neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department; and
- (b) the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as

determined by the State Labor Department in accordance with the Labor Law.

14. **Public Work Contracts – Hazardous Substances**

If this is a contract for public work, the Contractor agrees as follows:

- (a) the Contractor acknowledges that the Town uses and/or produces various substances which may be classified as hazardous under OSHA's Hazard Communication Standard;
- (b) the Contractor recognizes the use of said substances by the Town and acknowledges that the Town has provided, or upon request will provide, the Contractor with a description of such substances which may be present in the area of the Town's facility/facilities to which the Contractor may have accessed during the performance of this contract;
- (c) the Contractor acknowledges that the Town has provided, or upon request will provide, suggestions for appropriate protective measures which should be observed when the Contractor is in the area of any such hazardous substances;
- (d) the Contractor agrees to be solely responsible for providing training and information to its employees regarding any such hazardous substances, as well as of any protective measures suggested by the Town;
- (e) the Contractor agrees to be solely responsible to ensure that the Contractor's employees observe protective measures during the performance of their duties in the performance of the contract, and that all such protective measures will be at least as stringent as those suggested or which would have been suggested by the Town;
- (f) in the event that the Contractor's performance of the work under this contract requires the use of any hazardous substances, the Contractor shall notify the Town in advance of bringing in and/or using such substances in or upon Town property and suggest to the Town appropriate measures to be observed by the Town, its officers and employees, and/or the public; and
- (g) in the event the Contractor fails in whole or in part to comply with the terms of this paragraph, the Town shall have the right to interrupt the Contractor's work and/or terminate this contract, and the Contractor shall be prohibited from renewing such work until all applicable safety and health procedures and practices are implemented by the Contractor.

15. **Disputes**

Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be heard in a court of competent jurisdiction within the State of New York.

16. **Non-Assignment**

This agreement may not be assigned, subcontracted, transferred, conveyed, sublet or otherwise disposed of in whole or in part, by the Contractor, without the prior written consent of the Town, and any attempts to assign the contract without the Town's written consent are null and void.

17. **No Collusion**

If this contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that:

- (a) its bid was arrived at independently and without collusion aimed at restricting competition; and
- (b) at the time Contractor submitted its bid, an authorized and responsible person executed

and delivered to the Town a non-collusive bidding certification on Contractor's behalf.

18. **International Boycott**

In accordance with Section 220-f of the Labor Law, if this contract exceeds \$5,000.00, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation, has participated, is participating, or shall participate in an International boycott in violation of the federal Export Administration Act of 1979, or regulations thereunder. If such contractor, or any of the aforesaid affiliates of Contractor, is convicted, or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the Town Manager within five (5) business days of such conviction, determination or disposition of appeal.

19. **Town's Rights of Set-Off**

The Town shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Town's option to withhold for the purposes of set-off any moneys due to the Contractor under this agreement up to any amounts due and owing to the Town with regard to this contract, any other contract with any Town department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Town for any other reason, including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The Town shall exercise its set-off rights in accordance with normal Town practices, including, in cases of set-off pursuant to an audit, the acceptance of such audit by the Town Board of Supervisors or its designated representative.

20. **Contractor Defined**

Whenever the term "Contractor" is used in this agreement, such term shall include and apply to all employees, all officers, directors and agents, if any, of the Contractor.

21. **Amendment**

This agreement may not be amended, modified or renewed except by written agreement signed by the Contractor and the Town.

22. **Ownership Of Work Products**

All final and written or tangible work products completed by the Contractor shall belong to the Town. In the event of premature discontinuance of performance, the Contractor agrees to deliver all existing products and data files to the Town.

23. **Executive Order Debarment/Suspension**

In the event that this contract involves the Contractor furnishing goods and services in excess of \$100,000.00, or constitutes a subaward to subrecipients, under any Federal program, grant or other funding source, then by executing this agreement the Contractor certifies that neither it nor any of its principals are suspended or debarred within the scope or meaning of Executive Orders 12549 and 12689, any Federal or State regulation implementing or codifying the same, or any other Federal or State law, rule or regulation.

24. **Health Insurance Portability and Accountability Act of 1996 (HIPAA)**

In the event that this contract involves the use or disclosure of protected health information within the meaning or application of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the regulations thereunder, the following provisions of this paragraph shall apply.

- (a) Definitions. The terms used, but not otherwise defined, in this Agreement shall have the same meaning as given such terms in 45 CFR §160.103 and §164.501, as the same may be amended from time to time, including but not limited to the following.
- (1) "Business Associate" shall mean the Contractor, its officers, employees, agents and subcontractors.
 - (2) "Covered Entity" shall mean Town (the "Town"), its departments, agencies, officers and employees.
 - (3) "Individual" shall have the same meaning as given such term in 45 CFR §164.501 and shall also include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
 - (4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.
 - (5) "Protected Health Information" shall have the same meaning as given such term in 45 CFR §164.501, limited to the information created or received by Contractor from or on behalf of the Town.
 - (6) "Required by law" shall have the same meaning as given such term in 45 CFR §164.501.
 - (7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- (b) Obligations and Activities of Contractor.
Contractor agrees to:
- (1) not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law;
 - (2) use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement;
 - (3) mitigate, to the extent practicable, any harmful effect that is known, should have been known, and/or discovered to/by Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement;
 - (4) report to the Town any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware;
 - (5) ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of the Town agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information;
 - (6) provide access, at the request of the Town, and in the time and manner designated by the Town or the Secretary, to Protected Health Information in a Designated Record Set, to the Town or, as directed by the Town, to an Individual in order to meet the requirements under 45 CFR §164.524;
 - (7) make any amendment(s) to Protected Health Information in a Designated Record Set that the Town directs or agrees to pursuant to 45 CFR §164.526 at the request of the Town or an Individual, and in the time and manner designated by the Town or the Secretary;
 - (8) make internal practices, books, and records, including policies and procedures

and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, the Town available to the Town, and/or to the Secretary, in a time and manner designated by the Town or by the Secretary, for purposes of the Secretary determining the Town's compliance with the Privacy Rule;

(9) document such disclosures of Protected Health Information and information related to such disclosures as would be required for the Town to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528;

(10) provide to the Town or an Individual, in time and manner designated by the Town or the Secretary, information collected in accordance with the above subparagraph (b)(9) of this Agreement, to permit the Town to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(c) Permitted Uses and Disclosures by Contractor.

Except as otherwise limited in this Agreement, Contractor may use or disclose Protected Health Information on behalf of, or to provide services to, the persons entitled to services under this Agreement:

(1) solely for the purposes of performing Contractor's obligations under this Agreement, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by the Town or the minimum necessary policies and procedures of the Town; or

(2) provided that such use or disclosures are required by law; or

(3) Contractor

(A) obtains written authorization(s) from the individual to which the information pertains permitting the specific uses or disclosures of such information to third persons,

(B) represents and agrees in writing with such individual that the information to be used and/or disclosed will remain confidential and used or further disclosed only as required by law or for the purposes specified in the written authorization(s), and

(C) such third persons agree in writing to notify the Town as soon as practicable and in writing of any instances of which such third person(s) is/are aware in which the confidentiality of the information has been breached; or

(4) provide Data Aggregation services to the Town as permitted by 42 CFR §164.504(e)(2)(i)(B); or

(5) report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

(d) Town To Inform Contractor of Privacy Practices and Restrictions.

The Town agrees to notify the Contractor of any

(1) limitation(s) in its notice of privacy practices of the Town in accordance with 45 CFR §164.520, to the extent that such limitation may affect the Contractor's use or disclosure of Protected Health Information;

(2) changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Contractor's use or disclosure of Protected Health Information; and/or

(3) restriction to the use or disclosure of Protected Health Information that the Town

has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Contractor's use or disclosure of Protected Health Information.

(e) Permissible Requests by Town.

The Town shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Town; except that in the event that the services to be furnished by the Contractor under this Agreement requires data aggregation by the Contractor, the Contractor may use or disclose protected health information for such data aggregation or management and administrative activities of Contractor.

(f) Survival of Provisions.

The obligations of the Contractor under this paragraph 24 shall survive the expiration of the term of this Agreement and/or the termination of this Agreement, and said obligations shall remain effective and shall not terminate until all of the Protected Health Information provided by the Town to Contractor, or created or received by Contractor on behalf of the Town, is destroyed or returned to the Town, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in subparagraph (g) below.

(g) Return or Destruction of Protected Health Information.

Except as otherwise provided below, upon termination of this Agreement for any reason, Contractor shall return or destroy all Protected Health Information received from the Town, or created or received by Contractor on behalf of the Town. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.

In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to the Town notification of the conditions that make return or destruction infeasible. Upon determination by the Town that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information.

(h) Termination for Cause.

Upon the Town's knowledge of a material breach of this paragraph by Contractor, the Town shall:

- (1) either:
 - (A) provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement within the time specified by the Town, or
 - (B) immediately terminate this Agreement if cure is not possible; and
- (2) report the violation to the Secretary.

(i) Miscellaneous.

- (1) Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- (2) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Town to comply with the requirements of the Privacy Rule and the Health Insurance Portability and

Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Contractor under this paragraph 24 of this Agreement shall survive the termination of this Agreement.

(4) Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Town to comply with the Privacy Rule.

25. **Severability**

If any term or provision of this agreement or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and every other term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

26. **Entire Agreement**

This agreement is the entire agreement between the parties, and the same shall be construed in accordance with the laws of the State of New York.

27. In addition to those items required at Paragraph 10 of this Appendix, as conditions for payment, each claim of payment shall be accompanied by a Contractor and Sub-Contractor Progress Payment Waiver, Release and Discharge form in the form attached hereto and made a part hereof. All final accompanied by a Contractor and Sub-Contractor Final Payment Waiver, Release and Discharge as in the form attached hereto and made a part hereof. As well as a Contractor Affidavit relative to final payment, a copy of which is attached hereto and made a part of this contract.

28. **Cooperative Purchasing (Piggybacking)**

Pursuant to General Municipal Law §103 and County Law §408-a, any political sub-division or fire company (as both are defined in Section 100 of the GML) or district authorized to make purchases of apparatus, materials, equipment or supplies, or to contract for services related to the installation, maintenance or repair of apparatus, materials, equipment and supplies may make said purchases under this existing contract (Piggybacking) provided, and on condition that this present contract was **LET TO THE LOWEST RESPONSIBLE BIDDER**. Therefore all terms and condition under this contract are extended to other political sub-divisions and governmental entities.

Purchases under this contract by any other political sub-division other than _____ shall be pursuant to the terms and conditions of Resolution No. ____ of _____ dated _____.

CONTRACTOR PROGRESS PAYMENT WAIVER, RELEASE AND DISCHARGE

PROJECT: _____

OWNER: _____

CONTRACTOR: _____

WITNESSETH:

The above-named Contractor, hereinafter referred to as the "Releasor", does, for and on behalf of itself, its' successors, assigns and all parties claiming any interest or right through the Releasor, hereby warrant, covenant and agree as follows:

1. Releasor is/was a Contractor relative to the above-referenced Project pursuant to a contract or other relationship for the performing and/or furnishing of work, labor, services, materials and/or equipment at the Project site or to be incorporated in said Project.

2 Whenever the term "Releasor" is used in this instrument such term shall mean: (a) the above-named Contractor, its, successors and assigns; (b) any and all sureties and all other guarantors of the Releasor on any payment, performance, labor and/or material bond or other undertaking; (c) all parties claiming any interest or right through the Releasor, including but not limited to subcontractors and suppliers; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).

3. Whenever the term "Releasees" is used in this instrument such term shall mean: (a) the above-named Owner, its' successors and assigns; (b) the Project Architect/Engineer; and (c) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a) and (b).

4. For and in consideration of the sum of \$ _____, and other good and valuable consideration, which sum is acknowledged as being the full and total amount due or allegedly due or owing from the Releasees to the Releasor as of the date hereof, and the receipt of such payment being hereby acknowledged, the Releasor does waive, release and discharge the Releasees from any and all causes of action, suits, debts, claims, liens, accounts, bonds, contracts, damages, encumbrances, judgments and demands whatsoever and of every kind and nature, in law or in equity, which against the Releasees, jointly and/or severally, the Releasor ever had, now has, or might hereafter have, relating directly or indirectly to the work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or incorporated or to be incorporated in said Project, as of the date hereof, including but not in any manner limited to the right of the Releasor to assert, file or claim any lien or other security interest in or upon the real and/or personal property of the Releasees.

5. The Releasor hereby agree to defend, indemnify, and hold harmless the Releasees from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party for work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or which should have been so furnished or performed, or incorporated or to be incorporated in said Project, as of the date hereof, by the Releasor or by any other party claiming any interest or right through the Releasor.

6. The Releasor hereby certifies and warrants that it has fully paid for all work, labor, services, materials and/or equipment provided to it in connection with the Project and/or any contract relating thereto.

7. The Releasor hereby grants to the Releasees the right to review and audit any and books and records of the Releasor at any time for verification.

IN WITNESS WHEREOF this instrument has been executed this ____ day of _____, 20__.

Releasor

By: _____

(Print Name)

(Title)

STATE OF NEW YORK)
) SS:
COUNTY OF _____)

I, _____, being duly sworn, depose and say that: I reside at _____, and I hereby sign this instrument under penalty of perjury; I am the of the Releasor identified herein; I am fully authorized to execute this instrument on behalf of the Releasor; and I hereby affirm that the statements contained in this instrument are true and correct.

Vendor/Releasor Agent Sign Here

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

Notary Public

CONTRACTOR FINAL PAYMENT WAIVER, RELEASE AND DISCHARGE

PROJECT: _____

OWNER: _____

CONTRACTOR: _____

WITNESSETH:

The above-named Contractor, hereinafter referred to as the "Releasor", does, for and on behalf of itself, its' successors, assigns and all parties claiming any interest or right through the Releasor, hereby warrants, covenants and agrees as follows:

1. Releasor is/was a Contractor relative to the above-referenced Project pursuant to a contract or other relationship for the performing and/or furnishing of work, labor, services, materials and/or equipment at the Project site or to be incorporated in said Project.
2. Whenever the term "Releasor" is used in this instrument such term shall mean: (a) the above-named Contractor, its, successors and assigns; (b) any and all sureties and all other guarantors of the Releasor on any payment, performance, labor and/or material bond or other undertaking; (c) all parties claiming any interest or right through the Releasor, including but not limited to subcontractors and suppliers; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).
3. Whenever the term "Releasees" is used in this instrument such term shall mean: (a) the above-named Owner, its' successors and assigns; (b) the Town of Essex, its agencies and departments (including but not limited to its Office for the Aging); and (c) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a) and (b).
4. For and in consideration of the sum of \$ _____, and other good and valuable consideration, which sum is acknowledged as being the full, final and total amount due or allegedly due or owing from the Releasees to the Releasor as of the date hereof, and the receipt of such payment being hereby acknowledged, the Releasor does waive, release and discharge the Releasees from any and all causes of action, suits, debts, claims, liens, accounts, bonds, contracts, damages, encumbrances, judgments and demands whatsoever and of every kind and nature, in law or in equity, which against the Releasees, jointly and/or severally, the Releasor ever had, now has, or might hereafter have, relating directly or indirectly to the work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or incorporated or to be incorporated in said Project, as of the date hereof, including but not in any manner limited to the right of the Releasor to assert, file or claim any lien or other security interest in or upon the real and/or personal property of the Releasees.
5. The Releasor hereby agree to defend, indemnify, and hold harmless the Releasees from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party for work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or which should have been so furnished or performed, or incorporated or to be incorporated in said Project, as of the date hereof, by the

Releasor or by any other party claiming any interest or right through the Releasor.

6. The Releasor hereby certifies and warrants that it has fully paid for all work, labor, services, materials and/or equipment provided to it in connection with the Project and/or any contract relating thereto.

7. The Releasor hereby grants to the Releasees the right to review and audit any and books and records of the Releasor at any time for verification.

IN WITNESS WHEREOF this instrument has been executed this ____ day of _____, 20__.

Contractor

By: _____

(Print Name)

(Title)

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

I, _____, being duly sworn, depose and say that: I reside at _____
_____, and I hereby sign this instrument under penalty of perjury; I am
the of the Releasor identified herein; I am fully authorized to execute this instrument on behalf of
the Releasor; and I hereby affirm that the statements contained in this instrument are true and
correct.

Vendor/Releasor Agent Sign Here

Sworn to before me this ____
day of _____, 20__.

Notary Public

CONTRACTORS AFFIDAVIT RELATIVE TO FINAL PAYMENT

PROJECT: _____

OWNER: _____

CONTRACTOR: _____

WITNESSETH:

The herein below designated representative of the Contractor being duly sworn deposes and states:

1. He is duly authorized to sign this Affidavit on behalf of the Contractor.
2. That all payrolls, bills for materials and equipment, and other indebtedness connection with the work for which the Town or the Town's property might be responsible or encumbered have been paid or otherwise satisfied and there remain no further indebtedness or bills outstanding.
3. Attached hereto and made a part hereof is a valid certificate of insurance evidencing that insurance required by the contract documents will remain in full force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to the owner.
4. Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the contract documents.
5. Attached hereto and made a part hereof at Schedule B is a detailed list of all sub-contractors and material suppliers.
6. Contractor warrants and represents that all sub-contractors, material suppliers and fringe benefit trust funds for employees of contractor and sub-contractors on the portion of the project encompassed by the work, as well as all workers and persons employed in connection therewith have been paid in full for all labor and work and materials furnished.
7. Contractor releases and waives any and all public improvement lien rights which contractor has against the Town.

IN WITNESS WHEREOF, deponent has executed this document on ____ day of _____

_____, 20____.

Contractor

By: _____

(Print Name)

(Title)

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

I, _____, being duly sworn, depose and say that: I reside at _____, and I hereby sign this instrument under penalty of perjury; I am the of the Releasor identified herein; I am fully authorized to execute this instrument on behalf of the Releasor; and I hereby affirm that the statements contained in this instrument are true and correct.

Vendor/Releasor Agent Sign Here

Sworn to before me this ____
day of _____, 20__.

