

ONEIDA COUNTY BOARD OF LEGISLATORS

ONEIDA COUNTY OFFICE BUILDING ♦ 800 PARK AVENUE ♦ UTICA, N.Y. 13501-2977

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(315) 798-5404

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Minority Leader

COMMUNICATIONS WITH DOCUMENTATION October 14, 2020

(Correspondence relating to upcoming legislation, appointments, petitions, etc.)

FILE NO.

COMMITTEE

2020-288 . . .	Health & Human Services, Ways & Means	.....
2020-315 . . .	Health & Human Services, Ways & Means	.....
2020-316 . . .	Health & Human Services, Ways & Means	.....
2020-317 . . .	Health & Human Services, Ways & Means	.....
2020-318 . . .	Health & Human Services, Ways & Means	.....
2020-319 . . .	Health & Human Services, Ways & Means	.....
2020-320 . . .	Health & Human Services, Ways & Means	.....
2020-321 . . .	Health & Human Services, Ways & Means	.....
2020-322 . . .	Ways & Means	.....
2020-323 . . .	Ways & Means	.....
2020-324 . . .	Public Works	.....
2020-325 . . .	Public Works	.....
2020-326 . . .	Public Works	.....
2020-327 . . .	Public Works	.....
2020-328 . . .	Public Safety	.....
2020-329 . . .	Public Safety	.....
2020-330 . . .	Public Safety	.....
2020-331 . . .	Public Safety	.....
2020-332 . . .	Read and File
2020-333 . . .	Read and File
2020-334 . . .	Government Operations, Ways & Means

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Anthony J. Picente, Jr.
County Executive



Colleen Fahy-Box
Commissioner

ONEIDA COUNTY DEPARTMENT OF FAMILY AND COMMUNITY SERVICES
Commissioner's Office

COUNTY OFFICE BUILDING ~ 800 PARK AVENUNE ~ UTICA, NY 13501

PHONE: 315-798-5733 ~ FAX: 315-798-5218

September 24, 2020

Honorable Anthony J. Picente, Jr.
Oneida County Executive
800 Park Avenue
Utica, New York 13501

FN 20 20-288

HEALTH & HUMAN SERVICES

WAYS & MEANS

Dear Mr. Picente:

I am submitting the following Purchase of Services Agreement for review and approval by the Board of Legislators.

Northwoods Consulting Partners, Inc. is to provide the department with a modernized customer service processing system to replace the dated system in Central Intake. This new lobby management system has the capacity to provide multi-language check-in and self-serve kiosk systems that allows for independent document submission decreasing the number of people in the waiting area(s), and the ability to track clientele volume by program area and purpose as well as the timeliness in response to customer appointments. This ultimately provides a streamlined and more efficient intake process for our clients. The department has the goal to improve workflow processes, timeliness of response, and identify training needs of the employees in order to maximize productivity, efficiency and compliance. Updating the Central Intake areas will provide a better work environment for employees and consumers that will promote safety, accountability, and better service.

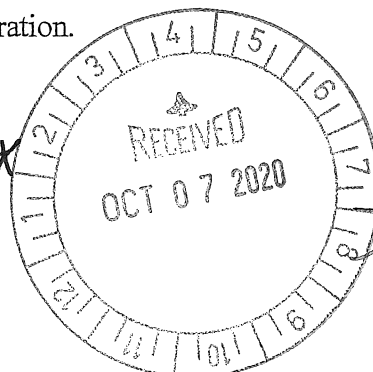
The term of this Agreement runs from Date of Execution and shall end 3 years or 36 months after execution. The Agreement cost is \$659,406 with a local share of 40% or \$ 263,762.40. This service went out to RFP and this is an awarded Agreement.

I am respectfully requesting that this matter be forwarded to the Board of Legislators for action as soon as possible.

Thank you for your consideration.

Sincerely,

Colleen Fahy-Box
Colleen Fahy-Box
Commissioner



Reviewed and Approved for submittal to the
Oneida County Board of Legislator by
Anthony J. Picente, Jr.
Anthony J. Picente, Jr.
County Executive

Date 10-1-20

CFB/tms
attachment

Oneida Co. Department Family and Community Services

Competing Proposal X
Only Respondent _____
Sole Source RFP _____
Other _____

Oneida County Board of Legislators
Contract Summary

Name of Proposing Organization:

Northwoods Consulting Partners, Inc.
5200 Rings Road
Dublin, OH 43017

Title of Activity or Services: Central Intake Customer Service Process System Restructure

Proposed Dates of Operations: Date of Execution through 12 months thereafter

Client Population/Number to be Served: Family and Community Services Clients

SUMMARY STATEMENTS

1). Narrative Description of Proposed Services

The existing Central Intake Customer Service Processing System is over fifteen years old. It experiences frequent breakdowns due to the age of the software and hardware. Minor glitches result in the entire system shutting down. The department also encounters long wait times for parts ranging from several days to weeks for replacement parts. When the ticketing system is down, the front desk staff must hand write tickets. They also have to hand write tickets in the event that the ticket paper runs out. Again, due to the age of the system, the actual ticket paper is difficult to purchase from the company due to decreased production. It also lacks the technical capacity to manage statistical data which is a critical need for the department.

This new lobby system is more efficient and modern and has the capacity to provide multi-language check-in, self-serve kiosk that allows for document submission without further interaction decreasing the number of people in the waiting area(s), and the ability to track clientele volume by program area and purpose as well as the timeliness in response to customer appointments. This ultimately provides a streamlined and more efficient check in process for our clients. The department has diligently evaluated workflow processes over the last several years with a focus on improving processes, timeliness of response and identifying training needs of the employees in order to maximize productivity, efficiency and compliance. Updating the Central Intake areas will provide a better work environment for our employees that promotes safety, accountability and better service.

2). Program/Service Objectives and Outcomes -

The County has sent out a Request for Proposal (RFP) for a modernized lobby system and has chosen Northwoods Consulting Partners, Inc. (Northwoods) to provide the system. Northwoods has more than 15 years of implementing social services solutions and their software will integrate with New York State Network Systems. Specifically, Oneida County Department of Social Services is seeking a system to address three critical areas of need: the necessity to modernize the lobby management system and managing the volume of consumers who present daily, improve customer service and effectiveness, and increase Social Welfare Examiner accuracy and efficiency.

3). Program Design and Staffing Level - N/A

Total Funding Requested: \$659,406

Oneida County Dept. Funding Recommendation:

- **Equipment A6010.295**
- **Service Agreements A6010.493**

Mandated or Non-Mandated:

Proposed Funding Source (Federal \$ /State \$ / County \$): (Per Year)

Federal	48% = \$ 316,514.88
State	12% = \$ 79,128.72
County	40% = \$ 263,762.40

Cost Per Client Served:

Past performance Served: This is a new contract with this vendor.

O.C. Department Staff Comments: With the aging equipment currently in place, the Department feels it is necessary to replace the Central Intake system.

Anthony J. Picente Jr.
County Executive

Colleen Fahy-Box
Commissioner



ONEIDA COUNTY DEPARTMENT OF FAMILY AND COMMUNITY SERVICES

Business Accounting, 4th Floor
County Office Building, 800 Park Avenue, Utica, NY 13501
Phone (315) 798-5523 Fax (315) 793-6044

September 30, 2020

Honorable Anthony J. Picente Jr.
Oneida County Executive
800 Park Avenue
Utica, New York 13501

FN 20 20-315
HEALTH & HUMAN SERVICES

WAYS & MEANS

Dear Mr. Picente:

I am submitting a purchase of services agreement for review and approval by the Board of Legislators. The Department of Community and Family Services would like to contract with the Central New York Health Home Network, Inc. (Restorative Integrated Youth Services) for the provision of Diversion Services to high-risk youth. Through Diversion Services, this program will work with youth and their families to improve their behavior in school, community, and at home.

The contract term is November 16, 2020 through November 15, 2023 at a cost of \$ 1,961,549.00 with a local cost of 27.18% or \$533,149.01.

I respectfully request that you forward this matter to the Board of Legislators.

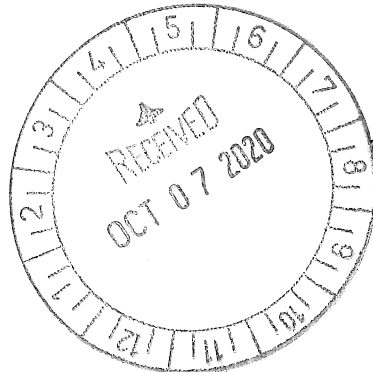
Thank you for your consideration.

Sincerely,

Colleen Fahy Box

Colleen Fahy-Box
Commissioner

CFB/md
Attachment



Reviewed and Approved for submittal to the
Oneida County Board of Legislator by

Anthony J. Picente, Jr.
Anthony J. Picente, Jr.
County Executive

Date 10-5-20

54401

Oneida Co. Department Social Services

Competing Proposal X

Only Respondent _____

Sole Source RFP _____

Oneida County Board of Legislators

Contract Summary

Name of Proposing Organization: Central New York Health Home Network, Inc.
268 Genesee Street, Suite 202
Utica, New York 13502

Title of Activity or Services: Restorative Integrated Youth Services (RIYS) is a Diversion program

Proposed Dates of Operations: November 16, 2020 through November 15, 2023

- **Client Population/Number to be Served:** The Contractor shall handle a maximum active caseload of 75 children and their families who are at serious risk of Foster Care or Institutional placement through Family Court due to their behavior at school, at home, or in the community.

SUMMARY STATEMENTS

1). Narrative Description of Proposed Services

- This program shall be designed to manage the care of children, both preventive and aftercare, from the point of entry into the program, through resolution of the risk. Children and their families shall be eligible for this program while in any stage of a Family Court proceeding. The services commence with a rapid comprehensive assessment and quick identification of needs. The goal is for the Family to be transitioned to and supported by appropriate established community-based services within six (6) to twelve (12) months from the time of admission.
- Services are flexible to meet the individual needs of children and their families. The Contractor will coordinate individualized “wrap-around” services for referred families.
- The program shall provide 24-hour crisis management services and flexible working hours. The program shall be designed to be a no-refusal program that will accept all referrals with adequate referral information within one (1) business day up to the limits of availability. In the event that no openings exist at the time of the referral, a prioritized waiting list shall be established based upon immediacy of need.
- All cases shall receive a comprehensive assessment with an individualized comprehensive family plan that meets the needs of all Family members, developed in partnership with the child and Family within seven (7) days of admission. Services include, but are not limited to: Clinical Services, Case Management, family support, support groups, and referral with

follow-up at any point necessary to any appropriate service. Individual referrals to other support services may be coordinated as a gradual transition if necessary.

2). Program/Service Objectives and Outcomes -

Youth involved with this program will demonstrate an increased ability to live within the laws of the community, Family Court directives, and parent controls. Families will be engaged in services and assisted in monitoring their children through individualized programs that utilize and coordinate community-based services/resources to deter further JD/PINS related behavior and support diversion

3). Program Design and Staffing Level -

Total Funding Requested: \$ 1,961,549.00

Oneida County Dept. Funding Recommendation: Account #: A6070.49547

Mandated or Non-mandated; Preventive mandated service

Proposed Funding Source (Federal \$ /State \$ / County \$):

Federal	38.39 %	- \$ 753,038.67
State	34.43 %	- \$ 675,361.32
County	27.18 %	- \$ 533,149.01

Cost Per Client Served:

Past performance Served: This is a new contract with this agency to provide this service. The Department has contracted with another provider previously and the cost in 2019 for this service was \$ 901,410.72 for one year.

O.C. Department Staff Comments: This service has gone out to RFP and has been awarded to Central New York Health Homes Network, Inc.

THIS AGREEMENT, by and between Oneida County, a municipal corporation organized and existing under the laws of the State of New York, through its Department of Family and Community Services (hereinafter called the "Department," the Department and Oneida County together shall collectively be called the "County"), having its principal offices at 800 Park Avenue, Utica, New York 13501, and Central New York Health Home Network, Inc. ("CNYHHN"); a not-for-profit corporation as defined in Section 102 (a) (5) of the New York Not-For-Profit Corporation Law, having its principal offices at 268 Genesee Street, Suite 202, Utica, New York 13502 (hereinafter called the "Contractor").

WITNESSETH:

WHEREAS, the Commissioner of Social Services of the County of Oneida (hereinafter called the Commissioner) is charged with the responsibility for the administration of all child welfare services provided in the County of Oneida at public expense pursuant to Article 6 of the Social Services Law including Preventive Services pursuant to Section 409 et seq. of the Social Services Law and the Consolidated Services Plan for New York State; and

WHEREAS, the Commissioner pursuant to Section 409-a.3 of the Social Services Law and 18 NYCRR Section 405.1 may provide such Preventive Services directly or through an authorized agency as defined in subdivision (a) of Section 371.10 of the Social Services Law, or a not-for-profit corporation as defined in paragraph (5) of subdivision (a) of Section 102 of the Not-for-Profit Corporation Law, or a public agency that receives the prior approval of New York State; and

WHEREAS, the Contractor under the terms of its corporate authority has the power to provide the services required to be performed herein; and

WHEREAS, the Department has determined that the amount of funds to be paid to the Contractor is reasonable and necessary to provide quality Preventive Services in conformance with the Consolidated Services Plan of the County, Section 409 et seq. of the Social Services Law and 18 NYCRR Parts 405 and 423; and

WHEREAS, it is economically and organizationally feasible for the Department to contract with the Contractor for the performance of these services;

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE DEPARTMENT AND THE CONTRACTOR AS FOLLOWS:

SECTION I: DEFINITIONS

Whenever the following terms are used in this Agreement and schedules attached hereto, they shall have the following meaning unless otherwise clearly noted.

*Central New York Health Home Network, Inc.
Restorative Integrated Youth Services (Diversion Services)*

54401
11/16/20-11/15/23

(1) Preventive Services shall mean supportive and rehabilitative services provided to children and their families in accordance with the provisions of 18 NYCRR Part 423 for the purpose of: averting a disruption of a Family which will or could result in placement of a child in foster care; enabling a child who has been placed in foster care to return to his or her Family at an earlier time than would otherwise be possible; or reducing the likelihood that a child who has been discharged from foster care would return to such care. The following services, when provided for the above-stated purpose and in conformity with this Part, are considered Preventive Services.

Mandated Preventive Services shall mean Preventive Services provided to a child and his or her Family whom the district is required to serve pursuant to 18 NYCRR Part 430.9. Non-mandated Preventive Services shall mean Preventive Services provided to a child and his or her Family who the district may service pursuant to Section 409-a (2) of the Social Services Law. The services, set forth in paragraph (2) through (17) of this Agreement when provided for the above-stated purpose and in conformity with 18 NYCRR Part 423, are considered Preventive Services.

(2) Case Management is defined as the responsibility of the Department to authorize the provision of Preventive Services, to approve the client eligibility determination according to the criteria of 18 NYCRR Part 423.3 and, to approve in writing, the service plans as defined in 18 NYCRR Part 428.

(3) Case Planning is defined as assessing the need for, providing or arranging for, coordinating and evaluating the provision of those Preventive Services needed by a child and his or her Family to prevent disruption of the Family or to help a child in foster care return home sooner. Case Planning shall include, but not be limited to, referring such child and his or her Family to other services as needed, including but not limited to, educational counseling and training, vocational diagnosis and training, employment counseling, therapeutic and preventive medical care and treatment, health counseling and health maintenance services, vocational rehabilitation, housing services, speech therapy and legal services. Case Planning responsibility shall also include documenting client progress and adherence to the plan by recording in the uniform case record as defined in 18 NYCRR Part 428 and 18 NYCRR Part 430.8 through 430.12 that such services are provided and providing Casework Contact as defined in paragraph (4) of this Agreement. Case Planner shall mean the caseworker assigned Case Planning responsibility.

(4) Casework Contacts are defined as:

(a). Individual or group face-to-face counseling sessions between the case planner and the child and/or the child's parents, relatives or guardians that constitute Preventive Services for the purpose of guiding the child and/or the child's parents or guardians towards a course of action agreed to by the child and/or the child's parents or guardians as the best method of attaining personal objectives or resolving problems or needs of a social, emotional, developmental or economic nature.

(b). Individual or group activities with the child and/or the child's parents that are planned for the purposes of achieving such course of action as specified in the child and Family's service plan.

(5). Clinical Services are defined as assessment, diagnosis, testing, psychotherapy, and specialized therapies provided by a person who has received a master's degree in social work, a licensed psychologist, a licensed psychiatrist or other recognized therapist in human services. Such services shall be separate and distinct from Casework Contacts as defined in paragraph (4) of this Agreement.

(6). Day Care Services as defined in the Consolidated Services Plan of the State Department of Social Services prepared pursuant to Section 34-a of the Social Services Law,

(7). Day Services to children as defined in 18 NYCRR Part 425.1 shall mean a program offering a combination of services including at least: social services, psychiatric, psychological, educational and/or vocational services and health supervision and also including, as appropriate, recreational and transportation services, for at least three (3) but not more than 24 hours a day and at least four (4) days per week excluding holidays. If it can be demonstrated that one or more of these services are not needed by the population served, that service may be waived.

(8). Emergency Cash or Goods is defined as money or the equivalent thereto, food, clothing or other essential items that are provided to a child and his or her Family in an emergency or acute problem situation in order to avert foster care placement.

(9). Emergency Shelter is defined as providing or arranging for shelter where a child and his or her Family who are in an emergency or acute problem situation reside in a site other than their own home in order to avert foster care placement.

(10). Family shall be defined solely for the purpose of this Agreement as the child who is at risk of foster care, his or her parent, or legal guardians, or other caretakers and siblings. Family may include a woman who is pregnant as specified in 18 NYCRR Part 430.9(c)(6). Family may also include a child who does not live with his or her parents and needs services to prevent return to foster care.

(11). Family Planning Services as defined in the Consolidated Services Plan of the State Department of Social Services prepared pursuant to Section 34-a of the Social Services Law.

(12). Home Management Services as defined in the Consolidated Services Plan of the State Department of Social Services prepared pursuant to Section 34-a of the Social Services Law.

(13). Homemaker Services as defined in the Consolidated Services Plan of the State Department of Social Services prepared pursuant to Section 34-a of the Social Services Law.

(14). Housekeeper/Chore Services as defined in the Consolidated Services Plan of the State Department of Social Services prepared pursuant to Section 34-a of the Social Services Law.

(15). Parent Aide Services is defined as those services provided in the home and community that focus on the need of the parent for instruction and guidance and are designed to maintain and enhance parental functioning and Family/parent role performance. Techniques may include but are not limited to role modeling, listening skills, Home Management assistance and education in parenting skills and personal coping behavior.

(16). Parent Training is defined as group instruction in parent skills development and the developmental needs of the child and adolescent for the purpose of strengthening parental functioning and parent / child relationships in order to avert a disruption in a Family or help a child in foster care return home sooner than otherwise possible. Parent Training may include child-parent interaction groups formed to enhance relationship and communication skills.

(17). Transportation Services is defined as providing or arranging for transportation of the child and/or his or her Family to and/or from services arranged as part of the child's service plan except that transportation may not be provided as a Preventive Service for visitation of children in foster care with their parents and may only be provided if such transportation cannot be arranged or provided by the child's Family.

SECTION II: TERM OF AGREEMENT

(1). This Agreement shall commence on November 16, 2020 and continue through November 15, 2023. The option to renew this Agreement for a period of two (2) years is at the sole discretion of the County. If the County wishes to renew this Agreement, it will notify the Contractor thirty (30) days prior to the end of the term of Agreement.

SECTION III: SCOPE OF SERVICES

(1). The Contractor shall furnish Preventive Services to a maximum of 75 youth and their families simultaneously in accordance with Federal and New York State Laws and Regulations, including 18 NYCRR Parts 404 and 423 and any other standards prescribed by New York State. It is mutually agreed that all that follows in this section shall be viewed in the context of these regulations.

(2). The Department shall be responsible for determining the eligibility of persons for Preventive Services to be purchased by the Department. The Department shall also be responsible for establishing the policies and procedures for such eligibility determinations in accordance with 18 NYCRR Part 423 and any other standards prescribed by New York State.

(3). The Department shall be responsible for Case Management which shall include authorizing the provision of Preventive Services, monitoring of Child Protective Services (CPS) cases, submission of Connections/Child Care Review Services information, approval of the service plan, Utilization Review procedures, approving client eligibility in accordance with 18 NYCRR Section 423.3 and approving child service plans. In the event of conflict regarding a service plan, the Department supervisor will resolve the issue. The Child Protective Services monitor has the final responsibility for Child Protective cases.

(4). The Contractor shall provide Preventive Services including, but not limited to: Clinical Services, family support, support groups and referral with follow-up when necessary to any appropriate service, in accordance with the program narrative and rates of payment described in Appendix C of this Agreement.

(5). The Contractor and the Department shall cooperate in the collection and exchange of data to facilitate service planning and to provide required information to the State's Child Care Review Service.

(6). The Contractor and the Department shall comply with Section 153 of the Social Services Law which requires that all social services districts which purchase Preventive Services from other authorized agencies charge any loss of reimbursement pursuant to this section to such agencies to the extent that such loss is attributable to such agencies.

(7). The Parties agree that a determination by New York State to deny reimbursement for the provision of Preventive Services for a child, pursuant to Sections 153, 153-a, and 53-k of the Social Services Law shall not relieve the Department or the Contractor from their statutory or contractual obligations to continue to provide Preventive Services for the child or other children in its care.

(8). The Contractor is responsible for Casework Contacts and Case Planning activities which shall be provided in accordance with Appendix C of this Agreement and as required by individual case plans as set forth in 18 NYCRR Part 428.1 through 428.10.

(9). The Contractor will develop a service plan using the Family Assessment and Service Plan (FASP). The Contractor shall review and discuss the service plan with the Department. Should the Contractor seek any changes in the plan or significant deviation therefrom, a revised plan shall be submitted in to the Department prior to the implementation of the change. The Contractor shall implement the change only upon receipt of written approval by the Department. Initial approvals and amendments to an existing service plan must be approved by the Department's Case Manager.

(10). The Contractor shall comply with the reporting provision of suspected child abuse or maltreatment as set forth in Article 6 of Title 6 of the Social Services Law. After the Contractor makes such a report, it will then submit a completed 2221A to the Department.

(11). If the Contractor's employees observe hazardous living conditions during a home visit, the Contractor shall report those conditions to the Codes Department for that municipality and to the Department's case manager. The Contractor must also complete a dwelling survey.

SECTION IV: FAIR HEARINGS

(1). The Department shall notify applicants for or recipients of care and services of their right to a fair hearing to appeal the denial, reduction or termination of a service, or failure to act upon application within 30 days of application. The Department shall also inform applicants for or recipients of Preventive Services how to file a fair hearing request and shall be responsible for establishing fair hearing procedures. Whenever an applicant or recipient requests a fair hearing, the Department shall be responsible for holding a fair hearing and taking such steps as may be necessary to enforce its determinations and decisions. The Department shall provide the Contractor with copies of the decision. The Contractor, upon the request of the Department, shall participate in appeals and fair hearings as witnesses for a determination of issues.

SECTION V: REIMBURSEMENT AND SERVICE FEES

(1). The Contractor shall service a maximum of 75 children and their families at any given time. The schedule of reimbursement is further detailed in Appendix C.

(2). For the term of November 16, 2020 through November 15, 2021, the Department shall reimburse the Contractor \$716.50 per child (and his/her Family) provided with services, per month.

(3). For the term of November 16, 2021 through November 15, 2022, the Department shall reimburse the Contractor \$723.37 per child (and his/her Family) provided with services, per month.

(4). For the term of November 16, 2022 through November 15, 2023, the Department shall reimburse the Contractor \$739.63 per child (and his/her Family) provided with services, per month.

(5). Should the County exercise its option to renew this Agreement for two years:

i. For the term of November 16, 2023 through November 15, 2024, the Department shall reimburse the Contractor \$756.29 per child (and his/her Family) provided with services, per month.

ii. For the term of October 16, 2025 through November 15, 2026, the Department shall reimburse the Contractor \$773.37 per child (and his/her Family) provided with services, per month.

SECTION VI: GENERAL RESPONSIBILITIES OF PARTIES

(1). The Contractor shall have the responsibility for the provision of Preventive Services for each child serviced in accordance with this Agreement and with appropriate New York State regulations including 18 NYCRR Part 423. The parties recognize, however, that ultimate responsibility for the welfare of each child rests with the Department.

(2). The Contractor shall maintain sufficient staff, facilities and equipment, in accordance with the New York State regulations in order to provide the services set forth in Appendix C of this Agreement. The Contractor shall manage the assigned caseload regardless of temporary vacancies and in the same manner or quality as would be expected if at full staff.

(3). The Contractor shall provide the services described in Appendix C of this Agreement at the principal location of:

Central New York Health Home Network, Inc. (R.I.Y.S.)
268 Genesee Street, Suit 202
Utica, New York 13502

The Contractor shall provide the Department with written notification of the location(s) of any additional support services that are provided in conjunction with the child service plan.

(4). The Department shall provide the Contractor with the name of the person with monitoring responsibility for Child Protective Services each person receiving Preventive Services from the Contractor.

SECTION VII: BOOKS, RECORDS, AND REPORTS

(1). The Contractor shall keep accurate records that conform with State regulations established for utilization review and uniform case recording for each public charge serviced under this Agreement. Each record shall indicate the services provided to the child and his or her Family, services provided to others involved with the case, and the date such services were provided. The Contractor shall make such reports to the Department on the current status and progress of each recipient of service at intervals required by New York State regulations.

(2). All information contained in the Contractor's files shall be held confidential by the Contractor and the Department pursuant to the applicable provisions of the Social Services Law and any New York State regulations promulgated thereunder, including 18 NYCRR Section 357.5 and 423.7, as well as any applicable Federal Laws and any regulations promulgated thereunder and shall not be disclosed except as authorized by law.

(3). The records of individual recipients of services shall be made available to the Department upon request for consultation or review.

(4). The Contractor shall maintain statistical records as required by the Department and shall furnish such data at times prescribed by and on forms supplied by the Department.

(5). The Contractor shall maintain financial books, records and necessary supporting documents as required by the Department. The Contractor shall use accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of the services provided under this Agreement. The Contractor shall collect statistical data of a fiscal nature on a regular basis and to make fiscal and statistical reports at times prescribed by and on forms furnished by the Department.

(6). The Contractor shall retain all books, records and other documents relevant to this Agreement for six (6) years after final payment for services to which they relate, during which time authorized County, State and/or Federal auditors shall have access to and the right to examine the same.

SECTION VIII: INSURANCE and INDEMNIFICATION

(1). The Contractor shall purchase and maintain insurance of the following types of coverage and limits of liability with an insurance carrier qualified and admitted to do business in the State of New York. The insurance carrier must have at least an A- (excellent) rating by A. M. Best.

(a). Commercial General Liability (CGL) coverage with limits of Insurance of not less than \$1,000,000 each occurrence and \$3,000,000 annual aggregate.

i. CGL coverage shall be written on ISO Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products-completed operations, and personal and advertising injury.

ii. Abuse and Molestation coverage must be included.

iii. Oneida County and any other parties required by the County shall be included as additional insureds. Coverage for the additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insureds.

(b). Workers' Compensation and Employer's Liability

i. Statutory limits apply.

(c). Business Automobile Liability (BAL)

- i. BAL with limits of at least \$1,000,000 each accident.
- ii. BAL coverage must include coverage for liability arising out of all owned, leased, hired, and non-owned automobiles.
- iii. Oneida County shall be included as an additional insured on the BAL policy. Coverage for the additional insured shall be on a primary and non-contributing basis.

(d). Commercial Umbrella

- i. Umbrella limits must be at least \$5,000,000.
- ii. Umbrella coverage must include as additional insureds all entities that are additional insureds on the CGL.
- iii. Umbrella coverage for such additional insureds shall apply as primary and non-contributing before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insureds.

(e). Professional Liability with coverage limits of \$1,000,000 each occurrence and \$2,000,000 aggregate.

- i. Coverage for review of cases and resulting professional assessment.
- ii. Coverage for Abuse and Molestation.

(2). Waiver of Subrogation: the Contractor waives all rights against the County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by CGL or Workers' Compensation and Employer's Liability insurance maintained per requirements stated above.

(3). Certificates of Insurance: Prior to the start of any work, the Contractor shall provide certificates of insurance to the County. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Contractor's CGL policy. These certificates and the insurance policies required above shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the County.

(4). The Contractor shall at all times defend, indemnify and hold the County and its officers and employees harmless and free and clear of any and all liability arising from any act of omission or commission by the Contractor, its officers or employees, with respect to this Agreement and any of the terms thereof.

SECTION IX: ACCOUNTABILITY

(1). The Department shall establish methods to evaluate the provision of Preventive Services by the Contractor pursuant to this Agreement. All provisions of this Section shall be interpreted consistent with the New York State Law and applicable regulations. In implementing the foregoing, the Contractor recognizes that the Commissioner, pursuant to statute, has ultimate responsibility for the protection and preservation of the welfare of all children within her jurisdiction and thus has the duty, ongoing throughout the term of this Agreement, to monitor the Contractor with regard to the Preventive Services provided to the children referred hereunder.

(2). The Contractor agrees that a program and facilities review, as pertains to the delivery of Preventive Services under this Agreement, including meetings with recipients of service, review of uniform case records, review of service policy and procedural issuances, review of staffing and job description and meetings with staff directly or indirectly involved in the provision of Preventive Services, may be conducted at any reasonable time by qualified personnel from those local, State and Federal agencies with the required legal powers and statutory authority to conduct such activities.

(3). The Department shall confer with the Contractor at least twice a year to discuss the Contractor's services purchased by the County. This shall include, but not be limited to, such items as frequency of contact and planning with the natural Family and significant others, scope of Service Plans and of achieving the goals stated therein, and the extent to which special mental health, remedial, tutorial and vocational services were provided after the Contractor and the Department determined these were necessary. These semi-annual client reviews shall include a review of compliance to requirements in this Agreement.

(4). The monthly report that accompany the County voucher for payment shall include, but are not limited to, the data based on the Outcomes/Measurements, case statistics such as client, case number, and number of contacts per child. See Appendix C, Section III, Reimbursement for Services, b.

(5). If the Contractor fails to substantially conform to the provisions of this Agreement after due written notice, the Department may take such actions or invoke such sanctions under this Agreement and any appropriate regulations issued by the State Department of Social Services as it deems necessary.

(6). The Contractor shall not make any subcontract for the performance of this Agreement without prior written approval of the Department. The assignment of this Agreement, in whole or in

part, or of any money due or to become due under this Agreement shall be void. Where subcontractors are permitted, they are subject to Federal and State requirements governing purchase of services contracts and the Contractor is responsible for the performance of any subcontractor.

(7). The Contractor covenants and agrees that neither it nor any of its directors, officers, members, or employees has any interest, nor shall they acquire any interest, directly or indirectly, which would substantially or adversely conflict in any manner or degree with the Contractor's performance of the services defined in Section III. The Contractor further covenants that in the performance of this Agreement, no person having such interest shall be employed. The names and addresses of the members of the Contractor's Board of Directors have been provided to the Department.

SECTION X: INDEPENDENT CONTRACTOR STATUS

(1). The relationship of the Contractor to the County is that of Independent Contractor. The Contractor's employees shall not be considered employees of the County for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health insurance benefits.

(2). The Contractor warrants and represents that it is in the business of offering the same or similar services detailed herein and does offer the same or similar service(s) to other entities and/or the general public as a regular course of business. The Contractor and County agree that Contractor is free to undertake other work arrangements during the term of this Agreement, and may continue to make its services available to the public.

(3). The Contractor's employees shall not be eligible for compensation from the County due to a) illness; b) absence due to normal vacation; c) absence due to attendance at school or special training or a professional convention or meeting.

(4). The Contractor shall be paid pursuant to IRS Form 1099, and shall be solely responsible for applicable taxes for all compensation paid out under this Agreement, and for compliance with all applicable labor and employment requirements with respect to Contractor's form of business organization, including payroll deductions, workers' compensation insurance, and provision of health insurance where required.

(5). The County shall not be responsible for withholding from the payments provided for services rendered for State or Federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA). The Contractor shall indemnify and hold the County harmless from all loss or liability incurred because the County does not make such payments or withholdings.

(6). If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Contractor's Independent Contractor status, the County and

the Contractor shall have the right to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of the manner such discussions or negotiations are initiated.

(7). The Contractor is solely responsible for paying all of its business expenses related to furnishing the services described herein. The County will not reimburse the cost of travel, equipment, tools, office space, support services or other general operating expenses.

(8). The Contractor shall not be required to attend or undergo any training by the Department. The Contractor shall be fully responsible for its own training necessary to maintain any licenses or certifications to perform the services described herein, and shall be solely responsible for the cost of the same. Further, the Contractor shall have all of the licenses, approvals and certifications currently required by the laws of any applicable municipality and shall keep licenses, approvals and certifications in full force and effect during the term of this Agreement, or any extension, and to comply within the required time to secure any new license so required.

SECTION XI: COMPLIANCE WITH LAW

(1). The Contractor represents and agrees to comply with the requirements of the Civil Rights Act of 1964 as amended, the Age Discrimination Employment Act of 1967 as amended, the Federal Rehabilitation Act of 1973 as amended, and Executive Order No.11375 and as supplemented in Department of Labor Relations, 41 CFR, Part 60. The Contractor also agrees to observe all applicable Federal regulations contained in 45 CFR, Part 84, and 28 CFR, Part 41.

(2). The Contractor shall be bound by the terms and conditions of any attachments, amendments, addendums or appendices attached hereto and made a part hereof.

SECTION XII: TERMINATION OF AGREEMENT

(1). This Agreement may be terminated by the County for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including any attachments thereto, provided that the Department shall give the Contractor written notice specifying the Contractor's failure. Such written notice shall be delivered via registered or certified mail with return receipt requested or shall be delivered by hand with receipt granted by the Contractor. The Contractor shall not incur new obligations or claim for any expenses incurred after receipt of the notification of termination.

(2). In addition to the termination provisions set forth in paragraph 1 supra, the County shall have the right to terminate this Agreement in whole or in part, if at any time Contractor has failed to comply with any Federal, State or local health, safety or fire code regulations; or in the event that any license, approval or certification of the Contractor, required by Federal, State or County government is revoked, not renewed, or otherwise not in full force or effect, or in the event that a

new such license, approval or certification is required and Contractor fails to secure it during the term of this Agreement.

(3). Should the federal, state, or local funding be eliminated, the County may terminate this Agreement.

(4). When this Agreement is to be terminated, notice of termination shall be given in writing specifying the reasons for termination and the effective date of termination. The effective date shall not be less than thirty days from the date of notice, unless a petition in bankruptcy or insolvency has been filed by or against the Contractor or the Contractor has failed to comply with a corrective action notice issued by the Department, which in either case, the Department may immediately terminate this Agreement as outlined in Appendix B. In any event, the effective date of termination shall not be later than the Agreement expiration date.

(5). Upon termination or upon expiration of the term of this Agreement pursuant to Paragraphs 1 or 2 supra, the Department shall arrange for the transfer to another contractor of all public charges then served by the Contractor. In order to reimburse that contractor for all public charges not transferred by the effective date of termination, the Department and Contractor shall negotiate an extension of this Agreement prior to the date of termination.

(6). The Contractor shall comply with all Department close-out procedures, including, but not limited to: within 30 calendar days after the date of termination, the Contractor shall account for and refund to the County any overpayments or excess funds paid to the Contractor pursuant to this Agreement; not incur or pay any further obligation to be reimbursed to it under this Agreement beyond the termination date; and transmit to the Department or its designee on written request copies of all books, records, documents and materials pertaining to the financial details of any services provided under the terms of this Agreement.

SECTION XIII: MISCELLANEOUS

(1). The Contractor agrees that the Commissioner has the right to request the reassignment of any employee performing services under this Agreement, and to request the retention, the reinstatement or the reassignment of any employee(s) who may have been removed. However, the Parties recognize that the ultimate authority for the assignment of work and the supervision of employees remains with the Contractor.

(2). The Contractor agrees that payment by the County will be contingent upon the Contractor submitting a Department-approved voucher to the Department's Accounting Department certifying the satisfactory completion of the Contractor's performance and setting forth the payment to be made.

(3). This Agreement may not be assigned, transferred or in any way disposed of by the Contractor without first having obtained written approval thereof from the County.

(4). The Contractor warrants that it is not in arrears to the County upon any debt or contract, and that it has not been in default and is not in default as surety, contractor or otherwise.

(5). Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.

(6). The terms of this Agreement, including any attachments, amendments, addendums or appendixes attached hereto, constitute the entire understanding and agreement of the parties and cancel and supersede all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. No waiver, alterations or modifications of any provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

Date: _____

Oneida County: _____

Anthony J. Picente, Jr., County Executive

Approved: _____

Kimberly A. Koich, Assistant County Attorney

Date: 10/2/20

Oneida County Department
of Family and Community Services:

Colleen Fahy-Box

Colleen Fahy-Box, Commissioner, Dept. of Social Services

Date: 10/1/2020

Central New York Health Home Network, Inc.:

Jane Vail
Jane Vail, Executive Director

Central New York Health Home Network, Inc.
Restorative Integrated Youth Services (Diversion Services)

54401
11/16/20-11/15/23

APPENDIX A
NEW YORK STATE CONDITIONS

The parties to the attached contract further agree to be bound by the following, which are hereby made a part of said contract.

- I. This contract may not be assigned by the contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the State.
- II. This contract shall be deemed executory only to the extent of money available to the State for the performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for the purpose thereof.
- III. The contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d, as amended that:
 - (a) no laborer, workman or mechanic, in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or any 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 the emergencies set forth in the Labor Law.
 - (b) The wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.
 - (c) The minimum hourly rate of wages to be paid shall not be less than that stated in the specifications, and any redetermination of the prevailing rate of wages after the contract is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of these contract documents.
 - (d) The Labor Law provides that the contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than—
 - (a) the stipulated wage scale as provided in Labor Law, Section 220, subdivision 3, as amended or
 - (b) less than the stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.
- IV. The contractor specifically agrees, as required by the provisions of the Labor Law, Section 220-e, as amended, that:
 - (a) in hiring of employees for the performance of work under this contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no contractor, subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
 - (b) No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired

for the performance of work under this contract on the account of race, creed, color, sex or national origin.