Notary Public

SUBCONTRACTOR/SUPPLIER PROGRESS PAYMENT
WAIVER, RELEASE AND DISCHARGE

PROJECT: _____

OWNER: _____

CONTRACTOR: _____

SUBCONTRACTOR/SUPPLIER: _____

W I T N E S S E T H :

The above-named Subcontractor/Supplier, hereinafter referred to as the "Releasor", does, for and on behalf of itself, its, successors, assigns and all parties claiming any interest or right through the Releasor, hereby warrants, covenants and agrees as follows:

1. Releasor is/was a subcontractor/supplier to the Contractor above-named relative to the above-referenced Project pursuant to a contract or other relationship for the performing and/or furnishing of work, labor, services, materials and/or equipment at the Project site or to be incorporated in said Project.
2. Whenever the term "Releasor" is used in this instrument such term shall mean: (a) the above-named Subcontractor/Supplier, its' successors and assigns; (b) any and all sureties and all other guarantors of the Releasor on any payment, performance, labor and/or material bond or other undertaking; (c) all parties claiming any interest or right through the Releasor; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).
3. Whenever the term "Releasees" is used in this instrument such term shall mean: (a) the above-named Contractor and all of its, sureties and other guarantors on any payment, performance, labor and/or material bond or other undertaking; (b) the abovenamed Owner, its, successors and assigns; (c) the Project Architect/Engineer; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).
4. For and in consideration of the sum of \$ _____, and other good and valuable consideration, which sum is acknowledged as being the full and total amount due or allegedly due or owing from the Releasees to the Releasor as of the date hereof, and the receipt of such payment being hereby acknowledged, the Releasor does waive, release and discharge the Releasees from any and all causes of action, suits, debts, claims, liens, accounts, bonds, contracts, damages, encumbrances, judgments and demands whatsoever and of every kind and nature, in law or in equity, which against the Releasees, jointly and/or severally, the Releasor ever had, now has, or might hereafter have, relating directly or indirectly to the work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or incorporated or to be incorporated in said Project, as of the date hereof, including but not in any manner limited to the right of the Releasor to assert, file or claim any lien or other security interest in or upon the real and/or personal property of the Releasees.
5. The Releasor hereby agree to defend, indemnify, and hold harmless the Releasees from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party for work, labor, services, materials and/or

equipment furnished and/or performed at the Project site, or which should have been so furnished or performed, or incorporated or to be incorporated in said Project, as of the date hereof, by the Releasor or by any other party claiming any interest or right through the Releasor.

6. The Releasor hereby certifies and warrants that it has fully paid for all work, labor, services, materials and/or equipment provided to it in connection with the Project and/or any contract relating thereto.

7. The Releasor hereby grants to the Releasees the right to review and audit any and books and records of the Releasor at any time for verification.

IN WITNESS WHEREOF this instrument has been executed this ____ day of _____, 20____.

Releasor

By:_____

(Print Name)

(Title)

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

I, _____, being duly sworn, depose and say that: I reside at _____, and I hereby sign this instrument under penalty of perjury; I am the of the Releasor identified herein; I am fully authorized to execute this instrument on behalf of the Releasor; and I hereby affirm that the statements contained in this instrument are true and correct.

Vendor/Releasor Agent Sign Here

Sworn to before me this _____
day of _____, 20____

Notary Public

SUBCONTRACTOR/SUPPLIER FINAL WAIVER, RELEASE AND DISCHARGE

PROJECT: _____

OWNER: _____

CONTRACTOR: _____

SUBCONTRACTOR/SUPPLIER: _____

W I T N E S S E T H :

The above-named Subcontractor/Supplier, hereinafter referred to as the "Releasor", does, for and on behalf of itself, its, successors, assigns and all parties claiming any interest or right through the Releasor, hereby warrants, covenants and agrees as follows:

1. Releasor is/was a subcontractor/supplier to the Contractor above-named relative to the above-referenced Project pursuant to a contract or other relationship for the performing and/or furnishing of work, labor, services, materials and/or equipment at the Project site or to be incorporated in said Project.
2. Whenever the term "Releasor" is used in this instrument such term shall mean: (a) the above-named Subcontractor/Supplier, its' successors and assigns; (b) any and all sureties and all other guarantors of the Releasor on any payment, performance, labor and/or material bond or other undertaking; (c) all parties claiming any interest or right through the Releasor; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).
3. Whenever the term "Releasees" is used in this instrument such term shall mean: (a) the above-named Contractor and all of its, sureties and other guarantors on any payment, performance, labor and/or material bond or other undertaking; (b) the abovenamed Owner, its, successors and assigns; (c) the Project Architect/Engineer; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).
4. For and in consideration of the sum of \$ _____, and other good and valuable consideration, which sum is acknowledged as being the full, final and total amount due or allegedly due or owing from the Releasees to the Releasor as of the date hereof, and the receipt of such payment being hereby acknowledged, the Releasor does waive, release and discharge the Releasees from any and all causes of action, suits, debts, claims, liens, accounts, bonds, contracts, damages, encumbrances, judgments and demands whatsoever and of every kind and nature, in law or in equity, which against the Releasees, jointly and/or severally, the Releasor ever had, now has, or might hereafter have, relating directly or indirectly to the work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or incorporated or to be incorporated in said Project, as of the date hereof, including but not in any manner limited to the right of the Releasor to assert, file or claim any lien or other security interest in or upon the real and/or personal property of the Releasees.
5. The Releasor hereby agree to defend, indemnify, and hold harmless the Releasees from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party for work, labor, services, materials and/or

equipment furnished and/or performed at the Project site, or which should have been so furnished or performed, or incorporated or to be incorporated in said Project, as of the date hereof, by the Releasor or by any other party claiming any interest or right through the Releasor.

6. The Releasor hereby certifies and warrants that it has fully paid for all work, labor, services, materials and/or equipment provided to it in connection with the Project and/or any contract relating thereto.

7. The Releasor hereby grants to the Releasees the right to review and audit any and books and records of the Releasor at any time for verification.

IN WITNESS WHEREOF this instrument has been executed this ____ day of _____, _____.

Releasor

By: _____

(Print Name)

(Title)

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

I, _____, being duly sworn, depose and say that: I reside at _____, and I hereby sign this instrument under penalty of perjury; I am the _____ of the Releasor identified herein; I am fully authorized to execute this instrument on behalf of the Releasor; and I hereby affirm that the statements contained in this instrument are true and correct.

Vendor/Releasor Agent Sign Here

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

Notary Public

APPENDIX E

GENERAL SPECIFICATIONS FOR PROCUREMENT CONTRACTS

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PART I

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PART I
General Provisions

1. APPLICABILITY The terms and conditions set forth herein are expressly incorporated in and applicable to all procurements and resulting procurement contracts let by the Town of Essex where incorporated by reference in its Bid Documents. The provisions herein shall govern such procurement or contract unless expressly modified or amended by the terms of a Bid Specifications, or a negotiated Contract/Clarification document, if any. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

2. GOVERNING LAW The laws of the State of New York shall govern and apply to the procurement, any resulting contract and for determinations in a court of competent jurisdiction in New York of any and all disputes, litigation or interpretations arising from or connected with the procurement or contract, except where expressly superseded in a specific contract letting or where the Federal supremacy clause requires otherwise. These specifications are modeled after and upon the specifications developed and used by the New York State Office of General Services for procurements by New York State.

3. APPENDIX A / INSURANCE The mandatory terms for all Town of Essex contracts are expressly incorporated herein and in all bid documents and/or resulting contracts, such terms being set forth in Appendix A (*Standard Clauses for Town of Essex Contracts*). Insurance requirements are also attached and incorporated herein.

4. ETHICS COMPLIANCE All Bidders/Contractors and their employees must comply with the requirements of the *General Municipal Law*, the *Public Officers Law*, and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State and/or municipalities. In signing the bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving Town of Essex and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

5. CONFLICT OF CLAUSES Conflicts between procurement or contract documents shall be resolved in the following order of precedence:

- (a) **Appendix A** (*Standard Clauses for Town of Essex Contracts*)
- (b) **Contract/Clarification Documents** Writing(s) setting forth the final agreements, clarifications, terms, statement of work and/or modifications between the Bid Documents and Contractors Bid or Mini-bid.
- (c) **Bid Documents** - Bid Specifications prepared by the Town of Essex
- (d) **Contractors Bid or Proposal**

6. DEFINITIONS

Terms used in this document shall have the following meanings:

AGENCY OR AGENCIES Town of Essex, New York, acting by or through one or more departments, boards, commissions, offices or institutions of Town of Essex.

ANCILLARY PRODUCT: Product which is purchased or licensed on a restricted use basis in conjunction with the principal manufacturers Product being acquired (e.g. may be used only in combination, or by educational institutions for research use).

AUTHORIZED USER(S) Agencies, or any other entity authorized by Town of _____ to participate in Town of _____ procurement contracts (including but not limited to political subdivisions, public authorities, school districts and public benefit corporations), provided that each such Agency or other entity shall be held solely responsible for liabilities or payments due as a result of its participation. The term “Authorized User” shall include “Licensees.”

BID OR BID PROPOSAL An offer or proposal submitted by a Bidder to furnish a described product or a solution or means of achieving a practical end, at a stated price for the stated contract term.

BIDDER Any individual or other legal entity, (including but not limited to partnership, firm or corporation) which submits a bid in response to a Bid Solicitation. The term Bidder shall also include “offeror” and/or “contractor”.

BID DOCUMENTS Writings setting forth the scope, terms, conditions and technical specifications for a procurement of Product. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference, e.g. Appendix A (*Standard Clauses for NYS Contracts*), Appendix B, (*General Specifications*). Where these General Specifications are incorporated in negotiated contracts which have not been competitively bid, the term “Bid Documents” shall be deemed to refer to the terms and conditions set forth in the negotiated contract.

BID SOLICITATION The notice or advertisement of an intent to purchase a specified Product by or on behalf of Authorized User(s).

BID SPECIFICATION A written description drafted by Town of _____ or an authorized user setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a commodity or construction item, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work. Where these *General Specifications* are incorporated in negotiated contracts which have not been competitively bid, the term “Bid Specifications” shall be deemed to refer to the terms and conditions set forth in the negotiated contract.

CONTRACT The writing(s) which contain the agreement of the Commissioner and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law.

CONTRACT AWARD NOTIFICATION An announcement to Authorized Users that a contract has been established.

CONTRACTOR Any successful Bidder(s) to whom a contract has been awarded by the Purchasing Agent. The term “Contractor” includes Licensors.

EMERGENCY An urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

ERROR CORRECTIONS Machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.

GROUP A classification of Product (commodities, services or technology).

INVITATION FOR BIDS (IFB) A type of Bid Document which is most typically used where requirements can be stated and award will be made to the lowest responsive bid submitted by the most responsible

Bidder(s).

LATE BID For purposes of bid openings held and conducted by the Town of _____ Purchasing Agent, a bid not received in such place as may be designated on the Bid Specifications or in the Office of the Town of _____ Purchasing Agent, at or before the date and time established in the Bid Specifications for the bid opening.

LETTER OF ACCEPTANCE A letter to the successful Bidder(s) indicating acceptance of its bid in response to a solicitation. Unless otherwise specified, the issuance of a Letter of Acceptance forms a contract but is not an order for Product, and Contractor should not take any action with respect to actual contract deliveries except on the basis of Purchase Orders sent from Authorized User(s).

LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes ancillary products, error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g. patches, fixes, PTFs, programs, code or data conversion, or custom programming).

LICENSEE The Town, or one or more Agencies or Authorized Users who acquire Product from Contractor by execution of a license in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User(s) on whose behalf the license was executed who took receipt of the Product, and who shall be solely responsible for performance and liabilities incurred.

LICENSOR A Contractor who transfers rights in proprietary Product to Authorized Users in accordance with the rights and obligations specified in the Contract.

MULTIPLE AWARD A determination and award of a contract in the discretion of the Purchasing Agent to more than one responsive and responsible Bidder who meets the requirements of a specification, where the multiple award is made on the grounds set forth in the Bid Document in order to satisfy multiple factors and needs of Authorized Users (e.g., complexity of items, various manufacturers, differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, geographic location or other pertinent factors).

NEW PRODUCT RELEASES (Product Revisions) Any commercially released revisions to the version of a Product as may be generally offered and available to Authorized Users. New releases involve a substantial revision of functionality from a previously released version of the Product.

PROCUREMENT RECORD Documentation by the Town of _____ Purchasing Agent of the decisions made and approach taken during the procurement process.

PRODUCT A deliverable under any Bid or Contract which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

PURCHASE ORDER The Town's fiscal form or format which is used when making a purchase.

REQUEST FOR PROPOSALS (RFP) A type of Bid Document which is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the method of award is "best value", as defined by the Town's Procurement Policy and New York Law.

REQUEST FOR QUOTATION (RFQ) A type of Bid Document which can be used when a formal bid opening is not required (e.g. discretionary, sole source, single source or emergency purchases).

RESPONSIBLE BIDDER A Bidder that is determined to have skill, judgment and integrity, and that is

found to be competent, reliable, experienced and qualified financially, as determined by the Purchasing Agent.

RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the Purchasing Agent.

SINGLE SOURCE A procurement where two or more offerors can supply the required Product, and the Purchasing Agent may award the contract to one Bidder over the other.

SOLE SOURCE A procurement where only one offeror is capable of supplying the required Product.

Bid Submission

7. BID LANGUAGE & CURRENCY All offers (tenders), and all information and Product documentation required by the solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$ US). Any offers (tenders) submitted which do not meet the above criteria will be rejected.

8. BID OPENING Bids may, as applicable, be opened publicly. The Purchasing Agent reserves the right at anytime to postpone or cancel a scheduled bid opening.

9. BID SUBMISSION The submission of a bid will be construed to mean that the bidder is fully informed as to the extent and character of the supplies, material, or equipment required and a representation that the bidder can furnish the supplies, materials, or equipment satisfactorily in complete compliance with the specifications.

All bids shall comply with the following:

(a) Bids are to be packaged, sealed and submitted to the location stated in the Bid Specifications. Bidders are solely responsible for timely delivery of their bids to the location set forth in the Bid Specifications prior to the stated bid opening date/time.

(b) A bid return envelope, if provided with the Bid Specifications, should be used with the bid sealed inside. If the bid response does not fit into the envelope, the bid envelope should be taped onto the outside of the sealed box or package with the bid inside. If using a commercial delivery company which requires use of their shipping package or envelope, Bidders sealed bid, labeled as detailed below, should be placed within the shippers sealed envelope to ensure that the bid is not prematurely opened. All bids must have a label on the outside of the package or shipping container outlining the following information:

“BID ENCLOSED” (bold print, all capitals)
IFB or RFP Number
Bid Submission date and time

In the event that a Bidder fails to provide such information on the return bid envelope or shipping material, the Town reserves the right to open the shipping package or envelope to determine the proper bid number or Product group, and the date and time of bid opening. Bidder shall have no claim against the receiving entity arising from such opening and such opening shall not affect the validity of the bid or the procurement. Notwithstanding the Town’s right to open a bid to ascertain the foregoing information, Bidder assumes all risk of late delivery associated with the bid not being identified, packaged or labeled in accordance with the foregoing requirements.

10. FACSIMILE SUBMISSIONS Unless specifically authorized by the terms of the Bid Specifications, facsimile bids ARE PROHIBITED AND SHALL NOT BE ACCEPTED. Where the bid specifications are silent as to the submission of bids by facsimile, no fax bids shall be permitted or accepted. Where

specifically authorized, the following rules and conditions apply:

- (a) FAX number(s) indicated in the Bid Specifications must be used.
- (b) Access to the facsimile machine(s) is on a "first come, first serve" basis, and the Purchasing Agent bears no liability or responsibility and makes no guarantee whatsoever with respect to the Bidders access to such equipment at any specific time.
- (c) Bidders are solely responsible for submission and receipt of the entire facsimile bid by the Town of Essex Purchasing Agent prior to bid opening and must include on the first page of the transmission the total number of pages transmitted in the bid, including the cover page. Incomplete, ambiguous or unreadable transmissions in whole or in part may be rejected at the sole discretion of the Purchasing Agent.
- (d) Facsimile bids are fully governed by all conditions outlined in the Bid Documents and must be submitted on forms or in the format required in the Bid Specifications, including the executed signature page and acknowledgment.

11. AUTHENTICATION OF FACSIMILE BIDS The act of submitting a bid by facsimile transmission, when, as and if specifically authorized, including an executed signature page, shall be deemed a confirming act by Bidder which authenticates the signing of the bid.

12. LATE BIDS Any bid received at the specified location after the time specified will be considered a late bid. A late bid shall not be considered for award unless acceptance of the late bid is in the best interests of the Town and either (a) no timely bids meeting the requirements of the Bid Documents are received, or (b) in the case of a multiple award, an insufficient number of timely bids were received to satisfy the multiple award. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Town, shall not excuse late bid submissions. Otherwise, all late bids will not be considered and will be returned unopened to the bidder. The bidder assumes the risk of any delay in the mail or in the handling of the mail by employees of the Town. Whether sent by mail or by means of personal delivery, the bidder assumes responsibility for having his bid deposited on time at the place specified.

13. BID CONTENTS Bids must be complete and legible. All bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified in the Bid Specifications. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by the Purchasing Agent or may be grounds for rejection of the bid. Changes, corrections and/or use of white-out in the bid or Bidders response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their bids before submission, as amendments to bids or requests for withdrawal of bids received by the Purchasing Agent after the time specified for the bid opening, may not be considered. All lines must have an indication of bidders response whether it be "o", "N/A" or a dollar figure. All lines must be filled in to indicate bidder acknowledgment of the request. Bids that do not have all applicable lines filled in on bid sheet may be disqualified as a non-responsive bid. The Purchasing Agent shall not assume there is "no charge" when lines are left empty.

Bidders must submit with bid detailed specifications, circulars, warranties and all necessary data on items he proposes to furnish. This information must show clearly that the item offered meets all detailed specifications herein. The Purchasing Agent reserves the right to reject any bid if its compliance with the specifications is not clearly evident. If item offered differs from the provisions contained in these specifications such differences must be explained in detail, and bid will receive careful consideration if such deviations do not depart from the intent of these specifications and are to the best interests of the Town as interpreted by the Town of _____.

It is the responsibility of the bidder to offer a product that meets the specifications of the

manufacturer model as listed.

All stock electrical items must be listed and approved by Underwriters' Laboratories, Inc.

14. EXTRANEIOUS TERMS Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the bid non-responsive and may result in rejection of the bid.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) which are attached or referenced with the submission shall not be considered part of the bid, but shall be deemed included for informational or promotional purposes only.

Only those extraneous terms which meet all the following requirements will be considered as having been submitted as part of the Bid:

- (a) Each proposed extraneous term (addition, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and
- (b) The writing must identify the particular specification requirement (if any) which Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- (c) The Bidder shall enumerate the proposed addition, counteroffer, modification or deviation from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed "material," shall be incorporated into a contract unless the Purchasing Agent expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s).

15. CONFIDENTIAL / TRADE SECRET MATERIALS Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the *Freedom of Information Law* must request the exemption in writing, setting forth the reasons for the claimed exemption, at the time of submission. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.

16. PREVAILING WAGE RATES - Public Works and Building Services Contracts If any portion of work being bid is subject to the prevailing wage rate provisions of Labor Law, the following shall apply:

(a) "Public Works" and "Building Services" – Definitions

i. Public Works *Labor Law* Article 8 applies to contracts for public improvement in which laborers, workers or mechanics are employed on a "public works" project (distinguished from public "procurement" or "service" contracts). The State, a public benefit corporation, a municipal corporation (including a school district), or a commission appointed by law must be a party to the contract. The wage and hours provision applies to any work performed by contractor or subcontractors.

ii. Building Services *Labor Law* Article 9 applies to contracts for building service work over \$1,500 with a public agency, which 1) involve the care or maintenance of an existing building, or 2) involve the transportation of office furniture or equipment to or from such building, or 3) involve the transportation and delivery of fossil fuel to such building, and 4) the principal purpose of which is to furnish services through use of building service employees.

(b) Prevailing Wage Rate Applicable to Bid Submissions A copy of the applicable

prevailing wage rates to be paid or provided are attached to this solicitation. Bidders must submit bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Where the Bid Documents require the Bidder to enumerate hourly wage rates in the bid, Bidders may not submit bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. **Bids which fail to comply with this requirement will be disqualified.**

(c) Wage Rate Payments / Changes During Contract Term The wages to be paid under any resulting contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the contract term that apply to the classes of individuals supplied by the contractor on any projects which result from this contract which are subject to the provisions of the *Labor Law*. Contractor is solely liable for and must pay such required prevailing wage adjustments during the contract term as required by law.

(d) Public Posting & Certified Payroll Records In compliance with Article 8, Section 220 of the *Labor Law*, as amended by Chapter 565 of the Laws of 1997:

i. Posting The Contractor must publicly post on the work site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.

ii. Payroll Records Contractors and sub-contractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only Contractors and sub-contractors on public works projects must submit monthly payroll transcripts to the Town which has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For mini-bid solicitations, the payroll records must be submitted to the entity preparing the agency mini-bid project specification. For "agency specific" bids, the payroll records should be submitted to the entity issuing the purchase order. For all other Town procurement contracts, such records should be submitted to the individual agency issuing the purchase order(s) for the work. Upon mutual agreement of the Contractor and the Town, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor so long as: 1) the contractor/subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the contractor or subcontractor attesting to the truth and accuracy of the records accompanies the disk. **This provision does not apply to building services contracts.**

iv. Records Retention Contractors and subcontractors must preserve such certified transcripts for a period of three years from the date of completion of work on the awarded contract.

(e) Days Labor - Defined for Article 8, Public Works (For Purposes of Article 8 of the Labor Law) No laborer, worker or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do all or part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the Town of Essex Purchasing Agent for the preservation of the contract site or for the protection of

the life and limb of the persons using the contract site.

17. TAXES

(a) Unless otherwise specified in the Bid Specifications or set forth in this clause, the quoted bid price includes all taxes applicable to the transaction.

(b) Purchases made by Town of _____ and certain non-Town Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a Town Agency or the invoice forwarded to authorize payment for such items will be sufficient evidence that the sale by the Contractor was made to the Town, an exempt organization under Section 1116 (a) (1) of the *Tax Law*. Non-Town Authorized Users must offer their own proof of exemption where required. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor. For tax free transactions under the Internal Revenue Code, the Town of _____ Registration Number is _____.

(c) Purchases by Authorized Users other than the Town may be subject to such taxes, and in those instances the tax should be computed based on the bid price and added to the invoice submitted to such entity for payment.

18. EXPENSES PRIOR TO AWARD The Town of _____ is not liable for any costs incurred by a Bidder in the preparation and production of a bid or for any work performed prior to contract award and/or issuance of an approved Purchase Order.

19. ADVERTISING BID RESULTS A Bidder in submitting a bid agrees not to use the results therefrom as a part of any commercial advertising without the prior written approval of the Purchasing Agent. In addition to any other sanctions or remedies available to it in law or equity, the Purchasing Agent may suspend from bidding on its requirements or terminate a contract of any Bidder/Contractor who violates the terms of this clause.

20. PRODUCT REFERENCES

(a) **“Or Equal”** On all Bid Specifications the words “or equal” are understood to apply where a copyright brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Purchasing Agents decision as to acceptance of the Product as equal shall be final.

(b) **Discrepancies in References** In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products therein which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

21. RECYCLED OR RECOVERED MATERIALS Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the “Warranties & Guaranties” set forth below.

Refurbished or remanufactured components or items may only be accepted at the discretion of the Purchasing Agent, or upon the conditions set forth in the Bid Specifications.

Items with recycled, recovered, refurbished or remanufactured content must be identified in the bid or will be deemed new Product.

22. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS Bids offering Products which are manufactured or produced in public institutions will be rejected.

23. PRICING

(a) Unit Pricing If required by the Bid Specifications, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places for each item, in the bid. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Purchasing Agent, such unit pricing is obviously erroneous.

(b) Net Pricing Prices must be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject only to the cash discount. If the award is to be made on another basis, transportation and other charges must be prepaid by the Contractor and added to the invoice as a separate item, unless otherwise required in the Bid Specifications.

(c) “No Charge” Bid When bids are requested on a number of Products as a group or Lot, a Bidder desiring to bid “no charge” on a Product in the grouping or Lot must clearly indicate such. Otherwise, such bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Purchasing Agent.

If a price is written in numbers and alpha, the alpha will govern.

Prices shall be net FOB any point in Town of _____, New York. Price quoted shall include all delivery costs. Prices shall be net, including transportation and delivery charges fully prepaid by the successful bidder to destination indicated in the proposal. If award is made on any other basis, transportation charges must be prepaid by the successful bidder and added to the invoice as a separate item. In any case, title shall not pass until items have been delivered and accepted by the Town.

24. DRAWINGS

(a) Drawings Submitted With Bid When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Purchasing Agent, be considered a part of the bid and of any resulting contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

(b) Drawings Submitted During the Contract Term Where required by the Bid Specifications to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall be required to develop, maintain, deliver and update such drawings on an ongoing basis at no additional charge. Contractor shall be responsible for updating drawings and plans during the contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized Users representative as required by the Bid Specifications. Where required, Contractor shall furnish to Authorized User in a timely manner the required drawings representing the then current, “as modified” condition of all product included in the scope of work.

(c) Accuracy of Drawings Submitted All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing product, services or installation, or carrying out any other requirements of the intended scope of work.

25. SITE INSPECTION Where Bidder is required by the Bid Specifications to deliver or install Product, or to service installed product(s) or equipment, Bidder shall be given an opportunity and shall be required to inspect the site prior to submission of the Bid, including environmental or other conditions or pre-existing deficiencies in the installed product, equipment or environment, which may affect Bidders ability to deliver, install or otherwise provide the required product. All inquiries regarding such conditions may only be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed, and to have included the costs of repair in its bid. Bidder must provide a detailed explanation of work intended to be performed under this clause. Bidder shall be required to remedy any pre-existing deficiencies or conditions at the commencement of the contract term. Reimbursement for the cost of repairing the conditions or deficiencies shall be separately enumerated in the bid.

26. SAMPLES

(a) Standard Samples Bid Specifications may indicate that the Product to be purchased must be equal to a standard sample on display in a place designated by the Purchasing Agent and such sample will be made available to the Bidder for examination prior to the opening date. Failure by the Bidder to examine such sample shall not entitle the Bidder to any relief from the conditions imposed by the Bid Documents.

(b) Bidder Supplied Samples The Purchasing Agent reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidders name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate bid or Town of _____ contract reference.

A sample may be held by the Purchasing Agent during the entire term of the contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period the sample, where feasible, will be returned as instructed by the Bidder, at the Bidders expense and risk. Where the Bidder has failed to fully instruct the Purchasing Agent as to the return of the sample (i.e. mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

(c) Enhanced Samples When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractors default, the Purchasing Agent may procure a commodity substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

(d) Conformance with Sample(s) Submission of a sample (whether or not such sample is tested by, or for, the Purchasing Agent) and approval thereof shall not relieve the Contractor

from full compliance with all conditions and terms, performance related and otherwise, specified in the Bid Documents. If in the judgment of the Purchasing Agent the sample or product submitted is not in accordance with the specifications or testing requirements prescribed in the Bid Documents, the Purchasing Agent may reject the bid. If an award has been made, the Purchasing Agent may cancel the contract at the expense of the Contractor.

(e) Testing All samples are subject to tests in the manner and place designated by the Purchasing Agent, either prior to or after contract award. Unless otherwise stated in the Bid Specifications, Bidder Samples consumed or rendered useless by testing will not be returned to the Bidder.

27. ADDENDA / INTERPRETATION No verbal interpretation of the intent of any of the specifications or other Contract Documents will be made before receipt of bids. Requests for interpretations prior to receipt of bids must be presented, in writing, to the Purchasing Agent, 100 Court Street, P.O. Box 217, Elizabethtown, NY 12932, and to be given consideration must be received by the Purchasing Agent at least seven (7) days prior to the date set for the opening of bids.

Any interpretation, and any additional information or instruction will, if issued, be in the form of a written Addendum or Addenda sent to all holders of Contract Documents at the addresses furnished therefor, at least five (5) days prior to the date of the opening of bids.

Failure of any bidder to receive any Addenda shall not relieve such bidder from any obligation under this bid as submitted. All Addenda so issued shall become a part of the Contract Documents.

Bid Evaluation

28. BID EVALUATION The Purchasing Agent reserves the right to accept or reject any and all bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if the Purchasing Agent determines the best interests of the Town will be served. The Purchasing Agent, in his/her sole discretion, may accept or reject illegible, incomplete or vague bids and his/her decision shall be final. A conditional or revocable bid which clearly communicates the terms or limitations of acceptance may be considered and contract award may be made in compliance with the Bidders conditional or revocable terms in the offer.

Where a bidder is requested to submit a bid on individual items and/or on a total sum or sums, the right is reserved to award bids on individual items or on total sums. The Town reserves the right to award in whole or in part based on the lowest responsible bid.

The following three items will automatically render a bid unacceptable to Town of Essex:

- a. Failure to sign bid proposal page.
- b. Failure to include necessary bid deposit (as required).
- c. Failure to sign and submit non-collusive bidding certificate.

It shall be fully understood that any deviations from the inclusion of the above items will be grounds to see the bid as non-compliant and will not be considered for award.

The Purchasing Agent reserves the right to reject such bids, as in his opinion, are incomplete, conditional, obscure, or which contain irregularities of any kind including unbalanced bids. One in which the amount bid for one or more separate items is substantially out of line with the current market prices for the materials and/or work covered thereby.

29. CONDITIONAL BID Unless the Bid Specifications provides otherwise, a bid is not rendered non-responsive if the Bidder specifies that the award will be accepted only on all or a specified group of items or Product included in the specification. It is understood that nothing herein shall be deemed to

change or alter the method of award contained in the Bid Documents.

30. CLARIFICATIONS / REVISIONS Prior to award, the Purchasing Agent reserves the right to seek clarifications, request bid revisions, or to request any information deemed necessary for proper evaluation of bids from all Bidders deemed to be eligible for contract award. Failure to provide requested information may result in rejection of the bid.

31. PROMPT PAYMENT DISCOUNTS While prompt payment discounts will not be considered in determining the low bid, the Purchasing Agent may consider any prompt payment discount in resolving bids which are otherwise tied. However, any notation indicating that the price is net, (e.g. net 30 days), shall be understood to mean only that no prompt payment discount is offered by the Bidder. The imposition of service, interest, or other charges, except pursuant to the provisions of Article 11_A of the *State Finance Law*, which are applicable in any case, may render the bid non-responsive and may be cause for its rejection.

32. EQUIVALENT OR IDENTICAL BIDS In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent bids as to pricing or other factors, the decision of the Purchasing Agent to award a contract to one or more of such Bidders shall be final.

33. PERFORMANCE QUALIFICATIONS The Purchasing Agent reserves the right to investigate or inspect at any time whether or not the Product, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Documents. Contractor shall at all times during the contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Purchasing Agent, to present evidence of experience, ability and financial standing, as well as a statement as to plant, machinery and capacity of the manufacturer for the production, distribution and servicing of the Product bid. If the Purchasing Agent determines that the conditions and terms of the Bid Documents or Contract are not complied with, or that items or Product proposed to be furnished do not meet the specified requirements, or that the qualifications, financial standing or facilities are not satisfactory, or that performance is untimely, the Purchasing Agent may reject such bid or terminate the contract. Nothing in the foregoing shall mean or imply that it is obligatory upon the Purchasing Agent to make an investigation either before or after award of a contract, but should such investigation be made, it in no way relieves the Bidder/Contractor from fulfilling all requirements and conditions of the contract.

34. DISQUALIFICATION FOR PAST PERFORMANCE Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidders employment, has previously failed to perform satisfactorily in connection with public bidding or contracts.

35. QUANTITY CHANGES PRIOR TO AWARD The Purchasing Agent reserves the right, at any time prior to the award of a specific quantity contract, to alter in good faith the quantities listed in the Bid Specifications to conform with requirements. In the event such right is exercised, the lowest responsible Bidder meeting specifications will be advised of the revised requirements and afforded an opportunity to extend or reduce its bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its bid price may result in the rejection of its bid and the award of such contract to the lowest responsible Bidder who accepts the revised requirements.

36. RELEASE OF BID EVALUATION MATERIALS Requests concerning the evaluation of bids may be submitted under the *Freedom of Information Law*. Information, other than the Bid Tabulation, shall be released as required by law after contract award. Written requests should be directed to the Purchasing Agent.

37. TIME FRAME FOR OFFERS The Purchasing Agent reserves the right to make awards within sixty (60) days after the date of the bid opening, during which period, bids must remain firm and cannot be withdrawn. If, however, an award is not made within the sixty (60) day period, bids shall remain firm

until such later time as either a contract is awarded or the Bidder delivers to the Purchasing Agent written notice of the withdrawal of its bid. Any bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Purchasing Agent, be accepted or rejected.

TERMS & CONDITIONS

38. CONTRACT CREATION / EXECUTION Except as may be otherwise provided by law or by the Purchasing Agent, upon receipt of all required approvals a Contract shall be deemed executed and created with the successful Bidder(s) upon the Purchasing Agent's mailing or electronic communication to the address on the bid of (a) a Letter of Acceptance and (b) a fully executed contract, or (c) a Purchase Order authorized by the Purchasing Agent.

39. COMPLIANCE WITH LAWS, ETC. The Bidder shall comply with all the provisions of the laws of the State of New York and of the United States of America which affect municipalities and municipal contracts, and any and all State and Federal rules and regulation, and of amendments and additions thereto, insofar as the same shall be applicable to any contract awarded hereunder with the same force and effect as if set forth at length herein. The Bidder's special attention is called to the following laws: *General Municipal Law* Section 1 03-d, *State Finance Law* Section 167-b prohibiting the purchase of tropical hardwood products, and the New York State Public Employee Safety & Health Act of 1980.

40. MODIFICATION OF TERMS The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Purchasing Agent and Contractor.

The Contractor may, however, offer Authorized User(s) more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Authorized User(s) and Purchasing Agent by the Contractor.

Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Purchasing Agent or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized Users subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

41. SCOPE CHANGES The Purchasing Agent reserves the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the contract specifications, such changes to be within the general scope of the contract. The Purchasing Agent may make an equitable adjustment in the contract price or delivery date if the change affects the cost or time of performance.

With respect to any specific quantity stated in the contract, the Purchasing Agent reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the contract. Notwithstanding the foregoing, the Purchasing Agent may purchase greater or lesser percentages of contract quantities should the Purchasing Agent and Contractor so agree.

42. ESTIMATED QUANTITY CONTRACTS Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the contract term. No guarantee of any estimated quantity(s) is implied or given. Unless otherwise set forth in the Bid Specifications, contracts for services and technology are completely voluntary as to use, and therefore

no quantities are guaranteed.

43. BEST PRICING OFFER During the contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this contract vehicle upon the same or similar terms and conditions as that of this contract at a lower price, the price under this contract shall be immediately reduced to the lower price.

44. PURCHASE ORDERS Unless otherwise authorized in writing by the Purchasing Agent, no Products are to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User requiring the Product. Unless terminated or canceled pursuant to the authority vested in the Purchasing Agent, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the contract period, addressed to the Contractor at the address set forth in the Contract for receipt of orders, or in the Contract Award Notification.

All Purchase Orders issued pursuant to contracts let by the Purchasing Agent must bear the appropriate contract number and, if necessary, required State approvals. Unless otherwise specified, all Purchase Orders against centralized contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the vendors order form, confirmation or acknowledgment, and the contract terms shall be resolved in favor of the terms most favorable to the Authorized User.

If, with respect to an agency specific contract, a Purchase Order is not received within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, the Contractor shall promptly notify the appropriate purchasing officer in Town of Essex. Failure to timely notify such officer may, in the discretion of the Purchasing Agent and without cost to the State, result in the canceling of such requirement by the Purchasing Agent with, at the Purchasing Agents discretion, a corresponding reduction in the contract quantity and price.

45. PRODUCT DELIVERY It shall be understood that with respect to contract deliveries, time is of the essence. Delivery must be made as ordered and in accordance with the terms of the contract. Unless otherwise specified in the Bid Specifications, delivery shall be made within thirty calendar days after receipt of a purchase order by the Contractor. The decision of the Purchasing Agent as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Purchasing Agent and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of the time for delivery must be requested in writing by the Contractor and approved in writing by the Purchasing Agent. Failure to meet such time schedule may be grounds for cancellation of the order or, in the Purchasing Agents discretion, the Contract.

The Town must be notified twenty-four (24) hours in advance of delivery. The Town reserves the right to deny acceptance of delivery if this notice is not given, at no cost to the Town.

The successful bidder shall be responsible for delivery of items in good condition at point of destination, and shall file with the carrier all claims for breakage, imperfections, and other losses, which will be deducted from invoices. The Purchasing Agent will note for the benefit of successful bidder when packages are not received in good condition. Carton shall be labeled with purchase order or contract number, successful bidders name and general statement of contents. Failure to comply with this condition shall be considered sufficient reason for refusal to accept the goods.

Unless otherwise stated in the specifications, all items must be delivered into and placed at a point within the building as directed by the shipping instructions or the Purchasing Agent. The

successful bidder will be required to furnish proof of delivery in every instance.

Unloading and placing of equipment and furniture is the responsibility of the successful bidder, and the Town accepts no responsibility for unloading and placing of equipment. Any costs incurred due to the failure of the successful bidder to comply with this requirement will be charged to him. No help for unloading will be provided by the Town, and suppliers should notify their truckers accordingly.

All deliveries shall be accompanied by delivery tickets or packing slips. Ticket shall contain the following information for each item delivered:

Contract Number and/or Purchase Order Number
Name of Article
Item Number (if applicable)
Quantity
Name of the Successful Bidder

46. SATURDAY & HOLIDAY DELIVERIES Unless otherwise specified in the Bid Specifications or by an Authorized User, deliveries will not be scheduled for Saturdays, Sundays or legal holidays observed by the State of New York except of Product for daily consumption or where an emergency exists or the delivery is a replacement or is late, in which event the convenience of the Authorized User shall govern.