- (c) There may be deducted from the amount payable to the contractor by the State under this contract a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract, and
- (d) This contract may be cancelled or terminated by the State or municipality and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract, and
- (e) The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

V. The contractor specifically agrees, as required by Executive Order # 45, dated Jan. 4, 1977, effective February 4, 1977, that:

- (a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake programs of affirmative action to insure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference, but not limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- (b) If the contractor is directed to do so by the contracting agency or the Office of State Contract Compliance (hereafter OSCC). The contractor shall request each employment agency, labor union, or authorized representative of workers, with which he has a collective bargaining or other agreement or understanding, to furnish him with a written statement that such employment agency, labor union or representative will not discriminate because 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 hereunder and the purposes of Executive Order # 45 (1977).
- (c) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- * (d) The contractor will comply with all the provisions of Executive Order # 45 (1977) and rules, regulations and orders issued

pursuant thereto and will furnish all information and reports required by said Executive Order or such rules, regulations and orders, and will permit access to its books, records, and accounts and to its premises by the contracting agency or the OSCC for the purposes of ascertaining compliance with said Executive Order and such rules, regulations and orders.

*(e) If the contractor does not comply with the equal opportunity provisions of this contract, with Executive Order # 45 (1977), or with such rules, regulations, or orders, this contract or any portion thereof, may be cancelled, terminated or suspended or payments thereon withheld, or the contractor may be declared ineligible for future State or State-assisted contracts, in accordance with procedures authorized in Executive Order #45 (1977), and such other sanctions may be imposed and remedies invoked as are provided in said Executive Order or by rule, regulation or order issued pursuant thereto, or as otherwise provided by law.

*(f) The contractor will include the provisions of clauses (a) through (e) above and all contract provisions promulgated by OSCC pursuant to Section 1.3 (b) of Executive Order # 45 (1977), in every non-exempt subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work force within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency or the OSCC may direct, including sanctions or remedies for noncompliance. If the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction, the contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

VI. The contractor will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights under the Law, and will permit access to its books, records and accounts by the State Industrial Commissioner for the purposes of investigation to ascertain compliance with the non-discrimination clauses, the Executive Law and Civil Rights Law.

VII. (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder, and will not be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;

3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that 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 sub-paragraph VII (a)

****Note:** Reference to the above Rules and Regulations refer to those Rules and Regulations in effect as of the date of the solicitation of bids relative to this contract.

APPENDIX B

STANDARD CLAUSES FOR ALL ONEIDA COUNTY DEPARTMENT OF SOCIAL SERVICES CONTRACTS

PERSONNEL

- a. The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries, and management of its project personnel. These functions shall be carried out in accordance with the provisions of this AGREEMENT, and all applicable federal, state and local laws and regulations.
- b. It is the policy of the Department to encourage the employment of qualified applicants or recipients of public assistance by both public organization and private enterprises who are under contractual AGREEMENT to the Department for the provision of goods and services. Contractors will be expected to make best efforts in this area.
- c. The Contractor agrees to identify, in writing, the person(s) who will be responsible for directing the work to be done under this AGREEMENT. No change or substitution of such responsible person(s) will be made without prior approval in writing from the Department, to the degree that such change is within the reasonable control of the Contractor

NOTICES

- a. All notices permitted or required hereunder shall be in writing and shall be transmitted either by:
 1. By certified or registered United States mail, return receipt requested;
 2. By facsimile transmission;
 3. By personal delivery;
 4. By expedited delivery service; or
 5. By e-mailNotices to the Department shall be addressed to the Commissioner of Social Services at the address, facsimile number or e-mail Address provided to the Contractor during contract development or to such different Program Manager as the Department may from time-to time designate.
- b. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- c. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the

purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

OFFICE SERVICES

- a. The Contractor shall be responsible for the provision of necessary equipment and services for Contractor's staff, pursuant to and described in the narratives and budgets contained in the AGREEMENT.
- b. For federally funded contracts, title to real property and non-expendable personal property whose requisition cost is borne in whole or in part by monies proved under this AGREEMENT shall be determined between the Contractor and the Department, pursuant to federal regulations 45 CFR 92 unless such authority is otherwise inappropriate. Title to all equipment, supplies and material purchased with funds under this AGREEMENT under contracts which are not federally funded shall be in the State of New York and the property shall not be transferred, conveyed, or disposed of without written approval of the Department. Upon expiration or termination of this AGREEMENT, all property purchased with funds under this AGREEMENT shall be returned to the Department, unless the Department has given direction for, or approval of, an alternative means of disposition in writing.
- c. Upon written direction by the Department, the Contractor shall maintain an inventory of those properties that are subject to the provisions of sub-paragraph b of this section

GENERAL TERMS AND CONDITIONS

- a. The Contractor agrees to comply in all respects with the provisions of this AGREEMENT and the attachments hereto. The Contractor specifically agrees to perform services according to the objectives, tasks, work plan and staffing plan contained in the AGREEMENT. Any modifications to the tasks or work plan contained in AGREEMENT must be mutually agreed to by both parties in writing before the additional or modified tasks or work plan shall commence.
- b. If any specific event or conjunction of circumstances threatens the successful completion of the project, in whole or in part, including where relevant, timely completion of milestones, the Contractor agrees to submit to the Department within three (3) days of occurrence or perception of such problem, a written description thereof together with a recommended solution thereto.
- c. The Contractor immediately shall notify in writing the Department Program Manager assigned to this contract of any unusual incident, occurrence or event that involves the staff, volunteers or officers of the Contractor, and subcontractor or Program participant funded through this AGREEMENT, including but not limited to the following: death or serious injury; an arrest or possible criminal activity; and destruction of property; significant damage to the physical plant of the Contractor, or other matters of a similarly serious nature.

- d. In providing these services, the Contractor hereby agrees to be responsible for designing and operating these services, and otherwise performing, so as to maximize federal financial participation to the Department under the Federal Social Security Act.
- e. If funds from this AGREEMENT will be used to pay any costs associated with the provision of legal services of any sort, the following shall apply:
1. No litigation shall be brought against the State of New York, the New York State Office of Children and Family Services or against Oneida County or the Department or other local government or local social services district with funds provided under this AGREEMENT. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from either the State of New York, the New York State Office of Children and Family Services or Oneida County or other local government or local social services district, based upon any agreement between such agency in litigation with another party and such party, during pendency of the litigation.
 2. Opinions prepared by consultant law firms construing the statutes of Constitution of the State of New York do not constitute the view of the State unless the prior written approval of the Attorney General is obtained. Requests for said approval shall be submitted to the Solicitor General, Division of the Appeals and Opinions Bureau, department of Law, The Capital, Albany, New York 12224
 3. The Contractor shall provide to the Department in a format provided by the Department such additional information concerning the provision of legal services as the Department shall require.
- f. The Department will designate a Contract Manager who shall have authority relating to the technical services and operational functions of this AGREEMENT and activities completed or contemplated there under. The Contract Manager and those individuals designated by him/her in writing shall have the prerogative to make announced or unannounced on-site visits to the project. Project reports and issues of interpretation or direction relating to this AGREEMENT shall be directed to the Contract Manager.
- g. Except where the Department otherwise authorizes or directs in writing, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, for the performance of the obligations contained herein until it has received the prior written approval of the Department, which shall have the right to review and approve each and every subcontract prior to giving written approval to the contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT (2) that nothing contained in the subcontract shall impair the rights of the Department under this AGREEMENT, (3) that nothing contained in the subcontract, nor under this AGREEMENT, shall be deemed to create any contractual relationship between the subcontractor and the Department, and (4) incorporating all provisions regarding the

rights of the Department as set forth in this AGREEMENT, where applicable. The Contractor specifically agrees that the Contractor shall be fully responsible to the Department for the acts and omissions of subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Contractor.

- h. The Contractor warrants that it, its staff and any and all subcontractors which must be approved by the Department, have all the necessary licenses, approvals and certifications currently required by the law of any applicable local, state or federal government to perform the services pursuant to this AGREEMENT and/or subcontract entered into under this AGREEMENT. The Contractor further agrees such required licenses, approvals and certificates will be kept in full force and effect during the term of this AGREEMENT, and/or any extension thereof, and to secure any new licenses, approvals or certificates within the required time frames and/or to require its staff and subcontractors to obtain and requisite licenses, approvals or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval or certification to perform the services under this AGREEMENT, Contractor will immediately notify the Department.
- i. This AGREEMENT cannot be assigned by the Contractor to a subcontractor without obtaining written approval of the Department. Prior to executing a subcontract agreement the Contractor agrees to provide the Department the information the Department needs to determine whether a proposed subcontractor is a responsible vendor. The determination of vendor responsibility will be made in accordance with Section n. of General Terms and Conditions herein.
- j. If the Contractor intends to use materials, equipment or personnel paid for under this AGREEMENT in a revenue generating activity, the Contractor shall report such intentions to the Department forthwith and shall be subject to the direction of the Department as to the disposition of such revenue.
- k. Any interest accrued on funds paid to the Contractor by the Department shall be deemed to be the property of the Department and shall either be credited to the Department at the termination of this AGREEMENT or expended on additional services provided for under this AGREEMENT.
- l. The Contractor ensures that the grounds, structures, building and furnishings at the program site(s) used under this AGREEMENT are maintained in good repair and free from any danger to health or safety and that any building or structure used for program services complies with all applicable zoning, building, health, sanitary, and fire codes.
- m. The Contractor agrees to produce, and retain for the balance of the calendar year in which produced, and for a period of six (6) years thereafter, any and all records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under this AGREEMENT. Such records shall include, but not be limited to,

original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

1. Payroll Expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, employee personal history folders, and cost allocation plans, if applicable.
2. Payroll Taxes and Fringe Benefits: cancelled checks, copies of related bank statements, reporting forms, and invoices for Fringe Benefit expenses.
3. Non-Personal Services Expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.
4. Receipt and Deposit of Advance and Reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.
5. The Contractor agrees that any equipment purchased with funds under this AGREEMENT is the property of the Department and will remain with or will be returned to the Department in the event of the termination of this AGREEMENT,

Although not required, the Department recommends that the Contractor retain records directly pertinent to this AGREEMENT for a period of ten (10) years after the end of the calendar year in which they were made, as the statute of limitations for the New York False Claims Act is ten (10) years.

- n. By signing this AGREEMENT, the Contractor certifies that within the past three (3) years the Contractor has engaged in no actions that would establish a basis for a finding by the Department that the Contractor is a non-responsible vendor or, if the Contractor has engaged in any such action or actions, that all such actions have been disclosed to the Department prior to entering into this AGREEMENT. The actions that would potentially establish a basis for a finding by Department that the Contractor is a non-responsible vendor include:
 1. The Contractor has had a license or contract suspended, revoked or terminated by a governmental agency.
 2. The Contractor has had a claim, lien, fine, or penalty imposed or secured against the Contractor by a governmental agency.
 3. The Contractor has initiated a bankruptcy proceeding or such a proceeding has been initiated against the Contractor
 4. The Contractor has been issued a citation, notice, or violation order by a governmental agency finding the Contractor to be in violation of any local, state, or federal laws.
 5. The Contractor has been advised by a governmental agency that a determination to issue a citation, notice or violation order finding the Contractor to be in violation of any local, state or federal laws is pending before a governmental agency
 6. The Contractor has not paid all due and owed local, state and federal taxes to the proper authorities
 7. The Contractor has engaged in any other actions of a similarly serious nature.

Where the Contractor has disclosed any of the above to the Department, the Department may require as a condition precedent to entering into this AGREEMENT that the

Contractor agree to such additional conditions as will be necessary to satisfy the Department that the vendor is and will remain a responsible vendor. By signing this AGREEMENT, the Contractor agrees to comply with any such additional conditions that have been made a part of this AGREEMENT.

By signing this AGREEMENT, the Contractor also agrees that during the term of the AGREEMENT, the Contractor will promptly notify the Department if the Contractor engages in any actions that would establish a basis for a finding by Department that the Contractor is a non-responsible vendor, as described above.

- o. By signing this AGREEMENT, the Contractor agrees to comply with State Tax Law section 5-a
- p. The Contractor must maintain Workers' Compensation Insurance in accordance with the Workers' Compensation Law. If the Contractor believes they are exempt from the Workers' Compensation insurance requirement then they must apply for an exemption. Contractors can apply for the exemption online through the New York State Workers' Compensation Board website at:
http://www.web.state.ny.us/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp
- q. All organizations that receive federal financial assistance under social service programs are prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, are not allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct federal financial assistance (including through prime awards or sub-awards), separately in time or location from any such programs or services supported with direct federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such federal financial assistance

REPORTS AND DELIVERABLES

The Contractor shall prepare and submit all reports, documents, and projects required by this AGREEMENT to the Department's Contract Manager for review and approval. These reports shall be in such substance, form, and frequency as required by the Department and as necessary to meet state, federal and Oneida County requirements.

The Contractor shall complete Contract Evaluations as required by the Department as

well as Statistical Data as needed by the Department and New York State to meet the reporting requirements.

CONFIDENTIALITY AND PROTECTION OF HUMAN SUBJECTS

- a. The Contractor agrees to safeguard the confidentiality of financial and/or client information relating to individuals and their families who may receive services in the course of this project. The Contractor shall maintain the confidentiality of all such financial and/or client information with regard to services provided under this AGREEMENT in conformity with the provisions of applicable state, federal, and local laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this AGREEMENT.
- b. Any Contractor who will provide goods and/or services to a residential facility or program operated by Department agrees to require all of its employees and volunteers who will have the potential for regular and substantial contact with youth in the care or custody of the Department to sign an Employee Confidentiality Certification and employee Background Certification before any such employees and volunteers are permitted access to youth in the care or custody of the Department and/or any financial and/or client identifiable information concerning such youth. Additionally, the Department will require a database check of the State wide Central Register of Child Abuse and Maltreatment (SCR) of each employee and volunteer of the Contractor who has the potential for regular and substantial contract with children in the care or custody of the Department. Any Contractor whose employees and volunteers will have access to financial and/or client identifiable information concerning youth in the care or custody of Department agrees to require all such employees and volunteers to sign an Employee Confidentiality Certification before any such employees and volunteers are permitted access to any financial and/or client identifiable information concerning such youth.
- c. The Contractor and any subsequent subcontractor shall not discriminate or refuse assistance to individuals with AIDS or an HIV infection or an HIV - related illness.

The Contractor and any subsequent subcontractor agrees that their staff to whom confidential HIV - related information may be given as a necessity for providing services and in accordance with 403 of Title 18 NYSDSS regulation and Section 2782 of the Public Health Law are fully informed of the penalties and fines for re-disclosure in violations of state law and regulations.

The Contractor and any subsequent subcontractor must include the following written statement when disclosing any confidential HIV - related information.

"This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the

release of medical or other information is not sufficient authorization for further disclosure."

- d. All information contained in the Contractor's, or its subcontractor's files shall be held confidential pursuant to the applicable provisions of the Social Services Law and any State Department Regulations promulgated thereunder, including 18 NY CRR Sec. 357.5 and 423.7, as well as any applicable federal laws and any regulations promulgated thereunder and shall not be disclosed except as authorized by law.
- e. The Contractor and any of the Contractor's staff that are subject to the Oneida County computer systems/databases shall complete the Oneida County Department of Social Services Confidentiality and Non-Disclosure Agreement provided with this AGREEMENT and shall submit forms to the following address:

Oneida County Department of Social Services
Contract Administration Office, 4th Floor
800 Park Ave
Utica, New York, 13501

PUBLICATIONS AND COPYRIGHTS

- a. The results of any activity supported under this AGREEMENT may not be published without prior written approval of the Department, which results (1) shall acknowledge the support of the Department and the County and, if funded with federal funds, the applicable federal funding agency, and (2) shall state that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretation or policy of the Department or Oneida County.
- b. The Department and Oneida County expressly reserve the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish, distribute or otherwise use, in perpetuity, any and all copyrighted or copyrightable material resulting from this AGREEMENT or activity supported by this AGREEMENT. All publications by the Contractor covered by this AGREEMENT shall expressly acknowledge the Department's right to such license.
- c. All of the license rights so reserved to the Department and Oneida County under this paragraph are equally reserved to the United States Department of Health and Human Services and subject to the provisions on copyrights contained in 45 CFR 92 if the AGREEMENT is federally funded
- d. The Contractor agrees that at the completion of any scientific or statistical study, report or analysis prepared pursuant to this AGREEMENT, it will provide to the Department at no additional cost a copy of any and all data supporting the scientific or statistical study, report or analysis, together with the name(s) and business address(es) of the principal(s) producing the scientific or statistical study, report or

analysis. The Contractor agrees and acknowledges the right of the Department, subject to applicable confidentiality restrictions, to release the name(s) and business address(es) producing the scientific or statistical study, report or analysis, together with a copy of the scientific or statistical study, report or analysis and all data supporting the scientific or statistical study, report or analysis.

PATENTS AND INVENTIONS

The Contractor agrees that any all inventions, conceived or first actually reduced to practice in the course of, or under this AGREEMENT, or with monies supplied pursuant to this AGREEMENT, shall be promptly and fully reported to the Department. Determination as to ownership and/or disposition of rights to such inventions, including whether a patent application shall be filed, and if so, the manner of obtaining, administering and disposing of rights under any patent application or patent which may be issued, shall be made pursuant to all applicable law and regulations.

TERMINATION

- a. This AGREEMENT may be terminated by the Department upon thirty (30) days prior written notice to the Contractor. Such notice is to be made by way of registered or certified mail return receipt requested or hand delivered with receipt granted by the Contractor. The date of such notice shall be deemed to be the date the notice is received by the Contractor established by the receipt returned, if delivery by registered or certified mail, or by the receipt granted by the Contractor, if the notice is delivered by hand. The Department agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith before the date of termination of this AGREEMENT.
- b. If the Contractor fails to use any real property or equipment purchased pursuant to this AGREEMENT or the Contractor ceases to provide the services specified in the AGREEMENT for which the equipment was purchased, the Department may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor, where the Contractor has failed to cure as set forth hereafter, said notice of breach shall be sent by way of registered or certified mail return receipt requested, or shall be delivered by hand, receiving Contractor's receipt therefor. Said notice shall specify the Contractor's breach and shall demand that such breach be cured. Upon failure of the Contractor to comply with such demand within thirty (30) days, or such longer period as may be specified therein, the Department may, upon written notice similarly served, immediately terminate this AGREEMENT, termination to be effective upon the date of receipt of such notice established by the receipt returned to the Department. Upon such termination, the Department may require (a) the repayment to the Department of any monies previously paid to the Contractor, or (b) return of any real property or equipment purchased under the terms of this AGREEMENT or an appropriate combination of (a) and (b), at the Department's option.

- c. To the extent permitted by law, this AGREEMENT shall be deemed in the sole discretion of the Department terminated immediately upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligation by the Department to the Contractor
- d. Should the Department determine that federal, state or County funds are limited or become unavailable for any reason, the Department may reduce that total amount of funds payable to the Contractor, reduce the AGREEMENT period or deem this AGREEMENT terminated immediately. The Department agrees to give notice to the Contractor as soon as it becomes aware that funds are unavailable, in the event of termination under this paragraph. If the initial notice is oral notification, the Department shall follow this up immediately with written notice. The Department will be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination is received either orally or in writing by the Contractor from the Department.
- e. The Contractor shall provide to the Department such information as is required by the Department in order that the Department may determine whether the Contractor is a responsible vendor for purposes of compliance with section 163 of the State Finance Law and requirements of the Department. If there is any change in any of the vendor responsibility information provided to the Department by the Contractor at any time during the term of this AGREEMENT, the Contractor shall be required to immediately notify the Department so that the Department may assess whether the Contractor continues to be a responsible vendor. Should the Contractor fail to notify the Department of any change in the vendor responsibility information or should the Department otherwise determine that the Contractor has ceased to be a responsible vendor for the purposes of this AGREEMENT, the Department may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor. Said notice of termination shall be sent by way of registered or certified mail return receipt requested, or shall be delivered by hand, receiving Contractor's receipt therefore. Said notice shall specify the reason(s) that the Contractor has been found to no longer be a responsible vendor.

Upon determination that the Contractor is no longer a responsible vendor the Department may, in its discretion and as an alternative to termination pursuant to this paragraph, notify the contractor of the determination that the Contractor has ceased to be a responsible vendor and set forth the corrective action that will be required of the Contractor to maintain this AGREEMENT. Should the Contractor fail to comply with the required corrective action within thirty (30) days of the date of notification, or such longer period as may be specified therein, the Department may, upon written notice similarly served, immediately terminate this AGREEMENT, termination to be effective upon the date of receipt of such notice established by the receipt returned to the Department. Upon such termination, the Department may require (a) the repayment to the Department of any monies previously paid to the Contractor, (b) return of any real property or equipment

purchased under the terms of this AGREEMENT, or an appropriate combination of (a) and (b) at the Department's option.

CONTRACTOR COMPLIANCE

The Contractor agrees to provide an Annual Certification pertaining to this AGREEMENT as part of the Contractor's Annual Independent audit.

The Department shall have the right to audit or review the Contractor's performance and operations as related to this AGREEMENT. If the Department should determine that the Contractor has abused or misused funds paid to the Contractor, or if the Contractor has violated or is in non-compliance with any term of any other agreement with the Department, or has abused or misused funds paid to the Contractor under any other agreement with the Department, the rights of the Department shall include, but not be limited to:

1. Recovery of any funds expended in violation of this AGREEMENT;
2. Suspension of Payments;
3. Termination of this AGREEMENT; and/or
4. Employment of another entity to fulfill the requirements of this AGREEMENT.

The Contractor shall be liable for all reasonable costs incurred on account thereof, including payment of any cost differential for employing such entity. The Contractor will assist the Department in transferring the operation of the contracted services to any other entity selected by the Department in a manner that will enable the Department or clients to continue to receive services in an on-going basis, including, but not limited to, notifying clients of the new entity to which the services will be transferred and the effective date of the transfer, providing the new entity promptly and at no charge with a complete copy of the clients' and all other records necessary to continue the provision of the transferred services, and transferring any equipment purchased with funds provided under this AGREEMENT.

Nothing herein shall preclude the Department from taking actions otherwise available to it under law.

The Contractor agrees to cooperate fully with any audit or investigation the Department or any agent of the Department may conduct and to provide access during normal business hours to any and all information necessary to perform its audit or investigation. The Contractor shall also allow the Department, and any representatives specifically directed by the Department to take possession of all books, records and documents relating to this AGREEMENT without prior notice to the Contractor. The Department will return all such books, records and documents to the Contractor upon completion the official purposes for which they were taken.

The Contractor agrees that all agreements between the Contractor and a subcontractor or consultants for the performance of any obligations under this AGREEMENT will be by written contract (subcontract) which will contain provisions including, but not limited to, the above specified rights of the Department.

FISCAL SANCTION

In the sole discretion of the Department, contractors may be placed on Fiscal Sanction when the Department identifies any of the following issues:

1. The Contractor has received an advance, overpayment or other funds under this or another agreement that has not been refunded to the Department within the established timeframe;
2. A Department or other audit identifies significant fiscal irregularities and/or that funds are due to the Department
3. The Contractor has not provided satisfactory services as required under the terms of this or another Department agreement;
4. The Contractor has not provided fiscal or program reports as required under the terms of this or another Department agreement;
5. A Department, County, state or federal prosecutorial or investigative agency identifies possible criminal activity, or significant fiscal or programmatic irregularities on the part of the Contractor;
6. The Contractor is not in compliance with state, federal, or County statutes or regulations, or applicable Department guidelines, policies and/or procedures; or
7. Unsafe physical conditions exist at a program site operated by the Contractor and funded under an agreement with the Department

Once the Contractor has been placed on Fiscal Sanction, payments on all open contracts and any new awards, amendments or contract renewals will not be processed until the issues have been satisfactorily resolved. The Contractor will be notified in advance of any proposed Fiscal Sanction and will be provided a timeframe within which the issues must be resolved in order to avoid Fiscal Sanction. Issues that are not resolved within the timeframe established by the Department may be referred to the Attorney General (AG) for collection of legal action. If a contract is referred to the AG a collection fee will be added to the amount owed. In addition, interest will be due on any amount not paid in accordance with the timeframes established by the AG. The Contractor will remain on Fiscal Sanction until the amount owed, including any collection fee and interest is paid.

ADDITIONAL ASSURANCES

- a. The Department and Contractor agree that the Contractor is an Independent Contractor, and not in any way deemed to be an employee of the Department or County of Oneida for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement or health insurance benefits. The Contractor agrees to defend and indemnify the Department and/or Oneida County for any loss the Department and/or Oneida County may suffer when such losses result from claims of any person or organization injured by the negligent acts or omissions of the Contractor, its officers and/or employees or subcontractors. Furthermore, the Contractor agrees to indemnify, defend, and save harmless the Department and/or Oneida County, and its

officers, agents, and employees from any and all claims and losses occurring or resulting from any and all contractors, subcontractors, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from all claims and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor in the performance of this AGREEMENT, and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, or use, or disposition of any data furnished under this AGREEMENT or based on any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to this AGREEMENT.

- b. The Contractor further agrees that the Department has the right to take whatever action it deems appropriate, including, but not limited to, the removal of the Contractor from the rotation list, the removal of clients, the cessation of client referrals, and termination of this AGREEMENT, if the Contractor fails to submit a completed and signed Standard Insurance Certificate or its acceptable substitute, which is subsequently approved by the Oneida County Department of Law, prior to the expiration of its insurance coverage.

RENEWAL NOTICE TO CONTRACTORS

Options to renew this AGREEMENT are at the discretion of the Department, which shall supply written notice of such renewal or termination within thirty (30) days of the expiration date. The Commissioner of Social Services reserves the right to evaluate the job performance and availability of funding.

COMPLIANCE WITH LAW

The Contractor represents and agrees to comply with the requirements of the Civil Rights Act of 1964 as amended, the Age Discrimination Employment Act of 1964 as amended, the Federal Rehabilitation Act of 1973 as amended, and Executive Order No. 11246, entitled "Equal Employment Opportunity" as amended by Executive Order No. 11375 and as supplemented in Department of Labor Relations, 41CFR Part 60.

The Contractor also agrees to comply with federal and state laws as supplemented in the Dept. of Labor regulations and any other regulations of the federal and state entities relating to such employment and Civil Rights requirements.

As a mandated reporting agency, all instances of suspected child abuse, neglect and/or maltreatment, will be reported to the Central Registry as required by law. These verbal reports will be followed by submission of completed 2221A to the Department. The family will be informed in advance of the Agency's decision to file a report with the Central Register.

The Contractor attests they have not been debarred by the federal Government from

contracting to provide services funded by any federal money.

The obligations of the parties hereunder are conditioned upon the continued availability of federal and/or New York State Funds for the purposes set forth in this AGREEMENT.

Should funds become unavailable or should appropriate federal or New York State officials fail to approve sufficient funds for completion of the services or programs set forth in this AGREEMENT, the Department shall have the option to immediately terminate this AGREEMENT upon providing written notice to the Contractor. In such an event, the Department shall be under no further obligation to the Contractor other than payment for costs actually incurred prior to termination and in no event will the Department be responsible for any actual or consequential damages as a result of termination.

This AGREEMENT contains all the terms and conditions agreed upon by the parties. All items incorporated by reference are to be attached. No other understandings, oral or otherwise, regarding the subject matter of this AGREEMENT, shall be deemed to exist or to bind any of the parties hereto. No waiver, alterations or modifications of and provisions of this AGREEMENT shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

This AGREEMENT shall be binding upon both parties when fully signed and executed and upon approval of the appropriate legislative bodies where required.

As the duly authorized representative of the Contractor, I hereby certify that the Contractor will comply with the above Standard Clauses.

CNYHHN, Inc.

NAME OF CONTRACTED AGENCY

Jane Vail, Executive Director

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

Jane Vail

SIGNATURE

10/1/2020

DATE

APPENDIX C

Department Objectives, Program Narrative, and Reimbursement

I. Department Objectives

A. General

- The provision of preventive care and aftercare from the point of entry into the program, through resolution of the risk (six (6) to twelve (12) months). The goal is to transition the youth and the Family and ensure that they are supported by appropriate established community-based services within that time.
- Flexibility in the provision of service to meet the individual needs of children and their families; the Contractor should work in any necessary capacity to coordinate individualized "wrap-around" services for referred families.
- To provide supportive services to the identified youth's family/caretaker(s) to assist in managing the youth's behaviors, to ensure provision of a safe and nurturing home environment and adequate supervision and utilization of effective parenting strategies.
- To redirect patterns of incorrigible delinquent behaviors through the development of individualized programs that use and coordinate a variety of community resources within wraparound services.
- Reliance on community resources including, but not limited to, schools or vocational programs, recreational, artistic or other positive experiential programs or activities, health and mental health services. Supportive services provide the opportunity to build self-confidence, reduce negative behaviors, increase employability, and provide service to the community.
- Maintenance: follow-up planning and support services to maintain youth at home and in the community safely and to promote family stability and pro-social behaviors for youth and family.

B. Outcomes/measurements for PINS Detention Diversion Case Management Program

Outcome:

- Youth will demonstrate an increased ability to live within the laws of the community, including family court orders and parental rules.

Performance:

- Families will be engaged in services and will be assisted in monitoring the youth through the

development of individualized programs that use and coordinate community based services/resources such as educational support, advocacy and referral, health and mental health services, recreational and vocational programs and casework counseling in order to deter further PINS/JD/JO related behavior.

Measurement:

- 85% of the youth referred to the program will not present to Family Court as a result of a violation of a current order within a 12 month period following termination of services.
- 85% of caretakers will actively participate in service planning and working with agency staff.

C. Outcomes/Measurements for Enhanced Support Services

Outcome:

- Using evidence-based interventions, the RIYS program will provide youth with an opportunity to build their self-confidence, reduce negative social behaviors, increase employability, and provide service to the community.

Performance:

- RIYS will track youth involvement in positive educational, family, or community-based activities that have built-in achievement measures.

Measurement:

- 90% of the youth will participate in activities that will promote personal growth and wellness.

D. Outcomes Regarding Educational/Vocational Goals

Outcome:

- Youth enrolled in the RIYS program will be provided with the resources to see improved performance in their individualized educational track, whether that is traditional schooling, a GED program, or a vocational program.

Performance:

- RIYS will prove interventions that assist youth in achieving their educational/vocational goals. They will work with school districts and provide support and advocacy for youth. They will assist youth enrolling in desired programs, such as, vocational programs through BOCES, desired classes, or preparation for college. The program will work to keep kids engaged in their educational/vocational programs and decrease drop-out rates.

Measurement:

- 85% of youth will have demonstrated improvement in attendance, grades, and/or behavior in school.

II. Central New York Health Home Network, Inc. (CHYHHN) Restorative Integrated Youth Services (RIYS) Program Narrative

Referral

All referrals for the Restorative Integrated Youth Services program will be assigned by the Oneida County Department of Social Services. All referrals will be accepted within one (1) business day, up to the limits of the capacity of the contract. If no openings exist at the time of the referral, the Department, in coordination with RIYS, will establish a prioritized waiting list based upon immediacy of need. The youth served under this agreement are PINS/JD/JO youth ordered by a Court to participate in Diversion Services to avoid out-of-home placement; or youth identified by the Department as "at risk" of out-of-home placement due to incorrigible or criminal like behaviors. CNYHHN currently has a liaison with the Department through the Health Home Care Management Program. This individual will serve as a liaison for the RIYS program as an in-kind service to this contract and will ensure that all referrals are delivered to the Project Manager on the same day as they are approved by the Department. Upon referral, RIYS will obtain an application for Preventive Services from the Department in those cases in which a service case is not already opened.

Case Assignment and Contact with Families

The Project Manager is responsible for assigning cases to Diversion Caseworkers. The Project Manager will make assignments based primarily, on fit and secondarily, on current caseload. The Project Manager will assign the case within one business day of approval of the referral. The Caseworker then has 24 hours to reach out to the family to set up an initial in-home contact and provide the family with crisis information. In the event that the assigned caseworker is out of the office or not working, the Project Manager will contact the family and inform them of their caseworker's name and contact information as well as provide them with information for the RIYS Program's 24-hour crisis line.

Intake

Caseworkers will work with caretakers to make face-to-face contact with the family within two (2) business days of receiving the referral for the identified youth. Caseworkers will make contact with the school within five (5) business days of receiving the referral. The majority of intakes will require two appointments with the youth and caretakers. Caseworkers will complete all intake visits and paperwork within 15 days of enrollment. The Department's intake paperwork, including, but not limited to, the application for services, the dwelling survey, and the releases for information will be completed and submitted to the Department's case manager within 10 business days of enrollment. Diversion Caseworkers will complete initial assessments during intake that include identifying a youth's strengths, challenges, service needs, and family needs requiring interventions. Diversion Caseworkers will use the YASI to assess youth. This assessment will generate care plans and determine which level of service/Tier for each youth.

Casework Contacts

Diversion Caseworkers will make a minimum of two casework contacts per month at all Tier levels. At least one of these contacts will be in the home. The worker will meet with the identified youth, the caretaker, and any tracked siblings. Caseworkers will assess the home for safety during home visits and report any suspected safety or code issues to the appropriate authorities and to the Department. Caseworkers will work to ensure that the youth is progressing through the program planning and is engaging with all community based and support services. Caseworkers will modify the service provision as needed based on goal attainment and family voice and choice. The Caseworker will work with youth under an order from a court to comply with said order. The caseworker will report on the youth's progress to the identified case manager.

Documentation

Diversion Caseworkers and Support Specialists will document all interactions with youth, their families and collateral contacts. These progress notes will be completed contemporaneously and will be entered into the Connections System, including the FASP, progress notes, and other information pursuant to regulatory requirements, within two (2) weeks from date of contact. All other documentation such as releases of information, written assessments, school records, etc., will be stored in hard files in a HIPPA compliant storage area at the CNYHHN offices. Any other required documentation requirements per the contract or Connections requirements will be completed by the Diversion Caseworker. CNYHHN currently uses GSI as its electronic record. This system will be used to house demographic and statistical information for youth. This system will also allow on-call staff to document crisis notes in real time for any youth in the program.

Support Specialist will submit notes to Caseworkers via secure encrypted email. These notes will be reviewed and approved by the identified case planner and then copied and pasted into Connections in a manner that the Department deems appropriate so that all case contact will be documented in the same electronic record.

The Project Manager will be responsible for providing the Department with required documentation such as monthly reports documenting statistics on required program outcomes, an annual report and quarterly contract reports.

Diversion Caseworkers will complete all Family Assessment and Service Plans for youth and their families. Caseworkers will be trained to accurately complete these assessments in the periods in which they are due. Caseworkers will submit FASPs to their Project Manager for review prior to Case Manager approval.

Diversion Caseworkers will utilize the YASI as a means of assessing Risk, Needs and Responsivity. The principles of Risk, Needs and Responsivity are evidence-based principles designed to organize an individualized care plan based on where a youth is at in their current functioning.

Risk Principle: services and supervision should be provided in direct proportion to a youth's risk of reoffending, with lower risk youth receiving less-intensive interventions and higher risk youth receiving interventions at a higher intensity.

Need Principle: treatment and programming should be administered to youth based on their assessed criminogenic needs. Criminogenic needs are factors that are related to the risk of reoffending but are amenable to change. Addressing these needs can lower a youth's risk level.

Responsivity Principle: Interventions should be tailored to a youth's learning style, level of motivation, abilities and strengths. Services should be delivered in a manner where there is the greatest chance for engagement and motivation.

The RIYS Program embraces these principles and will utilize the YASI, a validated risk assessment that also identifies needs and protective factors. The YASI will be completed at intake and every three months thereafter. Results of the YASI will determine the level of intensity of programming for each youth. This can be interchangeable over the length of stay in the program. Staff will be trained in using the YASI through the Orbis System. This is the electronic system where the YASI assessment will be completed as well as where the care plan will be generated based on results of the risk assessment. Caseworkers have the ability to make modification to the goals of the care plan based on family voice and choice.

Tiered Level of Service

The RIYS Program proposes utilizing a tiered level of service based on the principles of Risk, Need and Responsivity. Using the YASI assessment, a youth's level of service will be determined. Several services are available at all Tiers; however, the intensity of these support services will vary depending on level. The levels may change over time based on how a youth is progressing through treatment.

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Tier 1: Youth at low risk. They will receive a Diversion Caseworker, Referrals to any community-based providers deemed appropriate (mental health, substance use, primary care, and/or any family referrals), and Check and Connect Mentoring.

Tier 2: Youth at moderate risk. They will receive a Diversion Caseworker, referrals to community-based organizations to meet treatment needs, community service projects, Check and Connect and Restorative Justice Practices.

Tier 3: Youth at higher risk. They will receive a Diversion Caseworker, Community Based referrals for treatment, Check and Connect, Community Service Projects, Family Group Conferencing, and Mediation.

All youth, regardless of Tier, will have the opportunity to participate in life skills groups, skill building groups, group recreation and leadership camps. By ensuring that the level of intervention meets the level of risk and need, we work toward motivating and engaging youth at higher rates, leading to more successful outcomes.

Care Plan and Team Meetings

Youth and their families will have an established Family Service Plan. Caseworkers will coordinate with the youth, family, support services and the Department to develop and implement the FASP. Caseworkers will also generate a care plan for all identified youth based on information presented in the YASI. Care Plans include a behavior analysis, Protective Factors and Priority areas. Priority areas include long term and short-term goals, action steps the youth will take to achieve these goals, and interventions by service providers and family members. Care plans will be developed and modified at team meetings every 90 days. Team Meetings will include, at a minimum, the youth, the family, the Diversion Caseworker, the support Specialist, and the Department's Case Manager. Family service Plans are completed every six months after the initial plan and a service plan review will be held including all member of a child's treatment team will be present. Any modification or significant deviation from the plan will approved by the Department prior to implementation.

Youth and their family will be empowered to have a voice in their plan and identify their own goals. Ideally, youth and families will lead their own team meetings.

Support Services

Support services will be provided by three (3) full time staff contracted through Safe Schools Mohawk Valley (SSMV). Several of the support services available are evidence-based and geared toward at-risk youth. Support services will be tailored to meet every youth's individualized needs. Some of the core services this program will provide are:

Check and Connect- an evidence-based mentoring intervention for youth who show warning signs of disengagement with school and are at risk of dropping out. A trusting relationship is built between the youth and the mentor. The mentor demonstrates open communication, checks in on students to ensure success in school, connects with youth offering individualized interventions and partners with families. Check and connect decreases truancy, tardiness, behavioral referrals, and dropout rates.

Mediation- designed to divert youth from volatile situations that could result in suspension or arrest. Youth are identified through various sources and are encouraged to volunteer to participate. Mediation training is through PAX United and is an evidence-based practice endorsed by the Office of Juvenile Justice and Delinquency Prevention.

Family Group Conferencing- an evidence-based intervention using a community/team approach to incorrigibility, truancy, and juvenile offenses by developing an intervention/restitution plan outside of the courtroom that is agreed upon by all parties involved. Team members, the youth, and the family work together to develop an agreement with established goals for the youth to improve behavior and to succeed in school and community. Progress is tracked weekly.

Life Skills Group- Staff will work with youth to develop basic life skills that they will need as they move into early adulthood. Basic skills such as cooking, laundry, resume building, interview skills, finances, personal safety and time management will be taught. Group curriculum can be modified based on the dynamics of the group and suggestions from participants.

Skill Building Group- These groups will focus on a variety of topics including but not limited to coping skills, emotional management, response to authority, health relationships and boundaries.

Community Service Projects- restorative justice practices will be a common thread woven through services. Community service projects are a way for youth to give back to their communities as well as ways in which to make amends for past behaviors or interactions. Community service projects teach social responsibility.

Incentives and Sanctions- Caseworkers and support staff will work together with youth and families to create a list of incentives and sanctions based on behavioral progress. Each plan will be individualized to each youth.

Leadership Camp- Safe Schools will offer two-day leadership camps for eligible youth. These camps will assist youth in harnessing their leadership skills for positive interactions and outlets. Youth who demonstrate a commitment to leadership will be eligible to attend a five-day leadership camp to prepare them for peer mentoring services.

Gender specific groups and interventions- models that are evidence based and gender specific recognize the rise in females entering the justice system. Support staff will use best practices when working with this population. Safe Schools has staff trained in Girls Circles and the Council for Boys and Young Men.

Recreational Activities- Recreational activities will continuously be available. They are structured to provide an outlet for youth to learn how to interact positively with others, create joy, build confidence, and develop social skills. SSMV operates programming at the Underground Café and the Utica Parkway Center that will be open to youth enrolled in this program. Opportunities will be offered in all parts of the County.

Crisis Services

CNYHHN has a long-established on-call service in operation 24/7 to address the needs of health home participants. CNYHHN proposes enhancing this service to address the needs of youth enrolled in the RIYS Program. An on-call crisis service line will be available to all enrolled families and a trained worker will be able to respond to the needs of the youth. By providing 24-hour availability and support, it is likely that crises can be de-escalated quickly without need for outside intervention. All staff with on-call duties will be trained in de-escalation techniques and safety protocols.

Transportation

The RIYS Program has the ability to provide and facilitate transportation. The program will assist families with engagement and continuation of services by ensuring youth attend appointments to address their physical and behavioral health needs and Activities that are part of the family/youth service plan. Case Workers and Support Staff will empower families to develop their own means of transportation so that they can continue attending community-based services after completion of the program.

Training

Diversion Case Planners hold a bachelor's degree- the same qualification as the Department's caseworkers

All program staff will receive on-boarding training. These trainings will include Mandated Reporter and appropriate response, Preventive Services training, including documentation, home visit safety, and home safety assessments, training on the developmental needs of youth in the juvenile justice system, restorative practices YASI training, Implicit Bias Training, trauma informed care, and Caseworker Foundation training. Staff are also trained and supervised in the preparation of case progress notes.

CNYHHN has the LITMOS system, an online training platform that all staff may access. Staff will complete several orientation trainings within this system. This system has the

ability to provide a training tracking system so the Project Manager can ensure that staff are trained to do their jobs to the best of their abilities.

Discharge from Program

Diversion Caseworkers will ensure that youth continue to remain connected to all community-based services a youth may require upon discharge from the RIYS Program. Eligible youth can also be referred to Health Home Care Management services through the Health Home if less intensive care management is needed. Youth who may continue to need long-term support and meet eligibility requirements can be referred for these support services. Diversion Caseworkers will work with families and the Department's Case Manager to identify and plan for any services appropriate at the time of discharge.

III. Reimbursement for Services

a. Services shall be billed on a per slot basis as follows:

- i. The Contractor shall service a maximum of 75 children and their families at any given time.
- ii. For the term of November 16, 2020 through November 15, 2021, the Department shall reimburse the Contractor \$716.50 per child (and his/her Family) provided with services, per month.
- iii. If a child (and his/her Family) is provided with services for at least twenty-one (21) days per month, the Contractor will receive the full monthly rate. If child (and his/her Family) is provided with services for less than twenty-one (21) days in a month, payment will be prorated to a daily rate of \$23.56. The daily rate is calculated as the full monthly rate multiplied by twelve (12) months and divided by 365 days.
- iv. For the term of November 16, 2021 through November 15, 2022, the Department shall reimburse the Contractor \$723.37 per child (and his/her Family) provided with services, per month.
- v. If a child (and his/her Family) is provided with services for at least twenty-one (21) days per month, the Contractor will receive the full monthly rate. If child (and his/her Family) is provided with services for less than twenty-one (21) days in a month, payment will be prorated to a daily rate of \$23.78. The daily rate is calculated as the full monthly rate multiplied by twelve (12) months and divided by 365 days.

- vi. For the term of November 16, 2022 through November 15, 2023 the county shall reimburse the Contractor \$739.63 per child (and his/her Family) provided with services, per month.
 - vii. If a child (and his/her Family) is provided with services for at least twenty-one (21) days per month, the Contractor will receive the full monthly rate. If child (and his/her Family) is provided with services for less than twenty-one (21) days in a month, payment will be prorated to a daily rate of \$24.32. The daily rate is calculated as the full monthly rate multiplied by twelve (12) months and divided by 365 days.
 - viii. The maximum reimbursement for the term of this Agreement shall not exceed \$1,961,554.00.
- b. The Contractor shall bill monthly on County vouchers with the Agreement number and name provided by the Department. The vouchers shall have attached:
- i. Statement identifying each Child provided with services in said month, listing the days of admittance and discharge from program.
 - ii. Copy for each case of "Itemized Individual Billing for Preventive Services" with case number, Case Manager's name, and case comments.
 - iii. Other data that is mutually agreed upon.

**Oneida County Department of Social Services
Contractor and Contract Staff
Confidentiality and Non-Disclosure Agreement**

I, the undersigned, an employee of CNY HHN, Inc. (the
Name of Contract Agency

"Service Provider"), hereby state that I understand and agree that all information provided to the Service Provider from the Oneida County Department of Social Services staff by paper copies, computer systems or databases, electronic communication or otherwise obtained pursuant to the Agreement entered between the Oneida County Department of Social Services and the Service Provider indicated above, is CONFIDENTIAL, is to be used only for the purposes of performing services required by the Agreement, and must be safeguarded from unauthorized disclosure.

I further understand that such information includes, but is not limited to, any and all information regarding parents or guardians and their children, and all employment, financial, and personal identifying data, including Protected Health Information (PHI) as set forth in HIPAA regulations.

I agree to maintain all such information as CONFIDENTIAL, and I agree to use such information only in the performance of my official duties to perform the functions required by the Agreement, unless otherwise authorized in writing by the Department of Social Services.

I understand that confidential information maintained in and/or obtained from systems/databases such as, but not limited to the Welfare Management system (WMS), Child Support Management System (CSMS/ASSETS), Benefits Issuance Control System (BICS), COGNOS, and Connections are protected by Federal and State statutes and regulations. Access and disclosure of confidential information is strictly limited to authorized employees and legally designated agents, for authorized purposes only in the delivery of program services.

I understand that service providers may not access their own active, closed or archived records or those involving a relative, friend, acquaintance, neighbor, partner or co-worker or other individuals to whom they have no official assignment.

I understand that if my employment is terminated by resignation, retirement or for other reasons or the Service Provider Contract is not renewed, the terms of this Confidentiality and Non-Disclosure Agreement are still binding.

I understand that if I disclose CONFIDENTIAL information in violation of the requirements stated herein, any individual who incurs damages due to the disclosure may recover such damage in a civil action.

I understand that, in addition to any other penalties provided by law, any person who willfully releases or willfully permits the release of any CONFIDENTIAL information as described herein to persons or agencies not authorized under New York State law to receive it shall be guilty of a class A misdemeanor.

Print Name: Jane Vail
Signature: Jane Vail
Title: Executive Director
Date: 10/1/2020
Witness: Amy Schmid

Anthony J. Picente Jr.
County Executive

Colleen Fahy-Box
Commissioner



ONEIDA COUNTY DEPARTMENT OF FAMILY AND COMMUNITY SERVICES

Contract Administration, 4th Floor
County Office Building, 800 Park Avenue, Utica, NY 13501
Phone (315) 798-5073 Fax (315) 793-6044

June 5, 2020

FN 20 20-316

Honorable Anthony J. Picente, Jr.
Oneida County Executive
800 Park Avenue
Utica, NY 13501

HEALTH & HUMAN SERVICES

WAYS & MEANS

Dear Mr. Picente:

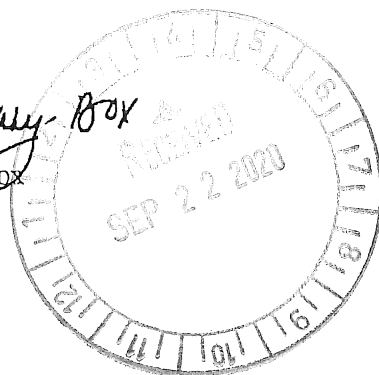
Enclosed for your review and signature is the Second Amendment of the Agreement between GTL, Inc. d/b/a Link to Life, located at 27475 Meadowbrook Road, Novi, Michigan 48377-3532, and the Oneida County Office for the Aging and Continuing Care, located at 120 Airline Street, Suite 201, Oriskany, New York 13424. If this Agreement meets with your approval, please forward to the Board of Legislators for further consideration.

This Second Amendment is needed as the original Agreement (#80759) did not account for two years of funding. The purpose of the original Agreement is to provide for the rental of Personal Emergency Response Systems (PERS) to be ancillary to in-home services for eligible clients of the Expanded In-Home Services for the Elderly Program (EISEP). The amount of this Agreement is \$177,060.00, which consists of 75% State finding (\$117,795.00), 25% County funding (\$39,265.00) funding, and \$20,000.00 from a grant for Unmet Needs. This Agreement commenced April 1, 2019 and will terminate March 31, 2021.

I respectfully request the approval of this agreement between Oneida County Department of Family and Community Services and GTL, Inc. d/b/a Link to Life. If you concur, please forward to the Board of Legislators for consideration at their next meeting.

Sincerely,

Colleen Fahy-Box
Colleen Fahy-Box
Commissioner



Reviewed and Approved for submittal to the
Oneida County Board of Legislators by
Anthony J. Picente, Jr.
Anthony J. Picente, Jr.
County Executive
Date 9-22-20

CFB/md

Enclosure

OFFICE FOR THE AGING

DEPARTMENT OF SOCIAL SERVICES

VETERANS SERVICES

YOUTH BUREAU

Oneida Co. Department: _____

Competing Proposal _____
Only Respondent _____
Sole Source RFP _____
Other X

ONEIDA COUNTY BOARD
OF LEGISLATORS

Name & Address of Vendor: GTL Inc. d/b/a Link to Life
27475 Meadowbrook Road
Novi, Michigan 48377-3532

Title of Activity or Service: Personal Emergency Response System (PERS)

Proposed Dates of Operation: April 1, 2019 through March 31, 2021

Client Population/Number to be Served: Approximately 300 clients

Summary Statements:

1) Narrative Description of Proposed Services

To provide, for rental, Personal Emergency Response Systems (PERS) which allow senior citizens the ability to stay safe and independent in their own home.

2) Program/Service Objectives and Outcomes:

PERS systems are to be used as ancillary to in-home services by eligible clients of the Expanded In-Home Services for the Elderly Program (EISEP).

3) Program Design and Staffing

N/A

Total Funding Requested: \$177,060.00 Account #: A6774.495.99

Oneida County Dept. Funding Recommendation: \$\$177,060.00

Proposed Funding Sources (Federal \$/ State \$/County \$):

Federal: 0% (\$0) State: 75% (\$117,795.00) County: 25% (\$39,265.00)
Unmet Needs: \$20,000.00

Cost Per Client Served: \$14.00 – Rental per month for Landline Device
\$23.00 – Rental per month for Cellular Device
\$5.00 – Additional fee per Spouse
\$6.00 – Additional fee for Fall Detection Device
\$0.00 – Installation Fee

Past Performance Data: N/A

O.C. Department Staff Comments: This is the first year that GTL, Inc. d/b/a Link to Life will be providing services for all Emergency Response Systems used by the Office of the Aging and Continuing Care.

This Second Amendment is needed because the original contract did not account for two years of funding.

SECOND AMENDMENT

THIS SECOND AMENDMENT is by and between Oneida County, a municipal corporation organized and existing under the laws of the State of New York, having its principal offices at 800 Park Avenue, Utica, New York, by and through its Office for the Aging and Continuing Care, with offices at 120 Airline Street, Suite 201, Oriskany, New York, herein collectively referred to as the "County," and GTL, Incorporated, d/b/a Link to Life, a domestic business corporation organized and existing under the laws of the State of New York, having its principal office located at 27475 Meadowbrook Road, Novi, Michigan, hereinafter referred to as the "Contractor." All parties to the Agreement shall collectively be known as the "Parties."

WITNESSETH

WHEREAS, the County and the Contractor entered into an agreement whereby the Contractor provides Personal Emergency Response System (PERS) services to Oneida County residents, hereinafter referred to as the "Original Agreement" (County contract number 80759), a copy of which is attached hereto as Exhibit "A." The Original Agreement is in effect from April 1, 2019 through March 31, 2021; and

WHEREAS, since its execution, the parties have amended the Original Agreement, a copy of that amendment (County contract number 92100) is attached hereto as Exhibit "B"; and

WHEREAS, the Parties are desirous of entering into a Second Amendment to the Original Agreement regarding the following provisions,

NOW THEREFORE, in consideration of the mutual promises made herein, the parties hereto agree as follows:

1. Paragraph 4D of the Original Agreement (as amended) shall be replaced with the following language:

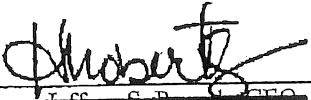
The total reimbursement paid by the County to the Contractor for Services provided under this Agreement shall not exceed one hundred seventy seven thousand sixty dollars (\$177,060.00).

2. All other terms of the Original Agreement remain in effect without change or alteration.

(THE REMAINDER OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK)

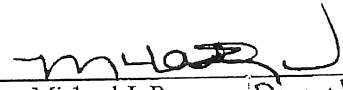
IN WITNESS WHEREOF, the County and the Contractor have signed this First Amendment on the day and year written below.

GTL, Inc. d/b/a Link to Life

By: 
~~Jeffery S. Prough, CEO~~
Heather Robertson, Admin/Compliance Manager

09/02/2020
Date

Office for the Aging

By: 
Michael J. Romano, Deputy Commissioner

9/15/20
Date

County of Oneida

By: _____
Anthony J. Picente Jr., County Executive

Date

By: _____
Kimberly A. Kolch, Asst. County Attorney

Date

AGREEMENT

This Agreement, made by and between **GTL, INCORPORATED dba LINK TO LIFE**, a domestic business corporation organized and existing under the laws of the State of New York, with the principal executive office located at 27475 Meadowbrook Road, Novi, MI 48377, hereinafter referred to as the "**CONTRACTOR**," and the **COUNTY OF ONEIDA**, a municipal corporation, organized and existing under the laws of the State of New York with its offices located at 800 Park Avenue, Utica, NY 13501, by and through its **OFFICE FOR THE AGING AND CONTINUING CARE**, located at 120 Airline Street, Suite 201, Oriskany, NY 13424, hereinafter collectively referred to as the "**COUNTY**," the **CONTRACTOR** and the **COUNTY** shall collectively be called the "Parties."

WITNESSETH:

WHEREAS, the **COUNTY** has the primary responsibility for the overall planning and coordination of **COUNTY** funds including the Federal AOA-Older Americans Act Title III, Title V, New York State Office for the Aging (NYSOFA) – Expanded In-Home Services for the Elderly Program (EISEP), Community Services for the Elderly Program (CSEP), Congregate Services Initiative (CSI), Wellness in Nutrition (WIN), Health Insurance Information Counseling and Assistance Program (HIICAP), Medicare Improvements for Patients and Providers (MIPPA)/ Senior Health Insurance Program (SHIP), and County of Oneida funds; and

WHEREAS, the **COUNTY** has the responsibility to formally and informally monitor, assess and evaluate all programs, services and contracts funded through the **COUNTY**; and

WHEREAS, the **COUNTY** will provide technical assistance, upon request, to assist the **CONTRACTOR** in more effectively carrying out service delivery and/or complying with federal, state and local statutes, policies, rules and regulations; and

WHEREAS, the **CONTRACTOR** is willing and able to perform the services required by this Agreement;

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **TERM OF AGREEMENT**

A. The terms and conditions of this Agreement shall commence April 1, 2019 and terminate March 31, 2021.

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B. The COUNTY may, in its sole discretion, renew this Agreement for an additional two (2) one-year terms. Nothing herein shall be construed to indicate that the COUNTY is bound to renew this Agreement with the CONTRACTOR, and the COUNTY reserves the right to seek the same or similar services from third parties.

2. SCOPE OF SERVICES

A. The CONTRACTOR shall provide Personal Emergency Response System (PERS) items to be used as ancillary equipment as an in-home service provided to eligible clients of the Expanded In-home Services for the Elderly Program (EISEP) and the Caregiver Support III-E Program.

B. The CONTRACTOR shall test each unit monthly, maintain records of such tests, and provide required conformation documentation as proof of successful client contact and equipment function for each client billed for along with a monthly voucher.

C. The authorization for said services will be made solely by the Office for the Aging's Director or designee.

3. PERFORMANCE OF SERVICES

A. The CONTRACTOR represents that the CONTRACTOR is duly licensed (as applicable) and has the qualifications, the specialized skill(s), the experience and the ability to properly perform the services. The CONTRACTOR shall use the CONTRACTOR'S best efforts to perform the services such that the results are satisfactory to the COUNTY. The CONTRACTOR shall be solely responsible for communications with the client or the client's caregiver in order to determine the location, method, details and means of performing the services, except where federal, state or local laws and regulations impose specific requirements on performance of the same.

B. The CONTRACTOR may, at the CONTRACTOR'S own expense, employ or engage the services of such employees, subcontractors and/or partners as the CONTRACTOR deems necessary to perform the services (collectively, the "Assistants"). The Assistants are not and shall not be deemed employees of the COUNTY, and the COUNTY shall have no obligation to provide the Assistants with any salary or benefits. The CONTRACTOR shall be solely responsible and shall remain liable for the performance of the services by the Assistants in a manner satisfactory to the COUNTY, and in compliance with any and all applicable federal, state or local laws and regulations.

C. The CONTRACTOR acknowledges and agrees that CONTRACTOR and its Assistants have no authority to enter into contracts that bind the COUNTY or create

obligations on the part of the COUNTY without the prior written authorization of the COUNTY.

4. REIMBURSEMENT FOR SERVICES

A. The COUNTY shall reimburse the CONTRACTOR pursuant to the following schedule of fees:

- i. \$14.00 per month per landline unit for monitoring and rental of PERS equipment;
- ii. \$23.00 per month per cellular unit for monitoring and rental of PERS equipment;
- iii. \$6.00 per month per client for an automatic fall detection device; and
- iv. \$5.00 per month for an automatic fall detection device for a client's spouse.

B. The CONTRACTOR shall also provide PERS services to Oneida County residents who wish to privately pay. The CONTRACTOR shall honor the above fee schedule for private pay clients but may charge a one-time initial fee of \$50.00 for the cost of installation.

C. The obligations of the Parties hereunder are conditioned upon the continued availability of New York State funds for the purposes set forth in this Agreement. Should funds become unavailable or should appropriate New York State officials fail to approve sufficient funds for completion of the services or programs set forth in this Agreement, the COUNTY shall have the option to immediately terminate this Agreement upon providing written notice to the CONTRACTOR by certified mail. In such an event, the COUNTY shall be under no further obligation to the CONTRACTOR other than payment for costs actually incurred prior to termination and in no event will the COUNTY be responsible for any actual or consequential damages as a result of termination.

C. The COUNTY shall reimburse the CONTRACTOR in twelve (12) monthly vouchers as specified in the Oneida County Office for the Aging 2019-2020 Voucher Instructions for Units of Services Contracts which is attached as Appendix C.

D. The total reimbursement for services provided under this Agreement shall not exceed **Sixty Six Thousand Dollars (\$66,000.00)**.

5. TRAINING

A. The CONTRACTOR and its Assistants shall not be required to attend or undergo any training by the COUNTY, other than those trainings mandated by the federal, state or local law and regulations necessary to perform the services described herein. Except for those trainings mandated by federal, state or local law or regulations necessary to perform the services described herein, the CONTRACTOR shall be fully responsible for its own training

1 2

necessary to maintain any licenses or certifications to perform the services described herein, and shall be solely responsible for the cost of the same.

6. INDEPENDENT CONTRACTOR STATUS

A. It is expressly agreed that the relationship of the CONTRACTOR and its Assistants to the COUNTY shall be that of Independent Contractors. The CONTRACTOR and its Assistants shall not be considered employees of the COUNTY for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health insurance benefits. The CONTRACTOR and its Assistants, in accordance with their status as Independent Contractors, covenant and agree that they will conduct themselves in accordance with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the COUNTY by reason thereof and that they will not by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the COUNTY.

B. The CONTRACTOR warrants and represents that it is in the business of offering the same or similar services detailed herein and does offer the same or similar service(s) to other entities and/or the general public as a regular course of business. The CONTRACTOR and the COUNTY agree that the CONTRACTOR is free to undertake other work arrangements during the term of this Agreement, and may continue to make its services available to the public.

C. The CONTRACTOR and its Assistants shall not be eligible for compensation from the COUNTY due to illness; absence due to normal vacation; or absence due to attendance at school or special training or a professional convention or meeting.

D. The CONTRACTOR acknowledges and agrees that neither the CONTRACTOR, nor its Assistants, shall be eligible for any COUNTY employee benefits, including retirement membership credits.

E. The CONTRACTOR shall be solely responsible for applicable taxes for all compensation paid to the CONTRACTOR or its Assistants under this Agreement, and for compliance with all applicable labor and employment requirements with respect to CONTRACTOR'S form of business organization, and with respect to the Assistants, including payroll deductions, workers' compensation insurance, and provision of health insurance where required. The COUNTY shall not be responsible for withholding from the payments provided for services rendered for state or federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA).

The CONTRACTOR shall provide proof of workers' compensation insurance, where applicable, prior to execution of this Agreement.

F. The CONTRACTOR shall indemnify and hold the COUNTY harmless from all loss or liability incurred by the COUNTY as a result of the COUNTY not making such payments or withholdings.

G. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the CONTRACTOR'S or its Assistants' Independent Contractor status, it is agreed that both the COUNTY and the CONTRACTOR shall have the right to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.

H. The CONTRACTOR shall comply with federal and state laws as supplemented in the Department of Labor regulations and any other regulations of the federal and state entities relating to such employment and Civil Rights requirements.

7. SUBCONTRACTS

A. A subcontractor is a person and/or entity who has an agreement with the CONTRACTOR to perform any of the services stated herein.

B. The CONTRACTOR shall furnish to the COUNTY, prior to the execution of this Agreement, a list of names of subcontractors to whom the CONTRACTOR proposes to award any portion of the services. The COUNTY shall be provided a copy of any and all agreement(s) between the CONTRACTOR and any subcontractors regarding the award of any portion of the services within ten (10) days of their final execution.

C. Any agreements between the CONTRACTOR and the subcontractors shall be in accordance with the terms of this Agreement and shall include the conditions of this Agreement including all exhibits, attachments, appendices, and addendums, insofar as applicable.

8. NON ASSIGNMENT CLAUSE

The CONTRACTOR shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or of its right, title, or interest therein, or its power to execute this Agreement, to any other corporation or person without the prior written consent of the COUNTY.

9. STANDARD ASSURANCES

1

A. The CONTRACTOR shall comply with statutes, regulations, and policies set by the following: Federal Department of Health and Human Services, Federal Administration on Aging, the NYSOFA, and the COUNTY, more fully described in APPENDIX A.

B. The CONTRACTOR shall comply with section 504 of the Rehabilitation Act of 1973 (Nondiscrimination) which states "No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service." (29 U.S.C.A. §794)

C. The CONTRACTOR shall comply with the Human Rights Law Article 15 of the Executive Law of New York State (N.Y. Exec. Law §290, et seq.), Article 15A of the Executive Law of New York State regarding participation by minority group members and women with respect to state contracts (N.Y. Exec. Law §310, et seq.), and the Governor's Executive Order 28 which prohibits discrimination based on sexual orientation (9 NYCRR 4.28).

D. The CONTRACTOR shall comply with Title VI, the Civil Rights Act of 1964 (42 U.S.C.A. §2000-d, et seq.), and any amendment thereto: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

E. The CONTRACTOR agrees that any program, public information materials, or other printed or published materials on the work of or funded by CSEP/III-E will give due recognition to the NYSOFA and the Oneida County Office for the Aging. The statement shall be in font which is one of the following: in italics, or at least two font sizes larger than the rest of the text, or in bold font or underlined (i.e., "*This program is supported by Oneida County Office for the Aging and Continuing Care, New York State Office for the Aging, and the Administration on Aging.*"). The CONTRACTOR shall forward copies of all materials to the COUNTY at the end of each month.

F. The COUNTY shall conduct a program review to ensure that the CONTRACTOR is in compliance with all standards and regulations as set forth in this Agreement.

10. NYSOFA TERMS AND CONDITIONS

A. The CONTRACTOR agrees that all its activities under this Agreement shall conform with all applicable federal, state, and local laws, with federal and state regulations, and

Program Standards and Program Instructions of the NYSOFA that apply to such activities, including, but not limited to:

- i. Rehabilitation Act of 1973, Sec. 504 Nondiscrimination (29 U.S.C. 794)
- ii. Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.; see 92-PI-32, [8/4/92])
- iii. Civil Rights Act of 1964, Title VI, as amended (42 U.S.C. 2000-d et. seq.)
- iv. Older Americans Act (42 U.S.C. 3001, et seq.)
- v. Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency (65 FR 50121)
- vi. Federal Executive Order 11246 (30 FR 12319), as Amended by Executive Order 11375 (32 FR 14303, Affirmative Action); as Amended by Executive Order 12086 (43 FR 46501, Consolidation of Compliance Functions); and as Amended by Executive Order 13279 (67 FR 77141, Equal Protection for Faith-Based and Community Organizations.)
- vii. Article 15 of the Executive Law of the State of New York, Human Rights Law: prohibiting discrimination based on age, race, creed, color, national origin, sexual orientation, military status, sex, marital status, or disability (N.Y. Exec. Law §290, et seq.)
- viii. Article 15A of the Executive Law of New York State regarding participation by minority group members and women with respect to state contracts (N.Y. Exec. Law §310, et seq.),
- ix. The NYSOFA'S Equal Access to Services and Targeting Policy Program Instruction (12-PI-08)
- x. Elder Law

B. The **CONTRACTOR**, to the extent it has discretion regarding to whom it will provide services, agrees to provide services to those unserved and underserved older adults in greatest social or economic need, particularly those who are low-income, low-income minorities, older adults with Limited English Proficiency (LEP), Native Americans, and frail/persons with disabilities and older adults residing in rural areas, in accordance with their need for such services, and to meet specific objectives established by the Area Agencies on Aging (AAA) for providing services to the above groups within Oneida County. The **CONTRACTOR** agrees to concentrate the services on older adults in the targeted populations identified by the AAA following the methods the AAA has established for complying with the targeting requirements under the Older Americans Act and the Equal Access and Targeting Policy issued by the NYSOFA.

C. The CONTRACTOR shall inform persons with LEP of the availability of language assistance, free of charge, by providing written notice of such assistance in a manner designed to be understandable by LEP persons at service locations and, at a minimum, have a telephonic interpretation service contract or similar community arrangement with a language interpretation services provider of their choice. The CONTRACTOR shall train staff that have contact with the public in the timely and appropriate use of these and other available language services.

D. To the extent that the contract with the AAA is for a program or service funded under the Area Plan, the CONTRACTOR agrees that it and any subcontractors will perform such work in accordance with the terms of the Area Plan. The AAA agrees to make the Area Plan available to the CONTRACTOR.

E. The CONTRACTOR agrees that for programs established and funded in whole or in part pursuant to Title III of the Older Americans Act, the CONTRACTOR shall specify how it intends to satisfy the service needs of low-income minority individuals, older adults with LEP, and older adults residing in rural areas in the area served by it; will to the maximum extent feasible, provide services to low-income minority individuals, older individuals with LEP, and older adults residing in rural areas in accordance with their need for such services; and meet specific objectives established by the AAA, for providing services to low-income minority individuals, older adults with LEP, and older adults residing in rural areas within the planning and service area.

11. GRIEVANCE PROCEDURES

The CONTRACTOR shall implement the COUNTY'S grievance procedures as required by the NYSOFA. The written procedures are attached in APPENDIX B.

12. FISCAL REQUIREMENTS/RESPONSIBILITIES

A. The CONTRACTOR shall keep CSEP/III-E funds separate; further, state and federal funds shall not be used as local share (match).

B. The CONTRACTOR shall comply with all voucher and contribution procedures, and submissions of required reports as described in the Oneida County Office for the Aging 2019-2020 Voucher Instructions for Units of Services Contracts, attached hereto as APPENDIX C.

C. The CONTRACTOR shall report to the COUNTY any and all additional moneys or program income (contributions, donations,) given to the CSEP/III-E supported programs. "Program income means gross income received by the subcontractor directly generated by a COUNTY grant supported activity, or earned as a result of the COUNTY grant agreement

during the grant period." REF: Department of Health & Human Services, Program Instruction AoA-PI-96-01, October 16, 1995.

E. The CONTRACTOR shall maintain copies of proper documentation for all program income, including, but not limited to, in-kind support, donations, contributions, reimbursements and other grants within its program budget.

F. The COUNTY shall conduct a periodic audit of revenues and expenditures, as well as the required annual on-site review of the program's fiscal status to ensure expenditures are in proportion to the total program budget.

G. The CONTRACTOR shall have an independent audit conducted for the contracted program if it has provided the services described in this Agreement to the COUNTY for two (2) years or more; a copy of the audit shall be submitted to the COUNTY upon completion of the program/fiscal audit conducted by the outside auditor.

H. The CONTRACTOR shall maintain fiscal records for six (6) years and shall make them available for COUNTY review upon request.

I. The CONTRACTOR shall cooperate with the close-out audit that is required when the contract is terminated.

J. The CONTRACTOR shall follow close-out procedures administered by the COUNTY in accordance with 45 C.F.R. §75.381.

13. INDEMNIFICATION

A. The obligations of the CONTRACTOR under this section shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

B. The CONTRACTOR shall defend, indemnify and hold harmless the COUNTY from and against all liability, damages, expenses, costs, including, without limitation, attorneys' fees and expenses, causes of action, suits, claims or judgments arising, occurring or resulting from property damage, personal injuries or death to persons arising, occurring or resulting from or out of the services of the CONTRACTOR and its Assistants and from any loss or damage arising, occurring or resulting from the acts or failure to act or any default or negligence by the CONTRACTOR or failure on the part of the CONTRACTOR to comply with any of the covenants, terms or conditions of the Agreement.

C. The CONTRACTOR shall be solely responsible for all physical injuries or death to its Assistants or to any other persons or damage to any property sustained during its operations and services under this Agreement resulting from any act of omission or commission or error in judgment of any of its Assistants, and shall hold harmless and indemnify the COUNTY

from liability upon any and all claims for injuries to persons or damages to property on account of any neglect, fault or default of the CONTRACTOR, or its Assistants. The CONTRACTOR shall be solely responsible for the safety and protection of all of its Assistants whether due to the negligence, fault or default of the CONTRACTOR or not.

14. INSURANCE COVERAGE REQUIREMENTS

A. As part of its obligation to indemnify, defend and hold harmless the COUNTY, its agents, servants, employees, independent contractors, volunteers or partners, as set forth above, the CONTRACTOR shall obtain and maintain in full force and effect, for the term of this Agreement, insurance coverage as described below.

B. The CONTRACTOR shall purchase and maintain insurance of the following types of coverage and limits of liability with an insurance carrier qualified and admitted to do business in the State of New York. The insurance carrier shall have at least an A- (excellent) rating by A.M. Best.

C. The CONTRACTOR shall not commence services until such insurance has been approved by the COUNTY. The CONTRACTOR shall provide insurance certificates on forms approved by the COUNTY. Acceptance of the certificates shall not relieve the CONTRACTOR of any of the insurance requirements, nor decrease the liability of the CONTRACTOR. The COUNTY reserves the right to require the CONTRACTOR to provide insurance policies for review by the COUNTY. The CONTRACTOR grants the COUNTY a limited power of attorney to communicate with the CONTRACTOR'S insurance provider and/or agent for the express purpose of confirming the coverages required hereunder.

D. Certificates of Insurance: Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the CONTRACTOR'S Commercial General Liability Policy, Business Automobile Liability, and Excess/Umbrella Policy. These Certificates and the insurance policies required below shall contain a provision that coverage afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the COUNTY. Oneida County must be named as the certificate holder and additional insured.

E. Commercial General Liability Insurance (CGL): The CONTRACTOR shall at its own expense, at all times during the term of this Agreement, maintain in force a policy of insurance which will insure against liability for property damage and/or injury/death with regard to any property or persons. The liability and property damage coverage of such insurance shall not be less than One Million Dollars (\$1,000,000.00) per occurrence and such

insurance shall not be less than Two Million Dollars (\$2,000,000.00) annual aggregate. The CONTRACTOR shall have Oneida County added to said insurance policy and /or policies as a named additional insured, on a primary, non-contributory basis. Coverage for the additional insured shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by or provided to, the additional insured.

- 1) CGL coverage shall be written on ISO Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products- completed operations, and personal and advertising injury.
- 2) Coverage for sexual abuse and/or misconduct shall be included.

F. Business Automobile Liability: The CONTRACTOR shall at its own expense, at all times during the term of this Agreement, purchase and maintain in force a policy of Business Automobile Liability insurance in an amount equal to or greater than One Million Dollars (\$1,000,000.00). Business Automobile Liability coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles. The CONTRACTOR shall have Oneida County added to said insurance policies as a named additional insured, on a primary, non-contributory basis.

G. Excess/Umbrella Liability Insurance: The CONTRACTOR shall, at its own expense, at all times during the term of this Agreement, purchase and maintain in force a policy of Umbrella/Excess Liability insurance in an amount not less than Ten Million Dollars (\$10,000,000.00) per occurrence and such insurance shall not be less than Ten Million Dollars (\$10,000,000.00) annual aggregate. The CONTRACTOR shall have Oneida County added to said insurance policies as a named additional insured, on a primary, non-contributory basis. Umbrella coverage for such additional insured shall apply as primary and non-contributing before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insured.

H. Professional Liability Insurance: The CONTRACTOR shall, during the term of this Agreement, maintain a professional liability policy and shall provide the COUNTY with proof of coverage in the amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate.

I. Workers' Compensation and Employer's Liability Insurance: The CONTRACTOR shall, at its own expense, at all times during the term of this Agreement, purchase and maintain in force a policy of insurance, written by one or more insurance carriers licensed to do business in the State of New York, and having offices within the State of New York, which

will insure against all claims under New York State Workers' Compensation Law at statutory New York limits.

J. The CONTRACTOR shall require any subcontractors to procure and maintain insurance coverage of the same type and in the same amounts with the same endorsements required of the CONTRACTOR in the above Insurance Coverage Requirements paragraphs.

K. Reimbursement to the CONTRACTOR may be suspended in the event the CONTRACTOR and its sub-contractors, if any, fail to provide the required insurance documentation in a timely manner.

L. Waiver of Subrogation: The CONTRACTOR waives all rights against the COUNTY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by CGL, Business Automobile Liability, Professional Liability or Workers' Compensation and Employer's Liability Insurance maintained per the requirements stated above.

15. REPORTING REQUIREMENTS

A. The COUNTY shall, pursuant to the requirements of CSEP/III-E funded programs, comply with the Definition of Services as established by the NYSOFA Program Instruction 96-PI-43 (April 2011).

B. The CONTRACTOR shall provide the COUNTY with required information needed to meet planning, coordination, evaluation and reporting requirements as required by the NYSOFA's Consolidated Area Agency Reporting System (CAARS), by the 10th of every month. The current and revised CAARS Monthly Report Forms and Monthly Summary Form must be submitted as an attachment to the voucher on a monthly basis.

C. The CONTRACTOR shall maintain appropriate client records on each EISEP client who receives services through this program; the COUNTY shall have access to the client records upon request; the COUNTY shall have ownership of all client's records and files.

D. The CONTRACTOR agrees to comply with policies ensuring client confidentiality, as established by the COUNTY, when information sharing between agencies is crucial to the client's well-being and is needed to ensure effective service provision; pertinent information shall be shared in accordance with federal and state regulations and statutes.

E. The CONTRACTOR shall provide the COUNTY with required monthly, periodic, and/or special reports and shall submit all reports to the COUNTY by the dates specified.

16. COORDINATION REQUIREMENTS

A. The CONTRACTOR and the COUNTY shall coordinate referrals.

B. The CONTRACTOR and the COUNTY shall work with older persons, who are not eligible for services through this contracted program, to obtain needed services.

C. The CONTRACTOR shall coordinate with other appropriate service providers in obtaining and providing referrals for older residents of Oneida County.

17. AGREEMENT CANCELLATION

A. This Agreement may be cancelled by the COUNTY for failure by the CONTRACTOR to comply with the terms and conditions of this Agreement. The CONTRACTOR shall agree to incur no new obligations nor submit a claim for any expenses made after the receipt of written notification of termination.

B. The COUNTY reserves the right to cancel the Agreement upon thirty (30) day written notice to the other CONTRACTOR.

C. The CONTRACTOR agrees that in the event of termination, the CONTRACTOR shall make a full and final accounting of all funds received and monies expended under the Agreement within thirty (30) days after the date of termination. Any unexpended funds shall be the property of the COUNTY.

D. The CONTRACTOR shall coordinate with the COUNTY and other providers to ensure that any break in service to clients shall not be detrimental to a clients' health or well-being. If available and appropriate, other services shall be substituted and/or coordinated on the clients' behalf.

18. ENTIRE AGREEMENT

A. This Agreement contains the binding Agreement between the Parties and supersedes all other agreements and representations, written or oral, on the subject matter of this Agreement.

B. Oral statements and understandings are not valid or binding and this Agreement shall not be changed or modified except by a writing signed by all Parties.

C. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same instrument.

19. INCORPORATION BY REFERENCE

All exhibits, addenda, appendices and attachments, to which reference is made, are deemed incorporated in this Agreement, whether or not actually attached.