47. SHIPPING / RECEIPT OF PRODUCT

(a) Packaging Tangible Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases or other types of containers. The container shall become and remain the property of the receiving entity unless otherwise specified in the contract documents.

(b) Shipping Charges Contractor shall be responsible for insuring that the Bill of Lading states "charges prepaid" for all shipments. Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be FOB Destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. Shipping point plus transportation charges are understood to not relieve the contractor from responsibility for safe and proper delivery notwithstanding the Authorized Users payment of transportation charges.

(c) Receipt of Product The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the Authorized User. Any losses resulting from the Contractors failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

48. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title and risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g. signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product which is substandard or does not comply with the Contract terms, may be rejected or accepted on an adjusted price basis, as determined by the Purchasing Agent.

49. RE-WEIGHING PRODUCT Deliveries are subject to re-weighing at the point of destination by the receiving entity. If shrinkage occurs which exceeds that normally allowable in the trade, the receiving entity shall have the option to require delivery of the difference in quantity, or to reduce the payment accordingly.

50. PRODUCT SUBSTITUTION In the event a specified manufacturers Product listed in the Contractors Bid becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Force Majeure Clause below) a Product deemed by the Purchasing Agent to be the equal or better of the specified commodity or service must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product prior to the Purchasing Agents approval may be cause for cancellation of contract.

51. REJECTED PRODUCT When Products are rejected, they must be removed by the Contractor from the premises of the receiving entity within ten days of notification of rejection by Authorized User. Upon rejection notification, risk of loss of rejected or non-conforming Product shall remain on Contractor. Rejected items not removed by the Contractor within ten days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of the items as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition.

52. INSTALLATION Where installation is required, Bidder shall be responsible for placing and installing the equipment in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects which would mar the appearance of the equipment or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or replace the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site to its original condition. Work shall be performed so as to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

53. REPAIRED OR REPLACED PRODUCT / COMPONENTS Where the Contractor is required to repair, replace or substitute Product or components under the Contract, the repaired, replaced or substituted Product shall be subject to all terms and conditions for new Product set forth in the contract, including product warranties.

54. ON-SITE STORAGE Materials, equipment or supplies may be stored at the Town/s or Authorized User's site at the Contractors sole risk and only with the approval of, as the case may be, the Town or the Authorized User.

55. EMPLOYEES / SUBCONTRACTORS / AGENTS All employees, subcontractors or agents performing work under the contract must be trained technicians who meet or exceed the technical and training qualifications set forth in the Bid Specifications or the Bid, whichever is greater, and must comply with all rules and requirements of the Contract. The Purchasing Agent reserves the right to conduct a security background check or otherwise approve any employee or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause, including but not limited to, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized Users security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the contract terms. The Purchasing Agent reserves the right to reject and/or bar from the facility for cause any employee, subcontractor, or agents of the Contractor.

56. ASSIGNMENT / SUBCONTRACTORS The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract, other than

the assignment of the right to receive moneys due, without the prior written consent of Town of Essex. Prior to an assignment of the right to receive moneys becoming effective, Contractor shall file a written notice of such assignment simultaneously with Town of Essex and participating Authorized User(s).

The Purchasing Agent reserves the right to reject any proposed subcontractor, assignee or supplier for bona fide business reasons, which may include, but are not limited to: that the proposed transferee is on the Department of Labors list of companies with which New York State cannot do business; the Purchasing Agent determines that the company is not qualified; unsatisfactory contract performance or service has been previously provided; or attempts were not made to solicit minority and womens business enterprises (M/WBE) bidders for the subcontract.

57. PERFORMANCE / BID BOND Town of Essex reserves the right to require the Bidder/Contractor to furnish without additional cost, a performance, payment or bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the contract, whenever the Purchasing Agent in his/her sole discretion deems such bond or security to be in Town of Keene's best interest. Where required, such bond or other security shall be in the form prescribed by the Purchasing Agent.

58. STOP / SUSPENSION OF WORK

(a) **Stop Work Order** The Purchasing Agent reserves the right to stop the work covered by this contract at any time that the successful Contractor becomes unable or incapable of performing the work or meeting any requirements or qualifications set forth in the contract. In the event of such stopping, the Purchasing Agent shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful Contractor shall be liable for any such cost on account thereof.

(b) **Suspension of Work Order** The Purchasing Agent, in his/her sole discretion, reserves the right to suspend any or all activities under this contract, at anytime, in the best interests of the State or Issuing Entity. In the event of such suspension, the contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on Town spending, declaration of emergency, or other such circumstances. Upon issuance of such suspension of work, the Contractor is not to accept any purchase orders, as specified in the Suspension Order. Activity may resume at such time as the Purchasing Agent issues a formal written notice authorizing a resumption of work.

59. CANCELLATION A contract may be canceled by the Purchasing Agent, and/or an Authorized User may cancel its participation, license or service order under the contract, at the Contractors expense upon non-performance, or upon a determination that Contractor is non-responsive, or non-responsible.

60. FORCE MAJEURE The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor negligence of the Contractor, its officers, employees or agents contributed to such delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires or floods, or other similar cause beyond the control of the Contractor, or for any of the foregoing which affect subcontractors or suppliers and no alternate source of supply is available to the Contractor. In such event, Contractor shall notify the Purchasing Agent, by certified or registered mail, of the delay or potential delay and the cause(s) thereof either (a) within ten (10) calendar days after the cause which creates or will create the delay first arose if the Contractor could reasonably foresee that a delay could occur by reason thereof, or (b), if delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe a delay could result. The foregoing shall constitute the Contractors sole remedy or excuse with respect to such delay. In the event performance is suspended or delayed, in whole or in part, by reason of any of the aforesaid

causes or occurrences and proper notification is given the Purchasing Agent, any performance so suspended or delayed shall be performed by the Contractor at no increased cost, promptly after such disabilities have ceased to exist unless it is determined in the sole discretion of the Purchasing Agent that the delay will significantly impair the value of the contract to the Town or to Authorized Users, whereupon the Purchasing Agent may:

- (a) Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to Town Agencies with respect to Product subjected to allocation; and/or
- (b) Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the contract quantity; or
- (c) Terminate the contract or the portion thereof which is subject to delivery delays, and thereby discharge any unexecuted portion of the contract or the relative part thereof.

61. CONTRACT BILLINGS Contractor shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billings for Agencies must contain all information required by the Town Treasurer and/or Auditor. The Town Treasurer shall render payment for Agency purchases, and such payment shall be made in accordance with ordinary Town procedures and practices. Payment of contract purchases made by Authorized Users other than Agencies shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User.

Submission of an invoice and payment thereof shall not preclude the Purchasing Agent from reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the bid and award documents.

62. DEFAULT - AUTHORIZED USER An Authorized Users breach shall not be deemed a breach of the centralized contract. In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to both the Purchasing Agent and the Authorized Users purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future contract payments.

Notwithstanding the foregoing, the Contractor shall, at least 10 days prior to declaring a breach of contract by any Authorized User, by certified or registered mail, notify both the Purchasing Agent and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared. It is understood, however, that if the Contractors basis for declaring a breach is insufficient, the Contractors declaration of breach and failure to service an Authorized User shall constitute a breach of its contract and the Town or Authorized User may thereafter utilize any remedy available at law or equity.

63. INTEREST ON LATE PAYMENTS

- (a) **Town Agencies** The payment of interest on certain payments due and owed by a Town agency may be made in accordance with Section 3-a of the *General Municipal Law* at the rate of three percent (3%) per annum.
- (b) **By Non-Town Agencies** The terms of Article 11-A apply only to procurements by and the consequent payment obligations of the Town. Neither expressly nor by any implication is the Town responsible for payments on any purchases made by a Non-Town Agency Authorized User.

(c) **By Contractor** Should the Contractor be liable for any payments to the Town hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the *State Finance Law* to the same extent as though the contract was with the State of New York rather than the Town.

64. REMEDIES FOR BREACH It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

(a) **Cover / Substitute Performance** Upon the failure of the Contractor to properly perform within the time specified, failure to provide acceptable service, to make immediate replacement of rejected Product when so requested, or upon the revocation of the Contract by the Purchasing Agent for cause, or upon repudiation of the contract by the Contractor, the Purchasing Agent may, with or without formally bidding same:

i. Purchase from other sources to replace the Product rejected, revoked, not timely delivered or repudiated; or

ii. If after making reasonable attempts, under the circumstances then existing, to timely provide acceptable service or acquire replacement product of equal or comparable quality, the Purchasing Agent is unsuccessful, the Purchasing Agent may acquire acceptable service or replacement product of lesser or greater quality.

Such purchases may, in the discretion of the Purchasing Agent, be deducted from the contract quantity.

(b) **Withhold Payment** In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Purchasing Agent. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.

(c) **Reimbursement of Costs Incurred** The Contractor agrees to reimburse the Town and/or Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the Town or Authorized User in connection therewith, including reasonable attorneys fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the contract, the Purchasing Agent may authorize an ordering Authorized User to rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments due or to become due the Contractor on the same or another transaction.

(d) **Deduction / Credit** Sums due as a result of these remedies may be deducted or offset by the Town or Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Town or Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Purchasing Agent reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc. which arise from the administration of the contract.

65. ASSIGNMENT OF CLAIM Contractor hereby assigns to the Town any and all its claims for overcharges associated with this contract which may arise under the antitrust laws of the United States, 15 U.S.C. Section 1, *et seq.* and the antitrust laws of the State of New York, *General Business Law* Section 340, *et seq.*

66. TOXIC SUBSTANCES Each Contractor furnishing a toxic substance as defined by Section 875 of the *Labor Law*, shall provide such Authorized User with not less than two copies of a material safety data sheet, which sheet shall include for each such substance the information outlined in Section 876 of the *Labor Law*.

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the user agency representative.

67. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of the Town or Authorized User, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this contract, to maintain at Contractors expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including workers compensation, disability and unemployment insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

68. SECURITY / CONFIDENTIALITY Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Town and any Authorized User(s) in performance of the Contract.

Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, subcontractors, officers, or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the Town or any Authorized User hereunder or received from another third party, will not be divulged to any third parties. Contractor shall not be required to keep confidential any such confidential material which is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Town or Authorized User, or otherwise obtained under the Freedom of Information Act or other applicable New York State Laws and Regulations. This warranty shall survive termination of this Contract for a period of five (5) years. Contractor further agrees to take appropriate steps to instruct its personnel, agents, officers and any subcontractors regarding the obligations arising under this clause to insure such confidentiality.

69. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party agents, including but not limited to subcontractors of the Authorized User, relating to delivery of product or coordination of services.

70. CONTRACT TERM - EXTENSION In addition to any stated renewal periods in the Contract, any contract or unit portion thereof let by the Purchasing Agent may be extended by the Purchasing Agent for an additional period(s) of up to one year (cumulatively) with the written concurrence of the Contractor.

71. WARRANTIES & GUARANTEES Contractor hereby warrants and guarantees:

- (a) To fully defend, indemnify and save harmless the Town, Authorized Users and their respective officers, agents and employees from suits, actions, damages and costs of every name and description arising out of the acts or omissions of Contractor, its officers, employees, subcontractors, partners, or agents, in any performance under this contract including: i)

personal injury, damage to real or personal tangible or intangible property, without limitation; ii) negligence, either active or passive, without limitation, or iii) infringement of any law or of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or other third party intellectual proprietary rights, without limitation, provided that the Town or Authorized User shall give Contractor: (a) prompt written notice of any action, claim or threat of infringement suit, or other suit, promptness of which shall be established by Authorized User upon the furnishing of written notice and verified receipt, (b) the opportunity to take over, settle or defend such action, claim or suit at Bidders sole expense, and (c) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the Town or Authorized User may require Bidder/Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Purchasing Agent shall require.

(b) Contractor warrants full ownership, clear title free of all liens, or perpetual license rights to any Products transferred to Authorized User under this Contract, and Contractor shall be solely liable for any costs of acquisition associated therewith without limitation. Contractor warrants that Authorized User will have undisturbed, peaceful use of the Products, including, without limitation, software, object or source codes, custom programming or third party intellectual property rights incorporated or embedded therein, and training modules or Documentation. Contractor fully indemnifies the Town and Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.

(c) To pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the contract.

(d) Unless recycled or recovered materials are available in accordance with the "Recycled & Recovered Materials" clause, Product offered shall be standard new equipment, current model of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturers recommendations and standard practice. Every Product, including any substituted or replacement unit delivered, must be guaranteed against faulty material and workmanship for a period of one year from and after the date the unit is accepted unless otherwise specified by the Town or Authorized User. Notwithstanding the foregoing, when the manufacturers standard guarantee for Product or any component thereof exceeds one year, the longer guarantee period shall apply to such unit or component thereof delivered under this contract. Furthermore, the Contractor agrees to extend its warranty period with regard to any Product delivered by the cumulative periods of time, after notification, during which the Product requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers or employees. If during the regular or extended warranty periods faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective goods during the warranty periods shall be borne solely by the Contractor, and the Town or Authorized User shall in no event be liable or responsible therefore. This warranty shall survive any termination of the contract in accordance with the warranty term.

(e) Where the provision of services requires the replacement or repair of Product, any replaced or repaired component, part or Product shall be new and shall, if available, be replaced by the original manufacturers component, part or Product. All proposed substitutes for the original manufacturers installed Product must be approved by the Authorized User before installation. The Product or part shall be equal to or of better quality than the original Product being replaced. Any Product replaced by the Contractor under the contract shall be guaranteed for one (1) year from the date of replacement and replaced at no cost to the Authorized User if found defective during that time.

(f) Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Purchasing Agent that it meets or exceeds all requirements of the bid and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workman's compensation, and shall provide such proof as required by the Purchasing Agent. Failure to do so may constitute grounds for the Town to cancel or suspend this contract, in whole or in part, or to take any other action deemed necessary by the Purchasing Agent.

The Contractor further warrants and guarantees:

i. His/Her/Its products against defective material or workmanship and to repair or replace any damages or marring occasioned in transit.

ii. To furnish adequate protection from damage for all work and repair damages of any kind for which he or his workmen are responsible, to the building or equipment, to his own work, or to the work of other successful bidders.

iii. To carry adequate insurance to protect the Town from loss in case of accident, fire, theft, etc.

iv. That all deliveries will be equal to the accepted bid sample.

v. That the equipment delivered is standard, new, latest model of regular stock product or as required by the specifications; also that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice. Every unit delivered must be guaranteed against faulty material and workmanship for a period of at least one year from date of delivery. If during this period such faults develop, the successful bidder agrees to replace the unit or the part affected without cost to the Town. Any merchandise provided under the contract which is or becomes defective during the guarantee period shall be replaced by the successful bidder free of charge with the specific understanding that all replacements shall carry the same guarantee as the original equipment. The successful bidder shall make any such replacement immediately upon receiving notice from the Town.

vi. That all manufacturers product warranties and guarantees shall be furnished to the Town, and that the Town's rights thereunder shall not be in any way impaired or limited.

GENERAL

72. APPLICABILITY In addition to the terms contained in **Part I (General - All Procurements)**, the terms contained in **Part II (Software & Technology Procurements)** apply to software and technology procurements.

73. DEFINITIONS - Part II

DOCUMENTATION The complete set of manuals (e.g. user, installation, instruction or diagnostic manuals) in either hard or electronic copy, necessary to enable an Authorized User to properly test, install, operate and enjoy full use of the Product in accordance with the license rights.

ENTERPRISE The business operations in the United States of a Licensee or Enterprise Participant, without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of Licensee or Enterprise Participant. For the Town of New York, "business operations" shall be defined as the business operations of all Agencies, as defined in Part I.

ENTERPRISE LICENSE A contract which grants Enterprise Participants unlimited license rights to access, use and/or execute Product within the Enterprise.

ENTERPRISE PARTICIPANTS One or more Licensees, as defined in Part I, participating in an Enterprise License.

LICENSE EFFECTIVE DATE The date Product is delivered to an Authorized User. Where a License involves Licensees right to copy a previously licensed and delivered Master Copy of a Program, the license effective date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

LOGICAL PARTITION A subset of the processing power within a CEC which has been divided through hardware and/or software means (i.e. *Processor Resources/System Manager [PR/SM]*) so as to limit the total processing power which is accessible by an operating system image by individual users or individual software products.

OBJECT CODE The machine executable code that can be directly executed by a computers central processing unit(s).

PHYSICAL PARTITION A subset of the processing power within a CEC which has been derived through hardware means so as to limit the total processing power accessible by an operating system image by individual users or individual Products.

SITE The location (street address) where Product will be executed.

SOURCE CODE The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine Object Code.

TERMS OF LICENSE The terms and conditions set forth in the Contract which are in effect and applicable to a Product order at the time of order placement, and only such additional terms as are consistent therewith or more advantageous to the Authorized User as are set forth on the individual Product order form executed and approved by both Authorized User and Contractor.

VIRUS Any computer code, whether or not written or conceived by Contractor, which disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

TERMS AND CONDITIONS

74. SOFTWARE LICENSE GRANT *Unless otherwise set forth in the Bid Specifications or Contract, where Product is acquired on a licensed based the following shall constitute the license grant:*

(a) **License Scope** Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product with other product within its business enterprise in the United States. Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the product, provided that any modifications, however extensive, shall not diminish manufacturers proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

(b) **License Term** The license term shall commence upon the License Effective Date. Where the terms of license permit licensing on a non-perpetual basis, the license term stated in the Contract shall be extended by the time periods allowed for testing and acceptance.

(c) Licensed Documentation Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product. If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractors expense: a) One (1) hard copy and One (1) Master Electronic Copy of the Documentation in diskette or CD-ROM format; or b) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License – 1 copy per License
- Concurrent Users – 8 copies per site
- Processing Capacity – 8 copies per site

(d) Product Use Product may be accessed, used, executed, reproduced, displayed, performed by Licensee to service all Authorized Users of the machine on which Product is installed, up to the capacity measured by the applicable licensing unit stated in the terms of license (i.e. payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation).

(e) Permitted License Transfers As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated Authorized User site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior site. There shall be no additional license or other transfer fees due Contractor, provided that: i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site. (e.g., named users, seats, or MIPS); and ii) that, if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee.

(f) Restricted Use By Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and 2) such party has executed, or agrees to execute, the Product manufacturers standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("NonDisclosure Agreement"); and 3) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third partys compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the Town or Licensee.

Any third party with whom a Licensee has a relationship for a state function or business operation, shall have the temporary right to use Product (using, for example, but not limited to, JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the stated function or business activity.

(g) Archival Back-Up and Disaster Recovery Licensee may use and copy the Product

and related Documentation in connection with: 1) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; 2) reproducing a reasonable number of copies of the Product and related documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; 3) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed under paragraph (F) above. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

(h) Confidentiality Restrictions The Product is a trade secret and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the terms of license. Licensee will not remove or destroy any proprietary markings of Contractor.

(i) Restricted Use by Licensee Except as expressly authorized by the terms of license, Licensee shall not:

- a. Copy the Product;
- b. Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;
- c. Distribute, disclose, market, rent, lease or transfer to any third party any portion of the Product or the Documentation, or use the Product or Documentation in any service bureau arrangement;
- d. Disclose the results of Product performance benchmarks to any third party who is not an Authorized User without prior notice to Contractor;
- e. Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

75. ENTERPRISE LICENSE OPTION FOR SOFTWARE Multiple Authorized Users may license any Product offered under the Contract on behalf of their collective business operations. An Enterprise License shall incorporate the terms set forth in this Part II and the pricing set forth in the Contract, and additionally the following terms:

(a) Enterprise – Defined Any Authorized User may be an Enterprise Participant. Enterprise Participants will be enumerated in the Enterprise License, including: i) contact name, ship to and main billing address of each Enterprise Participant, ii) street address of the included End User sites of each Enterprise Participant. The originally defined Enterprise may be modified at any time thereafter, including deletion or addition of Enterprise Participants, sites ownership to" locations, provided that Contractor is given written notice and that any additional capacity required by such addition is licensed in accordance with the Enterprise License terms.

(b) Product Use Product licensed under this Enterprise Option shall be licensed with the rights set forth in this Part II, without reference to a specific designated system or Licensee, up to the maximum licensed capacity. Product may be used and freely transferable anywhere within the defined Enterprise, including higher or lower performance machines, and Enterprise Participants will not incur an increase in license, support or other charges provided that the

aggregate utilization of the Product does not exceed the aggregate Enterprise Licensed capacity.

(c) Submission of Orders, Billing and Usage Reporting An Enterprise may be established for order placement and billing as either a “single” or “multiple” point of contact, at Licensees option. Where designated as a “single”, one Enterprise Participant shall be designated as the lead agency and central point for submission of Purchase Orders, usage reporting and billing. Where designated as “multiple” point of contact, each designated Enterprise Participant shall be responsible for submission of Purchase Orders, reporting and billing with regard to its use of Enterprise Licensed Product. For either single or multiple point of contact Enterprises, a) Contractor agrees to hold each Enterprise Participant solely responsible for payment and performance; and b) Contractor shall be responsible for furnishing an annual report to each designated point of contact summarizing overall Enterprise License activity for the preceding twelve months.

(d) Shipping / Delivery Contractor shall be responsible for delivery of Master Copies of Enterprise Licensed Product and documentation to Enterprise Participants. Within either “Single” or “Multiple” Enterprise Licenses, shipping and delivery of Master Copies of Product and Documentation shall be the responsibility of Contractor to each “ship to” location specified on the Purchase Order(s). Distribution and installation of Enterprise Licensed Product to End Users at a site shall be the responsibility of the Licensee.

(e) Enterprise Operating Systems Unless otherwise specified by the parties, up to ten (10) hardware/operating system combinations for Product shall be included at no additional charge. The initial ten hardware/operating systems may be specified at any time within five (5) years of the Enterprise License effective date. Additional hardware/operating systems beyond the initial ten (10) may be specified at anytime by the Enterprise, however if additional copies of Product are required for hardware/operating systems beyond the initial ten, the cost for such systems will be as mutually agreed between the parties.

(f) Product Acceptance Each Enterprise Participant shall have a right of acceptance, as set forth above in this Part II, only for the first copy of Product for its site(s).

(g) Enterprise Fees Enterprise License Fees shall be set forth in the Contract. Notwithstanding the foregoing, the Product license fees for additional copies or units of capacity for Enterprise licensed Product shall not increase by more than six percent (6%) annually each year during the Enterprise License term. Contractor may offer additional discounts/incentives for Enterprise Participants as may be mutually agreed between the parties. Enterprise Participants shall be entitled to aggregate the volume of all Enterprise Participants for purposes of establishing any applicable discounts under the Contract, and Enterprise Licensed Volume shall be aggregated with volume of non-Enterprise Licensed Product otherwise purchased under the centralized Contract. Upon termination of the Enterprise, Enterprise Participants have the right to acquire additional capacity or users at the Enterprise License price for twelve months after the termination of the Enterprise License.

(h) Technical Support Unless otherwise mutually agreed, technical support is optional and may be elected individually by Product by each Enterprise Participant. Where an Enterprise Participant is under a current maintenance or technical support contract, such Enterprise Participant shall be entitled to credit any support paid covering any portion of the Enterprise License Term to the fees due under the Enterprise license.

Enterprise Participants shall have the right to partially or wholly de-support a subset of unused Enterprise licensed capacity upon written notice to Contractor at the end of any then - current technical support term without penalty or charge. The capacity for a Program license which has been de-supported must remain inactive and may not be used within the Enterprise

unless technical support for such capacity has been reinstated. In the event of de-support, Contractor reserves the right to reasonably determine compatibility of future releases or new programs prior to shipment.

(i) Merger of Two or More Enterprises Two or more Enterprises may be merged to form a larger Enterprise for the purpose of sharing and exchanging data at no additional license fee provided that participants give Contractor notice of such merger and that the combined capacity does not exceed the maximum capacity of the individual licenses.

(j) "Nested" Enterprises Individual Enterprise License participant(s) may license additional capacity or products for the specific use of a subset of the larger enterprise. Said participant(s) must certify in writing to Contractor that such use is only by the enumerated subset of participants.

(k) Default A default by any Enterprise Participant shall entitle the Contractor to the remedies against such participant under the Contract, but shall not be deemed a default by the remaining non-defaulting Enterprise Participants.

76. PRODUCT ACCEPTANCE Unless otherwise provided in the Bid Specifications, the Town and/or Authorized User(s) shall have sixty (60) days from delivery to accept Product. Failure to provide notice of acceptance or rejection by the end of the period provided for under this clause would constitute acceptance by the Town or Authorized User(s) as of the expiration of that period.

Unless otherwise provided in the Bid Specifications, The Town or Authorized User shall have the option to run acceptance testing on the Product prior to acceptance, such tests and data sets to be specified by User. Where using its own data or tests, The Town or Authorized User must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Town or Authorized User, and shall be made part of the Contractors standard documentation. The test data shall remain accessible to the Town or Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within sixty (60) days from delivery, and the Contractor or Product is responsible for the delay, The Town or Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for another sixty (60) day increment. The Town or Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Town or Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the The Town or Authorized Users agents or employees. Said costs shall be limited to fees paid to Contractor, if any, or any liability for costs incurred at the direction or recommendation of Contractor.

77. AUDIT OF LICENSED PRODUCT USAGE Contractor shall have the right to periodically audit, at its expense, use of licensed Product at any site where a copy of the Product resides provided that: i) Contractor gives Licensee or Enterprise Participants at least thirty (30) days advance notice, ii) such audit is conducted during such party's normal business hours iii) each Licensee or Enterprise Participant is entitled to designate a representative who shall be entitled to participant and simultaneously review all information obtained by the audit, and shall be entitled to copies of all reports, data or information obtained by the Contractor; and iv) if the audit shows that such party is not in compliance such party shall be liable for the unlicensed capacity and shall be required to purchase the additional units or rights necessary to bring it into compliance.

78. OWNERSHIP / TITLE TO CUSTOM PRODUCTS OR PROGRAMMING Where contract deliverables include custom products or programming, title, rights and interests to such Product(s) shall be determined as follows:

(a) Definitions

Product For purposes of this section, the term "Product" shall have the meaning set forth in Part I of these *General Specifications*, which includes, but is not limited to: software applications or programming, programming tools, documentation (including user or training manuals), modules, interfaces, templates, and other elements such as utilities, subroutines, algorithms, formulas, source code, object code, reports, drawings, or data.

"Existing Product" is defined as any proprietary material(s) existing or developed independently and not at the expense of Licensee.

"Custom Product" is defined as any material(s), exclusive of Existing Product, created, prepared, written, compiled or developed by Contractor, or anyone acting on his behalf for The Town or Authorized User pursuant to the Contract.

(b) Contractor or Third Party Manufacturers Title to Existing Product Title to Existing Product(s) does not transfer. With respect to such Existing Product(s), whether embedded in or operating in conjunction with Custom Product, Contractor warrants: a) all right, title and interest in Contractor's Existing Product(s); or b) all license rights, title and interest in third party Existing Product(s), which include the right to grant to The Town or Authorized User an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute Existing Product(s). Contractor hereby grants a irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute Existing Product(s) embedded in or transferred for use in conjunction with Custom Product(s). The Licensee agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the license granted under this paragraph prior to distribution or use.

(c) Title to Custom Product Title to Custom Product(s), excluding Existing Product, shall be deemed the sole and exclusive property of the Town or Authorized User, who shall have all right, title and interest (including ownership and copyrights). For the purposes of the federal copyright law, execution of this contract shall constitute an assignment of all right, title and interest in the Custom Product(s) by Contractor to the Town or Authorized User. The Town or Authorized User, in its sole discretion, reserves the right to sell Custom Product or to license them on an exclusive or non-exclusive basis to Contractor or other Third Parties. Contractor hereby agrees to take all necessary and appropriate steps to ensure that Custom Product is protected against unauthorized use, execution, reproduction, display, performance, or distribution by or through Contractor, its partners or agents. Notwithstanding this reservation of title, Contractor shall not be precluded from using the related or underlying general knowledge, skills and experience developed in the course of providing the Custom Product in the course of Contractor's business.

(d) Acquisitions Funded By Tax Exempt Financing In addition to the foregoing rights under a, b and c, the sale or licensing of Custom Product or rights therein shall not occur until such Product or rights are or become useable, and shall be at fair market value which shall be determined at the time of sale or licensing. Any such transfer shall be pursuant to a separate written agreement. If the Contract deliverables are to be funded through tax exempt financing, the Town or Authorized User may assign to a Trustee or other entity for security purposes Town or Authorized Users ownership and license rights in Custom and Existing Products. Contractor will cooperate with the Town or Authorized User to execute such other documents as may be appropriate to achieve the objectives of this paragraph.

(e) Other Acquisitions (Not Funded by Tax Exempt Financing) In addition to the rights set forth above (paragraphs “a”, “b” and “c”), the Town or Authorized User reserves the right to transfer any or all rights to Custom Materials on an exclusive or non-exclusive basis. Where such transfer (sale or licensing) is provided in the Bid Specifications, Contractor shall include a purchase price for such rights in its bid. Such price shall be offered as a deduction from Contractor’s overall Bid or Project Bid price, and shall be weighted as set forth in the bid evaluation criteria, if any. Such rights shall transfer to the successful Bidder/Contractor upon successful completion and acceptance by the Town or Authorized User of all contract deliverables. Contractor will cooperate with the Town or Authorized User to execute such other documents as may be appropriate to achieve the objectives of this paragraph.

79. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Product order either: a) the Product manufacturer’s certified License Confirmation Certificates in the name of each such Licensee; or b) a written confirmation from the Product manufacturer accepting Contractors Product invoice as proof of license. Bidder or Contractor shall submit a sample manufacturers certificate, or alternatively such written confirmation from the manufacturer, with the Bid or Contract. Such certificates must be in a form acceptable to the Licensee.

80. PRODUCT VERSION Product orders shall be deemed to reference Manufacturers most recently released model or version of the Product at time of delivery, unless an earlier model or version is specifically requested in writing by the Town or Authorized User and Contractor is willing to provide such version.

81. MIGRATION TO CENTRALIZED CONTRACT The Town or Authorized User may obtain additional Product authorized under this contract, (e.g., licensed capacity upgrades, new releases, documentation, maintenance, consulting or training) whether or not Product was initially obtained independently of this contract. The Town or Authorized Users election to obtain additional Product shall not operate to diminish, alter or extinguish rights previously granted.

82. NOTICE OF PRODUCT DISCONTINUANCE In the event that a Product manufacturer proposes to discontinue maintenance or support for Product, Contractor shall (1) notify the Town and each Authorized User in writing of the intended discontinuance, and (2) continue to provide maintenance and support for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than eighteen (18) months from the date of notice, and (3) at The Town or Authorized Users option, either a) provided that the Town or Authorized User is under maintenance, provide the Town or Authorized User with either a Product replacement with equivalent functionality at no additional charge, or b) provide Town or Authorized User with the source code for Licensed Product at no additional charge to enable it to continue use and maintenance of the Product.

83. REINSTATEMENT OF MAINTENANCE The Town or Authorized User shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon written notice to Contractor. In the event that The Town or Authorized User discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor at rates which would have been due under the contract for the period of time that such maintenance had lapsed, or for twelve months, whichever is less.

84. NO HARDSTOP / PASSIVE LICENSE MONITORING Contractor hereby represents, warrants and covenants that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs”, “time locks”, or “drop dead” devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device). Contractor agrees that in the event of a breach or alleged breach of this provision that The Town or Authorized User shall not have an adequate remedy at law, including monetary damages, and that The Town or Authorized User shall

consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which The Town or Authorized User shall be entitled.

85. ADDITIONAL WARRANTIES / GUARANTEES Where Contractor or Product manufacturer offers additional or more advantageous warranties than set forth herein, Contractor shall offer or pass through any additional or more advantageous warranties to The Town or Authorized Users. In addition to the 'Warranties/Guarantees" set forth in Part I, Contractor makes the following warranties.

(a) Product Performance Warranty Contractor represents and warrants that the Products delivered pursuant to this contract conform to the manufacturers specifications, performance standards, and documentation and that the documentation fully describes the proper procedure for using the Products in an efficient manner. Contractor does not warrant that software is error-free.

In the event that Contractor does not remedy a substantial breach of this warranty within the cure period, Licensee shall also have the right to terminate any payments due Contractor, with a refund of the any fees prospectively paid from the date of breach.

(b) Year 2000 Warranty For all procurements of Product, Contractor must furnish a warranty statement in accordance with the NYS Standard Year 2000 Warranty Compliance Statement set forth in Part I at the time of bid for agency specific contracts or product order for centralized contracts.

(c) Virus Warranty Contractor represents and warrants that Licensed Software contains no known viruses. Bidder is not responsible for viruses introduced at Licensees site. For purposes of this provision, "Virus" shall have the meaning set forth in Part II, "Definitions".

A breach of any of the foregoing shall be deemed a material breach of the Contract or any License granted thereunder. The defaulting party shall be given written notice of a warranty breach under this section and shall have a thirty (30) day period to cure such breach.

86. INDEMINIFICATION THE WARRANTIES SET FORTH IN THESE GENERAL SPECIFICATIONS (PARTS I and II) ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Contractor shall defend, indemnify and save harmless the Town and Authorized Users from suits, actions, claims, damages and costs arising under or connected to Contractors actions, and except where express loss liabilities set forth elsewhere in the Contract provide for a higher loss limitation liability than as set forth in this paragraph, or where such express provisions impose Contractor liability on "without limitation", the total liability of Contractor for such claim(s), regardless of the nature and basis for the claim, shall not exceed two (2) times the fees paid for the applicable Product. For any suit, action, claim, damages or costs arising under or are connected to personal injury or property damage, or breach of the title, patent and copyright warranties, Contractor shall be fully liable without limitation.

The Town or Authorized User may retain such moneys from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted by or against the Town or Authorized User, provided however, that Contractor shall not indemnify each such entity to the extent that any claim, loss or damages arising hereunder is caused by the negligence act or failure to act of said entity.

87. SOURCE CODE ESCROW FOR LICENSED PRODUCTS If source code or source code escrow is offered by either Contractor or Product manufacturer/developer to any other commercial customers, Contractor either: i) will provide Licensee with the Source Code for the Product; or ii) place the Source

Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the Town, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the Town, or iii) will certify to the Town that the Product manufacturer/developer has named the Town, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the Town and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above. Contractor shall identify the escrow agent upon commencement of the contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.

The Town may release the Source Code to Licensees under this Contract who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.



**Environmental
Facilities Corporation**

ANDREW M. CUOMO
Governor

SABRINA M. TY
President and CEO

Program Requirements and Bid Packet for Non-Construction Contracts

(For Treatment Works, Drinking Water and Water Grant projects funded with NYS Clean Water State Revolving Fund or Drinking Water State Revolving Fund, and Non-Treatment Works projects funded with NYS Clean Water State Revolving Fund)

Effective October 1, 2016

New York State Environmental Facilities Corporation
625 Broadway, Albany, NY 12207-2997
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www.efc.ny.gov

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ATTACHMENTS (REQUIRED FORMS)

- Attachment 1 - EEO Policy Statement
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- Attachment 3 - EEO Workforce Employment Utilization Report
- Attachment 4 - Monthly MWBE Contractor Compliance Report
- Attachment 5 - MWBE Utilization Plan
- Attachment 6 - MWBE Waiver Request
- Attachment 7 - EPA Form 6100-2 - DBE Subcontractor Participation Form
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- Attachment 10 - Lobbying Certification

PART 1:

HOW TO USE THIS DOCUMENT

The New York State Environmental Facilities Corporation (“EFC”) implements the New York State Revolving Fund (“SRF”) for both Clean Water and Drinking Water projects.

This Program Requirements and Bid Packet for Non-Construction Contracts document contains (1) a brief description of New York State and federal program requirements for Contracts and Subcontracts funded in whole or part by the New York State Clean Water and Drinking Water SRFs, (2) required language for such Contracts and Subcontracts to satisfy the SRF program requirements, including required forms, and (3) guidance materials to assist entities in complying with these requirements.

PROGRAM REQUIREMENTS

The following requirements apply to Treatment Works, Drinking Water and Water Grant projects funded with the NYS Clean Water State Revolving Fund or Drinking Water State Revolving Fund as well as Non-Treatment Works projects funded with the NYS Clean Water State Revolving Fund:

- Participation of Minority- and Women-Owned Business Enterprises (“MWBE”) and Equal Employment Opportunities (“EEO”) pursuant to New York State Executive Law, Article 15-A and New York Code of Rules and Regulations, Title 5 (5 NYCRR) Parts 140-145 (Regulations of the Commissioner of Economic Development);
- Participation by Disadvantaged Business Enterprises (“DBE”) in United States Environmental Protection Agency (“EPA”) Programs pursuant to 40 Code of Federal Regulations (CFR) Part 33;
- Equal Employment Opportunities pursuant to Title VI of the Civil Rights Act of 1964 and 40 CFR Part 7;
- Requirements regarding suspension and debarment pursuant to 2 CFR Part 180, 2 CFR Part 1532, 29 CFR § 5.12, State Labor Law § 220-b, and State Executive Law § 316; and,
- Restrictions on Lobbying pursuant to 40 CFR Part 34.