20. STANDARD ADDENDUM

The CONTRACTOR shall comply with the Standard Oneida County Conditions Addendum, which is attached hereto and made a part hereof.

21. CHOICE OF LAW/FORUM

A. If either Party elects to commence litigation against the other in connection with any matter relating to or arising out of this Agreement, it shall do so in a New York State Court of competent jurisdiction sitting in Oneida County, New York or in the United States District Court for the Northern District of New York.

B. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

22. SUCCESSORS AND ASSIGNS

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, legal or personal representatives, successors, and assigns.

23. NON WAIVER

No provision of this Agreement shall be deemed to have been waived by either Party, unless such waiver shall be set forth in a written instrument executed by such Party. Any waiver by any of the Parties to any of the provisions of this Agreement shall not imply preceding or subsequent waiver of that or any other provision, unless explicitly stated otherwise.

24. SEVERABILITY

If any provision of this Agreement or any part thereof is or becomes void or unenforceable by force or operation of law, the Parties agree that the Agreement shall be reformed to replace the stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Further, the Parties agree that all other provisions shall remain valid and enforceable.

25. AUTHORITY TO ACT/SIGN

The CONTRACTOR hereby represents and certifies that it has the power and authority to execute and deliver this Agreement and to carry out its obligations hereunder. The execution and delivery by CONTRACTOR of this Agreement and the consummation of the transactions contemplated herein have been duly authorized by the CONTRACTOR; no other action on the part of the CONTRACTOR or any other person or entity, whether

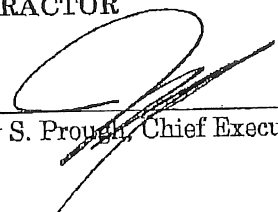
pursuant to its Articles of Incorporation, Articles of Operation, Operating Agreement or Bylaws, as the case may be, or by law or otherwise, are necessary to authorize the CONTRACTOR to enter into this Agreement, or to consummate the transactions contemplated herein.

26. ADVICE OF COUNSEL

Each Party acknowledges that, in executing this Agreement, such Party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.

IN WITNESS THEREOF, the Parties have here unto set their hand on the date respectively stated.

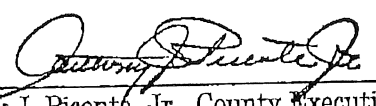
CONTRACTOR



Jeffery S. Prough, Chief Executive Officer/President

5/8/2019
Date

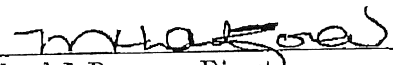
COUNTY OF ONEIDA



Anthony J. Picente, Jr., County Executive

7-18-19
Date

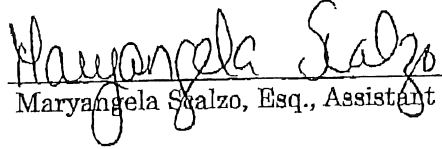
OFFICE FOR THE AGING AND CONTINUING CARE



Michael J. Romano, Director

5/24/19
Date

Approved:



Maryangela Scalzo, Esq., Assistant County Attorney

July 15, 2019
Date

APPENDIX A

- 1) The Older Americans Act (OAA) of 1965, as amended (42 U.S.C.A. § 3001 et. seq.)
- 2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards)
- 3) 2 CFR Part 230 (Cost Principles for Non-Profit Organizations)
- 4) 2 CFR Part 376 (Nonprocurement Debarment and Suspension)
- 5) 20 CFR Part 614 (Provisions Governing the Senior Community Service Employment Program)
- 6) 29 CFR Part 37 (Implementation of the Nondiscrimination and Equal opportunity Provisions of the Workforce investment Act of 1998)
- 7) 45 CFR Part 75 (Uniform Administration Requirements, Cost Principles, and Audit requirements for HHS Awards)
- 8) 45 CFR Part 80 (Nondiscrimination under programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964)
- 9) 45 CFR Part 84 (Nondiscrimination on the basis of Handicap)
- 10) 45 CFR Part 92 (Uniform Administrative Requirements for Grant and Cooperative Agreements to State and Local Governments)
- 11) 45 CFR Part 93 (New Restrictions on Lobbying)
- 12) 45 CFR Part 1321, Subparts A-D (Grants to State and Community Programs on Aging)
- 13) 45 CFR Part 1321.61 (b)(4) (Support of State Title VII Activities)
- 14) Age Discrimination in Employment Act of 1975, as amended (29 USC §621, et seq.)
- 15) Americans with Disabilities Act of 1990 (42 U.S.C.A. §12101, et seq.)
- 16) Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C.A. §2000e, et. seq.)
- 17) Equal Pay Act of 1963, as amended (29 U.S.C.A. §206)
- 18) Hatch Act (5 U.S.C.A. §1501, et seq.)
- 19) Low Income Energy Assistance (42 U.S.C.A. § 8621, et seq.)
- 20) Rehabilitation Act of 1973, Sec. 504 (29 U.S.C.A. §794) (Nondiscrimination)
- 21) Single Audit Act of 1984 (31 U.S.C.A. §7501, et. seq.)
- 22) USDA Nutrition Programs for the Elderly (7 C.F.R. § 226, et seq.) and (7 C.F.R. §235, et seq.)
- 23) Office of Management and Budget (OMB):

- a. OMB Circular A-87 (Cost Principles for State, Local and Indian Tribal Governments)
 - b. OMB Circular A-95 (Clearinghouse Review)
 - c. OMB Circular A-102 (Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments)
 - d. OMB Circular A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations)
 - e. OMB Circular A-122 (Cost Principles for Non-profit Organizations)
 - f. OMB Circular A-128 (Audits of State and Local Governments)
 - g. OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations)
- 24) 30 FR 12319- Federal Executive Order 11246, as Amended by 32 FR 14303- Federal Executive Order 11375 (Affirmative Action); as Amended by 43 FR 46501- Federal Executive Order 12086 (Consolidation of Compliance Functions); and as Amended by 67 FR 77141- Federal Executive Order 13279 (Equal Protection for Faith-Based and Community Organizations)
 - 25) New York State Office for the Aging Rules and Regulations (9 NYCRR Parts 6651, 6652, 6653, 654, 6655, and 6656)
 - 26) Executive Law of New York State, Article 15- State Human Rights Law (N.Y. Exec. Law §290, et seq.)
 - 27) Executive Law of New York State, Article 15-a Minority/Women's Business contract Requirements (N.Y. Exec. Law §310, et seq.)
 - 28) Executive Law of New York State, Article 7-a Solicitation and Collection of Funds for Charitable Purposes (N.Y. Exec. Law § 171-a, et seq.)
 - 29) Expanded In-home Services for the Elderly (EISEP) Program Standards (87-PI-66 [10/21/87])
 - 30) NYS Office for the Aging's 1990 Nutrition Program Standards (90-PI-26 [5/17/90])
 - 31) Legal Assistance Standards (94-PI-52 [12/29/94])
 - 32) Weatherization Referral and Packaging Program (WRAP) Handbook
 - 33) Governor's 1960 Code of Fair Practices (9 CRR-NY 1.4)
 - 34) Governor's Executive Order 6 (Affirmative Action Efforts) (9 NYCRR 4.6)
 - 35) Governor's Executive Order 19 (Prevention of Sexual Harassment) (9 NYCRR 4.19)
 - 36) Governor's Executive Order 28 (Prohibiting discrimination based on Sexual Orientation) (9 NYCRR 4.28)

APPENDIX B

Oneida County Office for the Aging Grievance Procedures

In accordance with the Older Americans Act (OAA), as amended, the Oneida County Office for the Aging has established the following process for resolving complaints from clients who are dissatisfied with or persons denied services funded under the Act.

Right to File a Grievance

The Office for the Aging and all contracting provider agencies who receive OAA funds shall notify program clients of their right to file a grievance with the provider agency and/or with Oneida County Office for the Aging. Upon request, the Office for the Aging will provide assistance with filing a grievance.

Denial of Service or Client's Un-satisfaction of Service

A client or applicant who is denied OAA services must be given the reasons for the denial. Services may be denied because of funding restrictions, ineligibility, hours or locations have changed, reassessment determined services no longer needed, or client is disruptive to the program. For OAA services for which a written application is made, the denial shall be confirmed in writing and the applicant informed of the right to file a grievance and to whom the grievance shall be made. For OAA services for which verbal application is made by telephone or in person, the person may be denied verbally and verbally informed of the right to file a grievance and to whom.

Grievance Process

Filing a Grievance

- Individual must submit their grievance in writing to the Director of the Office for the Aging who will forward the Letter to the designated person of the provider agency to conduct the initial review.
- The grievance must be filed within thirty (30) calendar days of denial, reduction or termination of services, or of the event or circumstances with which the person is dissatisfied. The Office for the Aging or the provider agency may grant an extension for good cause shown.
- The Letter of Grievance should include a written statement setting forth in detail the date, time and circumstances that are the basis for the complaint.

Investigation and Response to a Grievance

- The designated reviewer will investigate the complaint. The reviewer will determine whether the action was in accordance to applicable Older Americans Act and State laws and regulation and are supported by facts.
- The reviewer will prepare and send written response to the grievant and to the Office for the Aging Director within fifteen (15) working days after the grievance is filed. The response will set forth the circumstances relating to the grievance, the action requested by the grievant, the findings of the reviewer, a proposed remedial action and, if any, the reason(s) for and facts relied on in the determination.

Appeal of Initial Response/Decision

If the grievant is not satisfied with the determination, s(he) has the right to further review as follows:

- S(he) may initiate a request for subsequent review by the Office for the Aging Director within ten (10) calendar days following receipt of notification from the provider agency of its decision.
- The Office for the Aging Director will request, and the provider agency shall provide, copies of the initial file on the complaint in question. The Office for the Aging Director will review the materials to ensure that pertinent policies and procedures have been applied and followed.
- If the policies and procedures have been adhered to, the Office for the Aging Director will not overturn the decision of its contracting provider agency. If the proper policies and procedures have not been applied, the director reserves the right to overturn the decision.
- A written notification of the results will be made to the grievant within twenty (20) working days of receipt of the appeal request.

Record Keeping

The provider agency will keep a file, for six years, of all relevant documents and records of a grievance. The file shall include at a minimum: the initial grievance; any investigative reports; any and all written responses; any documents or other records submitted by any party; and, if applicable, the notice to the grievant of the right to appeal.

Confidentiality

No information, documents or other records relating to a grievance shall be disclosed by program staff or volunteers in a form that identifies the grievant without the written informed consent of the grievant, unless the disclosure is required by court order or for program monitoring by authorized agencies.

APPENDIX C

Oneida County Office for the Aging
2019-2020
Voucher Instructions
For Units of Services Contracts

Complete the Oneida County voucher (3-part white, yellow, and pink form) as follows:

1. **Department:** Office for the Aging and Continuing Care
2. **Claimants Name and Address:** Contractor name and address (checks will be payable to the name given and sent to the address listed).
3. **Date:** List month this claim covers.
4. **Vendor's Invoice Number:** leave blank
5. **Quantity/Description of Material or Service/Unit Price/Amount:**
 - ✓ State the number of units of service and the description of services performed during the month.
 - ✓ List the Unit Price as stated in the Contract Budget.
 - ✓ Place the amount (Units X Unit Price) in the Amount column.
 - ✓ Place the amount to be reimbursed in the Total block.
 - ✓ Specify program funds (III-E, EISEP, CSE, III-B etc.) in the space after the Contract Number.
6. **Claimant's Certification:**

Fill out completely, Note that Oneida County will not pay a voucher without an original signature, Federal ID Number or Social Security Number.
7. **Voucher Backup**
 - ✓ Attach CAARS monthly report.
 - ✓ Master list of clients billed for on voucher (with individual total monthly amount billed).
 - ✓ Attach appropriate backup:
 - Payroll certification sheets and time sheets signed by Agency employee.
 - Legal Assistance Program – case numbers, DOB, Legal Assistance Referral, Type of Service, Fax Date and Unit of Services.
 - Housekeeper/Chore (PCA Level I) or Homemaker/personal care (PCA Level II), Housekeeper/chore (Level I) – Contract EISEP voucher backup. Copies of PCA daily logs including date and times of service and all must be signed by client.
 - Adult Day Care – OFFICE approved sign-in log sheet with dates and times of service and all must be signed by client.
 - Emergency Response Systems – (Original Invoice)

Have all accounting records, receipts and supporting documentation readily available for review by the County, State and/or Federal personnel authorized to examine and/or audit program accounts. Ref: US Code of Federal Regulations 45-74 amended in 1980. Check numbers, dates paid and amounts paid must be written on each receipt.
8. **Timely Submissions:**
 - ✓ Submit monthly vouchers by the 10th day of the month following the reporting month.
 - ✓ Checks are issued by Oneida County Audit and Control only on Fridays - approximately 30 days after submission.
 - ✓ If all documentation is not included, the voucher will be returned unpaid with a request for proper backup and documentation.

9. **Changes To The Budget (including personnel):**
✓ Submit a Budget Revision and a justification for the change.

10. **Technical Assistance:**
✓ If you have fiscal questions regarding your program or require technical assistance, please contact the OFA-OCC Fiscal Unit directly at 315-798-5456.

Susie Perritano, Accounting Supervisor

STANDARD ONEIDA COUNTY CONDITIONS ADDENDUM

THIS ADDENDUM, entered into on this _____ day of _____, 20____, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:

i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons 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 the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.

- ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,

i. The Contractor certifies that it and its principals:

A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;

2) The Contractor's policy of maintaining a drug-free workplace;

3) Any available drug counseling, rehabilitation, and employee assistance program; and

4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

1) Abide by the terms of the statement; and

- 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building Campus,
Albany, NY 12240. Notice shall include the identification number(s) of
each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
 - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
 - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
 - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.

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b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and

ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;

ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;

iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;

iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;

v. Make available protected health information in accordance with 45 CFR §164.524;

vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;

vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;

viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County available to the

Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
 - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
 - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, 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 Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, 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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such

prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or 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 County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County 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: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.

- 2 2 2
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application; request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.
- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or 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 Office of General Services (hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

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

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or 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 or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

a. For the purposes of this provision, the "use of tobacco" shall include:

- i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
- ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.

- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that delivers vapor which is inhaled by an individual user as he or she simulates smoking.
- c. For the purposes of this provision, "on Oneida County property" shall be defined as:
- i. Upon all real property owned or leased by the County of Oneida; and
 - ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.
- d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

20. COMPLIANCE WITH NEWYORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.

Anthony J. Picente, Jr.
County Executive



Colleen Fahy-Box
Commissioner

ONEIDA COUNTY DEPARTMENT OF FAMILY AND COMMUNITY SERVICES
Commissioner's Office
COUNTY OFFICE BUILDING ~ 800 PARK AVENUE ~ UTICA, NY 13501
PHONE: 315-798-5733 ~ FAX: 315-798-5218

August 17, 2020

FN 20 20-317

Honorable Anthony J. Picente Jr.
Oneida County Executive
800 Park Avenue
Utica, New York 13501

HEALTH & HUMAN SERVICES

WAYS & MEANS

Dear Mr. Picente:

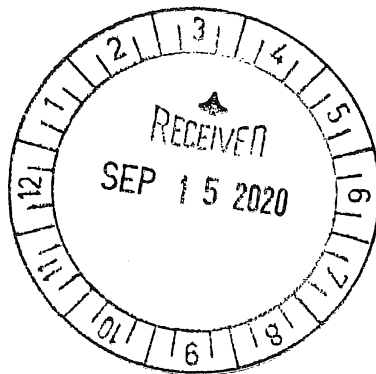
I am submitting the following Purchase of Services Agreement with Deliverance First Ministries Church of the Living God, Inc. DBA Academics First, for approval by the Board of Legislators. The contract mirrors that which was approved for twenty-four (24) other day care providers under resolution # 239 on August 8, 2018.

Day Care Services insure children are well cared for while eligible families participate in required work participation activities, training and/or employment.

The term of this Agreement is July 6, 2020 through September 30, 2021, and payment is based on Day Care "Market Rates" as determined by New York State Office of Children and Family Services. I am respectfully requesting that this matter be forwarded to the Board of Legislators for their review and approval. Thank you for your consideration.

Sincerely,

Colleen Fahy-Box
Colleen Fahy-Box
Commissioner
CFB/tms
Attachment'



Reviewed and Approved for submittal to the
Oneida County Board of Legislators by

Anthony J. Picente, Jr.
Anthony J. Picente, Jr.
County Executive
Date 9-15-20

Oneida Co. Department Social Services

Competing Proposal _____
Only Respondent _____
Sole Source RFP _____
Other X

Oneida County Board of Legislators
Contract Summary

Name of Proposing Organization:

Deliverance First Ministries Church of the Living God, Inc.
DBA Academics First
934 Sunset Avenue
Utica, New York 13502

Title of Activity or Services: Day Care Services for children

Proposed Dates of Operations: July 6, 2020 through September 30, 2021

Client Population/Number to be Served: Children in need of Day Care Services up to age 12.

SUMMARY STATEMENTS

1). Narrative Description of Proposed Services

Provide Day Care Services to eligible families.

2). Program/Service Objectives and Outcomes -

To provide safe quality Day Care Services to eligible low income employed families or public assistance recipients involved in approved educational, vocational job search or work experience activities.

3). Program Design and Staffing Level - N/A

Total Funding Requested:

Rates are determined by New York State Office of Children and Family Services; current rates are attached.

Oneida County Dept. Funding Recommendation: Account #:A6055.495

Mandated or Non-Mandated: Mandated Service

Proposed Funding Source (Federal \$ /State \$ / County \$): (Per Year)

Federal	63.80% =
State	18.00% =
County	18.20% =

Cost Per Client Served:

Past performance Served: This is a new day care provider which opened 7/6/2020

O.C. Department Staff Comments: The Department contracts with a number of Centers to ensure the availability of services when needed.

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THIS AGREEMENT, is hereby entered into by and between Oneida County, a municipal corporation organized and existing under the laws of the State of New York with its principal offices at 800 Park Avenue, Utica, New York 13501, through its Department of Family and Community Services (hereinafter collectively called the "Department"), and Deliverance First Ministries Church of the Living God, Inc. DBA Academics First, a Corporation, located at 934 Sunset Avenue, Utica, New York 13502 (hereinafter called the "Contractor").

WITNESSETH:

WHEREAS, the Commissioner of Social Services of the County of Oneida (hereinafter called the "Commissioner"), is authorized under Section 410 et seq. of the Social Services Law ("SSL") to provide Day Care Services at public expense for children residing in her territory who are eligible pursuant to criteria established by the New York State Office of Children and Family Services; and

WHEREAS, the Commissioner may provide such Day Care Services either directly or through the purchase of such care from a private non-profit corporation or association pursuant to Section 410 (3)(a) of said SSL. The Day Care Provider may also be a private proprietor provided the conditions set forth pursuant to Section 410(3)(a) are met; and

WHEREAS, the Contractor is authorized to provide Day Care Services by reason of holding a valid permit pursuant to Section 390 of the SSL; and

WHEREAS, Day Care Services are included in the latest Comprehensive Annual Social Services program Plan for New York State including the Oneida County Social Services District; and

WHEREAS, the fee paid for Day Care Services is the Day Care "Market Rate" as determined by the New York State Office of Children and Family Services, and the Department feels that the amount of funds to be paid to the Contractor is reasonable and necessary to assure quality of services; and

WHEREAS, it is economically and organizationally feasible for the Department to contract with the Contractor for performance of Day Care Services;

NOW THEREFORE, it is mutually agreed between the Department and the Contractor as follows:

I. Term

- a. The terms and conditions of this Agreement shall commence on July 6, 2020 and terminate on September 30, 2021.
- b. The option to renew this Agreement is at the sole discretion of the Department and notice shall be provided to the Contractor prior to the end of the term of this Agreement.

II. Termination

- a. This Agreement may be terminated by either party upon 30 days written notice to the other party.

III. Responsibilities of the Contractor

- a. If and so long as funds are available therefore, the Contractor shall furnish services to persons determined by the Department to be eligible therefore, in accordance with standards prescribed by the Department and by the New York State Office of Children and Family Services.
- b. The Contractor shall provide quality day care to children between 6 weeks of age and 12 years of age for a portion of the day and less than 24 hours, outside their home in accordance with New York State and Federal standards for day care ("Day Care Services").
- c. The Contractor shall provide the Day Care Services at its place(s) of business as specified in the OCFS Day Care Center License, to wit: 309 Genesee Street, Utica, NY. There are no other locations where the Contractor will provide Day Care Services.
- d. A child receiving Day Care Services from the Contractor must be at least 6 weeks years of age, and no more than 12 years of age since this is the basis for issuance of the Contractor's permit.
- e. The Contractor shall furnish such Day Care Services in accordance with applicable requirements of law and shall cooperate with the departments, as may be required, so that the Department and the New York State Office of the Children and Family Services will be able to fulfill their function and responsibilities as the Single State Agency under Title XX and other applicable provisions of the Social Security Act and Social Services Law and be able to meet all the applicable requirements, both state and federal, pertaining thereto.
- f. The Contractor shall establish a system through which recipients may present grievances about the operation of the Day Care Services. The Contractor shall advise recipients of this right and will also advise applicants and recipients of their right to appeal.
- g. The Contractor, upon the request of the Department, shall participate in appeals and fair hearings as witnesses when necessary for a determination of the issues.

- h. The Contractor shall retain all fees collected from eligible Individuals required to pay such fees and shall reduce its claim for payment by the amount of such fees determined by the Department to be due from such recipients. The collection of such fees is solely the responsibility of the Contractor.

IV. Responsibilities of the Department

- a. The Department shall be responsible for establishing the standards, policies, and procedures for determining the eligibility of persons for Day Care Services to be purchased by the Department and to be furnished by the Contractor. The Department shall retain basic responsibility for determining the eligibility of persons for Day Care Services.
- b. The Department shall notify applicants for or recipients of Day Care Services of their right to a fair hearing to appeal the denial, reduction or termination of Day Care Services, or failure to act upon a request for Day Care Services with reasonable promptness. The Department shall be responsible for establishing fair hearing procedures, holding fair hearings, and taking such steps as may be necessary to enforce the fair hearing's determinations and decisions. The Department shall provide the Contractor with copies of any decision issued by the Office of Temporary and Disability Assistance.

V. Insurance Requirements

- a. The Contractor shall purchase and maintain insurance of the following types of coverage and limits of liability with an insurance carrier qualified and admitted to do business in the State of New York. The insurance carrier must have at least an A- (excellent) by A.M. Best.
 - i. Commercial General Liability (CGL) coverage with limits of insurance of not less than \$1,000,000 each occurrence and \$3,000,000 annual aggregate.
 - 1. CGL coverage shall be written on ISO Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products, completed operations, and personal and advertising injury.
 - 2. Abuse and molestation coverage must be included.
 - 3. The County, and any other parties required by the County, shall be included as additional insureds. Coverage for the additional insureds

shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insureds.

ii. Workers' Compensation and Employer's Liability

1. Statutory limits apply.

iii. The Contractor shall procure and maintain insurance in force, for the duration of this Agreement, any additional types of coverage and limits of liability as determined by the Department.

b. Waiver of subrogation: The Contractor waives all rights against the County and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by CGL or Workers' Compensation and Employer's Liability insurance maintained by the County of Oneida.

c. Certificates of Insurance: Prior to the start of any work, the Contractor shall provide certificates of insurance to the County. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Contractor's CGL policy. These certificates and the insurance policies required above shall contain a provision that coverage afforded under these policies shall not be canceled or allowed to expire until at least 30 days prior written notice has been given to the County.

VI. Indemnification

To the fullest extent permitted by applicable law, the Contractor shall indemnify and hold harmless, and at the Department's option, defend, the Department, and/or its officers, directors, members, agents, employees, contractors and other representatives, from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, economic damage, and claims brought by third parties for personal injury and/or property damage (collectively, "Damages"), incurred by the Department caused by any negligent act or omission, or intentional misconduct of the Contractor, its officers, agents, employees (including the Contractor's Assistants or other authorized personnel) arising out of or in connection with the exercise by the Contractor or any of the Contractor's authorized

personnel of the rights and privileges granted by or pursuant to this Agreement, except to the extent such Damages are caused by the sole negligence, unlawful act or omission, or intentional misconduct of the Department.

VII. Performance of Services

- a. The Contractor represents that the Contractor is duly licensed (as applicable) and has the qualifications, the specialized skill(s), the experience and the ability to properly perform the services. The Contractor shall use the Contractor's best efforts to perform the services such that the results are satisfactory to the Department. The Contractor shall be solely responsible for discussion with Day Care Services recipients to determine the location, method, details and means of performing the services, except where federal, state or local laws and regulations impose specific requirements on performance of the same.
- b. The Contractor may, at the Contractor's own expense, employ or engage the services of such employees, subcontractors and/or partners as Contractor deems necessary to perform the services (collectively, the "Assistants"). The Assistants are not and shall not be deemed to be employees of the Department, and the Department shall have no obligation to provide the Assistants with any salary or benefits. The Contractor shall be solely responsible and shall remain liable for the performance of the services by the Assistants in a manner satisfactory to the Department, and in compliance with any and all applicable federal, state or local laws and regulations. The Contractor shall expressly advise the Assistants of the terms of this Agreement.
- c. The Contractor acknowledges and agrees that the Contractor and its Assistants have no authority to enter into contracts that bind the Department or create obligations on the part of the Department without the prior written authorization of the Department.
- d. The Contractor shall inform the Department within twenty-four (24) hours if it is unable or unwilling to accept an assignment and/or perform services pursuant to this Agreement. The Contractor maintains the right to do so at any time, and the Department maintains the right to contract with other individuals or entities to perform the same services.

VIII. Independent Contractor Status

- a. It is expressly agreed that the relationship of the Contractor and its Assistants to the Department shall be that of Independent Contractors. The Contractor's Assistants shall not be considered employees of the Department for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health insurance benefits. The Contractor, in accordance with its status as an Independent Contractor, covenants and agrees that its Assistants will conduct themselves in accordance with such status, that neither the Contractor, nor its Assistants, shall hold themselves out as, nor claim to be, officers or employees of the Department by reason thereof and that they will not by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Department.
- b. The Contractor warrants and represents that it is in the business of offering the same or similar services detailed herein and does offer the same or similar service(s) to other entities and/or the general public as a regular course of business. The Contractor and the Department agree that the Contractor is free to undertake other work arrangements during the term of this Agreement, and may continue to make its services available to the public.
- c. The Contractor or its Assistants shall not be eligible for compensation from the Department due to
 - i. illness;
 - ii. absence due to normal vacation; and
 - iii. absence due to attendance at school or special training or a professional convention or meeting.
- d. The Contractor acknowledges and agrees that neither the Contractor, nor its Assistants, shall be eligible for any Department employee benefits, including retirement membership credits.
- e. The Contractor shall be paid pursuant to IRS Form 1099, and shall be solely responsible for applicable taxes for all compensation paid to the Contractor or its Assistants under this Agreement, and for compliance with all applicable labor and employment requirements with respect to the Contractor's form of business organization, and with respect to the Assistants, including payroll deductions, workers' compensation insurance, and provision of health insurance where required.

The Department shall not be responsible for withholding from the payments provided for services rendered for state or federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA). The Contractor shall provide proof of workers' compensation insurance, where applicable, prior to execution of this Agreement.

- f. The Contractor shall Indemnify and hold the Department harmless from all loss or liability incurred by the Department as a result of the Department not making such payments or withholdings.
- g. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Contractor's or its Assistants' Independent Contractor status, it is agreed that both the Department and the Contractor shall have the right to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.
- h. The Contractor shall comply with federal and state laws as supplemented in the Department of Labor regulations and any other regulations of the federal and state entities relating to such employment and Civil Rights requirements.

IX. Payment

- a. For the purpose of this Agreement, a unit of service shall be defined as the care of a child for one week, five full days of at least six (6) hours per day.
- b. The Department shall pay the Contractor per market rates as set by New York State for each unit of service provide pursuant to this Agreement. This rate per unit of service has been determined by the Department to be an amount reasonable and necessary to assure the quality of the Day Care Services.
- c. The Department shall pay the Contractor a negotiated rate for a child who receives Day Care Services on a part-time basis.
- d. The Contractor shall submit time sheets and request for payment either electronically or in written form to the Department.
 - i. Electronic submissions shall be made using the New York State Office for Children and Family Services Child Care Time and Attendance System (CCTA). The Department shall verify the submission and authorize payment to the Contractor via the Benefits Issuance and Control System (BICS).

- ii. Written time sheets shall be submitted directly to the Department for payment. Upon verification of the written time sheets, the Department shall authorize payment to the Contractor via the BICS.
- X. The Department shall not be responsible for any fee and all clients supplemented by Department funds shall not be required to pay a registration fee.
- XI. The Department shall pay the Contractor for a maximum of four (4) absentee days per month.
- XII. Books, Records, and Reports**
 - a. The Contractor shall maintain financial books, records, and necessary supporting documents as required by the Department. The Contractor shall use accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of the services provided under this Agreement. The Contractor shall collect statistical data of a fiscal nature on a regular basis and make fiscal and statistical reports at times prescribed by and on forms furnished by the Department.
 - b. All records relevant to this Agreement shall be subject at all reasonable times for inspection, review or audit by the Department or New York State personnel, as well as by federal personnel when federal funds are being utilized in making payments to the Contractor, in accordance with applicable federal and state requirements.
 - c. The Contractor shall collect statistical data of a fiscal nature on a regular basis and make fiscal statistical reports at times prescribed by and on forms furnished by the Department in accordance with applicable federal and state requirements.
 - d. The Contractor shall maintain program records required by the Department and agrees that a program and facilities review, including meetings with recipients of services, review of service records, review of service policy and procedural issuances, review of staffing ratios and job descriptions, and meetings with any staff directly or indirectly involved in the provision of Day Care Services may be conducted at a reasonable time by appropriate Department, state or federal personnel and other persons duly authorized by the Department in accordance with applicable state and federal requirements.
 - e. The Contractor shall retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment. Federal and / or State auditors, and any person duly authorized by the Department shall have full access to and the

right to examine any of said material during said period, in accordance with applicable federal and state requirements.

- f. The Contractor and the Department shall observe and require the observance of applicable federal and state requirements relating to confidentiality of records and information, and neither shall allow the examination of records or disclosure of information, except that examination of records by the Department as may be necessary to assure that the purpose of this Agreement will be effectuated, and also to otherwise comply with the Department's requirements and obligations under law will be allowed. In addition, the Department and the Contractor shall be bound by the provisions of 45 CFR 205.50, and all amendments thereof, and any other relevant provisions of the state service operation work plans and federal regulations.

XIII. Choice of Law / Venue

- a. If either party elects to commence litigation against the other in connection with any matter relating to or arising out of this Agreement, it shall do so in a New York State Court of competent jurisdiction sitting in Oneida County, New York or in the United States District Court for the Northern District of New York.
- b. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

XIV. Non-Assignment

- a. The Contractor shall not assign or subcontract any portion of this Agreement without the prior written approval of the Department (which shall be attached to this Agreement) and subject to such conditions and provisions as the Department may deem necessary. No such approval by the Department of any assignment or subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation of the Department in addition to the total agreed upon amount to be paid under this Agreement.

XV. Miscellaneous

- a. The parties agree to renegotiate this Agreement in the event that the New York State Department of Health or the New York State Office of Children and Family Services issue new or revised requirements on the Department as a condition for receiving continued federal or state reimbursement.

- b. During the performance of this Agreement, the Contractor shall not, on the grounds of age, race, color, or national origin:
 - i. Deny an individual any services or other benefits provided under the program;
 - ii. Provide any service(s) or other benefits to an individual which are different, or are provided in a different manner, from those provided to others under the program;
 - iii. Subject an individual to segregation or separate treatment in any matter related to his or her receipt of any service(s) or other benefits provided under the program;
 - iv. Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any services(s) or other benefits provided under the program;
 - v. Treat an individual differently from others in determining whether he or she satisfies any eligibility or other requirements or condition which individuals must meet in order to receive any aid, care, service(s), or other benefits provided under the program;
 - vi. Deny any individual an opportunity to participate in the program through the provision of services or otherwise, or will afford him or her an opportunity to do so which is different from that afforded others under the program.
- c. During the performance of this Agreement, the Contractor agrees as follows:
 - i. The Contractor shall not discriminate against any employee or applicant for employment because of age, race, creed, sex, color, or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination because of race, creed, sex, color or national origin. Such action shall include, but not be limited to the following: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retaining, including apprenticeship and on-the-job training.
 - ii. The Contractor shall send to each labor union or representative of workers with which it has or is bound by a collective bargaining or other agreement

or understanding, a notice to be provided to the New York State Division of Human Rights, advising such labor union or representative of the Contractor's agreement under clauses I through vii (hereinafter called "non-discrimination clauses"). If the Contractor was directed to do so by the contracting agency as part of the bid or negotiation of this Agreement, the Contractor shall request such labor union or representative to furnish it with a written statement that such labor union or representative shall not discriminate because of age, race, creed, sex, color or national origin and that such labor union or representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this Agreement shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the Contractor shall promptly notify the New York State Division of Human Rights of such failure or refusal.

- iii. The Contractor shall post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the New York State Division of Human Rights setting forth the substance of the provisions of clauses i and ii and such provisions of the State's laws against discrimination as the New York State Commissioner of Human Rights shall determine.
- iv. The Contractor shall state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of age, race, creed, sex, color or national origin.
- v. The Contractor shall comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, shall furnish all information and reports deemed necessary by the New York State Commissioner of Human Rights under these non-discrimination clauses and such section of the Executive Law, and will permit access to its books, records and accounts by

the New York State Commissioner of Human Rights, the Attorney General, and the Industrial Commissioner for purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.

- vi. This Agreement may be forthwith canceled, terminated or suspended, in whole or in part, by the Department on the basis of a finding made by the New York State Commissioner of Human Rights that the Contractor has not complied with these non-discrimination clauses, and the Contractor may be declared ineligible for further contracts made by or on behalf of the State or a public authority or agency of the state, until it satisfies the New York State Commissioner of Human Rights that it has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the New York State Commissioner of Human Rights after conciliation efforts by the New York State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after verified complaint has been filed with the New York State Division of Human Rights, notice thereof has been given to the Contractor and an opportunity has been afforded it to be heard publicly before the New York State Commissioner of Human Rights or its designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.
- vii. The Contractor shall include the provisions of clauses i through vii in every subcontract or purchase order in such a manner that such provisions shall be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The Contractor shall take such action in enforcing such provisions of such subcontract or purchase order as the Department may direct, including sanctions or remedies for non-compliance. If the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor shall promptly notify the Attorney General, requesting him or her to intervene and protect the interest of the State of New York.

- d. The Contractor agrees to be bound by the provisions of Section 103-a and 103-b of the General Municipal Law of the State of New York which provide in part: that upon the refusal of a person, when called before a grand jury, head of state department, temporary state commission or other state agency, the organized crime task force in the Department of Law, head of a city department, or other city agency which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or officials of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.
- i. The Contractor, its director, and officers, and any firm partnership or corporation of which they are a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contract with any municipal corporation or fire district, or any public department, agency or official thereof, for goods, work or services, for a period of five (5) years after such refusal and;
 - ii. This Agreement and any and all other contracts made with any municipal corporation or any public department, agency or official thereof on or after the first day of July nineteen hundred and fifty-nine or with any fire district or any agency or official thereof on or after the first day of September, nineteen hundred sixty, by such person, any by any firm, partnership, or officer may be canceled or terminated by the Department of municipal corporation or fire district with incurring any penalty of damages on account of such cancellation or termination, and any monies owed by the Department or municipal corporation or fire district for goods delivered or work done prior to the cancellation or termination shall be paid.
 - iii. The undersigned, as an officer of the Contractor expressly warrants and represents that neither (s)he, nor any member, director or officer of the Contractor, prior to the date of execution of this Agreement, has been called before the grand jury, head of a state department, temporary state

commission or other state agency which is empowered to compel the attendance of witnesses and examine them under oath to testify in an investigation concerning any transaction or contract had with the State of New York, any political subdivision thereof, a public authority or with any public department, agency or official of the State of New York or any political subdivision thereof, or of a public authority or of any fire district, and refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

XVI. Entire Agreement

- a. The terms of this Agreement, including any attachments, amendments, addendums or appendixes attached hereto, constitute the entire understanding and agreement of the parties and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. By signing below, the parties agree and acknowledge that they have read, understood and agreed to all the terms contained in any addenda attached hereto including, but not limited to, Appendix A (New York State Conditions), Appendix B (Standard Clauses for all Oneida County Department of Social Services Contracts), the Standard Oneida County Conditions Addendum, and Oneida County Department of Social Services Contractor and Contract Staff Confidentiality and Non-Disclosure Agreement.
- b. No waiver, alterations or modifications of any provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

XVII. Advice of Counsel

Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.

50200

In Witness Whereof, the parties have hereunto signed this Agreement on the day and year appearing opposite their respective signatures.

Date: _____

Oneida County: _____
Anthony J. Picente Jr., Oneida County Executive

Approved: _____
Richard P. Ferris, Assistant County Attorney

Date: 9/11/20

Department: Colleen Fahy-Box
Colleen Fahy-Box, Commissioner

Date: 8-21-2020

Contractor: Deliverance First Ministries DBA Academics First

Authorized Signature: [Signature]

Print Authorized Name: Kelli Austin

Title: Exec Director

APPENDIX A
NEW YORK STATE CONDITIONS

The parties to the attached contract further agree to be bound by the following, which are hereby made a part of said contract.

- I. This contract may not be assigned by the contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the State.
- II. This contract shall be deemed executory only to the extent of money available to the State for the performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for the purpose thereof.
- III. The contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d, as amended that:
 - (a) no laborer, workman or mechanic, in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or any 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 the emergencies set forth in the Labor Law.
 - (b) The wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.
 - (c) The minimum hourly rate of wages to be paid shall not be less than that stated in the specifications, and any redetermination of the prevailing rate of wages after the contract is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of these contract documents.
 - (d) The Labor Law provides that the contract may forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than—
 - (a) the stipulated wage scale as provided in Labor Law, Section 220, subdivision 3, as amended or
 - (b) less than the stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.
- IV. The contractor specifically agrees, as required by the provisions of the Labor Law, Section 220-e, as amended, that:
 - (a) in hiring of employees for the performance of work under this contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no contractor, subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
 - (b) No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired

for the performance of work under this contract on the account of race, creed, color, sex or national origin.