EFC or its authorized representatives, and other governmental entities as applicable, reserve the right to conduct occasional site inspections to monitor compliance with SRF program requirements.

This document is not intended to be inclusive of all applicable legal requirements and there may be other legal requirements that need to be included in a particular Contract or Subcontract that are not set forth here. Accordingly, EFC recommends that Recipients, Contractors, Subcontractors, and any other involved entities consult their legal counsel for advice on compliance with all applicable laws, including but not limited to local laws. This document is not intended to be legal advice.

Refer to the EFC website at www.efc.ny.gov/MWBE for the latest version of the bid packet to ensure that the most recent forms and contract language are being used.

REQUIRED CONTRACT LANGUAGE

Part 2 of this document is the Required Contract Language. All of the language in Part 2 must be inserted in to all Contracts and Subcontracts funded in whole or in part with SRF funds, in order for SRF Recipients, Contractors, and Subcontractors to comply with the above-listed SRF program requirements.

GUIDANCE MATERIALS

Part 3 of this document sets forth Guidance Materials intended to assist SRF Recipients, Contractors, and Subcontractors in complying with the foregoing SRF program requirements, as applicable.

The Guidance Materials are for informational purposes only and are not intended to be used as contractual language. Please do not incorporate the Guidance Materials into any Contracts or Subcontracts.

COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

“Contract” means an agreement between a Recipient and a Contractor.

“Contractor” means all bidders, prime contractors, Service Providers, and consultants as hereinafter defined, unless specifically referred to otherwise.

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

“Subcontract” means an agreement between a Contractor and a Subcontractor.

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

“Recipient” means the party, other than EFC, to a grant agreement or a project finance agreement with EFC through which funds for the payment of amounts due thereunder are being paid in whole or in part.

“State” means the State of New York.

“Treatment Works” is defined in Clean Water Act (CWA) Section 212.

“Nonpoint Source Projects” and **“Green Infrastructure Projects”** are defined in CWA Section 319.

“Estuary Management Program Project” is defined in CWA Section 320.

PART 2:

REQUIRED CONTRACT LANGUAGE

SECTION 1 REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR FEDERAL DISADVANTAGED BUSINESS ENTERPRISES AND NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

The Equal Employment Opportunities requirements of this section apply to Contracts and Subcontracts greater than \$10,000.

The Minority- and Women- Owned Business Enterprises ("MWBE") and Disadvantaged Business Enterprises ("DBE") requirements of this section apply to Contractors and Subcontractors working pursuant to: (1) Contracts for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, greater than \$25,000; (2) Contracts that are initially under this threshold but subsequent change orders or contract amendments increase the Contract value to above \$25,000; and, (3) change orders greater than \$25,000.

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

I. General Provisions

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

1. New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation or real property and improvements thereon.
2. 40 CFR Part 33 ("Federal DBE Regulations") for contracts under EPA financial assistance agreements, as those terms are defined therein.
3. Title VI of the Civil Rights Act of 1964 and 40 CFR Part 7 ("Title VI") for any program or activity receiving federal financial assistance, as those terms are defined therein.

B. The Contractor and Subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor and Subcontractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Contractor and Subcontractor to carry out these requirements is a material breach of this Contract which may result in the termination of this Contract or other legally available remedies.

C. Contractors and Subcontractors shall have instituted grievance procedures to assure the prompt and fair resolution of complaints when a violation of Title VI of the Civil Rights Act of 1964 or Title 40 CFR Part 7 is alleged.

D. Failure to comply with all of the requirements herein may result in a finding by the Recipient that the Contractor is non-responsive, non-responsible, and/or has breached the Contract, leading to

the withholding of funds or such other actions, liquidated damages pursuant to subsection III(F) of this section, or enforcement proceedings as allowed by the Contract.

- E. If any terms or provisions herein conflict with Executive Law Article 15-A, the MWBE Regulations, Federal DBE Regulations, or Title VI, such law and regulations shall supersede these requirements.
- F. Upon request from the Recipient's Minority Business Officer ("MBO") and/or EFC, Contractor will provide complete responses to inquiries and all MWBE and EEO records available within a reasonable time. For purposes of this section, MBO means the duly authorized representative of the SRF Recipient for MWBE and EEO purposes.

II. Equal Employment Opportunities (EEO)

- A. Each Contractor and Subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- B. Contractor represents that it has submitted an EEO policy statement to Recipient prior to the execution of this Contract.
- C. Contractor represents that it's EEO policy statement includes the following language:
 - 1. The contractor will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Contracts relating to SRF projects.
 - 2. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract relating to this SRF project, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - 3. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- D. The Contractor will include the provisions of Subdivisions II(A), II(C), and II(E) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.
- E. The Contractor shall comply with the provisions of the Human Rights Law (Executive Law Article 15), Title VI, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

F. Required EEO Forms

1. EEO Staffing Plan

To ensure compliance with this section, the Contractor represents that it has submitted prior to execution of this Contract an EEO Staffing Plan to the Recipient's MBO to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

2. EEO Workforce Employment Utilization Report ("Workforce Report")

- a. The Contractor shall submit a Workforce Report, and shall require each of its Subcontractors to submit a Workforce Report to the Recipient, in such format as shall be required by EFC on a quarterly basis during the term of the Contract.
- b. Separate forms shall be completed by Contractor and any Subcontractor.
- c. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance of the Contract from the Contractor's and/or Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, the Contractor shall submit the Workforce Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

III. Business Participation Opportunities for MWBEs

A. Contract Goals

1. For purposes of this Contract, EFC establishes the following goals for New York State certified MWBE participation ("MWBE Combined Goals") based on the current availability of qualified MBEs and WBEs.

Program	MWBE Combined Goal*
CWSRF, DWSRF, & Green Innovation Grant Program	20%
NYS Water Grants (also receiving EFC loan)	Clean Water project 23% Drinking Water project 26%
NYS Water Grants (grant only)	30%
Engineering Planning Grant	Consolidated Funding Application Round 2012-2014 20% Consolidated Funding Application Round 2015-2017 30%

*May be any combination of MBE and/or WBE participation

2. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section III-A hereof, the Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com>.
3. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR § 142.8, the Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as Subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of Contract and the Contractor shall be liable to the Recipient for liquidated or other appropriate damages, as set forth herein.

B. MWBE Utilization Plan

1. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan to the Recipient prior to the execution of this Contract.
2. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this section.
3. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is not responsive.
4. Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the Recipient's MBO. Contractor shall indicate the changes to the MBO in the next Monthly MWBE Contractor Compliance Report after the changes occurred. At EFC's discretion, an updated MWBE Utilization Plan form and good faith effort documentation may be required to be submitted. When a Utilization Plan is revised due to execution of a change order, the change order should be submitted to the MBO with the revised Utilization Plan.
5. The Contractor shall submit copies of all fully executed subcontracts, agreements, and purchase orders that are referred to in the MWBE Utilization Plan to the MBO within 30 days of their execution.

C. Requests for Waiver

1. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver to the Recipient documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Recipient shall forward the request to EFC for evaluation, and EFC will issue a written notice of acceptance or denial within twenty (20) days of receipt.
2. If the Recipient, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the Recipient may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

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

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

E. Required Federal DBE Forms

1. EPA Form 6100-3 - DBE Subcontractor Performance Form
Contractor represents that it has submitted the Form 6100-3 to all of its Subcontractors, all of its Subcontractors have completed the form, and that Contractor submitted such completed forms to Recipient with its bid submission.
2. EPA Form 6100-4 - DBE Subcontractor Utilization Form
Contractor represents that it has completed the Form 6100-4 and submitted such completed form to Recipient with its bid submission.
3. EPA Form 6100-2 - DBE Subcontractor Participation Form
Contractor represents that it has distributed a Form 6100-2 to its MWBE Subcontractors

for completion prior to execution of this Contract.

F. Liquidated Damages - MWBE Participation

In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, if it has been determined by the Recipient or EFC that the Contractor has willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to Recipient liquidated damages or other appropriate damages, as specified herein and as determined by the Recipient or EFC.

Liquidated damages shall be calculated as an amount not to exceed the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the approved MWBE participation goals; and,
2. All sums actually paid to MWBEs for work performed or materials supplied under this Contract.

The Recipient and EFC reserve the right to impose a lesser amount of liquidated damages than the amount calculated above based on the circumstances surrounding the Contractor's non-compliance.

In the event a determination has been made by the Recipient or EFC which requires the payment of damages identified herein and such identified sums have not been withheld, Contractor shall pay such damages to the Recipient within sixty (60) days after they are assessed unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Empire State Development Corporation – Division of Minority and Women's Business Development ("ESD") pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the damages shall be payable if the Director of ESD renders a decision in favor of the Recipient.

SECTION 2 REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT

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

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

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

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

SECTION 3 RESTRICTIONS ON LOBBYING

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

The Contractor and any Subcontractor executing a Contract or Subcontract in excess of \$100,000 agree to provide to the Recipient an executed Certification Regarding Lobbying pursuant to 40 CFR Part 34 ("Lobbying Certification") in the form attached hereto as Attachment 10, consistent with the prescribed form provided in Appendix A to 40 CFR Part 34.

PART 3: GUIDANCE MATERIALS

APPLICABILITY OF PROGRAM REQUIREMENTS

This chart contains a listing of the SRF program requirements contained within this document, as well as the following details regarding each requirement: (1) its applicability, i.e., what types of contracts/subcontracts, particular monetary thresholds if applicable; (2) a section reference to the Required Contract Language that applies from Part 2; and (3) a section reference to the Guidance that applies from this Part.

Requirement	Applicability	Section of Required Contract Language from Part 2	Section of Appropriate Guidance from Part 3
Minority- and Women- Owned Business Enterprises (MWBE) and Disadvantaged Business Enterprises (DBE)	Contractors and Subcontractors working pursuant to: (1) Contracts for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, greater than \$25,000; (2) Contracts that are initially under this threshold but subsequent change orders or Contract amendments increase the Contract value above \$25,000; and, (3) Change orders greater than \$25,000	1	1
Equal Employment Opportunities (EEO)	Contracts and Subcontracts greater than \$10,000	1	1
Suspension and Debarment	All Contracts and Subcontracts	2	2
Restrictions on Lobbying	All Contracts and Subcontracts greater than \$100,000	3	3

SECTION 1 **GUIDANCE FOR THE REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR FEDERAL DISADVANTAGED BUSINESS ENTERPRISES AND NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

I. **Summary of EEO, MWBE, and DBE Forms**

A. **Forms to be Submitted Prior to Contract Execution**

1. **EEO Policy Statement**

To be submitted by the Contractor to the Recipient's Minority Business Officer ("MBO") prior to Contract execution. The "MBO" refers to the duly authorized representative of the SRF Recipient for MWBE and EEO purposes. This form is attached hereto as Attachment 1. See Required Contract Language, Section 1(II).

2. **EEO Staffing Plan**

To be submitted by the Contractor to the MBO prior to Contract execution. This form is attached hereto as Attachment 2. See required Contract Language, Section 1(II).

3. **EPA Form 6100-3 – DBE Subcontractor Performance Form**

To be submitted by the Contractor to the MBO with its bid submission. This form is attached hereto as Attachment 8. See Required Contract Language, Section 1(III)(E).

4. **EPA Form 6100-4 – DBE Subcontractor Utilization Form**

To be submitted by the Contractor to the MBO with its bid submission. This form is attached hereto as Attachment 9. See Required Contract Language, Section 1(III)(E).

5. **EPA Form 6100-2 – DBE Subcontractor Participation Form**

To be submitted by the Subcontractors to the MBO prior to Contract execution. The Contractor must provide the form to the Subcontractors for completion. The Contractor should also submit documentation (e.g., email, letter, certified mail receipt) to the MBO that the 6100-2 form was made available to the MWBE Subcontractors. This form is attached hereto as Attachment 7. See Required Contract Language, Section 1(III)(E).

6. **MWBE Utilization Plan**

To be submitted by the Contractor to the MBO after the bid opening, but in no case more than ten (10) business days after the Contractor receives notice from the Recipient that the Contractor has submitted a low bid. This form is attached hereto as Attachment 5. See Required Contract Language, Section 1(III)(B).

B. **Forms to be Submitted During the Term of the Contract**

1. **EEO Workforce Employment Utilization Report ("Workforce Report")**

To be submitted by the Contractor to the MBO on a quarterly basis during the term of the Contract. This form is attached hereto as Attachment 3. See Required Contract Language, Section 1(II)(G).

2. **Request for Partial or Total Waiver**

If applicable, to be submitted by the Contractor to the MBO at any time during the term of the Contract, but not later than prior to the submission of a request for final payment on the Contract. This form is attached hereto as Attachment 6. See Required Contract Language, Section 1(III)(C).

3. **Monthly MWBE Contractor Compliance Report (“Monthly MWBE Report”)**

To be submitted by the Contractor to the MBO by the third business day following the end of each month over the term of the Contract. This form is attached hereto as Attachment 4. See Required Contract Language, Section 1(III)(D).

II. Business Participation Opportunities for MWBEs

A. **Contract Goals**

The goals provided herein (Required Contract Language, Section 1(III)(A)) are effective as of October 1, 2016. MWBE participation goals for a contract will be based on the goals in place at the time of the execution date of each respective contract, unless otherwise specified. In certain instances, the goals may vary, such as with projects co-funded by EFC and other state/federal agencies. With some co-funded projects, EFC may defer to the MBE and WBE participation goals and program established by those agencies.

Please contact EFC if you have any questions about the applicable MWBE participation goals for your contract.

B. **Good Faith Efforts**

The Contractor must make good faith efforts to develop an adequate MWBE Utilization Plan and must continue such good faith efforts in order to meet applicable MWBE participation goals. The Contractor shall maintain documentation of good faith efforts to solicit participation of MWBE firms for SRF-funded projects. If a Contractor is unable to meet contract MWBE participation goals, and submits a Request for Waiver, documentation of such good faith efforts must accompany the request. See Required Contract Language, Section 1(III)(C).

Contractor should also continue good faith efforts to seek opportunities for MWBE participation during the life of the contract even if proposed goals have been achieved.

Examples of documentation of good faith efforts are set forth below:

- Information on the scope of work related to the contract, such as a copy of the schedule of values from the bid submission, and specific steps taken to reasonably structure the scope of work to break out tasks or equipment needs for the purpose of providing opportunities for subcontracting with, or obtaining supplies or services from, MBEs or WBEs.
- Printed screenshots of the directory of Certified Minority- and Women- Owned Business Enterprises (“MWBE directory”) on ESD’s website on a Statewide basis, if appropriate, for both MBEs and WBEs that provide the services or equipment necessary for the contract. Contact the MBO for assistance in performing a proper search including identifying a sufficient number of solicitations to show that good faith effort was made.
- Copies of timely solicitations and documentation (e.g., faxes and emails) that the Contractor offered relevant plans, specifications, or other related materials to MBE and WBE firms on ESD’s MWBE directory to participate in the work, with the responses.
- A log prepared by the Contractor in a sortable spreadsheet documenting the Contractor’s solicitation of MBEs and WBEs for participation as Subcontractors or suppliers pursuant to a contract. The log should consist of the list of MBE and WBE firms solicited, their contact information, the type of work they were solicited to perform (or equipment to provide), how the solicitation was made (fax, phone, email) and the contact information, the contacts name and the outcome. If a bid was received, the bid price should also be included in the log. See a sample log format below:

Date	M/WBE Type	Company	Scope of work	Contact Name	Phone/ Email	Solicitation Format	MWBE Response	Negotiation Required?	Selected? If not, Explain

If no response was received to an initial solicitation, at least one follow-up solicitation should be made in a different format than the first, e.g. fax followed by phone call. Any bids received from non-MWBE firms for the same areas MWBEs were solicited should also be tracked on the log.

- Copies of the EPA 6100-3 and 6100-4 forms that are required with the bid submission. A properly completed EPA 6100-3 form is good indication of a contact to an MWBE and their response to the contact. If solicitations do not result in obtaining sufficient participation of MWBE firms due to non-responsiveness, please contact the MBO or EFC MWBE representative for support.
- Copies of any advertisements of sufficient duration to effectively seek participation of certified MBE and WBEs timely published in appropriate general circulation, trade and MWBE oriented publications, together with listing and dates of publication of such advertisements. EFC recommends the use of the NYS Contract Reporter that is free to all Contractors - <https://www.nyscr.ny.gov/>. A log should be kept of the responses to the ads, similar to the log for MWBE firm solicitation and should include the non-MWBE firms that responded and the bid prices. Any negotiations should be documented in the log.
- Documents demonstrating that insufficient MBEs or WBEs are reasonably available to perform the work.
- A written demonstration that the Contractor offered to make up any inability to meet the project MWBE participation goals in other contracts and/or agreements performed by the Contractor on another SRF funded project.
- The date of pre-bid, pre-award, or other meetings scheduled by the Recipient, if any, and the contact information of any MBEs and WBEs who attended and are capable of performing work on the project.
- Any other information or documentation that demonstrates the Contractor conducted good faith efforts to provide opportunities for MWBE participation in their work. For instance, Prime Contractors and MBOs should develop a list of MWBE firms that have expressed interest in working on SRF-funded projects
- The use of certified DBE and small businesses certified through the US Small Business Administration (SBA) may be considered as a demonstration of Good Faith Efforts.

C. MWBE Utilization Plan

1. The MWBE Utilization Plan must be submitted to the Recipient's MBO after the bid opening, but in no case more than ten (10) business days after the Contractor receives notice from the Recipient that the Contractor has submitted a low bid.
2. The MBO will evaluate a completed MWBE Utilization Plan. If the MBO finds the Utilization Plan sufficient, it will be forwarded to EFC for review. If the MBO finds the Utilization Plan insufficient, the MBO will work with the Contractor to address deficiencies before submitting to EFC for review. A written notice of acceptance or deficiency will be issued by EFC within 20 business days of receipt of the Utilization Plan. Upon receipt of

a notice of deficiency from either the MBO or EFC, the Contractor shall respond with a written remedy to such notice within seven (7) business days of receipt.

3. In coordination with the MBO, EFC will accept an MWBE Utilization Plan upon consideration of many factors, including the following:
 - a. The MWBE Utilization Plan indicates that the proposed goals for the project will be achieved;
 - b. A Contractor, who is a certified MBE or WBE, will be credited for up to 100% of the category of their certification. However, good faith efforts to seek participation in the other category are also required; and,
 - c. Adequate documentation to demonstrate good faith efforts and/or support a specialty equipment/services waiver as described below in Section II(E).
4. EFC reserves the right to request additional information and/or documentation to support the adequacy of the MWBE Utilization Plan.
5. Within 10 days of EFC's acceptance of a MWBE Utilization Plan, EFC will post the approved Utilization Plan on the EFC website.
6. In coordination with the MBO, EFC may issue conditional acceptance of Utilization Plans pending submission of additional documentation that demonstrates there will be an increase in MWBE participation.