- (c) There may be deducted from the amount payable to the contractor by the State under this contract a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract, and
- (d) This contract may be cancelled or terminated by the State or municipality and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract, and
- (e) The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

V. The contractor specifically agrees, as required by Executive Order # 45, dated Jan. 4, 1977, effective February 4, 1977, that:

- (a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake programs of affirmative action to insure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference, but not limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- (b) If the contractor is directed to do so by the contracting agency or the Office of State Contract Compliance (hereafter OSCC). The contractor shall request each employment agency, labor union, or authorized representative of workers, with which he has a collective bargaining or other agreement or understanding, to furnish him with a written statement that such employment agency, labor union or representative will not discriminate because 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 hereunder and the purposes of Executive Order # 45 (1977).
- (c) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- * (d) The contractor will comply with all the provisions of Executive Order # 45 (1977) and rules, regulations and orders issued

pursuant thereto and will furnish all information and reports required by said Executive Order or such rules, regulations and orders, and will permit access to its books, records, and accounts and to its premises by the contracting agency or the OSCC for the purposes of ascertaining compliance with said Executive Order and such rules, regulations and orders.

*(e) If the contractor does not comply with the equal opportunity provisions of this contract, with Executive Order # 45 (1977), or with such rules, regulations, or orders, this contract or any portion thereof, may be cancelled, terminated or suspended or payments thereon withheld, or the contractor may be declared ineligible for future State or State-assisted contracts, in accordance with procedures authorized in Executive Order #45 (1977), and such other sanctions may be imposed and remedies invoked as are provided in said Executive Order or by rule, regulation or order issued pursuant thereto, or as otherwise provided by law.

*(f) The contractor will include the provisions of clauses (a) through (e) above and all contract provisions promulgated by OSCC pursuant to Section 1.3 (b) of Executive Order # 45 (1977), in every non-exempt subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work force within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency or the OSCC may direct, including sanctions or remedies for noncompliance. If the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction, the contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

VI. The contractor will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights under the Law, and will permit access to its books, records and accounts by the State Industrial Commissioner for the purposes of investigation to ascertain compliance with the non-discrimination clauses, the Executive Law and Civil Rights Law.

VII. (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder, and will not be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;

3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that 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 sub-paragraph VII (a)

**Note: Reference to the above Rules and Regulations refer to those Rules and Regulations in effect as of the date of the solicitation of bids relative to this contract.

APPENDIX B

STANDARD CLAUSES FOR ALL ONEIDA COUNTY DEPARTMENT OF SOCIAL SERVICES CONTRACTS

PERSONNEL

- a. The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries, and management of its project personnel. These functions shall be carried out in accordance with the provisions of this AGREEMENT, and all applicable federal, state and local laws and regulations.
- b. It is the policy of the Department to encourage the employment of qualified applicants or recipients of public assistance by both public organization and private enterprises who are under contractual AGREEMENT to the Department for the provision of goods and services. Contractors will be expected to make best efforts in this area.
- c. The Contractor agrees to identify, in writing, the person(s) who will be responsible for directing the work to be done under this AGREEMENT. No change or substitution of such responsible person(s) will be made without prior approval in writing from the Department, to the degree that such change is within the reasonable control of the Contractor

NOTICES

- a. All notices permitted or required hereunder shall be in writing and shall be transmitted either by:
 1. By certified or registered United States mail, return receipt requested;
 2. By facsimile transmission;
 3. By personal delivery;
 4. By expedited delivery service; or
 5. By e-mail

Notices to the Department shall be addressed to the Commissioner of Social Services at the address, facsimile number or e-mail Address provided to the Contractor during contract development or to such different Program Manager as the Department may from time-to time designate.
- b. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- c. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the

purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

OFFICE SERVICES

- a. The Contractor shall be responsible for the provision of necessary equipment and services for Contractor's staff, pursuant to and described in the narratives and budgets contained in the AGREEMENT.
- b. For federally funded contracts, title to real property and non-expendable personal property whose requisition cost is borne in whole or in part by monies proved under this AGREEMENT shall be determined between the Contractor and the Department, pursuant to federal regulations 45 CFR 92 unless such authority is otherwise inappropriate. Title to all equipment, supplies and material purchased with funds under this AGREEMENT under contracts which are not federally funded shall be in the State of New York and the property shall not be transferred, conveyed, or disposed of without written approval of the Department. Upon expiration or termination of this AGREEMENT, all property purchased with funds under this AGREEMENT shall be returned to the Department, unless the Department has given direction for, or approval of, an alternative means of disposition in writing.
- c. Upon written direction by the Department, the Contractor shall maintain an inventory of those properties that are subject to the provisions of sub-paragraph b of this section

GENERAL TERMS AND CONDITIONS

- a. The Contractor agrees to comply in all respects with the provisions of this AGREEMENT and the attachments hereto. The Contractor specifically agrees to perform services according to the objectives, tasks, work plan and staffing plan contained in the AGREEMENT. Any modifications to the tasks or work plan contained in AGREEMENT must be mutually agreed to by both parties in writing before the additional or modified tasks or work plan shall commence.
- b. If any specific event or conjunction of circumstances threatens the successful completion of the project, in whole or in part, including where relevant, timely completion of milestones, the Contractor agrees to submit to the Department within three (3) days of occurrence or perception of such problem, a written description thereof together with a recommended solution thereto.
- c. The Contractor immediately shall notify in writing the Department Program Manager assigned to this contract of any unusual incident, occurrence or event that involves the staff, volunteers or officers of the Contractor, and subcontractor or Program participant funded through this AGREEMENT, including but not limited to the following: death or serious injury; an arrest or possible criminal activity; and destruction of property; significant damage to the physical plant of the Contractor, or other matters of a similarly serious nature.

- d. In providing these services, the Contractor hereby agrees to be responsible for designing and operating these services, and otherwise performing, so as to maximize federal financial participation to the Department under the Federal Social Security Act.
- e. If funds from this AGREEMENT will be used to pay any costs associated with the provision of legal services of any sort, the following shall apply;
 - 1. No litigation shall be brought against the State of New York, the New York State Office of Children and Family Services or against Oneida County or the Department or other local government or local social services district with funds provided under this AGREEMENT. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from either the State of New York, the New York State Office of Children and Family Services or Oneida County or other local government or local social services district, based upon any agreement between such agency in litigation with another party and such party, during pendency of the litigation.
 - 2. Opinions prepared by consultant law firms construing the statutes of Constitution of the State of New York do not constitute the view of the State unless the prior written approval of the Attorney General is obtained. Requests for said approval shall be submitted to the Solicitor General, Division of the Appeals and Opinions Bureau, department of Law, The Capital, Albany, New York 12224
 - 3. The Contractor shall provide to the Department in a format provided by the Department such additional information concerning the provision of legal services as the Department shall require.
- f. The Department will designate a Contract Manager who shall have authority relating to the technical services and operational functions of this AGREEMENT and activities completed or contemplated there under. The Contract Manager and those individuals designated by him/her in writing shall have the prerogative to make announced or unannounced on-site visits to the project. Project reports and issues of interpretation or direction relating to this AGREEMENT shall be directed to the Contract Manager.
- g. Except where the Department otherwise authorizes or directs in writing, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, for the performance of the obligations contained herein until it has received the prior written approval of the Department, which shall have the right to review and approve each and every subcontract prior to giving written approval to the contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT (2) that nothing contained in the subcontract shall impair the rights of the Department under this AGREEMENT, (3) that nothing contained in the subcontract, nor under this AGREEMENT, shall be deemed to create any contractual relationship between the subcontractor and the Department, and (4) incorporating all provisions regarding the

rights of the Department as set forth in this AGREEMENT, where applicable. The Contractor specifically agrees that the Contractor shall be fully responsible to the Department for the acts and omissions of subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Contractor.

- h. The Contractor warrants that it, its staff and any and all subcontractors which must be approved by the Department, have all the necessary licenses, approvals and certifications currently required by the law of any applicable local, state or federal government to perform the services pursuant to this AGREEMENT and/or subcontract entered into under this AGREEMENT. The Contractor further agrees such required licenses, approvals and certificates will be kept in full force and effect during the term of this AGREEMENT, and/or any extension thereof, and to secure any new licenses, approvals or certificates within the required time frames and/or to require its staff and subcontractors to obtain and requisite licenses, approvals or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval or certification to perform the services under this AGREEMENT, Contractor will immediately notify the Department.
- i. This AGREEMENT cannot be assigned by the Contractor to a subcontractor without obtaining written approval of the Department. Prior to executing a subcontract agreement the Contractor agrees to provide the Department the information the Department needs to determine whether a proposed subcontractor is a responsible vendor. The determination of vendor responsibility will be made in accordance with Section n. of General Terms and Conditions herein.
- j. If the Contractor intends to use materials, equipment or personnel paid for under this AGREEMENT in a revenue generating activity, the Contractor shall report such intentions to the Department forthwith and shall be subject to the direction of the Department as to the disposition of such revenue.
- k. Any interest accrued on funds paid to the Contractor by the Department shall be deemed to be the property of the Department and shall either be credited to the Department at the termination of this AGREEMENT or expended on additional services provided for under this AGREEMENT.
- l. The Contractor ensures that the grounds, structures, building and furnishings at the program site(s) used under this AGREEMENT are maintained in good repair and free from any danger to health or safety and that any building or structure used for program services complies with all applicable zoning, building, health, sanitary, and fire codes.
- m. The Contractor agrees to produce, and retain for the balance of the calendar year in which produced, and for a period of six (6) years thereafter, any and all records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under this AGREEMENT. Such records shall include, but not be limited to,

original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

1. Payroll Expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, employee personal history folders, and cost allocation plans, if applicable.
2. Payroll Taxes and Fringe Benefits: cancelled checks, copies of related bank statements, reporting forms, and invoices for Fringe Benefit expenses.
3. Non-Personal Services Expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.
4. Receipt and Deposit of Advance and Reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.
5. The Contractor agrees that any equipment purchased with funds under this AGREEMENT is the property of the Department and will remain with or will be returned to the Department in the event of the termination of this AGREEMENT,

Although not required, the Department recommends that the Contractor retain records directly pertinent to this AGREEMENT for a period of ten (10) years after the end of the calendar year in which they were made, as the statute of limitations for the New York False Claims Act is ten (10) years.

- n. By signing this AGREEMENT, the Contractor certifies that within the past three (3) years the Contractor has engaged in no actions that would establish a basis for a finding by the Department that the Contractor is a non-responsible vendor or, if the Contractor has engaged in any such action or actions, that all such actions have been disclosed to the Department prior to entering into this AGREEMENT. The actions that would potentially establish a basis for a finding by Department that the Contractor is a non-responsible vendor include:
 1. The Contractor has had a license or contract suspended, revoked or terminated by a governmental agency.
 2. The Contractor has had a claim, lien, fine, or penalty imposed or secured against the Contractor by a governmental agency.
 3. The Contractor has initiated a bankruptcy proceeding or such a proceeding has been initiated against the Contractor
 4. The Contractor has been issued a citation, notice, or violation order by a governmental agency finding the Contractor to be in violation of any local, state, or federal laws.
 5. The Contractor has been advised by a governmental agency that a determination to issue a citation, notice or violation order finding the Contractor to be in violation of any local, state or federal laws is pending before a governmental agency
 6. The Contractor has not paid all due and owed local, state and federal taxes to the proper authorities
 7. The Contractor has engaged in any other actions of a similarly serious nature.

Where the Contractor has disclosed any of the above to the Department, the Department may require as a condition precedent to entering into this AGREEMENT that the

Contractor agree to such additional conditions as will be necessary to satisfy the Department that the vendor is and will remain a responsible vendor. By signing this AGREEMENT, the Contractor agrees to comply with any such additional conditions that have been made a part of this AGREEMENT.

By signing this AGREEMENT, the Contractor also agrees that during the term of the AGREEMENT, the Contractor will promptly notify the Department if the Contractor engages in any actions that would establish a basis for a finding by Department that the Contractor is a non-responsible vendor, as described above.

- o. By signing this AGREEMENT, the Contractor agrees to comply with State Tax Law section 5-a
- p. The Contractor must maintain Workers' Compensation Insurance in accordance with the Workers' Compensation Law. If the Contractor believes they are exempt from the Workers' Compensation insurance requirement then they must apply for an exemption. Contractors can apply for the exemption online through the New York State Workers' Compensation Board website at:
http://www.wcb.state.ny.us/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp
- q. All organizations that receive federal financial assistance under social service programs are prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, are not allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct federal financial assistance (including through prime awards or sub-awards), separately in time or location from any such programs or services supported with direct federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such federal financial assistance

REPORTS AND DELIVERABLES

The Contractor shall prepare and submit all reports, documents, and projects required by this AGREEMENT to the Department's Contract Manager for review and approval. These reports shall be in such substance, from, and frequency as required by the Department and as necessary to meet state, federal and Oneida County requirements.

The Contractor shall complete Contract Evaluations as required by the Department as

well as Statistical Data as needed by the Department and New York State to meet the reporting requirements.

CONFIDENTIALITY AND PROTECTION OF HUMAN SUBJECTS

- a. The Contractor agrees to safeguard the confidentiality of financial and/or client information relating to individuals and their families who may receive services in the course of this project. The Contractor shall maintain the confidentiality of all such financial and/or client information with regard to services provided under this AGREEMENT in conformity with the provisions of applicable state, federal, and local laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this AGREEMENT.
- b. Any Contractor who will provide goods and/or services to a residential facility or program operated by Department agrees to require all of its employees and volunteers who will have the potential for regular and substantial contact with youth in the care or custody of the Department to sign an Employee Confidentiality Certification and employee Background Certification before any such employees and volunteers are permitted access to youth in the care or custody of the Department and/or any financial and/or client identifiable information concerning such youth. Additionally, the Department will require a database check of the State wide Central Register of Child Abuse and Maltreatment (SCR) of each employee and volunteer of the Contractor who has the potential for regular and substantial contract with children in the care or custody of the Department. Any Contractor whose employees and volunteers will have access to financial and/or client identifiable information concerning youth in the care or custody of Department agrees to require all such employees and volunteers to sign an Employee Confidentiality Certification before any such employees and volunteers are permitted access to any financial and/or client identifiable information concerning such youth.
- c. The Contractor and any subsequent subcontractor shall not discriminate or refuse assistance to individuals with AIDS or an HIV infection or an HIV - related illness.

The Contractor and any subsequent subcontractor agrees that their staff to whom confidential HIV - related information may be given as a necessity for providing services and in accordance with 403 of Title 18 NYSDSS regulation and Section 2782 of the Public Health Law are fully informed of the penalties and fines for re-disclosure in violations of state law and regulations.

The Contractor and any subsequent subcontractor must include the following written statement when disclosing any confidential HIV - related information.

"This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the

release of medical or other information is not sufficient authorization for further disclosure."

- d. All information contained in the Contractor's, or its subcontractor's files shall be held confidential pursuant to the applicable provisions of the Social Services Law and any State Department Regulations promulgated thereunder, including 18 NY CRR Sec. 357.5 and 423.7, as well as any applicable federal laws and any regulations promulgated thereunder and shall not be disclosed except as authorized by law.
- e. The Contractor and any of the Contractor's staff that are subject to the Oneida County computer systems/databases shall complete the Oneida County Department of Social Services Confidentiality and Non-Disclosure Agreement provided with this AGREEMENT and shall submit forms to the following address:

Oneida County Department of Social Services
Contract Administration Office, 4th Floor
800 Park Ave
Utica, New York, 13501

PUBLICATIONS AND COPYRIGHTS

- a. The results of any activity supported under this AGREEMENT may not be published without prior written approval of the Department, which results (1) shall acknowledge the support of the Department and the County and, if funded with federal funds, the applicable federal funding agency, and (2) shall state that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretation or policy of the Department or Oneida County.
- b. The Department and Oneida County expressly reserve the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish, distribute or otherwise use, in perpetuity, any and all copyrighted or copyrightable material resulting from this AGREEMENT or activity supported by this AGREEMENT. All publications by the Contractor covered by this AGREEMENT shall expressly acknowledge the Department's right to such license.
- c. All of the license rights so reserved to the Department and Oneida County under this paragraph are equally reserved to the United States Department of Health and Human Services and subject to the provisions on copyrights contained in 45 CFR 92 if the AGREEMENT is federally funded
- d. The Contractor agrees that at the completion of any scientific or statistical study, report or analysis prepared pursuant to this AGREEMENT, it will provide to the Department at no additional cost a copy of any and all data supporting the scientific or statistical study, report or analysis, together with the name(s) and business address(es) of the principal(s) producing the scientific or statistical study, report or

analysis. The Contractor agrees and acknowledges the right of the Department, subject to applicable confidentiality restrictions, to release the name(s) and business address(es) producing the scientific or statistical study, report or analysis, together with a copy of the scientific or statistical study, report or analysis and all data supporting the scientific or statistical study, report or analysis.

PATENTS AND INVENTIONS

The Contractor agrees that any all inventions, conceived or first actually reduced to practice in the course of, or under this AGREEMENT, or with monies supplied pursuant to this AGREEMENT, shall be promptly and fully reported to the Department. Determination as to ownership and/or disposition of rights to such inventions, including whether a patent application shall be filed, and if so, the manner of obtaining, administering and disposing of rights under any patent application or patent which may be issued, shall be made pursuant to all applicable law and regulations.

TERMINATION

- a. This AGREEMENT may be terminated by the Department upon thirty (30) days prior written notice to the Contractor. Such notice is to be made by way of registered or certified mail return receipt requested or hand delivered with receipt granted by the Contractor. The date of such notice shall be deemed to be the date the notice is received by the Contractor established by the receipt returned, if delivery by registered or certified mail, or by the receipt granted by the Contractor, if the notice is delivered by hand. The Department agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith before the date of termination of this AGREEMENT.
- b. If the Contractor fails to use any real property or equipment purchased pursuant to this AGREEMENT or the Contractor ceases to provide the services specified in the AGREEMENT for which the equipment was purchased, the Department may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor, where the Contractor has failed to cure as set forth hereafter, said notice of breach shall be sent by way of registered or certified mail return receipt requested, or shall be delivered by hand, receiving Contractor's receipt therefore. Said notice shall specify the Contractor's breach and shall demand that such breach be cured. Upon failure of the Contractor to comply with such demand within thirty (30) days, or such longer period as may be specified therein, the Department may, upon written notice similarly served, immediately terminate this AGREEMENT, termination to be effective upon the date of receipt of such notice established by the receipt returned to the Department. Upon such termination, the Department may require (a) the repayment to the Department of any monies previously paid to the Contractor, or (b) return of any real property or equipment purchased under the terms of this AGREEMENT or an appropriate combination of (a) and (b), at the Department's option.

- c. To the extent permitted by law, this AGREEMENT shall be deemed in the sole discretion of the Department terminated immediately upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligation by the Department to the Contractor
- d. Should the Department determine that federal, state or County funds are limited or become unavailable for any reason, the Department may reduce that total amount of funds payable to the Contractor, reduce the AGREEMENT period or deem this AGREEMENT terminated immediately. The Department agrees to give notice to the Contractor as soon as it becomes aware that funds are unavailable, in the event of termination under this paragraph. If the initial notice is oral notification, the Department shall follow this up immediately with written notice. The Department will be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination is received either orally or in writing by the Contractor from the Department.
- e. The Contractor shall provide to the Department such information as is required by the Department in order that the Department may determine whether the Contractor is a responsible vendor for purposes of compliance with section 163 of the State Finance Law and requirements of the Department. If there is any change in any of the vendor responsibility information provided to the Department by the Contractor at any time during the term of this AGREEMENT, the Contractor shall be required to immediately notify the Department so that the Department may assess whether the Contractor continues to be a responsible vendor. Should the Contractor fail to notify the Department of any change in the vendor responsibility information or should the Department otherwise determine that the Contractor has ceased to be a responsible vendor for the purposes of this AGREEMENT, the Department may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor. Said notice of termination shall be sent by way of registered or certified mail return receipt requested, or shall be delivered by hand, receiving Contractor's receipt therefore. Said notice shall specify the reason(s) that the Contractor has been found to no longer be a responsible vendor.

Upon determination that the Contractor is no longer a responsible vendor the Department may, in its discretion and as an alternative to termination pursuant to this paragraph, notify the contractor of the determination that the Contractor has ceased to be a responsible vendor and set forth the corrective action that will be required of the Contractor to maintain this AGREEMENT. Should the Contractor fail to comply with the required corrective action within thirty (30) days of the date of notification, or such longer period as may be specified therein, the Department may, upon written notice similarly served, immediately terminate this AGREEMENT, termination to be effective upon the date of receipt of such notice established by the receipt returned to the Department. Upon such termination, the Department may require (a) the repayment to the Department of any monies previously paid to the Contractor, (b) return of any real property or equipment

purchased under the terms of this AGREEMENT, or an appropriate combination of (a) and (b) at the Department's option.

CONTRACTOR COMPLIANCE

The Contractor agrees to provide an Annual Certification pertaining to this AGREEMENT as part of the Contractor's Annual Independent audit.

The Department shall have the right to audit or review the Contractor's performance and operations as related to this AGREEMENT. If the Department should determine that the Contractor has abused or misused funds paid to the Contractor, or if the Contractor has violated or is in non-compliance with any term of any other agreement with the Department, or has abused or misused funds paid to the Contractor under any other agreement with the Department, the rights of the Department shall include, but not be limited to:

1. Recovery of any funds expended in violation of this AGREEMENT;
2. Suspension of Payments;
3. Termination of this AGREEMENT; and/or
4. Employment of another entity to fulfill the requirements of this AGREEMENT.

The Contractor shall be liable for all reasonable costs incurred on account thereof, including payment of any cost differential for employing such entity. The Contractor will assist the Department in transferring the operation of the contracted services to any other entity selected by the Department in a manner that will enable the Department or clients to continue to receive services in an on-going basis, including, but not limited to , notifying clients of the new entity to which the services will be transferred and the effective date of the transfer, providing the new entity promptly and at no charge with a complete copy of the clients' and all other records necessary to continue the provision of the transferred services, and transferring any equipment purchased with funds provided under this AGREEMENT.

Nothing herein shall preclude the Department from taking actions otherwise available to it under law.

The Contractor agrees to cooperate fully with any audit or investigation the Department or any agent of the Department may conduct and to provide access during normal business hours to any and all information necessary to perform its audit or investigation. The Contractor shall also allow the Department, and any representatives specifically directed by the Department to take possession of all books, records and documents relating to this AGREEMENT without prior notice to the Contractor. The Department will return all such books, records and documents to the Contractor upon completion the official purposes for which they were taken.

The Contractor agrees that all agreements between the Contractor and a subcontractor or consultants for the performance of any obligations under this AGREEMENT will be by written contract (subcontract) which will contain provisions including, but not limited to, the above specified rights of the Department.

FISCAL SANCTION

In the sole discretion of the Department, contractors may be placed on Fiscal Sanction when the Department identifies any of the following issues:

1. The Contractor has received an advance, overpayment or other funds under this or another agreement that has not been refunded to the Department within the established timeframe;
2. A Department or other audit identifies significant fiscal irregularities and/or that funds are due to the Department
3. The Contractor has not provided satisfactory services as required under the terms of this or another Department agreement;
4. The Contractor has not provided fiscal or program reports as required under the terms of this or another Department agreement;
5. A Department, County, state or federal prosecutorial or investigative agency identifies possible criminal activity, or significant fiscal or programmatic irregularities on the part of the Contractor;
6. The Contractor is not in compliance with state, federal, or County statutes or regulations, or applicable Department guidelines, policies and/or procedures; or
7. Unsafe physical conditions exist at a program site operated by the Contractor and funded under an agreement with the Department

Once the Contractor has been placed on Fiscal Sanction, payments on all open contracts and any new awards, amendments or contract renewals will not be processed until the issues have been satisfactorily resolved. The Contractor will be notified in advance of any proposed Fiscal Sanction and will be provided a timeframe within which the issues must be resolved in order to avoid Fiscal Sanction. Issues that are not resolved within the timeframe established by the Department may be referred to the Attorney General (AG) for collection of legal action. If a contract is referred to the AG a collection fee will be added to the amount owed. In addition, interest will be due on any amount not paid in accordance with the timeframes established by the AG. The Contractor will remain on Fiscal Sanction until the amount owed, including any collection fee and interest is paid.

ADDITIONAL ASSURANCES

- a. The Department and Contractor agree that the Contractor is an Independent Contractor, and not in any way deemed to be an employee of the Department or County of Oneida for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement or health insurance benefits. The Contractor agrees to defend and indemnify the Department and/or Oneida County for any loss the Department and/or Oneida County may suffer when such losses result from claims of any person or organization injured by the negligent acts or omissions of the Contractor, its officers and/or employees or subcontractors. Furthermore, the Contractor agrees to indemnify, defend, and save harmless the Department and/or Oneida County, and its

officers, agents, and employees from any and all claims and losses occurring or resulting from any and all contractors, subcontractors, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from all claims and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor in the performance of this AGREEMENT, and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, or use, or disposition of any data furnished under this AGREEMENT or based on any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to this AGREEMENT.

- b. The Contractor further agrees that the Department has the right to take whatever action it deems appropriate, including, but not limited to, the removal of the Contractor from the rotation list, the removal of clients, the cessation of client referrals, and termination of this AGREEMENT, if the Contractor fails to submit a completed and signed Standard Insurance Certificate or its acceptable substitute, which is subsequently approved by the Oneida County Department of Law, prior to the expiration of its insurance coverage.

RENEWAL NOTICE TO CONTRACTORS

Options to renew this AGREEMENT are at the discretion of the Department, which shall supply written notice of such renewal or termination within thirty (30) days of the expiration date. The Commissioner of Social Services reserves the right to evaluate the job performance and availability of funding.

COMPLIANCE WITH LAW

The Contractor represents and agrees to comply with the requirements of the Civil Rights Act of 1964 as amended, the Age Discrimination Employment Act of 1964 as amended, the Federal Rehabilitation Act of 1973 as amended, and Executive Order No. 11246, entitled "Equal Employment Opportunity" as amended by Executive Order No. 11375 and as supplemented in Department of Labor Relations, 41CFR Part 60.

The Contractor also agrees to comply with federal and state laws as supplemented in the Dept. of Labor regulations and any other regulations of the federal and state entities relating to such employment and Civil Rights requirements.

As a mandated reporting agency, all instances of suspected child abuse, neglect and/or maltreatment, will be reported to the Central Registry as required by law. These verbal reports will be followed by submission of completed 2221A to the Department. The family will be informed in advance of the Agency's decision to file a report with the Central Register.

The Contractor attests they have not been debarred by the federal Government from

contracting to provide services funded by any federal money.

The obligations of the parties hereunder are conditioned upon the continued availability of federal and/or New York State Funds for the purposes set forth in this AGREEMENT.

Should funds become unavailable or should appropriate federal or New York State officials fail to approve sufficient funds for completion of the services or programs set forth in this AGREEMENT, the Department shall have the option to immediately terminate this AGREEMENT upon providing written notice to the Contractor. In such an event, the Department shall be under no further obligation to the Contractor other than payment for costs actually incurred prior to termination and in no event will the Department be responsible for any actual or consequential damages as a result of termination.

This AGREEMENT contains all the terms and conditions agreed upon by the parties. All items incorporated by reference are to be attached. No other understandings, oral or otherwise, regarding the subject matter of this AGREEMENT, shall be deemed to exist or to bind any of the parties hereto. No waiver, alterations or modifications of and provisions of this AGREEMENT shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

This AGREEMENT shall be binding upon both parties when fully signed and executed and upon approval of the appropriate legislative bodies where required.

As the duly authorized representative of the Contractor, I hereby certify that the Contractor will comply with the above Standard Clauses.

Deliverance First Ministries DBA Academics First
NAME OF CONTRACTED AGENCY

Kathie Austin / Exec Director
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

[Signature]
SIGNATURE

8-21-2020
DATE

Oneida County Department of Social Services
Contractor and Contract Staff

Confidentiality and Non-Disclosure Agreement

Academics
First

I, the undersigned, an employee of Deliverance First Ministry DBA (the
Name of Contract Agency

"Service Provider"), hereby state that I understand and agree that all information provided to the Service Provider from the Oneida County Department of Social Services staff by paper copies, computer systems or databases, electronic communication or otherwise obtained pursuant to the Agreement entered between the Oneida County Department of Social Services and the Service Provider indicated above, is CONFIDENTIAL, is to be used only for the purposes of performing services required by the Agreement, and must be safeguarded from unauthorized disclosure.

I further understand that such information includes, but is not limited to, any and all information regarding parents or guardians and their children, and all employment, financial, and personal identifying data, including Protected Health Information (PHI) as set forth in HIPAA regulations.

I agree to maintain all such information as CONFIDENTIAL, and I agree to use such information only in the performance of my official duties to perform the functions required by the Agreement, unless otherwise authorized in writing by the Department of Social Services.

I understand that confidential information maintained in and/or obtained from systems/databases such as, but not limited to the Welfare Management system (WMS), Child Support Management System (CSMS/ASSETS), Benefits Issuance Control System (BICS), COGNOS, and Connections are protected by Federal and State statutes and regulations. Access and disclosure of confidential information is strictly limited to authorized employees and legally designated agents, for authorized purposes only in the delivery of program services.

I understand that service providers may not access their own active, closed or archived records or those involving a relative, friend, acquaintance, neighbor, partner or co-worker or other individuals to whom they have no official assignment.

I understand that if my employment is terminated by resignation, retirement or for other reasons or the Service Provider Contract is not renewed, the terms of this Confidentiality and Non-Disclosure Agreement are still binding.

I understand that if I disclose CONFIDENTIAL information in violation of the requirements stated herein, any individual who incurs damages due to the disclosure may recover such damage in a civil action.

I understand that, in addition to any other penalties provided by law, any person who willfully releases or willfully permits the release of any CONFIDENTIAL information as described herein to persons or agencies not authorized under New York State law to receive it shall be guilty of a class A misdemeanor.

Print Name:

Kathie Austin

Signature:

[Handwritten Signature]

Title:

Exec Director

Date:

8-21-2020

Witness:

[Handwritten Signature]

STANDARD ONEIDA COUNTY CONDITIONS ADDENDUM

THIS ADDENDUM, entered into on this _____ day of _____, 20____, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative

agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:

- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons 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 the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
 - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a

criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;

- 2) The Contractor's policy of maintaining a drug-free workplace;
- 3) Any available drug counseling, rehabilitation, and employee assistance program; and
- 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

- 1) Abide by the terms of the statement; and
- 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the

Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building
Campus, Albany, NY 12240. Notice shall include the
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
 - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
 - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
 - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
 - ii. The Contractor may provide data aggregation services relating to the health care operations of the County.
- c. The Contractor shall:
 - i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
 - ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
 - iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
 - iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
 - v. Make available protected health information in accordance with 45 CFR §164.524;
 - vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
 - vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
 - viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County

available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(i); and

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
 - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
 - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, 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 Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, 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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or 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 County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County 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: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records

shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application;

request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or 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 Office of General Services

(hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

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

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or 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 or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the "use of tobacco" shall include:
 - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
 - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that

delivers vapor which is inhaled by an individual user as he or she simulates smoking.

c. For the purposes of this provision, "on Oneida County property" shall be defined as:

i. Upon all real property owned or leased by the County of Oneida;
and

ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.

d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

20. COMPLIANCE WITH NEWYORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.

ONEIDA COUNTY HEALTH DEPARTMENT

Adirondack Bank Building, 5th Floor, 185 Genesee St., Utica, NY 13501

ANTHONY J. PICENTE, JR.
ONEIDA COUNTY EXECUTIVE



PHYLLIS D. ELLIS, BSN, MS, F.A.C.H.E.
DIRECTOR OF HEALTH

ADMINISTRATION

Phone: (315) 798-6400 Fax: (315) 266-6138

FN 20 20-318

August 11, 2020

Anthony J. Picente, Jr.
Oneida County Executive
800 Park Avenue
Utica, New York 13501

HEALTH & HUMAN SERVICES

WAYS & MEANS

Dear Mr. Picente:

Attached are two (2) copies of an amendment to an agreement between Oneida County, through its Health Department, and Oswego County BOCES to change the rates for in classroom Educational Audiology to eligible preschool aged children.

Under Section 4410 of the New York State Education Law and in compliance with Part 200 of the Regulations of the Commissioner of Education of the State of New York, municipalities are to provide payment for related services rendered to eligible preschool aged children with disabilities.

This amendment does not change the term of the original agreement which remains January 1, 2019 through December 31, 2021 with the County having the option to extend for two additional one-year terms. This is a New York State mandated program and the State will reimburse the county 59.5% of the costs incurred. The expected total is estimated to not exceed \$25,000 for the three-year term and two one-year extensions of the contract.

If this amendment meets your approval, please forward to the Board of Legislators for further action.

Sincerely,

Phyllis D. Ellis, BSN, MS, FACHE
Director of Health

Reviewed and Approved for submittal to the
Oneida County Board of Legislators by

Anthony J. Picente, Jr.
County Executive

Date 10-7-20

CM



"Promoting and Protecting the Health of Oneida County"

Oneida Co. Department: Public Health

Competing Proposal _____
Only Respondent _____
Sole Source RFP _____
Other X

**ONEIDA COUNTY BOARD
OF LEGISLATORS**

Name & Address of Vendor: Owego County BOCES aka
Citi BOCES
The Center for Instruction, Technology & Innovation
179 County Rt 64
Mexico, NY 13114

Title of Activity or Service: Educational Audiology

Proposed Dates of Operation: January 1, 2019 through December 31, 2021, with option
for two additional one year extensions

**Client Population/Number to
be Served:** Preschool students with disabilities

Summary Statements

1) **Narrative Description of Proposed Services:** Amends current contract with Citi BOCES which provides educational Audiology to hearing-impaired preschool students.

2) **Program/Service Objectives and Outcomes:** Educational Audiology

3) **Program Design and Staffing:** NA

Total Funding Requested: \$25,000.00

Expense Account: A2960.1953

Revenue Account: A3277

Oneida County Dept. Funding Recommendation: \$25,000.00

Proposed Funding Sources (Federal \$/ State \$/County \$): State- \$14,875.00 (59.5%), County- \$10,125.00 (40.5%)

Cost Per Client Served: N/A

Past Performance Data: NA

O.C. Department Staff Comments: This amendment modifies rates for the term of the Original Agreement. Oswego BOCES is the only source for this service.

Oneida County Health Department Preschool Related Services Rate Amendment

THIS FIRST AMENDMENT by and between Oneida County, a municipal corporation organized and existing under the laws of the State of New York with its principal offices located at 800 Park Avenue, Utica, New York, through its Health Department, located at 185 Genesee Street, Utica, New York (hereinafter referred to collectively as the "County"), and Oswego BOCES aka Citi BOCES- The Center for Instruction, Technology and Innovation, a Board of Cooperative Educational Services and supervising school district organized and existing under the laws of the State of New York located at 179 County Route 64, Mexico, New York (hereinafter referred to as the "Contractor").

WITNESSETH

WHEREAS, the County and the Contractor entered into an agreement (County contract no. 75441), hereinafter referred to as the "Original Agreement," a copy of which is annexed hereto as "Exhibit A," with a term of January 1, 2019 through December 31, 2021 and allows for amendment of the Original Agreement for rate changes;

NOW, THEREFORE, in consideration of the mutual promises made herein, the parties hereto agree as follows:

1. Section 2 of the Original Agreement titled "Rates" shall be replaced with the following language:
 - a. Upon submission of a completed County voucher and required supporting documentation as discussed in Section 5 below, the County shall pay the Contractor for services rendered pursuant to the following schedule:
 - i. For the period of January 1, 2019 through December 31, 2019, the County shall pay the Contractor Two Hundred Sixty Dollars (\$260.00) per sixty (60) minute consultation and One Hundred Fifty-Five Dollars (\$155.00) per thirty (30) minute session.
 - ii. For the period of January 1, 2020 through June 30, 2020, the County shall pay the Contractor Two Hundred Eighty Dollars (\$280.00) per sixty (60) minute consultation and One Hundred Sixty Dollars and Thirty Cents (\$160.30) per thirty (30) minute session.
 - iii. For the period of July 1, 2020 through December 31, 2021, the County shall pay the Contractor Two Hundred Ninety Dollars (\$290.00) per sixty (60) minute consultation and One Hundred Sixty-Five Dollars (\$165.00) per thirty (30) minute session.
 - b. Any rate changes to this Contract shall be submitted as written amendments to this Contract.
2. All other terms of the Original Agreement not herein modified shall continue in full force and effect.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first written below.

County

Contractor

Anthony J. Picente, Jr.
Oneida County Executive


Michael J. Sheperd
Assistant for Administrative Services

Date _____

Date 10/2/20

Approved:

Maryangela Scalzo, Assistant County Attorney

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first written below.

County

Contractor

Anthony J. Picente, Jr.
Oneida County Executive

Michael J. Sheperd
Assistant for Administrative Services

Date _____

Date _____

Approved:

Maryangela Scalzo, Assistant County Attorney

EXHIBIT A



ONEIDA COUNTY PRESCHOOL RELATED SERVICE CONTRACT

THIS CONTRACT, by and between the **COUNTY OF ONEIDA**, through its Health Department, a municipal corporation organized and existing under the laws of the State of New York, having its principal offices at 800 Park Avenue, Utica, New York 13501, hereinafter referred to as the "County," and **OSWEGO BOCES aka Citi BOCES-THE CENTER FOR INSTRUCTION, TECHNOLOGY AND INNOVATION**, a Board of Cooperative Educational Services and supervising school district organized and existing under the laws of the State of New York, located at 179 County Route 64 Mexico, New York 13114, hereinafter referred to as the "Contractor,"

WITNESSETH:

WHEREAS, the County is in need of the provision of related services to preschool children with disabilities pursuant to Section 4410 of the New York State Education Law and Part 200 of the Regulations of the Commissioner of Education, through the County's Education of Handicapped Children Program; and

WHEREAS, the Contractor has been approved by the Commissioner of Education of the State of New York to provide related services to preschool children with disabilities in accordance with Section 4410 of the New York State Education Law and in compliance with 8 NYCRR Part 200, to eligible preschool students with disabilities, as recommended by the Committee on Preschool Special Education and approved by the appropriate Board of Education from the child's resident school district;

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. TERM OF AGREEMENT

This Contract shall become effective January 1, 2019 and shall terminate on December 31, 2021, conditioned upon the continued availability of federal and/or New York State funds for the purpose set forth in this Contract. The County shall also have two (2) separate and consecutive options to extend this Contract. Each option shall be for one (1) year and shall be under the same terms and conditions contained in this Contract. Each such option shall be the sole and exclusive right of the County. Each option shall be exercised by the County in writing, and such option period shall commence upon the expiration of the immediately preceding Contract or option period.

2. RATES

Upon submission of a completed County voucher and required supporting documentation as discussed below for services rendered, the County shall pay the Contractor Two Hundred Sixty Dollars (\$260.00) per sixty (60) minute consultation and One Hundred Fifty-Five Dollars (\$155.00) per thirty (30) minute session. Any rate changes during the life of this contract will be submitted as written amendments to this Contract.

3. TERMINATION

- a. **By Contractor:** Should the Contractor request termination of this Contract, a written notice of any such termination shall be provided to the County by the Contractor not less than ninety (90) days prior to the intended effective date of such action. In the event of such termination, the parties shall adjust the accounts due and the Contractor shall undertake no additional expenditures not already required.
- b. **By County:** This Contract may be terminated at any time by the County upon ten (10) days written notice to the Contractor. However, in the event the Contractor defaults in the performance of any of its obligations under this Contract, the County may terminate this Contract effective upon written notice at any time. Furthermore, should funds become unavailable or should appropriate federal or New York State officials fail to approve sufficient funds for completion of the services or programs set forth in this Contract, the County shall have the option to immediately terminate this Contract upon providing written notice to the Contractor. In such event, the County shall be under no further obligation to the Contractor other than payment for costs actually incurred prior to termination and in no event will the County be responsible for any actual or consequential damages as a result of termination.

4. SCOPE OF SERVICES

Services performed pursuant to this Contract shall be provided in accordance with Section 4410 of the New York State Education Law and in compliance with the regulations of the Commissioner of Education of the State of New York set forth in 8 NYCRR 200.

- a. The Contractor shall provide appropriate Related Services for children with disabilities delivered on an itinerant basis subject to New York State Education Department (hereinafter "NYSED") and the appropriate Board of Education (hereinafter "BOE") approval. The parties hereto agree that "Related Services" as used herein shall have the same meaning as that term is defined in Section 4410 of the New York State Education Law and 8 NYCRR 200.1(qq).
- b. The Contractor shall provide Related Services for children with disabilities during the school year. The school year is hereby defined as a July/August session from July 1 through August 31 and/or a September/June session from September 1 through June 30.
- c. The Contractor cannot begin providing Related Services to a child with disabilities until the BOE has approved the Notification of Determination of Placement or System to Track and Account for Children ("STAC 1"), if the BOE uses the STAC 1, outlining the appropriate Related Services to be provided by the Contractor. The start date will be indicated on the STAC 1 and a copy shall be provided to the Contractor.
- d. All financial arrangements for services under this Contract shall be between the County and Contractor as outlined in the section entitled "Conditions of Payment" below. The County shall maintain an approved Oneida County Related Services Provider List and ensure that the Contractor is a referral from this list approved by the New York State Department of Education for the County of Oneida.

5. CONDITIONS OF PAYMENT:

The County, in accordance with the provisions of this Contract, shall reimburse the Contractor for expenditures made for contracted services as follows:

- a. The County shall provide payment to the Contractor for services requested per a child's Individualized Education Program ("IEP"), except for the following instances:
 - i. A cancelled visit because the child was unavailable for services due to foreseen, scheduled circumstances (i.e. field trips, early dismissals, special programs, or other scheduled events), if the Contractor does not confirm the child's ability to receive services on a scheduled date prior to the session.
 - ii. A cancelled visit because the child was unavailable for services due to a severe weather event (i.e.: snow day or weather related early dismissal, etc.), if the Contractor does not confirm the child's ability to receive services on a scheduled date prior to the session. It is the Contractor's responsibility to verify that a child's school district is in session.
 - iii. A cancelled visit when severe weather makes travel unsafe. It is the Contractor's responsibility to determine if weather makes road conditions or travel unsafe and warrants cancellation of the session.
 - iv. A visit that is cancelled due to the Contractor being unavailable and the session is not made up pursuant to Section 12 of this Contract.
- b. The County shall provide payment of services rendered, as authorized on the child's IEP and the STAC 1 upon the Contractor's submission of a correctly completed voucher on a monthly basis. All submissions must include the required documentation as set forth in this Contract and any other documentation requested by the County. The Contractor shall maintain a copy of the child's IEP throughout the term of this Contract.
- c. The Contractor shall submit a voucher to the County for the services rendered not later than fifteen (15) days after the end of the July/August session and not later than fifteen (15) days after the end of each month for the September to June session.
- d. No payment shall be required to be made by the County prior to the receipt of Notification of Determination of Placement or STAC 1, if the BOE uses the STAC 1 as its notice of determination of placement.
- e. No parent or any person shall be required or requested to make payment for services in addition to the payments made by the County pursuant to this Contract.
- f. The Contractor must submit, for Medicaid eligible children, a signed Medicaid Provider Agreement and Reassignment form with the instant Contract so the County can claim Medicaid reimbursement for the Related Services.

6. MEDICAID COMPLIANCE:

The Contractor shall provide with the voucher the following information for all Medicaid eligible children enrolled in its programs pursuant to Section 4410 of the New York State Education Law:

- a. Dates the child received a Related Service (e.g. physical therapy, speech therapy, occupational therapy, skilled nursing services and/or counseling, and transportation, as applicable).

- b. Documentation that each Related Service session was verified as delivered by the signature of the service provider.
- c. Copy of the Medicaid consent form to release child specific information signed by the parent of a child with a disability receiving Medicaid eligible services.
- d. All reporting requirements necessary for Medicaid compliance per Section 4410 of the New York State Education Law. The Contractor shall be responsible for reviewing Medicaid in Education notifications and changes, which can be found at <http://www.oms.nysed.gov/medicaid/>.
- e. Documentation evidencing the number of eligible Medicaid services by service type provided to each Medicaid eligible child pursuant to Section 4410 New York State Education Law.
- f. The Contractor shall obtain from the parent or person in parental relationship to the Medicaid eligible child receiving Related Services pursuant to Section 4410 of the New York State Education Law, the Client Identification Number (hereinafter "CIN"), period of eligibility and any other relevant third party health insurance information for the purpose of establishing Medicaid as the "payer of last resort." Nothing herein shall preclude the child's enrollment and initiation of services in accordance with the Board's Notice of Determination. A copy is to remain in the Contractor's file.

7. COMPLIANCE WITH THE LAW

The Contractor agrees that while performing under the terms of this Contract that the Contractor shall comply with all federal, New York State statutes and regulations, and all local rules and regulations.

8. CHILD ABUSE/MALTREATMENT MANDATE

- a. In compliance with Section 4410 of the New York State Education Law and Section 424-a of the New York State Social Services Law, the Contractor is required to screen and be cleared through the State Central Register of Child Abuse and Maltreatment (hereinafter "SCR").
- b. The Contractor is responsible for screening and obtaining clearance through the SCR for the following individuals: (1) Any person who is actively being considered for employment and who will have the potential for regular and substantial contact with children who receive preschool special education programs and Related Services; (2) Any person who is employed by an individual, corporation, partnership, or association that provides goods or services to approved preschool special education children.
- c. The Contractor is responsible for screening individuals through the SCR regardless of whether an individual has been screened through the SCR for employment or contract with another county or agency provider.
- d. The Contractor shall not permit unsupervised contact between child and any potential employee or contractor before receiving a completed clearance and acceptable response from SCR.
- e. The Contractor shall notify all individuals being screened that an inquiry will be made to the SCR and that this is a New York State requirement. The Contractor shall establish procedures to ensure that the confidentiality of any SCR response is maintained. The Contractor shall comply with SCR regulations in not screening employees more than once every six months, and one time only to the extent required by Section 424-a of the New York State Social Services Law for contractors, consultants and volunteers.
- f. Proof of SCR database check in accordance with Section 424-a of the New York State Social Services Law must be submitted to the County with the instant Contract and on an ongoing basis as required for special education services and programs for preschool children with disabilities.

9. CONFIDENTIALITY

The County and the Contractor shall hold in strict confidence all child records and disclose information and data in such records only to persons or entities as authorized or required by law or by written consent of the child's representative. The Contractor further agrees to safeguard the confidentiality of financial and/or client information relating to individuals and their families who may receive services in the course of this Contract. The Contractor shall maintain the confidentiality of all such financial and/or client information with regard to services provided under this Contract in conformity with the provisions of applicable Federal, State, and local laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this Contract.

10. REPORTING REQUIREMENTS

- a. Contractor employed therapists shall be presently qualified to provide Related Services in New York State and shall submit copies of all appropriate license(s) or certification(s) to the County and update these as necessary during the term of this Contract.
- b. The Contractor agrees to attend Committee for Preschool Special Education (hereinafter "CPSE") annual review meetings and program reviews as scheduled by the CPSE Chairperson or BOCES Coordinator for the child being

- served. The Contractor shall submit a copy of any reports necessary for review at these meetings to the County, as well as the CPSE Chairperson/BOCES Coordinator, at least ten (10) school days prior to the meeting date.
- c. Speech pathologists shall be required to obtain a written prescription (recommendation/order) for speech services signed and dated from (1) NYS Licensed and ASHA Certified Speech-Language Pathologist OR (2) a physician, physician's assistant or nurse practitioner which denotes the appropriate and current ICD code. The NYS Licensed and ASHA Certified Speech-Language Pathologist cannot write a referral if they have not seen the preschool child. According to 18 NYCRR 505.11, a written order must contain a diagnostic statement and purpose of treatment. It is not acceptable for the ordering or referring professional never to have met with the child as it is incompatible with the obligations of the ordering practitioner to assure that the ordered care, services or supplies will meet the recipients needs and restore him/her to the best possible functional level. Physician, physician assistants or nurse practitioner's orders must be dated on or before the initiation of service. No direct or consultation services will be permitted unless an appropriately written prescription is obtained. A copy of this prescription must also be forwarded to the County with the initial bill.
 - d. Physical Therapists must obtain a signed prescription (order/recommendation) from a physician, physician assistant or nurse practitioner which denotes an ICD code.
 - e. Occupational therapists must obtain a signed prescription (order/recommendation) signed and dated by a licensed physician or nurse practitioner which denotes an ICD code.
 - f. No direct or consultation services can be delivered unless an appropriately signed and dated prescription by the appropriate professional is obtained. A copy of this prescription must also be forwarded to the County with the initial bill.
 - g. The Contractor must obtain a current copy of the IEP from the CPSE Chairperson prior to start of service which will follow the BOE approval date. This is applicable to any later program changes on the IEP as well. The Contractor shall deliver services as specified on the IEP in the areas of remediation, frequency and duration of Related Services.
 - h. The Contractor shall submit an attendance and progress note for each session the child received Related Services on a monthly basis at the minimum, or with the invoice, whichever is presented first. All progress notes submitted must also have the signature and National Provider Identification (NPI) number of this licensed individual and title as well as the direct service provider and title.
 - i. The Contractor shall call the CPSE chairperson for a program review if services cannot be delivered as indicated on IEP due to child's absence, or if the therapist recommends a change in service or discharge.
 - j. The Contractor shall forward a copy of all documentation and justification for 12-month programming to the County and the CPSE prior to any scheduled program review or annual review, whenever such is recommended.
 - k. The Contractor shall meet with the child's parent/guardian at such times as appropriate during the year to discuss goals and progress. Whenever services are to be delivered in conjunction with a general education preschool program, the Contractor shall work with the program by communicating with staff, parents, school district and other therapists. An attempt will also be made to provide parent/guardian with follow up materials to be used at home to reinforce delivery of related services.
 - l. The Contractor shall inform the parent/guardian of his/her responsibility to ensure that the child's attendance enables him/her to benefit from the related services provided. The parent/guardian should be made aware of the need to alert the Contractor in a timely manner when the child will be absent or not available for Related Services if provided in the home.
 - m. If two or more Related Services are required for a child, the CPSE Chairperson shall select one of the therapists to act as a Coordinator of Service. If the CPSE determines that a Special Education Itinerant Teacher (hereinafter "SEIT") is to be provided in conjunction with one or more Related Services, the SEIT shall be responsible for the coordination of such services pursuant to regulations of the Commissioner of Education. Compensation for such services is to be part of the NYSED established rates for the SEIT model.
 - n. The Contractor's progress notes addressing goals and objectives on the IEP must be completed quarterly. A copy of the progress notes must be provided to the parent, the CPSE Chairperson and the County.
 - o. Upon expiration of the term of this Contract, all files and records shall be retained by the Contractor for six (6) years from the last date of payment under this Contract.

11. RESPONSIBILITIES OF THE COORDINATOR OF SERVICE

- a. When two or more Related Services are mandated (not in conjunction with SEIT), the CPSE Chairperson shall designate the coordinator of services (hereinafter the "Coordinator") from the list of approved Related Service providers maintained by the County. The Coordinator must be one of the individuals/agencies providing Related Services to the child, as specified by the CPSE. It is suggested that, to the extent possible, service providers be selected from the same agency. It is the responsibility of the Coordinator to stay thoroughly informed on all facets of the services provided to the child. In addition to duties as outlined in the section entitled "Reporting Requirements" above, the designated Coordinator shall perform appropriate coordination activities including but not limited to:
 - i. Arranging the schedule for service delivery, offering recommendations and consulting with the CPSE chairperson to resolve scheduling issues when appropriate.

- ii. Sharing appropriate information with other Related Service providers for the appropriate integration of such services.
 - iii. Gathering appropriate progress reports and anecdotal information relating to the student's progress from all Related Service providers to ensure that the Coordinator has a general knowledge of the child's progress, as well as any significant considerations, in the Related Service area.
 - iv. Attend Annual Review meeting and other meetings, if requested by the CPSE chairperson. The Coordinator is responsible to have all information on the child's progress and needs and is expected to represent the other therapists involved in the child's care at the CPSE meetings.
 - v. Conducting activities such as telephone conferences or other communication practices. Coordination activities must be documented and reported in half-hour service blocks on the Coordination Service Form.
 - vi. Coordination services can be provided only by a licensed speech pathologist, physical therapist or occupational therapist.
- b. Billing for coordination services shall not exceed ten (10) sessions or service blocks during a September/June session and two (2) sessions or service blocks during a July/August session per child. One (1) session or service block consists of a half-hour and will be paid at the rate indicated under the Oneida County Related Service Rates Schedule. Each date of contact and length of time claimed for coordination during the month must be listed and identified. Periods of less than a half-hour block may be combined into half-hour service blocks of coordination services for billing purposes.

12. MAKE UP POLICY

- a. Reporting Absences. Habitual absences by the student should be reported to the school district (CPSE) and the Special Education Itinerant Teacher (SEIT) if the child receives SEIT services; if the child receives two or more Related Services, habitual absences shall be reported to the assigned Related Service Coordinator appointed by the CPSE Chairperson.
- b. Student Absence or Cancellation. There shall be no makeup for therapy sessions provided under 4410 services which are missed due to a child's absence or cancellation (with or without notice). If a child's illness will necessitate canceling of service for several consecutive sessions, the Contractor shall request the parent/guardian call the Contractor to commence Related Services.
- c. Therapist Absence or Cancellation. Related Services which are missed due to the absence or cancellation of the therapist may be made up if the parent consents and the therapist's schedule permits. The makeup sessions must take place within the same week the Related Service was missed.
- d. Prolonged Absence of Therapist. When the therapist is absent for a prolonged period of time, the school district should be notified. The school district is responsible for arranging the replacement for the absent therapist. The school district is responsible for notifying the County of any change of a Related Service provider prior to the change so the County may give the new provider permission to begin services.
- e. Holidays and Other School Closings. The Contractor shall follow the calendar of the local school district in which the child resides. Therefore, holiday and other school closings of that particular school district shall apply. When Related Services are provided in a mainstream preschool setting, the preschool calendar shall be followed except where written prior arrangements have been mandated by the school district and approved by the County.
- f. Limitations on Scheduling Therapy Makeup Sessions. Make up sessions must be clearly documented on the appropriate session notes with reasons for the makeup session.

13. INSURANCE

The Contractor shall maintain a professional liability policy and will provide the County with proof of coverage in the amount of \$1,000,000 per incident and \$2,000,000 aggregate during the term of this Contract. The Contractor shall also maintain general liability insurance and will provide the County with proof of coverage in the amount of \$1,000,000 per incident and \$2,000,000 aggregate. The Contractor agrees to have the County named as "additional insured" on the general liability policy and to provide the County with certificates from said insurance company or companies showing proof of insurance as stated heretofore. The Contractor further agrees to provide that such coverage shall not be terminated without prior notice to the County of at least thirty (30) days. The Contractor grants Oneida County a limited power of attorney to communicate with the Contractor's insurance provider and/or agent for the express purpose of confirming the coverage required hereunder.

14. INDEMNIFICATION

The Contractor agrees that it shall defend, indemnify and hold harmless the County from and against all liability, damages, expenses, costs, causes of actions, suits, claims or judgments arising, occurring or resulting from property damage, personal injuries or death to persons arising, occurring or resulting from or out of the work of the Contractor or its agents, contractors, subcontractors, servants or employees, and from any loss or damage arising, occurring or resulting from the acts or failure to act or any default or negligence by the Contractor or failure on the part of the Contractor to comply with any of the covenants, terms or conditions of this Contract.

15. EXCLUSIVITY

- a. The County retains the right to reassign children receiving Related Services under the terms of this Contract to other contractors or its own employees.
- b. The County retains the right to contract with other independent contractors for such services which are the same or similar to those provided by the Contractor, or to provide such services to its eligible children through its own employees. The Contractor retains the right to provide services directly or indirectly through contract with another agency, to persons who are not classified preschool aged children with a disability receiving Related Services in Oneida County.

16. PERFORMANCE OF SERVICES

- a. The Contractor represents that the Contractor is duly licensed (as applicable) and has the qualifications, the specialized skill(s), the experience and the ability to properly perform the Related Services. The Contractor shall use its best efforts to perform the Related Services such that the results are satisfactory to the County. The Contractor shall be solely responsible for determining the method, details and means of performing the Related Services, except where Federal, State or local laws and regulations impose specific requirements on the performance of same.
- b. The Contractor may, at its own expense, employ or engage the services of such employees, subcontractors, and/or partners as the Contractor deems necessary to perform the Related Services (collectively, the "Assistants"). The Assistants are not and shall not be deemed employees of the County, and the County shall have no obligation to provide the Assistants with any salary or benefits. The Contractor shall be solely responsible and shall remain liable for the performance of the Related Services by the Assistants in a manner satisfactory to the County, and in compliance with any and all application Federal, State or local laws and regulations. The Contractor shall expressly advise the Assistants of the terms of this Contract.
- c. The Contractor acknowledges and agrees that the Contractor and its Assistants have no authority to enter into contracts that bind the County or create obligations on the part of the County without the prior written authorization of the County.

17. INDEPENDENT CONTRACTOR STATUS

- a. It is expressly agreed that the relationship of the Contractor to the County shall be that of an Independent Contractor. The Contractor's employees shall not be considered employees of the County for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health insurance benefits. The Contractor, in accordance with its status as an Independent Contractor, covenants and agrees that its employees shall conduct themselves in accordance with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the County by reason thereof and that they will not by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County.
- b. Contractor warrants and represents that it is in the business of offering the same or similar services detailed herein and does offer the same or similar service(s) to other entities and/or the general public as a regular course of business. Contractor and County agree that Contractor is free to undertake other work arrangements during the term of this Contract, and may continue to make its services available to the public.
- c. The Contractor's employees shall not be eligible for compensation from the County due to a) illness; b) absence due to normal vacation; c) absence due to attendance at school or special training or a professional convention or meeting.
- d. The Contractor acknowledges and agrees that its employees and agents shall not be eligible for any County employee benefits, including retirement membership credits.
- e. The Contractor shall be paid pursuant to IRS Form 1099, and shall be solely responsible for applicable taxes for all compensation paid to the Contractor or its employees and agents under this Contract, and for compliance with all applicable labor and employment requirements with respect to the Contractor's form of business organization, and with respect to its employees and agents, including payroll deductions, workers' compensation insurance, and provision of health insurance where required. The County shall not be responsible for withholding from the payments provided for services rendered for State or Federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA). The Contractor shall provide proof of workers' compensation insurance, where applicable, prior to execution of this Contract.
- f. The Contractor shall indemnify and hold the County harmless from all loss or liability incurred by the County as a result of the County not making such payments or withholdings.
- g. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Contractor's Independent Contractor status, it is agreed that both the County and the Contractor shall have the right

to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.

- h. The Contractor agrees to comply with federal and state laws as supplemented in the United States Department of Labor regulations and any other regulations of federal and state entities relating to such employment and civil rights requirements.

18. SUBCONTRACT

The Contractor may not assign the Contractor's rights and obligations under this Contract, or subcontract with or employ another to provide the services described above of this Contract, without the prior written consent of the County.

19. EXPENSES

The Contractor is solely responsible for paying all of its business expenses related to furnishing the services described herein, and shall not be reimbursed the cost of travel, equipment, tools, office space, support services or other general operating expenses.

20. TRAINING

The Contractor shall not be required to attend or undergo any training by the County. The Contractor shall be fully responsible for its own training necessary to maintain any licenses or certifications to perform the services described herein, and shall be solely responsible for the cost of the same.

21. ADVICE OF COUNSEL

Each party acknowledges that, in executing this Contract, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Contract.

22. ENTIRE AGREEMENT

The terms of this Contract, the attached Standard Oneida County Conditions Addendum, and any other attachments, amendments, addendums or appendixes attached hereto, are deemed incorporated herein in their entirety and constitute the entire understanding and agreement of the parties and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Contract. No waiver, alterations or modifications of any provisions of this Contract shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

ONEIDA COUNTY

CONTRACTOR

BY: 

Anthony J. Picente Jr.
Oneida County Executive

BY: 

Michael J. Sheperd
Assistant Superintendent for Administrative Services

DATE: 4/9/19

DATE: 4/8/19

Approved

BY: 

Maryangela Scalzo
Assistant County Attorney

STANDARD ONEIDA COUNTY CONDITIONS ADDENDUM

THIS ADDENDUM, entered into on this _____ day of _____, 20____, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative

agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:

- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons 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 the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
 - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a

criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;

- 2) The Contractor's policy of maintaining a drug-free workplace;
- 3) Any available drug counseling, rehabilitation, and employee assistance program; and
- 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

- 1) Abide by the terms of the statement; and
- 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the

Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building
Campus, Albany, NY 12240. Notice shall include the
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
 - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
 - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
 - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County

available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
 - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
 - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, 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 Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, 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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or 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 County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County 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: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records

shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application;

request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or 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 Office of General Services

(hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

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

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or 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 or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the "use of tobacco" shall include:
 - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
 - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that

delivers vapor which is inhaled by an individual user as he or she simulates smoking.

- c. For the purposes of this provision, "on Oneida County property" shall be defined as:
 - i. Upon all real property owned or leased by the County of Oneida; and
 - ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.
- d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

20. COMPLIANCE WITH NEW YORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.



ONEIDA COUNTY HEALTH DEPARTMENT

ANTHONY J. PICENTE, JR.
ONEIDA COUNTY EXECUTIVE

PHYLLIS D. ELLIS, BSN, MS, FACHE
DIRECTOR OF HEALTH



"PROMOTING & PROTECTING THE HEALTH OF ONEIDA COUNTY"

OCGOV.NET/HEALTH

August 12, 2020

FN 20 20-319

Anthony J. Picente, Jr.
Oneida County Executive
800 Park Avenue
Utica, New York 13501

HEALTH & HUMAN SERVICES
WAYS & MEANS

Dear Mr. Picente:

Attached is one (1) copy of an extension to an agreement between Oneida County, through its Health Department and Town of Webb Union Free School District. This amendment extends the original agreement for an additional one year term and modifies the rate schedule.

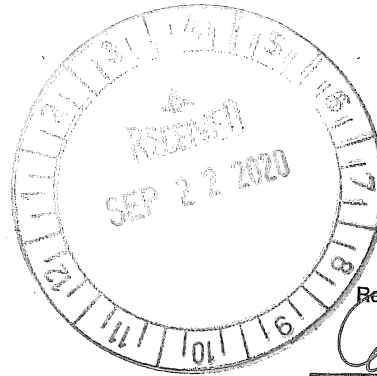
Under Section 4410 of the New York State Education Law and in compliance with Part 200 of the Regulations of the Commissioner of Education of the State of New York, counties are to provide payment for related services rendered to eligible preschool aged children with disabilities.

The term of this agreement will commence July 1, 2020 through June 30, 2021. This is a New York State mandated program. New York State will reimburse the county 59.5% of the costs incurred. The cost of this agreement is not expected to exceed \$49,000 for the term of the contract, including the optional two, one year extensions.

Sincerely,

Phyllis D. Ellis AB

Phyllis D. Ellis, BSN, MS, FACHE
Director of Health



Reviewed and Approved for submittal to the
Oneida County Board of Legislators by

Anthony J. Picente, Jr.
Anthony J. Picente, Jr.
County Executive

Date 9-22-20

CM

ADMINISTRATION
ADIRONDACK BANK BLDG., 5TH FL.,
185 GENESEE ST. UTICA, NY 13501
TEL: (315) 798-6400 • FAX: (315) 266-6138

SPECIAL CHILDREN SERVICES
ADIRONDACK BANK BLDG., 5TH FL.,
185 GENESEE ST. UTICA, NY 13501
TEL: (315) 798-5249 • FAX: (315) 731-3491

ENVIRONMENTAL HEALTH
ADIRONDACK BANK BLDG., 4TH FL.,
185 GENESEE ST. UTICA, NY 13501
TEL: (315) 798-5064 • FAX: (315) 798-6486

CLINICAL SERVICES
406 ELIZABETH ST. UTICA, NY 13501
TEL: (315) 798-5748 • FAX: (315) 798-1057

Oneida Co. Department: Health

Competing Proposal _____
Only Respondent _____
Sole Source RFP _____
Other X

ONEIDA COUNTY BOARD
OF LEGISLATORS

Name & Address of Vendor:

Town Of Webb UFSD
3002 Main Street PO Box 38
Old Forge, NY 13420

Title of Activity or Service:

Preschool Related Services

Proposed Dates of Operation:

July 1, 2020 to June 30, 2021

Client Population/Number to be Served:

Eligible preschool children in Oneida
County with disabilities

Summary Statements

- 1) **Narrative Description of Proposed Services:** NYS requires Under Section 4410 of the New York State Education Law and in compliance with Part 200 of the Regulations of the Commissioner of Education of the State of New York, Counties are to provide payment for related services rendered to eligible preschool aged children with disabilities.
- 2) **Program/Service Objectives and Outcomes:** Compliance with NYS Department of Education Law
- 3) **Program Design and Staffing** NA

Total Funding Requested: \$49,000.00

Account A2960 1953 Rev act A3277

Oneida County Dept. Funding Recommendation: \$49,000.00

Proposed Funding Sources (Federal \$/ State \$/County \$): State pays 59.5% County pays 40.5%

Cost Per Client Served: NA

Past Performance Data: NA

O.C. Department Staff Comments:

Oneida County Health Department Preschool Related Services Rate Amendment

THIS AMENDMENT AGREEMENT, made this _____ day of _____, 2020, by and between Oneida County, a municipal corporation organized and existing under the laws of the State of New York, through its Health Department, with its principal offices at the County Office Building, 800 Park Avenue, Utica, New York, 13501 (hereinafter referred to collectively as the "County"), and Town of Webb Union Free School District, a union free school district organized and existing under the laws of the State of New York, having its principal office located at 3002 Main Street, PO Box 38 Old Forge, NY 13420, (hereinafter referred to as the "Contractor").

WITNESSETH

WHEREAS, the County and the Contractor entered into an agreement (Oneida County Contract No. 66583), hereinafter referred to as the "Original Agreement," a copy of which is annexed hereto as "Exhibit A," that has an expiration date of June 30, 2020 and allows for an extension of the Original Agreement, and

NOW, THEREFORE, in consideration of the mutual promises made herein, the parties hereto agree as follows:

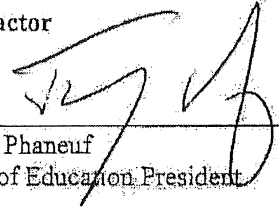
1. The Original Agreement shall be extended for the first of two consecutive one year options beginning July 1, 2020 and ending June 30, 2021.
2. The Original Agreement will be amended to change the Oneida County Rate Schedule which is attached hereto and incorporated in full.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first written above.

Oneida County

Contractor

Anthony J. Picente, Jr.
Oneida County Executive



Joseph Phaneuf
Board of Education President

DATE: _____

DATE: 9/15/20

Approved:

Ellen Rayhill
Assistant County Attorney

APPENDIX A

ONEIDA COUNTY RELATED SERVICE RATES SCHEDULE

RELATED SERVICE	MAXIMUM INDIVIDUAL HALF-HOUR RATE	MAXIMUM COORDINATOR PER HALF-HOUR BLOCK RATE	MAXIMUM GROUP HALF-HOUR RATE
Audiology	\$53.00	\$30.00	\$30.00
Assistive Technology Services	\$53.00	N/A	\$30.00
Counseling Services	\$53.00	\$30.00	\$30.00
Occupational Therapy	\$53.00	\$30.00	\$30.00
Orientation and Mobility Services	\$53.00	N/A	N/A
Physical Therapy	\$53.00	\$30.00	\$30.00
Speech Therapy for Eligible Preschool Students with Disabilities	\$62.50	\$30.00	\$34.00
Teacher of Hearing Impaired	\$53.00	N/A	\$30.00
Teacher of Visually Impaired Aide 1:1	\$53.00 \$10.00	N/A N/A	\$30.00 N/A

EXHIBIT A



ONEIDA COUNTY PRESCHOOL RELATED SERVICE CONTRACT

THIS CONTRACT, by and between the **COUNTY OF ONEIDA**, through its Health Department, a municipal corporation organized and existing under the laws of the State of New York, having its principal offices at 800 Park Avenue, Utica, New York 13501, hereinafter referred to as the "County," and **TOWN OF WEBB UNION FREE SCHOOL DISTRICT**, a union free school district organized and existing under the laws of the State of New York, having its principal office located at 3002 Main Street, PO Box 38, Old Forge, NY 13420, hereinafter referred to as the "Contractor."

WITNESSETH:

WHEREAS, the County is in need of the provision of related services to preschool children with disabilities pursuant to Section 4410 of the New York State Education Law and Part 200 of the Regulations of the Commissioner of Education, through the County's Education of Handicapped Children Program; and

WHEREAS, the Contractor has been approved by the Commissioner of Education of the State of New York to provide related services to preschool children with disabilities in accordance with Section 4410 of the New York State Education Law and in compliance with 8 NYCRR Part 200, to eligible preschool students with disabilities, as recommended by the Committee on Preschool Special Education and approved by the appropriate Board of Education from the child's resident school district;

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. TERM OF AGREEMENT

This Contract shall become effective July 1, 2018 and shall terminate on June 30, 2020, conditioned upon the continued availability of federal and/or New York State funds for the purpose set forth in this Contract. The County shall also have two (2) separate and consecutive options to extend this Contract. Each option shall be for one (1) year and shall be under the same terms and conditions contained in this Contract. Each such option shall be the sole and exclusive right of the County. Each option shall be exercised by the County in writing, and such option period shall commence upon the expiration of the immediately preceding Contract or option period.

2. RATES

Upon submission of a completed County voucher and required supporting documentation as discussed below for services rendered, the County shall pay the Contractor the rates set forth in the Oneida County Related Service Rates Schedule, attached hereto and incorporated hereto as "Appendix A." Any rate changes during the life of this contract will be submitted as amendments to this Contract.

3. TERMINATION

- a. By Contractor: Should the Contractor request termination of this Contract, a written notice of any such termination shall be provided to the County by the Contractor not less than ninety (90) days prior to the intended effective date of such action. In the event of such termination, the parties shall adjust the accounts due and the Contractor shall undertake no additional expenditures not already required.
- b. By County: This Contract may be terminated at any time by the County upon ten (10) days written notice to the Contractor. However, in the event the Contractor defaults in the performance of any of its obligations under this Contract, the County may terminate this Contract effective upon written notice at any time. Furthermore, should funds become unavailable or should appropriate Federal or New York State officials fail to approve sufficient funds for completion of the services or programs set forth in this Contract, the County shall have the option to immediately terminate this Contract upon providing written notice to the Contractor. In such event, the County shall be under no further obligation to the Contractor other than payment for costs actually incurred prior to termination and in no event will the County be responsible for any actual or consequential damages as a result of termination.

4. SCOPE OF SERVICES

Services performed pursuant to this Contract shall be provided in accordance with Section 4410 of the New York State Education Law and in compliance with the regulations of the Commissioner of Education of the State of New York set forth in 8 NYCRR 200.

- a. The Contractor shall provide appropriate Related Services for children with disabilities delivered on an itinerant basis subject to New York State Education Department (hereinafter "NYSED") and the appropriate Board of Education (hereinafter "BOE") approval. The parties hereto agree that "Related Services" as used herein shall have the same meaning as that term is defined in Section 4410 of the New York State Education Law and 8 NYCRR 200.1(qq).
- b. The Contractor shall provide Related Services for children with disabilities during the school year. The school year is hereby defined as a July/August session from July 1 through August 31 and/or a September/June session from September 1 through June 30.
- c. The Contractor cannot begin providing Related Services to a child with disabilities until the BOE has approved the Notification of Determination of Placement or STAC 1 (System to Track and Account for Children), if the BOE uses the STAC 1, outlining the appropriate Related Services to be provided by the Contractor. The start date will be indicated on the STAC 1 and a copy shall be provided to the Contractor.
- d. All financial arrangements for services under this Contract shall be between the County and Contractor as outlined in the section entitled "Conditions of Payment" below. The County will maintain an approved Oneida County Related Services Provider List and ensure that the Contractor is a referral from this list approved by the New York State Department of Education for the County of Oneida.

5. CONDITIONS OF PAYMENT:

The County, in accordance with the provisions of this Contract, shall reimburse the Contractor for expenditures made for contracted services as follows:

- a. The County will set rates for all related services delivered on an itinerant basis subject to NYSED approval.
- b. The County will provide payment of services rendered, as authorized on the child's Individualized Education Program (hereinafter "IEP") and the STAC 1 upon the Contractor's submission of a correctly completed voucher on a monthly basis. All submissions must include the required documentation as set forth in this Contract and any other documentation requested by the County. The Contractor shall maintain a copy of the child's IEP throughout the term of this Contract.
- c. The Contractor shall submit a voucher to the County for the services rendered not later than fifteen (15) days after the end of the July/August session and not later than fifteen (15) days after the end of each month for the September to June session.
- d. No payment shall be required to be made by the County prior to the receipt of Notification of Determination of Placement or STAC 1, if the BOE uses the STAC 1 as its notice of determination of placement.
- e. No parent or any person shall be required or requested to make payment for services in addition to the payments made by the County pursuant to this Contract.
- f. The Contractor must submit, for Medicaid eligible children, a signed Medicaid Provider Agreement and Reassignment form with the signed contract so the County can claim Medicaid reimbursement for the Related Services.

6. MEDICAID COMPLIANCE:

The Contractor shall provide with the voucher the following information for all Medicaid eligible children enrolled in its programs pursuant to Section 4410 of the New York State Education Law:

- a. Dates the child received a Related Service (e.g. physical therapy, speech therapy, occupational therapy, skilled nursing services and/or counseling, and transportation, as applicable).
- b. Documentation that each Related Service session was verified as delivered by the signature of the service provider.
- c. Copy of the Medicaid consent form to release child specific information signed by the parent of a child with a disability receiving Medicaid eligible services.
- d. All reporting requirements necessary for Medicaid compliance per Section 4410 of the New York State Education Law. The Contractor shall be responsible for reviewing Medicaid in Education notifications and changes, which can be found at <http://www.oms.nysed.gov/medicaid/>.
- e. Documentation evidencing the number of eligible Medicaid services by service type provided to each Medicaid eligible child pursuant to Section 4410 New York State Education Law.
- f. The Contractor shall obtain from the parent or person in parental relationship to the Medicaid eligible child receiving Related Services pursuant to Section 4410 of the New York State Education Law, the Client Identification Number (hereinafter "CIN"), period of eligibility and any other relevant third party health insurance information for

the purpose of establishing Medicaid as the "payer of last resort." Nothing herein shall preclude the child's enrollment and initiation of services in accordance with the Board's Notice of Determination. A copy is to remain in the Contractor's file.

7. COMPLIANCE WITH THE LAW

The Contractor agrees that while performing under the terms of this Contract that the Contractor shall comply with all federal, New York State statutes and regulations, and all local rules and regulations.

8. CHILD ABUSE/MALTREATMENT MANDATE

- a. In compliance with Section 4410 of the New York State Education Law and Section 424-a of the New York State Social Services Law, the Contractor is required to screen and be cleared through the State Central Register of Child Abuse and Maltreatment (hereinafter "SCR").
- b. The Contractor is responsible for screening and obtaining clearance through the SCR for the following individuals: (1) Any person who is actively being considered for employment and who will have the potential for regular and substantial contact with children who receive preschool special education programs and Related Services; (2) Any person who is employed by an individual, corporation, partnership, or association that provides goods or services to approved preschool special education children.
- c. The Contractor is responsible for screening individuals through the SCR regardless of whether an individual has been screened through the SCR for employment or contract with another County or agency provider.
- d. The Contractor will not permit unsupervised contact between child and any potential employee or contractor before receiving a completed clearance and acceptable response from SCR.
- e. The Contractor will notify all individuals being screened that an inquiry will be made to the SCR and that this is a State requirement. The Contractor will establish procedures to ensure that the confidentiality of any SCR response is maintained. The Contractor will comply with SCR regulations in not screening employees more than once every six months, and one time only to the extent required by Section 424-a of the New York State Social Services Law for contractors, consultants and volunteers.
- f. Proof of SCR database check in accordance with Section 424-a of the New York State Social Services Law must be submitted to the County with the instant Contract and on an ongoing basis as required for special education services and programs for preschool children with disabilities.

9. CONFIDENTIALITY

The County and the Contractor shall hold in strict confidence all child records and disclose information and data in such records only to persons or entities as authorized or required by law or by written consent of the child's representative. The Contractor further agrees to safeguard the confidentiality of financial and/or client information relating to individuals and their families who may receive services in the course of this Contract. The Contractor shall maintain the confidentiality of all such financial and/or client information with regard to services provided under this Contract in conformity with the provisions of applicable Federal, State, and local laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this Contract.