D. Eligibility for MWBE Participation Credit

1. To receive MWBE participation credit, Contractors or Subcontractors performing work that have been identified in an approved MWBE Utilization Plan must be certified as an MBE or WBE by ESD.
2. Prime Contractors may also include second or lower tier Subcontractors (Subcontractors hired by Subcontractors) on their MWBE Utilization Plan.
3. Credit for MWBE participation shall be granted only for MWBE firms performing a commercially useful business function according to custom and practice in the industry.
 - a. Factors to be used in assessing whether an MWBE is performing a commercially useful function include:
 - i. The amount of work subcontracted;
 - ii. Industry practices;
 - iii. Whether the amount the MWBE is to be paid under the contract is commensurate with the work it is to perform;
 - iv. The credit claimed towards MWBE utilization goals for the performance of the work by the MWBE; and,
 - v. Any other relevant factors.
 - b. "Commercially useful functions" normally include:
 - i. Providing technical assistance to a purchaser prior to a purchase, during installation, and after the supplies or equipment are placed in service;
 - ii. Manufacturing or being the first tier below the manufacturer of supplies or equipment;
 - iii. Providing functions other than merely accepting and referring requests for supplies or equipment to another party for direct shipment to a Contractor; or,
 - iv. Being responsible for ordering, negotiating price, and determining quality and quantity of materials and supplies.
4. No credit will be granted for MWBEs that do not perform a commercially useful function. An MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation.

E. Requests for Waiver

1. If the Contractor's application of good faith efforts does not result in the utilization of MWBE firms to achieve the aforementioned goals or a specialty equipment/service waiver is requested, the Contractor may request a full or partial waiver of MWBE participation goals by completing a Request for Waiver form, attaching appropriate documentation of good faith efforts, and submitting same to the MBO. See also Required Contract Language, Section 1(III)(C). Even if an MWBE waiver is granted, EEO information must still be submitted.
2. The MBO and EFC will review each waiver request based on the good faith effort criteria presented above and the documentation submitted with the waiver request. EFC will not issue any automatic waivers from MWBE responsibilities.
3. In cases where EFC accepts a full or partial waiver of MWBE participation goals, the waiver request will be posted to EFC's website.
4. Specialty Equipment/Service Waiver: A specialty equipment/service waiver may be granted in cases where:
 - a. equipment is made by only one non-MWBE manufacturer,
 - b. the technical specifications call for equipment that is not available through an MWBE supplier;
 - c. the equipment is constructed on site by specially trained non-MWBE labor;
 - d. the service is not available through an MWBE (such as work done by National Grid);
 - e. the service is proprietary in nature (such as use of certain computer software necessary for control systems); or,
 - f. the service cannot be subcontracted (such as litigation services).

If the contract includes specialty equipment or services, and documentation is submitted demonstrating that there are no MWBE firms capable of completing this portion of the contract, the specialty amount of the contract may be deducted from the total contract amount to determine the MWBE Eligible Amount and the goals will be applied to the MWBE Eligible Amount. This determination is made at the discretion of the MBO and EFC.

Example:

\$200,000	-	\$50,000	=	\$150,000
(Contract)		(Specialty equipment/service)		(MWBE Eligible Amount)

The MWBE goal is applied to the MWBE Eligible Amount.

A request for this specialty equipment/service deduction can be completed by filling out a Request for Waiver form and submitting it to the MBO. The request must include a copy of the page from the contract where the equipment/ service is described and the cost of each item. Additional documentation may be requested by the MBO or EFC.

III. Subcontractor's Responsibilities

Subcontractors should:

1. Maintain their MWBE certifications, and notify the Contractor and MBO of any change in their certification status.
2. Notify the Contractor of any MWBE Subcontractors they hire so they may be included on the Contractor's Utilization Plan.
3. Respond promptly to solicitation requests by completing and submitting bid information in a timely manner.
4. Maintain business records that should include, but not be limited to, contracts/agreements, records of receipts, correspondence, purchase orders, and canceled checks.
5. Complete and submit the EPA Form 6100-3 - DBE Subcontractor Performance Form to the Contractor prior to submission of the Contractor's bid to the Recipient.

6. Complete and return EPA Form 6100-2 - DBE Subcontractor Participation Form to the Recipient prior to Contractor's execution of the contract.
7. Ensure that a required EEO Policy Statement and applicable MWBE requirements are included in each subcontract.
8. Notify the MBO and EFC when contract problems arise, such as non-payment for services or when the Subcontractor is not employed as described in the MWBE Utilization Plan.

IV. Protests/Complaints

Contractors or Subcontractors who have any concerns, issues, or complaints regarding the implementation of the SRF MWBE & EEO Program, or wish to protest should do so in writing to the MBO and EFC. The MBO, in consultation with EFC, will review the circumstances described in the submission, investigate to develop additional information, if warranted, and determine whether action is required. If the Contractor or Subcontractor believes the issue has not been resolved to their satisfaction, they may appeal in writing to EFC for consideration.

V. Waste, Fraud and Abuse

Subcontractors, Contractors, or Recipients who know of or suspect any instances of waste, fraud, or abuse within the MWBE & EEO Program should notify the project MBO and EFC immediately. Additionally, suspected fraud activity should be reported to the USEPA – Office of Inspector General Hotline at (888) 546-8740, the New York State Office of Inspector General at (800) 367-4448, or the ESD Compliance Office at (212) 803-3266.

SECTION 2 GUIDANCE FOR REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT

A list of debarred and suspended contractors, pursuant to 2 CFR Parts 180 and 1532 and 29 CFR § 5.12, is available on the US Department of Labor's website at <https://www.sam.gov/portal/public/SAM/>.

A list of contractors and subcontractors deemed ineligible to submit a bid on or be awarded a public contract or subcontract, pursuant to Article 8 of the State Labor Law, is available on the New York State Department of Labor's website at <http://labor.ny.gov/workerprotection/publicwork/PDFs/debarred.pdf>

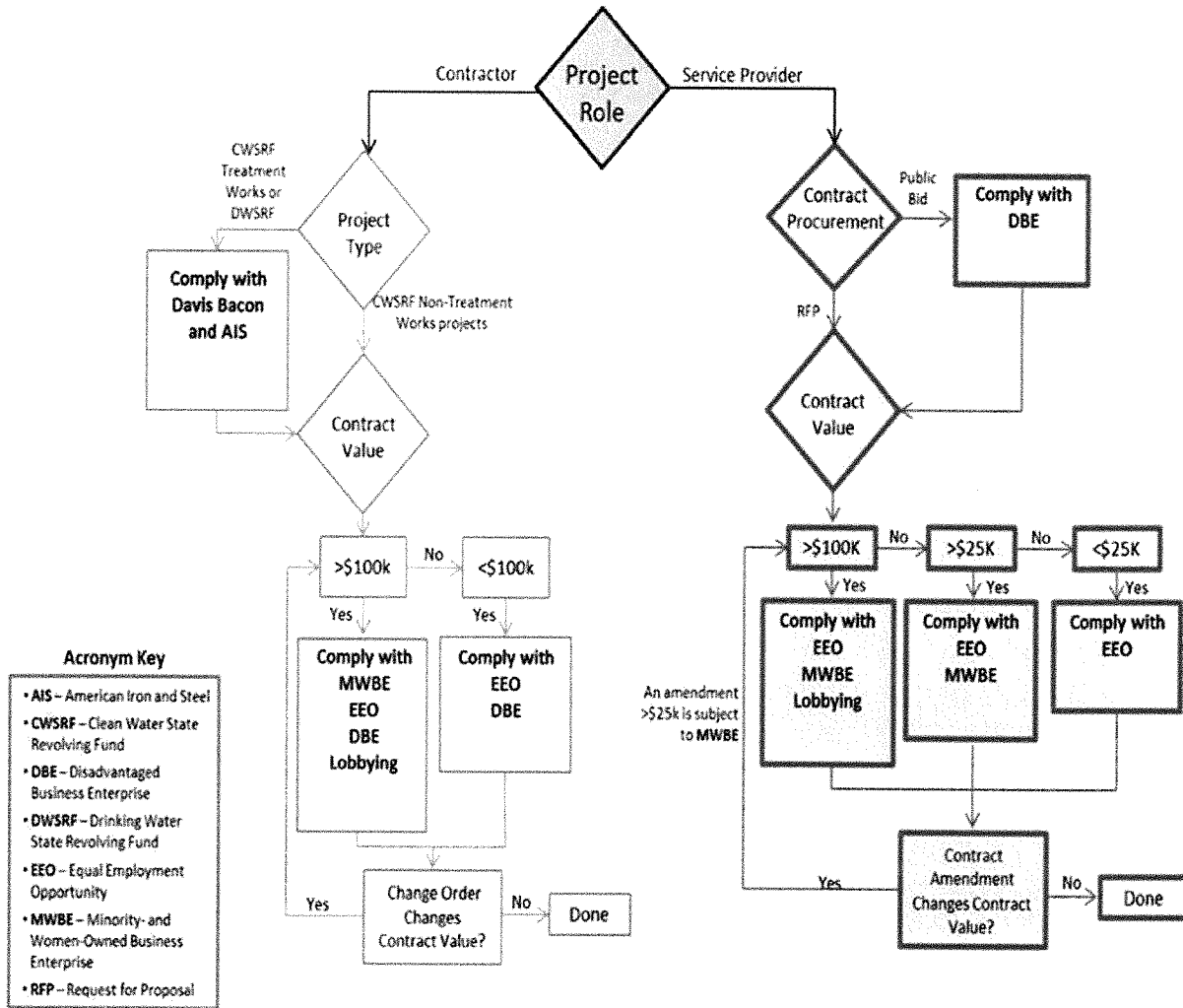
A list of contractors deemed ineligible to submit a bid is maintained by Empire State Development's Division of Minority and Women's Business Development.

SECTION 3 GUIDANCE FOR RESTRICTIONS ON LOBBYING

Each Contractor and any Subcontractor that has a Contract or Subcontract exceeding \$100,000 shall provide to the Recipient a completed Certification Regarding Lobbying pursuant to 40 CFR Part 34 ("Lobbying Certification") in the form attached hereto as Attachment 10 consistent with the prescribed form provided in Appendix A to 40 CFR Part 34. The form provides a certification that the Contractor or Subcontractor will not expend appropriated federal funds to pay any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, officer or employee of Congress or any employee of any Member of Congress in accordance with the provisions of 40 CFR Part 34, and to maintain such certification for their own records. It is noted that disbursement of funds may be withheld until the Lobbying Certification form has been received by the Recipient.

SECTION 4

PROGRAM CONTRACT REQUIREMENT DECISION TREE



SECTION 5 SUMMARY OF CONTRACTOR REQUIREMENTS FOR SRF-FUNDED PROJECTS

Forms can be found as attachments to this document or online at www.efc.ny.gov/MWBE

Forms should be submitted electronically via email or through EFC's [dropbox](#)

To be submitted with this bid:

- | | |
|--|-------------------------------|
| <input type="checkbox"/> EEO Policy Statement | Refer to Part 3 |
| <input type="checkbox"/> Documented Proof that EPA Form 6100-2 - DBE Subcontractor Participation Form was given to MWBE Subcontractors | Guidance Section
Section 1 |
| <input type="checkbox"/> EPA Form 6100-3 - DBE Subcontractor Performance Form | Section 1 |
| <input type="checkbox"/> EPA Form 6100-4 - DBE Subcontractor Utilization Form | Section 1 |
| <input type="checkbox"/> Lobbying Certification | Section 3 |

To be submitted prior to or upon Contract award:

- | | |
|--|-----------|
| <input type="checkbox"/> Executed Contracts, Subcontracts, agreements, and purchase orders | |
| <input type="checkbox"/> MWBE Utilization Plan and/or Waiver Request | Section 1 |
| <input type="checkbox"/> EEO Staffing Plan | Section 1 |

Ongoing documentation & tasks:

- | | |
|--|-----------|
| <input type="checkbox"/> EEO Workforce Utilization Report | Section 1 |
| <input type="checkbox"/> Submit Monthly MWBE Reports to MBO | Section 1 |
| <input type="checkbox"/> Maintain proof of payments for MWBE Subcontractors | Section 1 |
| <input type="checkbox"/> Ensure that all Subcontracts contain Part 2: Required Contract Language | |

Attachment 1
New York State Environmental Facilities Corporation
EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT
NEW YORK STATE REVOLVING FUND (SRF)

I, _____, am the authorized representative of _____.
Name of Representative Name of Contractor/Service Provider
I hereby certify that _____ will abide by the equal employment
Name of Contractor/Service Provider
opportunity (EEO) policy statement provisions outlined below.

- (i) The Contractor will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Contracts relating to SRF projects.
- (ii) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract relating to this SRF project, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- (iii) The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- (iv) The Contractor shall comply with the provisions of the Human Rights Law (Article 15 of the Executive Law), including those relating to non-discrimination on the basis of prior criminal conviction and prior arrest, and with all other State and federal statutory and constitutional non-discrimination provisions, including Titles VI and VII of the Civil Rights Act of 1964, 40 CFR Part 7, 41 CFR Part 60-1 Subpart A, and 41 CFR Part 60-4. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status.
- (v) The Contractor will include the provisions of subdivisions (i) through (iv) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

X

Contractor/Service Provider Representative

**Attachment 2
New York State Environmental Facilities Corporation
Equal Employment Opportunity (EEO) Staffing Plan**

Municipality:	County:	SRF Project No.:	Contract ID:
Service Provider Name:	Date:		

Report Includes – Please select one from the options below:

- Workforce utilized on this contract
- Contractor/subcontractor's total workforce
- Reporting Entity – Please select one from the options below:**
- Prime Service Provider
- Subcontractor

Job Categories	Hispanic/Latino		Not Hispanic or Latino						Female				
	Male	Female	Male			Female			Black/ African American	Native Hawaiian/ Other Pacific Islander	Asian	Native American/ Alaska Native	Two or More Races
			White	Black/ African American	Native Hawaiian/ Other Pacific Islander	Asian	Native American/ Alaska Native	Two or More Races					
Senior Level Officials/Managers	0	0	0	0	0	0	0	0	0	0	0	0	0
Mid-Level Officials/Managers	0	0	0	0	0	0	0	0	0	0	0	0	0
Professionals	0	0	0	0	0	0	0	0	0	0	0	0	0
Technicians	0	0	0	0	0	0	0	0	0	0	0	0	0
Sales Workers	0	0	0	0	0	0	0	0	0	0	0	0	0
Administrative Support Workers	0	0	0	0	0	0	0	0	0	0	0	0	0
Skilled Craftsmen	0	0	0	0	0	0	0	0	0	0	0	0	0
Operatives Semi-Skilled	0	0	0	0	0	0	0	0	0	0	0	0	0
Laborers & Helpers	0	0	0	0	0	0	0	0	0	0	0	0	0
Service Workers	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0
Journeypersons													
Apprentices													
Trainees													

Electronic Signature of Service Provider: I certify that the information submitted herein is true, accurate and complete to the best of my knowledge.

Date:

Attachment 2
New York State Environmental Facilities Corporation
Equal Employment Opportunity (EEO) Staffing Plan
INSTRUCTIONS

All Service Providers (including legal, engineering, financial advisory or other professional services, and labor) and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan and submit it no later than the date of execution of the contract to the Recipient's Minority Business Officer (MBO). Where the work force to be utilized in the performance of the contract can be separated out from the contractor's or subcontractors' total work force, the contractor shall complete this form *only for the anticipated work force to be utilized on the contract*. Where the work force to be utilized in the performance of the contract cannot be separated out from the contractor's or subcontractors' total work force, the contractor shall complete this form for the contractor's or subcontractors' total work force.

RACE/ETHNIC IDENTIFICATION: Definitions of race and ethnicity for purposes of completion of this form are as follows:

- **Hispanic or Latino** - A person having origins in Cuba, Mexico, Puerto Rico, South or Central America.
- **White** - A person having origins of Europe, the Middle East, or North Africa.
- **Black or African-American** - A person having origins in any of the black racial groups of Africa.
- **Native Hawaiian or Other Pacific Islander** - A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- **Asian** - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent
- **American Indian or Alaska Native** – A person having origins in any of the original peoples of North, Central, and South America and who maintain tribal affiliation or community attachment.
- **Two or More Races** - All persons who identify with more than one of the above (Non-Hispanic or Latino) five races.

DESCRIPTION OF JOB CATEGORIES: The major job categories used in EEO Staffing Plan are as follows:

- **Senior Level Officials and Managers** - Individuals residing in the highest levels of organizations who plan, direct and formulate policies, set strategy and provide the overall direction of enterprises/organizations for the development and delivery of products or services.
- **Mid-Level Officials and Managers** - Individuals who receive directions from the Senior Level management and serve as managers, other than those who serve as Senior Level Officials and Managers, including those who oversee and direct the delivery of products, services or functions at group, regional or divisional levels of organizations.
- **Professionals** - Most jobs in this category require bachelor and graduate degrees, and/or professional certification. In some instances, comparable experience may establish a person's qualifications.
- **Technicians** - Jobs in this category include activities that require applied scientific skills, usually obtained by post-secondary education of varying lengths, depending on the particular occupation, recognizing that in some instances additional training, certification, or comparable experience is required.
- **Sales Workers** - These jobs include non-managerial activities that wholly and primarily involve direct sales.
- **Administrative Support Workers** - These jobs involve non-managerial tasks providing administrative and support assistance, primarily in office settings.
- **Skilled Craftsmen** – Includes higher skilled occupations in construction (building trades craft workers and their formal apprentices) and natural resource extraction workers. Examples of these types of positions include: boilermakers; brick and stone masons; carpenters; electricians; painters.
- **Operatives Semi-Skilled** - Most jobs in this category include intermediate skilled occupations and include workers who operate machines or factory-related processing equipment. Most of these occupations do not usually require more than several months of training. Examples include: textile machine workers.
- **Laborers & Helpers** - Jobs in this category include workers with more limited skills who require only brief training to perform tasks that require little or no independent judgment.
- **Service Workers** - Jobs in this category include food service, cleaning service, personal service, and protective service activities.

See the bid packet at www.efc.ny.gov/mwbe or your designated MBO for further guidance.

Attachment 3
NYS Environmental Facilities Corporation
Equal Employment Opportunity (EEO) Workforce Employment Utilization Report

Municipality:	County:	SRF Project No.:	Contract ID:
Contractor/Service Provider:		Date:	

Report Includes – Please select one from the options below:

- Construction Contracts - Report the hours of contractor's and ALL subcontractor's employees who worked on contract activities during the month
- Service Provider Contracts - Report the Actual Contractor/subcontractor's workforce (# of personnel) utilized on this contract.