10. REPORTING REQUIREMENTS

- a. Contractor employed therapists shall be presently qualified to provide Related Services in New York State and shall submit copies of all appropriate license(s) or certification(s) to the County and update these as necessary during the term of this Contract.
- b. Contractor agrees to attend Committee for Preschool Special Education (hereinafter "CPSE") annual review meetings and program reviews as scheduled by the CPSE Chairperson or BOCES Coordinator for the child being served. The Contractor shall submit a copy of any reports necessary for review at these meetings to the County, as well as the CPSE Chairperson/BOCES Coordinator, at least ten (10) school days prior to the meeting date.
- c. **Speech pathologists** shall be required to obtain a written prescription (recommendation/order) for speech services signed and dated from (1) NYS Licensed and ASHA Certified Speech-Language Pathologist OR (2) a physician, physician's assistant or nurse practitioner which denotes the appropriate and current ICD code. The NYS Licensed and ASHA Certified Speech-Language Pathologist cannot write a referral if they have not seen the preschool child. According to 18 NYCRR 505.11, a written order must contain a diagnostic statement and purpose of treatment. It is not acceptable for the ordering or referring professional never to have met with the child as it is incompatible with the obligations of the ordering practitioner to assure that the ordered care, services or supplies will meet the recipients needs and restore him/her to the best possible functional level. Physician, physician assistants or nurse practitioner's orders must be dated on or before the initiation of service. No direct or consultation services will be

- permitted unless an appropriately written prescription is obtained. A copy of this prescription must also be forwarded to the County with the initial bill.
- d. **Physical Therapists** must obtain a signed prescription (order/recommendation) from a physician, physician assistant or nurse practitioner which denotes an ICD code.
 - e. **Occupational therapists** must obtain a signed prescription (order/recommendation) signed and dated by a licensed physician or nurse practitioner which denotes an ICD code.
 - f. No direct or consultation services can be delivered unless an appropriately signed and dated prescription by the appropriate professional is obtained. A copy of this prescription must also be forwarded to the County with the initial bill.
 - g. The Contractor must obtain a current copy of the IEP from the CPSE Chairperson prior to start of service which will follow the BOE approval date. This is applicable to any later program changes on the IEP as well. The Contractor shall deliver services as specified on the IEP in the areas of remediation, frequency and duration of Related Services.
 - h. The Contractor shall submit an attendance and progress note for each session the child received Related Services on a monthly basis at the minimum, or with the invoice, whichever is presented first. All progress notes submitted must also have the signature and National Provider Identification (NPI) number of this licensed individual and title as well as the direct service provider and title.
 - i. The Contractor shall call the CPSE chairperson for a program review if services cannot be delivered as indicated on IEP due to child's absence, or if the therapist recommends a change in service or discharge.
 - j. The Contractor shall forward a copy of all documentation and justification for 12-month programming to the County and the CPSE prior to any scheduled program review or annual review, whenever such is recommended.
 - k. The Contractor shall meet with the child's parent/guardian at such times as appropriate during the year to discuss goals and progress. Whenever services are to be delivered in conjunction with a general education preschool program, the Contractor shall work with the program by communicating with staff, parents, school district and other therapists. An attempt will also be made to provide parent/guardian with follow up materials to be used at home to reinforce delivery of related services.
 - l. The Contractor shall inform the parent/guardian of his/her responsibility to ensure that the child's attendance enables him/her to benefit from the related services provided. The parent/guardian should be made aware of the need to alert the Contractor in a timely manner when the child will be absent or not available for Related Services if provided in the home.
 - m. If two or more Related Services are required for a child, the CPSE Chairperson shall select one of the therapists to act as a Coordinator of Service. If the CPSE determines that a Special Education Itinerant Teacher (hereinafter "SEIT") is to be provided in conjunction with one or more Related Services, the SEIT shall be responsible for the coordination of such services pursuant to Regulations of the Commissioner of Education. Compensation for such services is to be part of the NYSED established rates for the SEIT model.
 - n. The Contractor's progress notes addressing goals and objectives on the IEP must be completed quarterly. A copy of the progress notes must be provided to the parent, the CPSE Chairperson and the County.
 - o. Upon expiration of the term of this Contract, all files and records shall be retained by the Contractor for six (6) years from the last date of payment under this Contract.

11. RESPONSIBILITIES OF THE COORDINATOR OF SERVICE

- a. When two or more Related Services are mandated (not in conjunction with SEIT), the CPSE Chairperson will designate the coordinator of services from the list of approved Related Service providers maintained by the County. The coordinator must be one of the individuals/agencies providing Related Services to the child, as specified by the CPSE. It is suggested that, to the extent possible, service providers be selected from the same agency. It is the responsibility of the coordinator to stay thoroughly informed on all facets of the services provided to the child. In addition to duties as outlined in the section entitled "Reporting Requirements" above, the designated coordinator will perform appropriate coordination activities including but not limited to:
 - i. Arranging the schedule for service delivery, offering recommendations and consulting with the CPSE chairperson to resolve scheduling issues when appropriate.
 - ii. Sharing appropriate information with other Related Service providers for the appropriate integration of such services.
 - iii. Gathering appropriate progress reports and anecdotal information relating to the student's progress from all Related Service providers to ensure that the Coordinator has a general knowledge of the child's progress, as well as any significant considerations, in the Related Service area.
 - iv. Attend Annual Review meeting and other meetings, if requested by the CPSE chairperson. The coordinator is responsible to have all information on the child's progress and needs and is expected to represent the other therapists involved in the child's care at the CPSE meetings.
 - v. Conducting activities such as telephone conferences or other communication practices. Coordination activities must be documented and reported in half-hour service blocks on the Coordination Service Form.

- vi. Coordination services can be provided only by a licensed speech pathologist, physical therapist and occupational therapist.
- b. Billing for Coordination services shall not exceed 10 sessions or service blocks during a September/June session and 2 sessions or service blocks during a July/August session per child. One (1) session or service block consists of a half-hour and will be paid at the rate indicated under the Oneida County Related Service Rates Schedule. Each date of contact and length of time claimed for coordination during the month must be listed and identified. Periods of less than a half-hour block may be combined into half-hour service blocks of coordination services for billing purposes.

12. MAKE UP POLICY

- a. Reporting Absences. Habitual absences by the student should be reported to the school district (CPSE) and the Special Education Itinerant Teacher (SEIT) if the child receives SEIT services; if the child receives two or more Related Services, habitual absences shall be reported to the assigned Related Service coordinator appointed by the CPSE Chairperson.
- b. Student Absence or Cancellation. There shall be no makeup for therapy sessions provided under 4410 services which are missed due to a child's absence or cancellation (with or without notice). If a child's illness will necessitate canceling of service for several consecutive sessions, please request the parent/guardian call you to commence Related Services.
- c. Therapist Absence or Cancellation. Related Services which are missed due to the absence or cancellation of the therapist may be made up if the parent consents and the therapist's schedule permits. The makeup sessions must take place within the same week the Related Service was missed.
- d. Prolonged Absence of Therapist. When the therapist is absent for a prolonged period of time, the school district should be notified. The school district is responsible for arranging the replacement for the absent therapist. The school district is responsible for notifying the County of any change of a Related Service provider prior to the change so the County may give the new provider permission to begin services.
- e. Holidays and Other School Closings. The Contractor will follow the calendar of the local school district in which the child resides. Therefore, holiday and other school closings of that particular school district will apply. When Related Services are provided in a mainstream preschool setting, the preschool calendar will be followed except where written prior arrangements have been mandated by the school district and approved by the County.
- f. Limitations on Scheduling Therapy Makeup Sessions. Make up sessions must be clearly documented on the appropriate session notes with reasons for the makeup session.

13. INSURANCE

The Contractor shall maintain a professional liability policy and will provide the County with proof of coverage in the amount of \$1,000,000 per incident and \$2,000,000 aggregate during the term of this Contract. The Contractor shall also maintain general liability insurance and will provide the County with proof of coverage in the amount of \$1,000,000 per incident and \$2,000,000 aggregate. The Contractor agrees to have the County named as "additional insured" on the general liability policy and to provide the County with certificates from said insurance company or companies showing proof of insurance as stated heretofore. The Contractor further agrees to provide that such coverage shall not be terminated without prior notice to the County of at least thirty (30) days. The Contractor grants Oneida County a limited power of attorney to communicate with the Contractor's insurance provider and/or agent for the express purpose of confirming the coverage required hereunder.

14. INDEMNIFICATION

The Contractor agrees that it shall defend, indemnify and hold harmless the County from and against all liability, damages, expenses, costs, causes of actions, suits, claims or judgments arising, occurring or resulting from property damage, personal injuries or death to persons arising, occurring or resulting from or out of the work of the Contractor or its agents, contractors, subcontractors, servants or employees, and from any loss or damage arising, occurring or resulting from the acts or failure to act or any default or negligence by the Contractor or failure on the part of the Contractor to comply with any of the covenants, terms or conditions of this Contract.

15. EXCLUSIVITY

- a. The County retains the right to reassign children receiving Related Services under the terms of this Contract to other Contractors or its own employees.
- b. The County retains the right to contract with other independent contractors for such services which are the same or similar to those provided by the Contractor, or to provide such services to its eligible children through its own employees. The Contractor retains the right to provide services directly or indirectly through contract with another agency, to persons who are not classified preschool aged children with a disability receiving Related Services in Oneida County.

16. INDEPENDENT CONTRACTOR STATUS

- a. It is expressly agreed that the relationship of the Contractor to the County shall be that of an Independent Contractor. The Contractor's employees shall not be considered employees of the County for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health benefits. The Contractor, in accordance with its status as an independent contractor, covenants and agrees that its employees will conduct themselves in accordance with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the County by reason thereof and that they will not by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County.
- b. Contractor warrants and represents that it is in the business of offering the same or similar services detailed herein and does offer the same or similar service(s) to other entities and/or the general public as a regular course of business. Contractor and County agree that Contractor is free to undertake other work arrangements during the term of this Contract, and may continue to make its services available to the public.
- c. The Contractor's employees shall not be eligible for compensation from the County due to a) illness; b) absence due to normal vacation; c) absence due to attendance at school or special training or a professional convention or meeting.
- d. Contractor acknowledges and agrees that its employees and agents shall not be eligible for any County employee benefits, including retirement membership credits.
- e. Contractor shall be paid pursuant to IRS Form 1099, and shall be solely responsible for applicable taxes for all compensation paid to Contractor or its employees and agents under this Contract, and for compliance with all applicable labor and employment requirements with respect to Contractor's self-employment, sole proprietorship or other form of business organization, and with respect to the employees and agents, including payroll deductions, workers' compensation insurance, and provision of health insurance where required. The County shall not be responsible for withholding from the payments provided for services rendered for State or Federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA). Contractor shall provide proof of worker's compensation insurance, where applicable, prior to execution of this Contract.
- f. The Contractor will indemnify and hold the County harmless from all loss or liability incurred by the County as a result of the County not making such payments or withholdings.
- g. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Contractor's Independent Contractor status, it is agreed that both the County and the Contractor shall have the right to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.
- h. The Contractor agrees to comply with federal and state laws as supplemented in the United States Department of Labor regulation and any other regulations of the federal and state entities relating to such employment and civil rights requirements.

17. SUBCONTRACT

The Contractor may not assign the Contractor's rights and obligations under this Contract, or subcontract with or employ another to provide the services described above of this Contract, without the prior written consent of the County.

18. EXPENSES

Contractor is solely responsible for paying all of its business expenses related to furnishing the services described herein, and shall not be reimbursed the cost of travel, equipment, tools, office space, support services or other general operating expenses.

19. TRAINING

Contractor shall not be required to attend or undergo any training by the County. Contractor shall be fully responsible for its own training necessary to maintain any licenses or certifications to perform the services described herein, and shall be solely responsible for the cost of the same.

20. ADVICE OF COUNSEL

Each party acknowledges that, in executing this Contract, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Contract.

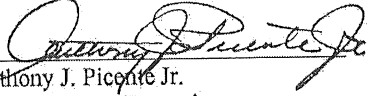
21. ENTIRE AGREEMENT


The terms of this contract, the Oneida County Related Service Rates Schedule, the attached Standard Oneida County Conditions Addendum (Appendix B), and any other attachments, amendments, addendums or appendixes attached hereto, are deemed incorporated herein in their entirety and constitute the entire understanding and agreement of the parties and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Contract. No waiver, alterations or modifications of and provisions of this Contract shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

ONEIDA COUNTY

CONTRACTOR


BY: 
Anthony J. Picante Jr.
Oneida County Executive

BY: 
Joseph Phaneuf
Board of Education President

DATE: 8/24/18

DATE: 8/29/18

Approved

BY: 
Raymond F. Bara
Assistant County Attorney

APPENDIX A
ONEIDA COUNTY RELATED SERVICE RATES SCHEDULE

RELATED SERVICE	MAXIMUM INDIVIDUAL HALF HOUR RATE	MAXIMUM COORDINATOR RATE PER HALF- HOUR BLOCK
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Audiology	\$53	\$30
Assistive Technology Services	\$53	
Counseling Services	\$53	\$30
Occupational Therapy	\$53	\$30
Orientation & Mobility Services	\$53	
Physical Therapy	\$53	\$30
Speech Therapy	\$53	\$30
Teacher of Hearing Impaired	\$53	
Teacher of Visually Impaired	\$53	
Aide 1:1	\$10	

RELATED SERVICE	MAXIMUM GROUP HALF HOUR RATE
Assistive Technology Services	\$25.00
Audiology	\$25.00
Counseling Services	\$25.00
Occupational Therapy	\$25.00
Physical Therapy	\$25.00
Speech Therapy	\$25.00
Teacher of Hearing Impaired	\$25.00
Teacher of Visually Impaired	\$25.00

APPENDIX B

ADDENDUM --STANDARD ONEIDA COUNTY CONDITIONS

THIS ADDENDUM, entered into on this _____ day of _____, 20____, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:
- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons 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 the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
 - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

- B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and
 - D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;
- ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.
- c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:
 - i. The Contractor will or will continue to provide a drug-free workplace by:
 - A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - B. Establishing an ongoing drug-free awareness program to inform employees about:

- 1) The dangers of drug abuse in the workplace;
- 2) The Contractor's policy of maintaining a drug-free workplace;
- 3) Any available drug counseling, rehabilitation, and employee assistance program; and
- 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

- 1) Abide by the terms of the statement; and
- 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and

- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building
Campus, Albany, NY 12240. Notice shall include the
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
 - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
 - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
 - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the

County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;

- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and
 - ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
 - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
 - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so

are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKERS' COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, 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 Articles, except as otherwise provided in the Labor Law and as set

forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, 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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or 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 County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County 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: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from

another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application; request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or 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 Office of General Services (hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

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

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or 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 or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the "use of tobacco" shall include:
 - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
 - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including:

chewing; holding in the mouth; or expectoration of chewing tobacco.

- b. For the purposes of this provision, “e-cigarette” shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that delivers vapor which is inhaled by an individual user as he or she simulates smoking.
- c. For the purposes of this provision, “on Oneida County property” shall be defined as:
 - i. Upon all real property owned or leased by the County of Oneida; and
 - ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.
- d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.



ONEIDA COUNTY HEALTH DEPARTMENT

ANTHONY J. PICENTE, JR. PHYLLIS D. ELLIS, BSN, MS, FACHE
ONEIDA COUNTY EXECUTIVE DIRECTOR OF HEALTH



"PROMOTING & PROTECTING THE HEALTH OF ONEIDA COUNTY"

OCCOV.NET/HEALTH

July 20, 2020

FN 20 20-322

Anthony J. Picente, Jr.
Oneida County Executive
800 Park Avenue
Utica, New York 13501

HEALTH & HUMAN SERVICES

Dear Mr. Picente:

WAYS & MEANS

Attached are two (2) copies of an extension to an agreement between Oneida County, through its Health Department and Hear 2 Learn Audiology and Speech Language Pathology, PLLC. This amendment extends the original agreement for an additional one year term and modifies the rate schedule.

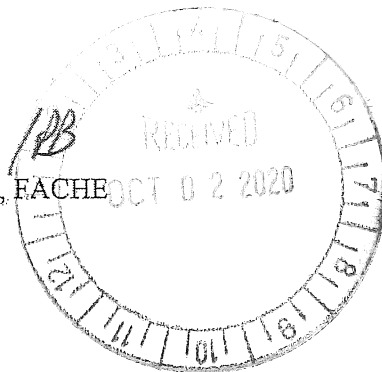
Under Section 4410 of the New York State Education Law and in compliance with Part 200 of the Regulations of the Commissioner of Education of the State of New York, counties are to provide payment for related services rendered to eligible preschool aged children with disabilities.

The term of this agreement will commence July 1, 2020 through June 30, 2021. This is a New York State mandated program. New York State will reimburse the county 59.5% of the costs incurred. The cost of this agreement is not expected to exceed \$100,000.00 for the term of the contract, including the optional two, one year extensions.

Should this amendment meet with your approval, please forward to the Board of Legislators for consideration at their next meeting.

Sincerely,

Phyllis D. Ellis
Phyllis D. Ellis, BSN, MS, FACHE
Director of Health



Reviewed and Approved for submittal to the
Oneida County Board of Legislator by

Anthony J. Picente, Jr.
Anthony J. Picente, Jr.
County Executive

Date 10-2-20

CM

ADMINISTRATION
ADIRONDACK BANK BLDG., 5TH FL.,
185 GENESEE ST. UTICA, NY 13501
TEL: (315) 798-6400 • FAX: (315) 266-6138

SPECIAL CHILDREN SERVICES
ADIRONDACK BANK BLDG. 5TH FL.,
185 GENESEE ST. UTICA, NY 13501
TEL: (315) 798-6249 • FAX: (315) 731-3401

ENVIRONMENTAL HEALTH
ADIRONDACK BANK BLDG., 4TH FL.,
185 GENESEE ST. UTICA, NY 13501
TEL: (315) 798-5064 • FAX: (315) 798-6486

CLINICAL SERVICES
406 ELIZABETH ST. UTICA, NY 13501
TEL: (315) 798-5748 • FAX: (315) 798-1067

Oneida Co. Department: Health

Competing Proposal _____
Only Respondent _____
Sole Source RFP _____
Other X

ONEIDA COUNTY BOARD
OF LEGISLATORS

Name & Address of Vendor: Hear 2 Learn Audiology and Speech Language Pathology,
PLLC
6575 Kirkville Rd Suite 1
East Syracuse, NY 13057

Title of Activity or Service: Preschool Related Services

Proposed Dates of Operation: July 1, 2020 to June 30, 2021

Client Population/Number to be Served: Eligible preschool children in Oneida
County with disabilities

Summary Statements

- 1) **Narrative Description of Proposed Services:** NYS requires Under Section 4410 of the New York State Education Law and in compliance with Part 200 of the Regulations of the Commissioner of Education of the State of New York, Counties to provide payment for related services rendered to eligible preschool aged children with disabilities.
- 2) **Program/Service Objectives and Outcomes:** Compliance with NYS Department of Education Law
- 3) **Program Design and Staffing** NA

Total Funding Requested: \$100,000.00 **Account A2960 1953 Rev act A3277**

Oneida County Dept. Funding Recommendation: \$100,000.00

Proposed Funding Sources (Federal \$/ State \$/County \$): State pays 59.5% County pays 40.5%

Cost Per Client Served: NA

Past Performance Data: 2019 Expense \$5,883.00

O.C. Department Staff Comments: annual expenditure is estimated as \$33,333.33

Oneida County Health Department Preschool Related Services Rate Amendment

THIS AMENDMENT AGREEMENT, made this 27 day of August, 2020, by and between Oneida County, a municipal corporation organized and existing under the laws of the State of New York, through its Health Department, with its principal offices at the County Office Building, 800 Park Avenue, Utica, New York, 13501 (hereinafter referred to collectively as the "County"), and Hear 2 Learn Audiology and Speech Language Pathology, PLLC, a domestic professional service limited liability company organized and existing under the laws of the State of New York, having its principal office located at 6575 Kirkville Road Suite 1, East Syracuse, New York 13057, (hereinafter referred to as the "Contractor").

WITNESSETH

WHEREAS, the County and the Contractor entered into an agreement (Oneida County Contract No. 66556), hereinafter referred to as the "Original Agreement," a copy of which is annexed hereto as "Exhibit A," that has an expiration date of June 30, 2020 and allows for an extension of the Original Agreement; and

NOW, THEREFORE, in consideration of the mutual promises made herein, the parties hereto agree as follows:

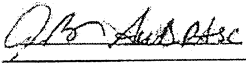
1. The Original Agreement shall be extended for the first of two consecutive one year options beginning July 1, 2020 and ending June 30, 2021.
2. The Original Agreement will be amended to change the Oneida County Rate Schedule which is attached hereto and incorporated in full.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first written above.

Oneida County

Contractor

Anthony J. Picente, Jr.



Arlene Balestra-Marco, Principal
Hear 2 Learn Audiology and Speech
Language Pathology, PLLC

Oneida County Executive

DATE: _____

DATE: August 31, 2020

Approved:

Ellen Rayhill
Assistant County Attorney

APPENDIX A

ONEIDA COUNTY RELATED SERVICE RATES SCHEDULE

RELATED SERVICE	MAXIMUM INDIVIDUAL HALF-HOUR RATE	MAXIMUM COORDINATOR PER HALF-HOUR BLOCK RATE	MAXIMUM GROUP HALF-HOUR RATE
Audiology	\$53.00	\$30.00	\$30.00
Assistive Technology Services	\$53.00	N/A	\$30.00
Counseling Services	\$53.00	\$30.00	\$30.00
Occupational Therapy	\$53.00	\$30.00	\$30.00
Orientation and Mobility Services	\$53.00	N/A	N/A
Physical Therapy	\$53.00	\$30.00	\$30.00
Speech Therapy for Eligible Preschool Students with Disabilities	\$62.50	\$30.00	\$34.00
Teacher of Hearing Impaired	\$53.00	N/A	\$30.00
Teacher of Visually Impaired Aide 1:1	\$53.00 \$10.00	N/A N/A	\$30.00 N/A

EXHIBIT A



ONEIDA COUNTY PRESCHOOL RELATED SERVICE CONTRACT

THIS CONTRACT, by and between the **COUNTY OF ONEIDA**, through its Health Department, a municipal corporation organized and existing under the laws of the State of New York, having its principal offices at 800 Park Avenue, Utica, New York 13501, hereinafter referred to as the "County," and **HEAR 2 LEARN AUDIOLOGY AND SPEECH LANGUAGE PATHOLOGY, PLLC**, a domestic professional service limited liability company organized and existing under the laws of the State of New York, having its principal office located at 6575 Kirkville Rd Suite 1 East Syracuse, NY 13057, hereinafter referred to as the "Contractor."

WITNESSETH:

WHEREAS, the County is in need of the provision of related services to preschool children with disabilities pursuant to Section 4410 of the New York State Education Law and Part 200 of the Regulations of the Commissioner of Education, through the County's Education of Handicapped Children Program; and

WHEREAS, the Contractor has been approved by the Commissioner of Education of the State of New York to provide related services to preschool children with disabilities in accordance with Section 4410 of the New York State Education Law and in compliance with 8 NYCRR Part 200, to eligible preschool students with disabilities, as recommended by the Committee on Preschool Special Education and approved by the appropriate Board of Education from the child's resident school district;

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. TERM OF AGREEMENT

This Contract shall become effective July 1, 2018 and shall terminate on June 30, 2020, conditioned upon the continued availability of federal and/or New York State funds for the purpose set forth in this Contract. The County shall also have two (2) separate and consecutive options to extend this Contract. Each option shall be for one (1) year and shall be under the same terms and conditions contained in this Contract. Each such option shall be the sole and exclusive right of the County. Each option shall be exercised by the County in writing, and such option period shall commence upon the expiration of the immediately preceding Contract or option period.

2. RATES

Upon submission of a completed County voucher and required supporting documentation as discussed below for services rendered, the County shall pay the Contractor the rates set forth in the Oneida County Related Service Rates Schedule, attached hereto and incorporated hereto as "Appendix A." Any rate changes during the life of this contract will be submitted as amendments to this Contract.

3. TERMINATION

- a. By Contractor: Should the Contractor request termination of this Contract, a written notice of any such termination shall be provided to the County by the Contractor not less than ninety (90) days prior to the intended effective date of such action. In the event of such termination, the parties shall adjust the accounts due and the Contractor shall undertake no additional expenditures not already required.
- b. By County: This Contract may be terminated at any time by the County upon ten (10) days written notice to the Contractor. However, in the event the Contractor defaults in the performance of any of its obligations under this Contract, the County may terminate this Contract effective upon written notice at any time. Furthermore, should funds become unavailable or should appropriate Federal or New York State officials fail to approve sufficient funds for completion of the services or programs set forth in this Contract, the County shall have the option to immediately terminate this Contract upon providing written notice to the Contractor. In such event, the County shall be under no further obligation to the Contractor other than payment for costs actually incurred prior to termination and in no event will the County be responsible for any actual or consequential damages as a result of termination.

4. SCOPE OF SERVICES

Services performed pursuant to this Contract shall be provided in accordance with Section 4410 of the New York State Education Law and in compliance with the regulations of the Commissioner of Education of the State of New York set forth in 8 NYCRR 200.

- a. The Contractor shall provide appropriate Related Services for children with disabilities delivered on an itinerant basis subject to New York State Education Department (hereinafter "NYSED") and the appropriate Board of Education (hereinafter "BOE") approval. The parties hereto agree that "Related Services" as used herein shall have the same meaning as that term is defined in Section 4410 of the New York State Education Law and 8 NYCRR 200.1(qq).
- b. The Contractor shall provide Related Services for children with disabilities during the school year. The school year is hereby defined as a July/August session from July 1 through August 31 and/or a September/June session from September 1 through June 30.
- c. The Contractor cannot begin providing Related Services to a child with disabilities until the BOE has approved the Notification of Determination of Placement or STAC 1 (System to Track and Account for Children), if the BOE uses the STAC 1, outlining the appropriate Related Services to be provided by the Contractor. The start date will be indicated on the STAC 1 and a copy shall be provided to the Contractor.
- d. All financial arrangements for services under this Contract shall be between the County and Contractor as outlined in the section entitled "Conditions of Payment" below. The County will maintain an approved Oneida County Related Services Provider List and ensure that the Contractor is a referral from this list approved by the New York State Department of Education for the County of Oneida.

5. CONDITIONS OF PAYMENT:

The County, in accordance with the provisions of this Contract, shall reimburse the Contractor for expenditures made for contracted services as follows:

- a. The County will set rates for all related services delivered on an itinerant basis subject to NYSED approval.
- b. The County will provide payment of services rendered, as authorized on the child's Individualized Education Program (hereinafter "IEP") and the STAC 1 upon the Contractor's submission of a correctly completed voucher on a monthly basis. All submissions must include the required documentation as set forth in this Contract and any other documentation requested by the County. The Contractor shall maintain a copy of the child's IEP throughout the term of this Contract.
- c. The Contractor shall submit a voucher to the County for the services rendered not later than fifteen (15) days after the end of the July/August session and not later than fifteen (15) days after the end of each month for the September to June session.
- d. No payment shall be required to be made by the County prior to the receipt of Notification of Determination of Placement or STAC 1, if the BOE uses the STAC 1 as its notice of determination of placement.
- e. No parent or any person shall be required or requested to make payment for services in addition to the payments made by the County pursuant to this Contract.
- f. The Contractor must submit, for Medicaid eligible children, a signed Medicaid Provider Agreement and Reassignment form with the signed contract so the County can claim Medicaid reimbursement for the Related Services.

6. MEDICAID COMPLIANCE:

The Contractor shall provide with the voucher the following information for all Medicaid eligible children enrolled in its programs pursuant to Section 4410 of the New York State Education Law:

- a. Dates the child received a Related Service (e.g. physical therapy, speech therapy, occupational therapy, skilled nursing services and/or counseling, and transportation, as applicable).
- b. Documentation that each Related Service session was verified as delivered by the signature of the service provider.
- c. Copy of the Medicaid consent form to release child specific information signed by the parent of a child with a disability receiving Medicaid eligible services.
- d. All reporting requirements necessary for Medicaid compliance per Section 4410 of the New York State Education Law. The Contractor shall be responsible for reviewing Medicaid in Education notifications and changes, which can be found at <http://www.oms.nysed.gov/medicaid/>.
- e. Documentation evidencing the number of eligible Medicaid services by service type provided to each Medicaid eligible child pursuant to Section 4410 New York State Education Law.
- f. The Contractor shall obtain from the parent or person in parental relationship to the Medicaid eligible child receiving Related Services pursuant to Section 4410 of the New York State Education Law, the Client Identification Number (hereinafter "CIN"), period of eligibility and any other relevant third party health insurance information for

the purpose of establishing Medicaid as the "payer of last resort." Nothing herein shall preclude the child's enrollment and initiation of services in accordance with the Board's Notice of Determination. A copy is to remain in the Contractor's file.

7. COMPLIANCE WITH THE LAW

The Contractor agrees that while performing under the terms of this Contract that the Contractor shall comply with all federal, New York State statutes and regulations, and all local rules and regulations.

8. CHILD ABUSE/MALTREATMENT MANDATE

- a. In compliance with Section 4410 of the New York State Education Law and Section 424-a of the New York State Social Services Law, the Contractor is required to screen and be cleared through the State Central Register of Child Abuse and Maltreatment (hereinafter "SCR").
- b. The Contractor is responsible for screening and obtaining clearance through the SCR for the following individuals: (1) Any person who is actively being considered for employment and who will have the potential for regular and substantial contact with children who receive preschool special education programs and Related Services; (2) Any person who is employed by an individual, corporation, partnership, or association that provides goods or services to approved preschool special education children.
- c. The Contractor is responsible for screening individuals through the SCR regardless of whether an individual has been screened through the SCR for employment or contract with another County or agency provider.
- d. The Contractor will not permit unsupervised contact between child and any potential employee or contractor before receiving a completed clearance and acceptable response from SCR.
- e. The Contractor will notify all individuals being screened that an inquiry will be made to the SCR and that this is a State requirement. The Contractor will establish procedures to ensure that the confidentiality of any SCR response is maintained. The Contractor will comply with SCR regulations in not screening employees more than once every six months, and one time only to the extent required by Section 424-a of the New York State Social Services Law for contractors, consultants and volunteers.
- f. Proof of SCR database check in accordance with Section 424-a of the New York State Social Services Law must be submitted to the County with the instant Contract and on an ongoing basis as required for special education services and programs for preschool children with disabilities.

9. CONFIDENTIALITY

The County and the Contractor shall hold in strict confidence all child records and disclose information and data in such records only to persons or entities as authorized or required by law or by written consent of the child's representative. The Contractor further agrees to safeguard the confidentiality of financial and/or client information relating to individuals and their families who may receive services in the course of this Contract. The Contractor shall maintain the confidentiality of all such financial and/or client information with regard to services provided under this Contract in conformity with the provisions of applicable Federal, State, and local laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this Contract.

10. REPORTING REQUIREMENTS

- a. Contractor employed therapists shall be presently qualified to provide Related Services in New York State and shall submit copies of all appropriate license(s) or certification(s) to the County and update these as necessary during the term of this Contract.
- b. Contractor agrees to attend Committee for Preschool Special Education (hereinafter "CPSE") annual review meetings and program reviews as scheduled by the CPSE Chairperson or BOCES Coordinator for the child being served. The Contractor shall submit a copy of any reports necessary for review at these meetings to the County, as well as the CPSE Chairperson/BOCES Coordinator, at least ten (10) school days prior to the meeting date.
- c. Speech pathologists shall be required to obtain a written prescription (recommendation/order) for speech services signed and dated from (1) NYS Licensed and ASHA Certified Speech-Language Pathologist OR (2) a physician, physician's assistant or nurse practitioner which denotes the appropriate and current ICD code. The NYS Licensed and ASHA Certified Speech-Language Pathologist cannot write a referral if they have not seen the preschool child. According to 18 NYCRR 505.11, a written order must contain a diagnostic statement and purpose of treatment. It is not acceptable for the ordering or referring professional never to have met with the child as it is incompatible with the obligations of the ordering practitioner to assure that the ordered care, services or supplies will meet the recipients needs and restore him/her to the best possible functional level. Physician, physician assistants or nurse practitioner's orders must be dated on or before the initiation of service. No direct or consultation services will be

- permitted unless an appropriately written prescription is obtained. A copy of this prescription must also be forwarded to the County with the initial bill.
- d. **Physical Therapists** must obtain a signed prescription (order/recommendation) from a physician, physician assistant or nurse practitioner which denotes an ICD code.
 - e. **Occupational therapists** must obtain a signed prescription (order/recommendation) signed and dated by a licensed physician or nurse practitioner which denotes an ICD code.
 - f. No direct or consultation services can be delivered unless an appropriately signed and dated prescription by the appropriate professional is obtained. A copy of this prescription must also be forwarded to the County with the initial bill.
 - g. The Contractor must obtain a current copy of the IEP from the CPSE Chairperson prior to start of service which will follow the BOE approval date. This is applicable to any later program changes on the IEP as well. The Contractor shall deliver services as specified on the IEP in the areas of remediation, frequency and duration of Related Services.
 - h. The Contractor shall submit an attendance and progress note for each session the child received Related Services on a monthly basis at the minimum, or with the invoice, whichever is presented first. All progress notes submitted must also have the signature and National Provider Identification (NPI) number of this licensed individual and title as well as the direct service provider and title.
 - i. The Contractor shall call the CPSE chairperson for a program review if services cannot be delivered as indicated on IEP due to child's absence, or if the therapist recommends a change in service or discharge.
 - j. The Contractor shall forward a copy of all documentation and justification for 12-month programming to the County and the CPSE prior to any scheduled program review or annual review, whenever such is recommended.
 - k. The Contractor shall meet with the child's parent/guardian at such times as appropriate during the year to discuss goals and progress. Whenever services are to be delivered in conjunction with a general education preschool program, the Contractor shall work with the program by communicating with staff, parents, school district and other therapists. An attempt will also be made to provide parent/guardian with follow up materials to be used at home to reinforce delivery of related services.
 - l. The Contractor shall inform the parent/guardian of his/her responsibility to ensure that the child's attendance enables him/her to benefit from the related services provided. The parent/guardian should be made aware of the need to alert the Contractor in a timely manner when the child will be absent or not available for Related Services if provided in the home.
 - m. If two or more Related Services are required for a child, the CPSE Chairperson shall select one of the therapists to act as a Coordinator of Service. If the CPSE determines that a Special Education Itinerant Teacher (hereinafter "SEIT") is to be provided in conjunction with one or more Related Services, the SEIT shall be responsible for the coordination of such services pursuant to Regulations of the Commissioner of Education. Compensation for such services is to be part of the NYSED established rates for the SEIT model.
 - n. The Contractor's progress notes addressing goals and objectives on the IEP must be completed quarterly. A copy of the progress notes must be provided to the parent, the CPSE Chairperson and the County.
 - o. Upon expiration of the term of this Contract, all files and records shall be retained by the Contractor for six (6) years from the last date of payment under this Contract.

11. RESPONSIBILITIES OF THE COORDINATOR OF SERVICE

- a. When two or more Related Services are mandated (not in conjunction with SEIT), the CPSE Chairperson will designate the coordinator of services from the list of approved Related Service providers maintained by the County. The coordinator must be one of the individuals/agencies providing Related Services to the child, as specified by the CPSE. It is suggested that, to the extent possible, service providers be selected from the same agency. It is the responsibility of the coordinator to stay thoroughly informed on all facets of the services provided to the child. In addition to duties as outlined in the section entitled "Reporting Requirements" above, the designated coordinator will perform appropriate coordination activities including but not limited to:
 - i. Arranging the schedule for service delivery, offering recommendations and consulting with the CPSE chairperson to resolve scheduling issues when appropriate.
 - ii. Sharing appropriate information with other Related Service providers for the appropriate integration of such services.
 - iii. Gathering appropriate progress reports and anecdotal information relating to the student's progress from all Related Service providers to ensure that the Coordinator has a general knowledge of the child's progress, as well as any significant considerations, in the Related Service area.
 - iv. Attend Annual Review meeting and other meetings, if requested by the CPSE chairperson. The coordinator is responsible to have all information on the child's progress and needs and is expected to represent the other therapists involved in the child's care at the CPSE meetings.
 - v. Conducting activities such as telephone conferences or other communication practices. Coordination activities must be documented and reported in half-hour service blocks on the Coordination Service Form.

- vi. Coordination services can be provided only by a licensed speech pathologist, physical therapist and occupational therapist.
- b. Billing for Coordination services shall not exceed 10 sessions or service blocks during a September/June session and 2 sessions or service blocks during a July/August session per child. One (1) session or service block consists of a half-hour and will be paid at the rate indicated under the Oneida County Related Service Rates Schedule. Each date of contact and length of time claimed for coordination during the month must be listed and identified. Periods of less than a half-hour block may be combined into half-hour service blocks of coordination services for billing purposes.

12. MAKE UP POLICY

- a. Reporting Absences. Habitual absences by the student should be reported to the school district (CPSE) and the Special Education Itinerant Teacher (SEIT) if the child receives SEIT services; if the child receives two or more Related Services, habitual absences shall be reported to the assigned Related Service coordinator appointed by the CPSE Chairperson.
- b. Student Absence or Cancellation. There shall be no makeup for therapy sessions provided under 4410 services which are missed due to a child's absence or cancellation (with or without notice). If a child's illness will necessitate canceling of service for several consecutive sessions, please request the parent/guardian call you to commence Related Services.
- c. Therapist Absence or Cancellation. Related Services which are missed due to the absence or cancellation of the therapist may be made up if the parent consents and the therapist's schedule permits. The makeup sessions must take place within the same week the Related Service was missed.
- d. Prolonged Absence of Therapist. When the therapist is absent for a prolonged period of time, the school district should be notified. The school district is responsible for arranging the replacement for the absent therapist. The school district is responsible for notifying the County of any change of a Related Service provider prior to the change so the County may give the new provider permission to begin services.
- e. Holidays and Other School Closings. The Contractor will follow the calendar of the local school district in which the child resides. Therefore, holiday and other school closings of that particular school district will apply. When Related Services are provided in a mainstream preschool setting, the preschool calendar will be followed except where written prior arrangements have been mandated by the school district and approved by the County.
- f. Limitations on Scheduling Therapy Makeup Sessions. Make up sessions must be clearly documented on the appropriate session notes with reasons for the makeup session.

13. INSURANCE

The Contractor shall maintain a professional liability policy and will provide the County with proof of coverage in the amount of \$1,000,000 per incident and \$2,000,000 aggregate during the term of this Contract. The Contractor shall also maintain general liability insurance and will provide the County with proof of coverage in the amount of \$1,000,000 per incident and \$2,000,000 aggregate. The Contractor agrees to have the County named as "additional insured" on the general liability policy and to provide the County with certificates from said insurance company or companies showing proof of insurance as stated heretofore. The Contractor further agrees to provide that such coverage shall not be terminated without prior notice to the County of at least thirty (30) days. The Contractor grants Oneida County a limited power of attorney to communicate with the Contractor's insurance provider and/or agent for the express purpose of confirming the coverage required hereunder.