Job Categories	Non-Hispanic / Latino															
	Hispanic/ Latino					Male					Female					
	Male		Female		White	Black/ African American	Native Hawaiian/ Other Pacific Islander	Asian	Native American/ Alaska Native	Two or More Races	White	Black/ African American	Native Hawaiian/ Other Pacific Islander	Asian	Native American/ Alaska Native	Two or More Races
Senior Level Officials/Managers																
Mid-Level Officials/Managers																
Professionals																
Technicians																
Sales Workers																
Administrative Support Workers																
Skilled Craftsmen																
Operatives Semi-Skilled																
Laborers & Helpers																
Service Workers																
TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Journeypersons																
Apprentices																
Trainees																

Service Provider Contracts Only: There are no changes to the workforce utilized on this contract since the last EEO Workforce Utilization Report

Electronic Signature of Contractor: I certify that the information submitted herein is true, accurate and complete to the best of my knowledge.

Name (Please Type): _____ **Date:** _____

Attachment 3
NYS Environmental Facilities Corporation
Equal Employment Opportunity (EEO) Workforce Employment Utilization Report

INSTRUCTIONS

All Contractors and each Subcontractor identified in the approved MWBE Utilization Plan must complete an EEO Workforce Utilization Report and submit it to the MBO on a monthly basis for construction contracts and on a quarterly basis for service provider contracts. Separate forms shall be completed by the Contractor and any Subcontractor. Where the work force to be utilized in the performance of the contract can be separated out from the contractor's or subcontractors' total workforce, the contractors shall *complete this form only for the actual work force utilized on the contract*. Where the workforce utilized in the performance of the contract cannot be separated out from the contractor's or subcontractors' total workforce, the contractors shall *complete this form for the contractor's or subcontractors' total workforce*.

Construction Contracts: Report the hours of contractor's and ALL subcontractors' employees who worked on contract activities for each month.

RACE/ETHNIC IDENTIFICATION: Definitions of race and ethnicity for purposes of completion of this form are as follows:

- **Hispanic or Latino** - A person having origins in Cuba, Mexico, Puerto Rico, South or Central America.
- **White** - A person having origins of Europe, the Middle East, or North Africa.
- **Black or African-American** - A person having origins in any of the black racial groups of Africa.
- **Native Hawaiian or Other Pacific Islander**- A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- **Asian** - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent
- **American Indian or Alaska Native** - Origins in any of the original peoples of North, Central, and South America and who maintain tribal affiliation or community attachment
- **Two or More Races** - All persons who identify with more than one of the above five races.

DESCRIPTION OF JOB CATEGORIES: The major job categories used in EEO Workforce Utilization Report are as follows:

- **Senior Level Officials and Managers** - Individuals residing in the highest levels of organizations who plan, direct and formulate policies, set strategy and provide the overall direction of enterprises/organizations for the development and delivery of products or services.
- **Mid-Level Officials and Managers** - Individuals who receive directions from the Senior Level management and serve as managers, other than those who serve as Senior Level Officials and Managers, including those who oversee and direct the delivery of products, services or functions at group, regional or divisional levels of organizations.
- **Professionals** - Most jobs in this category require bachelor and graduate degrees, and/or professional certification. In some instances, comparable experience may establish a person's qualifications.
- **Technicians** - Jobs in this category include activities that require applied scientific skills, usually obtained by post-secondary education of varying lengths, depending on the particular occupation, recognizing that in some instances additional training, certification, or comparable experience is required.
- **Sales Workers** - These jobs include non-managerial activities that wholly and primarily involve direct sales.
- **Administrative Support Workers** - These jobs involve non-managerial tasks providing administrative and support assistance, primarily in office settings.
- **Skilled Craftsmen** - These jobs include higher skilled occupations in construction (building trades craft workers and their formal apprentices) and natural resource extraction workers. Examples of these types of positions include: boilermakers; brick and stone masons; carpenters; electricians; painters.
- **Operatives Semi-Skilled** - Most jobs in this category include intermediate skilled occupations and include workers who operate machines or factory-related processing equipment. Most of these occupations do not usually require more than several months of training. Examples include: textile machine workers.
- **Laborers & Helpers** - Jobs in this category include workers with more limited skills who require only brief training to perform tasks that require little or no independent judgment.
- **Service Workers** - Jobs in this category include food service, cleaning service, personal service, and protective service activities.

Attachment 4
New York State Environmental Facilities Corporation
Monthly Minority- & Women- Owned Business Enterprise (MWBE) Contractor Compliance Report
("Monthly MWBE Report")

Instructions:

- Contractors are to complete the report in Word version and email to the SRF Recipient's Minority Business Officer ("MBO") on a monthly basis.
- If you require additional pages, you may find them on EFC's MWBE web page at www.efc.ny.gov/mwbe.
- All** MWBE Subcontractors for this contract **MUST** be listed on the form regardless of whether they were paid this month.
- Please save Report as "*MReport* – (*Project No.*) – (*Municipality*) – (*Firm Name*) – (*Date*)" and send the Word version of this document.
- Proofs of payment in the amounts shown below must be transmitted to the MBO with the report.

Municipality:		County:		Contract ID:		Month:		Year:	
SRF Project No.:		GIG/IEPG No.:		Registration No. (NYC only):					
Prime Contractor/Service Provider:				Award Date:		Start Date:		Date all MWBE subs paid in full:	
Signature of Contractor: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief. Date:									
Last Month's Contract Amt: \$		MWBE Eligible Amt: \$		EFC MWBE Goals		Total Paid to Prime			
Revised Contract Amt: \$		(Goals are applied to this amount and includes eligible change orders, amendments & waivers)		MBE: % WBE: % Total: %		Total Paid this Month: \$ Total Paid to Date: \$			
NYS Certified MWBE Contractor & Subcontractor				Please Specify Any Revisions this Month.		Subcontractor Total Amount Revised		Payments this Month	
Name: Fed. Employer ID#: <input type="checkbox"/> MBE <input type="checkbox"/> WBE Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:				<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED		Original		Total Payments Made to Date	
Name: Fed. Employer ID#: <input type="checkbox"/> MBE <input type="checkbox"/> WBE Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE Supplier <input type="checkbox"/> Other:				<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: <input type="checkbox"/> MBE <input type="checkbox"/> WBE Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:				<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: <input type="checkbox"/> MBE <input type="checkbox"/> WBE Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:				<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					

Attachment 4
New York State Environmental Facilities Corporation
Monthly Minority- & Women- Owned Business Enterprise (MWBE) Contractor Compliance Report
("Monthly MWBE Report")

NYS Certified MWBE Contractor & Subcontractor	Please Specify Any Revisions this Month.	Subcontractor Contract Amount		Payments this Month	Previous Payments	Total Payments Made to Date
		Original	Revised			
Name: Fed. Employer ID#: _____ Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: _____ Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: _____ Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: _____ Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: _____ Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: _____ Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: _____ Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: _____ Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					

Attachment 4
New York State Environmental Facilities Corporation
Monthly Minority- & Women- Owned Business Enterprise (MWBE) Contractor Compliance Report
("Monthly MWBE Report")

NYS Certified MWBE Contractor & Subcontractor	Please Specify Any Revisions this Month.	Subcontractor Total Amount		Payments this Month	Previous Payments	Total Payments Made to Date
		Original	Revised			
Name: Fed. Employer ID#: <input type="checkbox"/> Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: <input type="checkbox"/> Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: <input type="checkbox"/> Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: <input type="checkbox"/> Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: <input type="checkbox"/> Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: <input type="checkbox"/> Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: <input type="checkbox"/> Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Additional Pages can be found at www.efc.ny.gov						
TOTAL						
PLEASE EXPLAIN ANY REVISIONS (Change orders over \$25K may require that good faith efforts be made to obtain additional MWBE participation) :						

Attachment 5
New York State Environmental Facilities Corporation
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan

Instructions for Contractors & Service Providers:

Contractors and Service Providers must complete Sections 2 and 3. **Submit the completed, signed (electronic signature box checked and dated) form in Microsoft Word format to the SRF Recipient's designated Minority Business Officer (MBO) no later than the date of contract execution.** Incomplete forms will be found deficient. If more than 10 subcontractors are used, additional pages for Section 3 can be found in the form [Additional Utilization Plan Section 3](#).

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

MWBE firms must be certified by the NYS Empire State Development Corporation (ESD) in order to be counted towards satisfaction of MWBE participation goals. The utilization of certified MWBEs for non-commercially useful functions may not be counted towards utilization of certified MWBEs in the Utilization Plan.

See the Bid Packet at www.efc.ny.gov/mwbe or consult your designated MBO for further guidance.

Instructions for Minority Business Officers (MBO):

The MBO must complete Section 1. The MBO may designate an Authorized Representative to complete and submit quarterly payment reports on its behalf, and, if so designated, the MBO's Authorized Representative must also complete Section 1. The Authorized Representative may only submit quarterly payment reports on behalf of the MBO and may not submit any other required forms or reports for the MBO. The MBO must complete Section 1 even if designating an Authorized Representative. **Submit the completed, signed (electronic signature box checked and dated) form in Microsoft Word format via e-mail to your EFC MWBE Representative.**

The subject heading of the e-mail to the EFC MWBE Representative should follow the format "UP, SRF Number, Contractor." EFC will review the Utilization Plan and notify the MBO via e-mail of its acceptance or denial.

Within 10 days of EFC's acceptance of a Utilization Plan, EFC will post the approved Utilization Plan on the EFC website.

Attachment 5
New York State Environmental Facilities Corporation
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan

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

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

Attachment 5
New York State Environmental Facilities Corporation
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan

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

Attachment 5
New York State Environmental Facilities Corporation
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan

SECTION 3: MWBE SUBCONTRACTOR INFORMATION continued				
Name:		Fed. Employer ID#:		
Address:		Phone #:		
Scope of Work:		Email:		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:		Start Date:		
Full Contract Amount: \$		Completion Date:		
Name:		Fed. Employer ID#:		
Address:		Phone #:		
Scope of Work:		Email:		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:		Start Date:		
Full Contract Amount: \$		Completion Date:		
Name:		Fed. Employer ID#:		
Address:		Phone #:		
Scope of Work:		Email:		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:		Start Date:		
Full Contract Amount: \$		Completion Date:		

SIGNATURE	
Electronic Signature of Contractor: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and that all MWBE subcontractors will perform a commercially useful function.	
Name (Please Type):	Date:

Attachment 6
New York State Environmental Facilities Corporation
Minority & Women Owned Business Enterprise (MWBE) Waiver Request Form

Instructions for Contractors & Service Providers:

Contractors and Service Providers must complete Sections 2, 3, and 4. **Submit the completed, signed (electronic signature box checked and dated) form in Microsoft Word format to the SRF Recipient's designated Minority Business Officer (MBO).** Incomplete forms will be found deficient.

See the Bid Packet at www.efc.ny.gov/mwbe or consult your designated MBO for further guidance.

Instructions for Minority Business Officers (MBO):

The MBO must complete Section 1. **Submit the completed, signed (electronic signature box checked and dated) form in Microsoft Word format via e-mail to your EFC MWBE Representative.** The subject heading of the e-mail to the EFC MWBE Representative should follow the format "Waiver Request, SRF Number, Contractor." EFC will review and notify the MBO via e-mail of its acceptance or denial.

If a partial MWBE waiver is requested, an MWBE Utilization Plan must also be submitted for the amount of proposed MWBE participation.

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

SECTION 2: PRIME CONTRACTOR / SERVICE PROVIDER INFORMATION			
Firm Name:	Contract Type: <input type="checkbox"/> Construction <input type="checkbox"/> Other Services		
Prime Firm is Certified as: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> N/A <input type="checkbox"/> Other:			
Address:	Phone #:	Fed. Employer ID #:	
Contact Information of Firm Representative Authorized to Discuss Waiver Request:	E-mail:		
Name:	Title:	Phone #:	
Description of Work:			
Award Date:	Start Date:	Completion Date:	EFC MWBE GOAL Total
Total Contract Amount: \$			MBE: % \$
MWBE Eligible Contract Amount: \$			WBE: % \$
(MWBE Goals are applied to this amount and includes all change orders, amendments, & waivers)			Total: % \$

Attachment 6
New York State Environmental Facilities Corporation
Minority & Women Owned Business Enterprise (MWBE) Waiver Request Form

SECTION 3: TYPE OF MWBE WAIVER REQUESTED

1. **Full Waiver** (No MWBE participation)
 2. **Partial Waiver** (Less than the MWBE goals; indicate below the proposed MWBE participation)
- PROPOSED MWBE Participation**
- | | | | |
|---------------|---|----|--|
| MBE: | % | \$ | |
| WBE: | % | \$ | |
| Total: | % | \$ | |
3. **Specialty Equipment/Services Waiver** (Must be of SIGNIFICANT cost - list of equipment and cost must be attached in addition to the supporting documentation outlined below)

SECTION 4: SUPPORTING DOCUMENTATION

To be considered, the Request for Waiver Form must be accompanied by the documentation requested in items 1 – 9, as listed below. If a Specialty Equipment Waiver is requested, it must be accompanied by the documentation requested in items 1 - 13. If a Specialty Services Waiver is requested, it must be accompanied by the items requested in items 1 – 9 and item 14. Copies of the following information and all relevant supporting documentation must be submitted along with the request. Please contact EFC for assistance, including sample documentation.

1. A letter of explanation setting forth your basis for requesting a partial or total waiver and detailing the good faith efforts that were made.
2. Copies of advertisements in any general circulation, trade association, and minority- and women-oriented publications in which you solicited MWBEs for the purposes of complying with your participation goals, with the dates of publication.
3. Screenshots of search results (by business description or commodity code) from Empire State Development Corporation's (ESD) MWBE Directory of all certified MWBEs that were solicited for purposes of complying with your MWBE participation goals.
4. Copies of faxes, letters, or e-mails sent to MWBE firms to solicit participation and their responses.
5. A log of solicitation results, consisting of the list of MWBE firms solicited for the contract and the outcome of the solicitations. The log should be broken out into separate areas for each task that is solicited (e.g., trucking, materials, electricians) and clearly provide a rationale for firms included on the completed Utilization Plan as well as for those not chosen. The log should show: that each MWBE firm was contacted twice by two different methods (e.g., fax and phone); who was spoken to; what was said; and the final outcome of the solicitation.
6. A description of any contract documents, plans, or specifications made available to MWBEs for purposes of soliciting their bids and the date and manner in which these documents were made available. Specifically, include information on the scope of work in the contract and a breakout of tasks or equipment, such as

**Attachment 6
New York State Environmental Facilities Corporation
Minority & Women Owned Business Enterprise (MWBE) Waiver Request Form**

a schedule of values for a construction contract or a proposal or excerpt from a professional services agreement.

7. Documentation of any negotiations between you, the Contractor, and the MWBEs undertaken for purposes of complying with your MWBE participation goals.
8. Any other information you deem relevant which may help us in evaluating your request for a waiver. Examples may include sign-in sheets from any pre-bid meetings where MWBE firms were invited, attendance at MWBE forums, etc.
9. EFC and the MBO reserve the right to request additional information and/or documentation.

Additional Documentation for Requests for Specialty Equipment Waivers:

10. Copies of the appropriate pages of the technical specification related to the equipment showing the choices for manufacturers or other information that limits the choice of vendor.
11. Letter, e-mail or screenshot of website from the manufacturer listing their distributors in NYS and the locations.
12. Screenshots of ESD's MWBE Directory searches for the manufacturer and distributor showing that they are not found in the Directory.
13. An invoice or purchase order showing the value of the equipment.

Additional Documentation for Requests for Specialty Service Waivers:

14. A letter of explanation containing information about the scope of work and why no MWBE firms could be subcontracted to provide that service.

Note: Unless a Total Waiver has been granted, Firms will be required to submit all reports and documents pursuant to the provisions set forth in the procurement and/or contract, as deemed appropriate by EFC, to determine MWBE compliance. In cases where EFC accepts a full or partial waiver of MWBE participation goals, the waiver request will be posted to EFC's website.

SIGNATURE

Electronic Signature of Contractor:

I certify that the information submitted herein is true, accurate and complete to the best of my knowledge.

Name: (Please Type):

Date:

Attachment 7
United States Environmental Protection Agency
Form 6100-2
DBE Subcontractor Participation Form

Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Participation Form

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE¹ subcontractor² the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Amount Received by Prime Contractor

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



OMB Control No: 2090-0030
Approved: 8/13/2013
Approval Expires: 8/31/2015

Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Participation Form

Please use the space below to report any concerns regarding the above EPA-funded project:

Subcontractor Signature	Print Name
Title	Date

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

Attachment 8
United States Environmental Protection Agency
Form 6100-3
DBE Subcontractor Performance Form

Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Performance Form

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: <input type="radio"/> DOT <input type="radio"/> SBA <input type="radio"/> Other: _____		Meets/ exceeds EPA certification standards? <input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> Unknown

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

Subcontractor Signature	Print Name
Title	Date

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

Attachment 9
United States Environmental Protection Agency
Form 6100-4
DBE Subcontractor Utilization Form

Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Utilization Form

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	<input type="radio"/> YES	<input checked="" type="radio"/> NO	
If yes, please complete the table below. If no, please explain:			
Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?

Continue on back if needed

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

Attachment 10
New York State Environmental Facilities Corporation
CERTIFICATION REGARDING LOBBYING
FOR
CONTRACTS, GRANTS, LOANS, AND
COOPERATIVE AGREEMENTS
40 CFR Part 34

SRF Project No.: _____

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

By: _____
Name: _____
Title: _____
Date: _____
Contract ID: _____

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): _____

CONTRACTOR'S ACKNOWLEDGEMENT

(If Corporation)

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
_____ of the Corporation described in and which executed the within instrument,
who being duly sworn did depose and say that he, the said _____ reside at
_____ and that he is _____ of said
corporation and knows the corporate seal of the said corporation; that the seal affixed to the within
instrument 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

CONTRACTOR'S ACKNOWLEDGEMENT

(If Individual)

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 same person described in and who executed the within instrument and he duly acknowledged to
me that he executed the same for the purpose herein mentioned and, if operating under and trade
name, that the certificate required by the New York State Penal Law, Sections 440 and 440-b has been
filed with the County Clerk of Essex County.

Notary Public

CONTRACTOR'S ACKNOWLEDGEMENT

(If Co-Partnership)

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 a member of the
firm of and the person described in, and who executed the within instrument in behalf of said firm for
the purposes herein mentioned and that the certificate required by the New York State Penal Law,
Sections 440 and 440-b has been filed with the County Clerk of Essex County.

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 Town receive information that a Bidder/Contractor is in violation of the above-referenced certification, the Town 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 Town 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 Town 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