14. INDEMNIFICATION

The Contractor agrees that it shall defend, indemnify and hold harmless the County from and against all liability, damages, expenses, costs, causes of actions, suits, claims or judgments arising, occurring or resulting from property damage, personal injuries or death to persons arising, occurring or resulting from or out of the work of the Contractor or its agents, contractors, subcontractors, servants or employees, and from any loss or damage arising, occurring or resulting from the acts or failure to act or any default or negligence by the Contractor or failure on the part of the Contractor to comply with any of the covenants, terms or conditions of this Contract.

15. EXCLUSIVITY

- a. The County retains the right to reassign children receiving Related Services under the terms of this Contract to other Contractors or its own employees.
- b. The County retains the right to contract with other independent contractors for such services which are the same or similar to those provided by the Contractor, or to provide such services to its eligible children through its own employees. The Contractor retains the right to provide services directly or indirectly through contract with another agency, to persons who are not classified preschool aged children with a disability receiving Related Services in Oneida County.

16. INDEPENDENT CONTRACTOR STATUS

- a. It is expressly agreed that the relationship of the Contractor to the County shall be that of an Independent Contractor. The Contractor's employees shall not be considered employees of the County for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health benefits. The Contractor, in accordance with its status as an independent contractor, covenants and agrees that its employees will conduct themselves in accordance with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the County by reason thereof and that they will not by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County.
- b. Contractor warrants and represents that it is in the business of offering the same or similar services detailed herein and does offer the same or similar service(s) to other entities and/or the general public as a regular course of business. Contractor and County agree that Contractor is free to undertake other work arrangements during the term of this Contract, and may continue to make its services available to the public.
- c. The Contractor's employees shall not be eligible for compensation from the County due to a) illness; b) absence due to normal vacation; c) absence due to attendance at school or special training or a professional convention or meeting.
- d. Contractor acknowledges and agrees that its employees and agents shall not be eligible for any County employee benefits, including retirement membership credits.
- e. Contractor shall be paid pursuant to IRS Form 1099, and shall be solely responsible for applicable taxes for all compensation paid to Contractor or its employees and agents under this Contract, and for compliance with all applicable labor and employment requirements with respect to Contractor's self-employment, sole proprietorship or other form of business organization, and with respect to the employees and agents, including payroll deductions, workers' compensation insurance, and provision of health insurance where required. The County shall not be responsible for withholding from the payments provided for services rendered for State or Federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA). Contractor shall provide proof of worker's compensation insurance, where applicable, prior to execution of this Contract.
- f. The Contractor will indemnify and hold the County harmless from all loss or liability incurred by the County as a result of the County not making such payments or withholdings.
- g. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Contractor's Independent Contractor status, it is agreed that both the County and the Contractor shall have the right to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.
- h. The Contractor agrees to comply with federal and state laws as supplemented in the United States Department of Labor regulation and any other regulations of the federal and state entities relating to such employment and civil rights requirements.

17. SUBCONTRACT

The Contractor may not assign the Contractor's rights and obligations under this Contract, or subcontract with or employ another to provide the services described above of this Contract, without the prior written consent of the County.

18. EXPENSES

Contractor is solely responsible for paying all of its business expenses related to furnishing the services described herein, and shall not be reimbursed the cost of travel, equipment, tools, office space, support services or other general operating expenses.

19. TRAINING

Contractor shall not be required to attend or undergo any training by the County. Contractor shall be fully responsible for its own training necessary to maintain any licenses or certifications to perform the services described herein, and shall be solely responsible for the cost of the same.

20. ADVICE OF COUNSEL

Each party acknowledges that, in executing this Contract, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Contract.

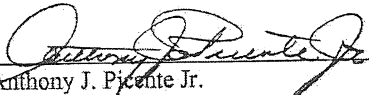
21. ENTIRE AGREEMENT

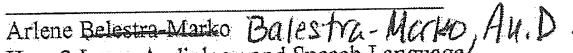
The terms of this contract, the Oneida County Related Service Rates Schedule, the attached Standard Oneida County Conditions Addendum (Appendix B), and any other attachments, amendments, addendums or appendixes attached hereto, are deemed incorporated herein in their entirety and constitute the entire understanding and agreement of the parties and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Contract. No waiver, alterations or modifications of and provisions of this Contract shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

ONEIDA COUNTY

CONTRACTOR

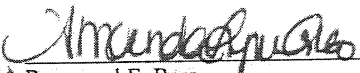
BY: 
Anthony J. Picente Jr.
Oneida County Executive

BY: 
Arlene Balestra-Marko *Balestra-Marko, Au.D.*
Hear 2 Learn Audiology and Speech Language
Pathology, PLLC

DATE: 8/14/18

DATE: 10/20/18

Approved

BY: 
Raymond F. Bara
Assistant County Attorney

**APPENDIX A
ONEIDA COUNTY RELATED SERVICE RATES SCHEDULE**

RELATED SERVICE	MAXIMUM INDIVIDUAL HALF HOUR RATE	MAXIMUM COORDINATOR RATE PER HALF- HOUR BLOCK
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Audiology	\$53	\$30
Assistive Technology Services	\$53	
Counseling Services	\$53	\$30
Occupational Therapy	\$53	\$30
Orientation & Mobility Services	\$53	
Physical Therapy	\$53	\$30
Speech Therapy	\$53	\$30
Teacher of Hearing Impaired	\$53	
Teacher of Visually Impaired	\$53	
Aide 1:1	\$10	

RELATED SERVICE	MAXIMUM GROUP HALF HOUR RATE
Assistive Technology Services	\$25.00
Audiology	\$25.00
Counseling Services	\$25.00
Occupational Therapy	\$25.00
Physical Therapy	\$25.00
Speech Therapy	\$25.00
Teacher of Hearing Impaired	\$25.00
Teacher of Visually Impaired	\$25.00

APPENDIX B

ADDENDUM --STANDARD ONEIDA COUNTY CONDITIONS

THIS ADDENDUM, entered into on this _____ day of _____, 20____, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:
- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons 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 the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
 - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

- B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and
 - D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;
- ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.
- c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:
- i. The Contractor will or will continue to provide a drug-free workplace by:
 - A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - B. Establishing an ongoing drug-free awareness program to inform employees about:

- 1) The dangers of drug abuse in the workplace;
- 2) The Contractor's policy of maintaining a drug-free workplace;
- 3) Any available drug counseling, rehabilitation, and employee assistance program; and
- 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

- 1) Abide by the terms of the statement; and
- 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and

- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building
Campus, Albany, NY 12240. Notice shall include the
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
 - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
 - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
 - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the

County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;

- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and
 - ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
 - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
 - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so

are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKERS' COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, 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 Articles, except as otherwise provided in the Labor Law and as set

forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, 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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or 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 County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County 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: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from

another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application; request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or 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 Office of General Services (hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

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

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or 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 or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the "use of tobacco" shall include:
 - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
 - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including:

chewing; holding in the mouth; or expectoration of chewing tobacco.

- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that delivers vapor which is inhaled by an individual user as he or she simulates smoking.
- c. For the purposes of this provision, "on Oneida County property" shall be defined as:
 - i. Upon all real property owned or leased by the County of Oneida; and
 - ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.
- d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.



ONEIDA COUNTY HEALTH DEPARTMENT

ANTHONY J. PICENTE, JR
ONEIDA COUNTY EXECUTIVE

PHYLLIS D. ELLIS, BSN, MS, FACHE
DIRECTOR OF HEALTH



"PROMOTING & PROTECTING THE HEALTH OF ONEIDA COUNTY"

OCGOV.NET/HEALTH

July 20, 2020

FN 20 20-321

Anthony J. Picente, Jr.
Oneida County Executive
800 Park Avenue
Utica, New York 13501

HEALTH & HUMAN SERVICES

WAYS & MEANS

Dear Mr. Picente:

Attached are two (2) copies of an extension to an agreement between Oneida County, through its Health Department and Jacalyn Bates. This amendment extends the original agreement for an additional one year term and modifies the rate schedule.

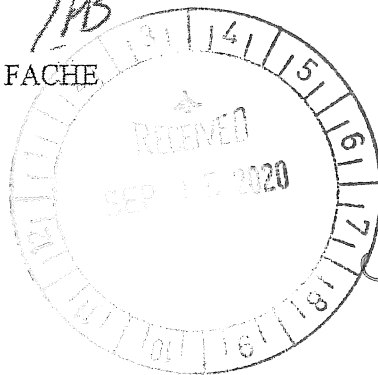
Under Section 4410 of the New York State Education Law and in compliance with Part 200 of the Regulations of the Commissioner of Education of the State of New York, counties are to provide payment for related services rendered to eligible preschool aged children with disabilities.

The term of this agreement will commence July 1, 2020 through June 30, 2021. This is a New York State mandated program. New York State will reimburse the county 59.5% of the costs incurred. The expense of the agreement is not expected to exceed \$77,217.00 for the term of the contract, including the optional two, one year extensions.

If this agreement meets with your approval, please forward to the Board of Legislators for consideration at their next meeting.

Sincerely,

Phyllis D. Ellis /PB
Phyllis D. Ellis, BSN, MS, FACHE
Director of Health



Reviewed and Approved for submittal to the
Oneida County Board of Legislators by

Anthony J. Picente, Jr.
Anthony J. Picente, Jr.
County Executive

Date 9-15-20

CM

ADMINISTRATION
ADIRONDACK BANK BLDG., 5TH FL.,
185 GENESEE ST. UTICA, NY 13501
TEL: (315) 798-6400 • FAX: (315) 266-6138

SPECIAL CHILDREN SERVICES
ADIRONDACK BANK BLDG. 5TH FL.,
185 GENESEE ST. UTICA, NY 13501
TEL: (315) 798-5249 • FAX: (315) 731-3491

ENVIRONMENTAL HEALTH
ADIRONDACK BANK BLDG., 4TH FL.,
185 GENESEE ST. UTICA, NY 13501
TEL: (315) 798-5064 • FAX: (315) 798-6486

CLINICAL SERVICES
408 ELIZABETH ST. UTICA, NY 13501
TEL: (315) 798-5748 • FAX: (315) 798-1057

Oneida Co. Department: Health

Competing Proposal _____
Only Respondent _____
Sole Source RFP _____
Other X

**ONEIDA COUNTY BOARD
OF LEGISLATORS**

Name & Address of Vendor:

Jacalyn Bates
9824 shady Lake Road
Camden, NY 13316

Title of Activity or Service:

Preschool Related Services

Proposed Dates of Operation:

July 1, 2020 to June 30, 2021

Client Population/Number to be Served:

Eligible preschool children in Oneida
County with disabilities

Summary Statements

- 1) **Narrative Description of Proposed Services:** NYS requires Under Section 4410 of the New York State Education Law and in compliance with Part 200 of the Regulations of the Commissioner of Education of the State of New York, Counties are to provide payment for related services rendered to eligible preschool aged children with disabilities.
- 2) **Program/Service Objectives and Outcomes:** Compliance with NYS Department of Education Law
- 3) **Program Design and Staffing** NA

Total Funding Requested: \$77,217.00

Account A2960 1953
Rev act A3277

Oneida County Dept. Funding Recommendation: \$77,217.00

Proposed Funding Sources (Federal \$/ State \$/County \$): State pays 59.5% County pays 40.5%

Cost Per Client Served: unknown

Past Performance Data: 2019 expense was \$5,671.00

O.C. Department Staff Comments:

Oneida County Health Department Preschool Related Services Rate Amendment

THIS AMENDMENT AGREEMENT, made this _____ day of _____, 2020, by and between Oneida County, a municipal corporation organized and existing under the laws of the State of New York, through its Health Department, with its principal offices at the County Office Building, 800 Park Avenue, Utica, New York, 13501 (hereinafter referred to collectively as the "County"), and Jacalyn Bates residing at 9824 Shady Lake Road, Camden, New York 13316, (hereinafter referred to as the "Contractor").

WITNESSETH

WHEREAS, the County and the Contractor entered into an agreement (Oneida County Contract No. 66390), hereinafter referred to as the "Original Agreement," a copy of which is annexed hereto as "Exhibit A," that has an expiration date of June 30, 2020 and allows for an extension of the Original Agreement, and

NOW, THEREFORE, in consideration of the mutual promises made herein, the parties hereto agree as follows:

1. The Original Agreement shall be extended for the first of two consecutive one year options beginning July 1, 2020 and ending June 30, 2021.
2. The Original Agreement will be amended to change the Oneida County Rate Schedule which is attached hereto and incorporated in full.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first written above.

ONEIDA COUNTY

CONTRACTOR

BY: _____

Anthony J. Picente Jr.
Oneida County Executive

BY: _____

Jacalyn Bates

DATE: _____

9/2/20

DATE: _____

Approved

Ellen Rayhill
Assistant County Attorney

APPENDIX A

ONEIDA COUNTY RELATED SERVICE RATES SCHEDULE

RELATED SERVICE	MAXIMUM INDIVIDUAL HALF-HOUR RATE	MAXIMUM COORDINATOR PER HALF-HOUR BLOCK RATE	MAXIMUM GROUP HALF-HOUR RATE
Audiology	\$53.00	\$30.00	\$30.00
Assistive Technology Services	\$53.00	N/A	\$30.00
Counseling Services	\$53.00	\$30.00	\$30.00
Occupational Therapy	\$53.00	\$30.00	\$30.00
Orientation and Mobility Services	\$53.00	N/A	N/A
Physical Therapy	\$53.00	\$30.00	\$30.00
Speech Therapy for Eligible Preschool Students with Disabilities	\$62.50	\$30.00	\$34.00
Teacher of Hearing Impaired	\$53.00	N/A	\$30.00
Teacher of Visually Impaired	\$53.00	N/A	\$30.00
Aide 1:1	\$10.00	N/A	N/A

EXHIBIT A



ONEIDA COUNTY PRESCHOOL RELATED SERVICE CONTRACT

THIS CONTRACT, by and between the COUNTY OF ONEIDA, through its Health Department, a municipal corporation organized and existing under the laws of the State of New York, having its principal offices at 800 Park Avenue, Utica, New York 13501, hereinafter referred to as the "County," and JACALYN BATES, having her principal office located at 9824 Shady Lake Road Camden, NY 13316, hereinafter referred to as the "Contractor."

WITNESSETH:

WHEREAS, the County is in need of the provision of related services to preschool children with disabilities pursuant to Section 4410 of the New York State Education Law and Part 200 of the Regulations of the Commissioner of Education, through the County's Education of Handicapped Children Program; and

WHEREAS, the Contractor has been approved by the Commissioner of Education of the State of New York to provide related services to preschool children with disabilities in accordance with Section 4410 of the New York State Education Law and in compliance with 8 NYCRR Part 200, to eligible preschool students with disabilities, as recommended by the Committee on Preschool Special Education and approved by the appropriate Board of Education from the child's resident school district;

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. TERM OF AGREEMENT

This Contract shall become effective July 1, 2018 and shall terminate on June 30, 2020, conditioned upon the continued availability of federal and/or New York State funds for the purpose set forth in this Contract. The County shall also have two (2) separate and consecutive options to extend this Contract. Each option shall be for one (1) year and shall be under the same terms and conditions contained in this Contract. Each such option shall be the sole and exclusive right of the County. Each option shall be exercised by the County in writing, and such option period shall commence upon the expiration of the immediately preceding Contract or option period.

2. RATES

Upon submission of a completed County voucher and required supporting documentation as discussed below for services rendered, the County shall pay the Contractor the rates set forth in the Oneida County Related Service Rates Schedule, attached hereto and incorporated hereto as "Appendix A." Any rate changes during the life of this contract will be submitted as amendments to this Contract.

3. TERMINATION

- a. By Contractor: Should the Contractor request termination of this Contract, a written notice of any such termination shall be provided to the County by the Contractor not less than ninety (90) days prior to the intended effective date of such action. In the event of such termination, the parties shall adjust the accounts due and the Contractor shall undertake no additional expenditures not already required.
- b. By County: This Contract may be terminated at any time by the County upon ten (10) days written notice to the Contractor. However, in the event the Contractor defaults in the performance of any of its obligations under this Contract, the County may terminate this Contract effective upon written notice at any time. Furthermore, should funds become unavailable or should appropriate Federal or New York State officials fail to approve sufficient funds for completion of the services or programs set forth in this Contract, the County shall have the option to immediately terminate this Contract upon providing written notice to the Contractor. In such event, the County shall be under no further obligation to the Contractor other than payment for costs actually incurred prior to termination and in no event will the County be responsible for any actual or consequential damages as a result of termination.

4. SCOPE OF SERVICES

Services performed pursuant to this Contract shall be provided in accordance with Section 4410 of the New York State Education Law and in compliance with the regulations of the Commissioner of Education of the State of New York set forth in 8 NYCRR 200.

- a. The Contractor shall provide appropriate Related Services for children with disabilities delivered on an itinerant basis subject to New York State Education Department (hereinafter "NYSED") and the appropriate Board of Education (hereinafter "BOE") approval. The parties hereto agree that "Related Services" as used herein shall have the same meaning as that term is defined in Section 4410 of the New York State Education Law and 8 NYCRR 200.1(qq).
- b. The Contractor shall provide Related Services for children with disabilities during the school year. The school year is hereby defined as a July/August session from July 1 through August 31 and/or a September/June session from September 1 through June 30.
- c. The Contractor cannot begin providing Related Services to a child with disabilities until the BOE has approved the Notification of Determination of Placement or STAC 1 (System to Track and Account for Children), if the BOE uses the STAC 1, outlining the appropriate Related Services to be provided by the Contractor. The start date will be indicated on the STAC 1 and a copy shall be provided to the Contractor.
- d. All financial arrangements for services under this Contract shall be between the County and Contractor as outlined in the section entitled "Conditions of Payment" below. The County will maintain an approved Oneida County Related Services Provider List and ensure that the Contractor is a referral from this list approved by the New York State Department of Education for the County of Oneida.

5. CONDITIONS OF PAYMENT:

The County, in accordance with the provisions of this Contract, shall reimburse the Contractor for expenditures made for contracted services as follows:

- a. The County will set rates for all related services delivered on an itinerant basis subject to NYSED approval.
- b. The County will provide payment of services rendered, as authorized on the child's Individualized Education Program (hereinafter "IEP") and the STAC 1 upon the Contractor's submission of a correctly completed voucher on a monthly basis. All submissions must include the required documentation as set forth in this Contract and any other documentation requested by the County. The Contractor shall maintain a copy of the child's IEP throughout the term of this Contract.
- c. The Contractor shall submit a voucher to the County for the services rendered not later than fifteen (15) days after the end of the July/August session and not later than fifteen (15) days after the end of each month for the September to June session.
- d. No payment shall be required to be made by the County prior to the receipt of Notification of Determination of Placement or STAC 1, if the BOE uses the STAC 1 as its notice of determination of placement.
- e. No parent or any person shall be required or requested to make payment for services in addition to the payments made by the County pursuant to this Contract.
- f. The Contractor must submit, for Medicaid eligible children, a signed Medicaid Provider Agreement and Reassignment form with the signed contract so the County can claim Medicaid reimbursement for the Related Services.

6. MEDICAID COMPLIANCE:

The Contractor shall provide with the voucher the following information for all Medicaid eligible children enrolled in its programs pursuant to Section 4410 of the New York State Education Law:

- a. Dates the child received a Related Service (e.g. physical therapy, speech therapy, occupational therapy, skilled nursing services and/or counseling, and transportation, as applicable).
- b. Documentation that each Related Service session was verified as delivered by the signature of the service provider.
- c. Copy of the Medicaid consent form to release child specific information signed by the parent of a child with a disability receiving Medicaid eligible services.
- d. All reporting requirements necessary for Medicaid compliance per Section 4410 of the New York State Education Law. The Contractor shall be responsible for reviewing Medicaid in Education notifications and changes, which can be found at <http://www.oms.nysed.gov/medicaid/>.
- e. Documentation evidencing the number of eligible Medicaid services by service type provided to each Medicaid eligible child pursuant to Section 4410 New York State Education Law.
- f. The Contractor shall obtain from the parent or person in parental relationship to the Medicaid eligible child receiving Related Services pursuant to Section 4410 of the New York State Education Law, the Client Identification Number (hereinafter "CIN"), period of eligibility and any other relevant third party health insurance information for

the purpose of establishing Medicaid as the "payer of last resort." Nothing herein shall preclude the child's enrollment and initiation of services in accordance with the Board's Notice of Determination. A copy is to remain in the Contractor's file.

7. COMPLIANCE WITH THE LAW

The Contractor agrees that while performing under the terms of this Contract that the Contractor shall comply with all federal, New York State statutes and regulations, and all local rules and regulations.

8. CHILD ABUSE/MALTREATMENT MANDATE

- a. In compliance with Section 4410 of the New York State Education Law and Section 424-a of the New York State Social Services Law, the Contractor is required to screen and be cleared through the State Central Register of Child Abuse and Maltreatment (hereinafter "SCR").
- b. The Contractor is responsible for screening and obtaining clearance through the SCR for the following individuals: (1) Any person who is actively being considered for employment and who will have the potential for regular and substantial contact with children who receive preschool special education programs and Related Services; (2) Any person who is employed by an individual, corporation, partnership, or association that provides goods or services to approved preschool special education children.
- c. The Contractor is responsible for screening individuals through the SCR regardless of whether an individual has been screened through the SCR for employment or contract with another County or agency provider.
- d. The Contractor will not permit unsupervised contact between child and any potential employee or contractor before receiving a completed clearance and acceptable response from SCR.
- e. The Contractor will notify all individuals being screened that an inquiry will be made to the SCR and that this is a State requirement. The Contractor will establish procedures to ensure that the confidentiality of any SCR response is maintained. The Contractor will comply with SCR regulations in not screening employees more than once every six months, and one time only to the extent required by Section 424-a of the New York State Social Services Law for contractors, consultants and volunteers.
- f. Proof of SCR database check in accordance with Section 424-a of the New York State Social Services Law must be submitted to the County with the instant Contract and on an ongoing basis as required for special education services and programs for preschool children with disabilities.

9. CONFIDENTIALITY

The County and the Contractor shall hold in strict confidence all child records and disclose information and data in such records only to persons or entities as authorized or required by law or by written consent of the child's representative. The Contractor further agrees to safeguard the confidentiality of financial and/or client information relating to individuals and their families who may receive services in the course of this Contract. The Contractor shall maintain the confidentiality of all such financial and/or client information with regard to services provided under this Contract in conformity with the provisions of applicable Federal, State, and local laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this Contract.

10. REPORTING REQUIREMENTS

- a. Contractor employed therapists shall be presently qualified to provide Related Services in New York State and shall submit copies of all appropriate license(s) or certification(s) to the County and update these as necessary during the term of this Contract.
- b. Contractor agrees to attend Committee for Preschool Special Education (hereinafter "CPSE") annual review meetings and program reviews as scheduled by the CPSE Chairperson or BOCES Coordinator for the child being served. The Contractor shall submit a copy of any reports necessary for review at these meetings to the County, as well as the CPSE Chairperson/BOCES Coordinator, at least ten (10) school days prior to the meeting date.
- c. Speech pathologists shall be required to obtain a written prescription (recommendation/order) for speech services signed and dated from (1) NYS Licensed and ASHA Certified Speech-Language Pathologist OR (2) a physician, physician's assistant or nurse practitioner which denotes the appropriate and current ICD code. The NYS Licensed and ASHA Certified Speech-Language Pathologist cannot write a referral if they have not seen the preschool child. According to 18 NYCRR 505.11, a written order must contain a diagnostic statement and purpose of treatment. It is not acceptable for the ordering or referring professional never to have met with the child as it is incompatible with the obligations of the ordering practitioner to assure that the ordered care, services or supplies will meet the recipients needs and restore him/her to the best possible functional level. Physician, physician assistants or nurse practitioner's orders must be dated on or before the initiation of service. No direct or consultation services will be

- permitted unless an appropriately written prescription is obtained. A copy of this prescription must also be forwarded to the County with the initial bill.
- d. **Physical Therapists** must obtain a signed prescription (order/recommendation) from a physician, physician assistant or nurse practitioner which denotes an ICD code.
 - e. **Occupational therapists** must obtain a signed prescription (order/recommendation) signed and dated by a licensed physician or nurse practitioner which denotes an ICD code.
 - f. No direct or consultation services can be delivered unless an appropriately signed and dated prescription by the appropriate professional is obtained. A copy of this prescription must also be forwarded to the County with the initial bill.
 - g. The Contractor must obtain a current copy of the IEP from the CPSE Chairperson prior to start of service which will follow the BOE approval date. This is applicable to any later program changes on the IEP as well. The Contractor shall deliver services as specified on the IEP in the areas of remediation, frequency and duration of Related Services.
 - h. The Contractor shall submit an attendance and progress note for each session the child received Related Services on a monthly basis at the minimum, or with the invoice, whichever is presented first. All progress notes submitted must also have the signature and National Provider Identification (NPI) number of this licensed individual and title as well as the direct service provider and title.
 - i. The Contractor shall call the CPSE chairperson for a program review if services cannot be delivered as indicated on IEP due to child's absence, or if the therapist recommends a change in service or discharge.
 - j. The Contractor shall forward a copy of all documentation and justification for 12-month programming to the County and the CPSE prior to any scheduled program review or annual review, whenever such is recommended.
 - k. The Contractor shall meet with the child's parent/guardian at such times as appropriate during the year to discuss goals and progress. Whenever services are to be delivered in conjunction with a general education preschool program, the Contractor shall work with the program by communicating with staff, parents, school district and other therapists. An attempt will also be made to provide parent/guardian with follow up materials to be used at home to reinforce delivery of related services.
 - l. The Contractor shall inform the parent/guardian of his/her responsibility to ensure that the child's attendance enables him/her to benefit from the related services provided. The parent/guardian should be made aware of the need to alert the Contractor in a timely manner when the child will be absent or not available for Related Services if provided in the home.
 - m. If two or more Related Services are required for a child, the CPSE Chairperson shall select one of the therapists to act as a Coordinator of Service. If the CPSE determines that a Special Education Itinerant Teacher (hereinafter "SEIT") is to be provided in conjunction with one or more Related Services, the SEIT shall be responsible for the coordination of such services pursuant to Regulations of the Commissioner of Education. Compensation for such services is to be part of the NYSED established rates for the SEIT model.
 - n. The Contractor's progress notes addressing goals and objectives on the IEP must be completed quarterly. A copy of the progress notes must be provided to the parent, the CPSE Chairperson and the County.
 - o. Upon expiration of the term of this Contract, all files and records shall be retained by the Contractor for six (6) years from the last date of payment under this Contract.

11. RESPONSIBILITIES OF THE COORDINATOR OF SERVICE

- a. When two or more Related Services are mandated (not in conjunction with SEIT), the CPSE Chairperson will designate the coordinator of services from the list of approved Related Service providers maintained by the County. The coordinator must be one of the individuals/agencies providing Related Services to the child, as specified by the CPSE. It is suggested that, to the extent possible, service providers be selected from the same agency. It is the responsibility of the coordinator to stay thoroughly informed on all facets of the services provided to the child. In addition to duties as outlined in the section entitled "Reporting Requirements" above, the designated coordinator will perform appropriate coordination activities including but not limited to:
 - i. Arranging the schedule for service delivery, offering recommendations and consulting with the CPSE chairperson to resolve scheduling issues when appropriate.
 - ii. Sharing appropriate information with other Related Service providers for the appropriate integration of such services.
 - iii. Gathering appropriate progress reports and anecdotal information relating to the student's progress from all Related Service providers to ensure that the Coordinator has a general knowledge of the child's progress, as well as any significant considerations, in the Related Service area.
 - iv. Attend Annual Review meeting and other meetings, if requested by the CPSE chairperson. The coordinator is responsible to have all information on the child's progress and needs and is expected to represent the other therapists involved in the child's care at the CPSE meetings.
 - v. Conducting activities such as telephone conferences or other communication practices. Coordination activities must be documented and reported in half-hour service blocks on the Coordination Service Form.

- vi. Coordination services can be provided only by a licensed speech pathologist, physical therapist and occupational therapist.
- b. Billing for Coordination services shall not exceed 10 sessions or service blocks during a September/June session and 2 sessions or service blocks during a July/August session per child. One (1) session or service block consists of a half-hour and will be paid at the rate indicated under the Oneida County Related Service Rates Schedule. Each date of contact and length of time claimed for coordination during the month must be listed and identified. Periods of less than a half-hour block may be combined into half-hour service blocks of coordination services for billing purposes.

12. MAKE UP POLICY

- a. Reporting Absences. Habitual absences by the student should be reported to the school district (CPSE) and the Special Education Itinerant Teacher (SEIT) if the child receives SEIT services; if the child receives two or more Related Services, habitual absences shall be reported to the assigned Related Service coordinator appointed by the CPSE Chairperson.
- b. Student Absence or Cancellation. There shall be no makeup for therapy sessions provided under 4410 services which are missed due to a child's absence or cancellation (with or without notice). If a child's illness will necessitate canceling of service for several consecutive sessions, please request the parent/guardian call you to commence Related Services.
- c. Therapist Absence or Cancellation. Related Services which are missed due to the absence or cancellation of the therapist may be made up if the parent consents and the therapist's schedule permits. The makeup sessions must take place within the same week the Related Service was missed.
- d. Prolonged Absence of Therapist. When the therapist is absent for a prolonged period of time, the school district should be notified. The school district is responsible for arranging the replacement for the absent therapist. The school district is responsible for notifying the County of any change of a Related Service provider prior to the change so the County may give the new provider permission to begin services.
- e. Holidays and Other School Closings. The Contractor will follow the calendar of the local school district in which the child resides. Therefore, holiday and other school closings of that particular school district will apply. When Related Services are provided in a mainstream preschool setting, the preschool calendar will be followed except where written prior arrangements have been mandated by the school district and approved by the County.
- f. Limitations on Scheduling Therapy Makeup Sessions. Make up sessions must be clearly documented on the appropriate session notes with reasons for the makeup session.

13. INSURANCE

The Contractor shall maintain a professional liability policy and will provide the County with proof of coverage in the amount of \$1,000,000 per incident and \$2,000,000 aggregate during the term of this Contract. The Contractor shall also maintain general liability insurance and will provide the County with proof of coverage in the amount of \$1,000,000 per incident and \$2,000,000 aggregate. The Contractor agrees to have the County named as "additional insured" on the general liability policy and to provide the County with certificates from said insurance company or companies showing proof of insurance as stated heretofore. The Contractor further agrees to provide that such coverage shall not be terminated without prior notice to the County of at least thirty (30) days. The Contractor grants Oneida County a limited power of attorney to communicate with the Contractor's insurance provider and/or agent for the express purpose of confirming the coverage required hereunder.

14. INDEMNIFICATION

The Contractor agrees that it shall defend, indemnify and hold harmless the County from and against all liability, damages, expenses, costs, causes of actions, suits, claims or judgments arising, occurring or resulting from property damage, personal injuries or death to persons arising, occurring or resulting from or out of the work of the Contractor or its agents, contractors, subcontractors, servants or employees, and from any loss or damage arising, occurring or resulting from the acts or failure to act or any default or negligence by the Contractor or failure on the part of the Contractor to comply with any of the covenants, terms or conditions of this Contract.

15. EXCLUSIVITY

- a. The County retains the right to reassign children receiving Related Services under the terms of this Contract to other Contractors or its own employees.
- b. The County retains the right to contract with other independent contractors for such services which are the same or similar to those provided by the Contractor, or to provide such services to its eligible children through its own employees. The Contractor retains the right to provide services directly or indirectly through contract with another agency, to persons who are not classified preschool aged children with a disability receiving Related Services in Oneida County.

16. INDEPENDENT CONTRACTOR STATUS

- a. It is expressly agreed that the relationship of the Contractor to the County shall be that of an Independent Contractor. The Contractor shall not be considered employee of the County for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health benefits. The Contractor, in accordance with her status as an independent contractor, covenants and agrees that she will conduct herself in accordance with such status, that she will neither hold herself out as, nor claim to be, an officer or employee of the County by reason thereof and that she will not by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County.
- b. Contractor warrants and represents that she is in the business of offering the same or similar services detailed herein and does offer the same or similar service(s) to other entities and/or the general public as a regular course of business. Contractor and County agree that Contractor is free to undertake other work arrangements during the term of this Contract, and may continue to make its services available to the public.
- c. The Contractor shall not be eligible for compensation from the County due to a) illness; b) absence due to normal vacation; c) absence due to attendance at school or special training or a professional convention or meeting.
- d. Contractor acknowledges and agrees that she shall not be eligible for any County employee benefits, including retirement membership credits.
- e. Contractor shall be paid pursuant to IRS Form 1099, and shall be solely responsible for applicable taxes for all compensation paid to Contractor under this Contract, and for compliance with all applicable labor and employment requirements with respect to Contractor's self-employment, sole proprietorship or other form of business organization, and with respect to the employees and agents, including payroll deductions, workers' compensation insurance, and provision of health insurance where required. The County shall not be responsible for withholding from the payments provided for services rendered for State or Federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA). Contractor shall provide proof of worker's compensation insurance, where applicable, prior to execution of this Contract.
- f. The Contractor will indemnify and hold the County harmless from all loss or liability incurred by the County as a result of the County not making such payments or withholdings.
- g. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Contractor's Independent Contractor status, it is agreed that both the County and the Contractor shall have the right to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.
- h. The Contractor agrees to comply with federal and state laws as supplemented in the United States Department of Labor regulation and any other regulations of the federal and state entities relating to such employment and civil rights requirements.

17. SUBCONTRACT

The Contractor may not assign the Contractor's rights and obligations under this Contract, or subcontract with or employ another to provide the services described above of this Contract, without the prior written consent of the County.

18. EXPENSES

Contractor is solely responsible for paying all of its business expenses related to furnishing the services described herein, and shall not be reimbursed the cost of travel, equipment, tools, office space, support services or other general operating expenses.

19. TRAINING

Contractor shall not be required to attend or undergo any training by the County. Contractor shall be fully responsible for its own training necessary to maintain any licenses or certifications to perform the services described herein, and shall be solely responsible for the cost of the same.

20. ADVICE OF COUNSEL

Each party acknowledges that, in executing this Contract, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Contract.

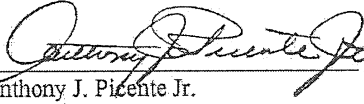
21. ENTIRE AGREEMENT

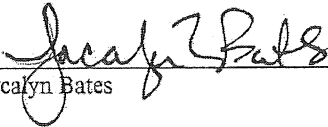
The terms of this contract, the Oneida County Related Service Rates Schedule, the attached Standard Oneida County Conditions Addendum (Appendix B), and any other attachments, amendments, addendums or appendixes attached hereto, are deemed incorporated herein in their entirety and constitute the entire understanding and agreement of the parties and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Contract. No waiver, alterations or modifications of and provisions of this Contract shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

ONEIDA COUNTY

CONTRACTOR

BY: 
Anthony J. Picente Jr.
Oneida County Executive

BY: 
Jacalyn Bates

DATE: 3/13/18

DATE: 6/18/18

Approved



013/0 Raymond F. Bara
Assistant County Attorney

**APPENDIX A
ONEIDA COUNTY RELATED SERVICE RATES SCHEDULE**

RELATED SERVICE	MAXIMUM INDIVIDUAL HALF HOUR RATE	MAXIMUM COORDINATOR RATE PER HALF- HOUR BLOCK
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Audiology	\$53	\$30
Assistive Technology Services	\$53	
Counseling Services	\$53	\$30
Occupational Therapy	\$53	\$30
Orientation & Mobility Services	\$53	
Physical Therapy	\$53	\$30
Speech Therapy	\$53	\$30
Teacher of Hearing Impaired	\$53	
Teacher of Visually Impaired	\$53	
Aide 1:1	\$10	

RELATED SERVICE	MAXIMUM GROUP HALF HOUR RATE
Assistive Technology Services	\$25.00
Audiology	\$25.00
Counseling Services	\$25.00
Occupational Therapy	\$25.00
Physical Therapy	\$25.00
Speech Therapy	\$25.00
Teacher of Hearing Impaired	\$25.00
Teacher of Visually Impaired	\$25.00

APPENDIX B

ADDENDUM --STANDARD ONEIDA COUNTY CONDITIONS

THIS ADDENDUM, entered into on this _____ day of _____, 20____, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:
- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons 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 the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
 - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

- 1) The dangers of drug abuse in the workplace;
 - 2) The Contractor's policy of maintaining a drug-free workplace;
 - 3) Any available drug counseling, rehabilitation, and employee assistance program; and
 - 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;
- D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:
- 1) Abide by the terms of the statement; and
 - 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
- E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and

- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building
Campus, Albany, NY 12240. Notice shall include the
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
 - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
 - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
 - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the

County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;

- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and
 - ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
 - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
 - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so

are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKERS' COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, 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 Articles, except as otherwise provided in the Labor Law and as set

forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, 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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or 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 County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County 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: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from

another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application; request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or 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 Office of General Services (hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

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

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or 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 or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the "use of tobacco" shall include:
 - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
 - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including:

chewing; holding in the mouth; or expectoration of chewing tobacco.

- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that delivers vapor which is inhaled by an individual user as he or she simulates smoking.
- c. For the purposes of this provision, "on Oneida County property" shall be defined as:
 - i. Upon all real property owned or leased by the County of Oneida;
and
 - ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.
- d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.



ONEIDA COUNTY BOARD OF LEGISLATORS

ONEIDA COUNTY OFFICE BUILDING ♦ 800 PARK AVENUE ♦ UTICA, N.Y. 13501-2977

Gerald J. Fiorini
Chairman
(315) 798-5900

Mikale Billard
Clerk
(315) 798-5404

George Joseph
Majority Leader

Philip M. Sacco
Minority Leader

FN 20 20 322

September 18, 2020

Oneida County
Board of Legislators
800 Park Avenue
Utica, New York 13501

F

WAYS & MEANS

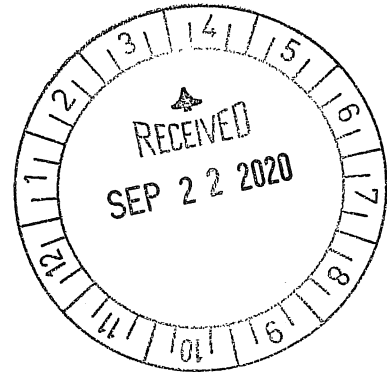
Honorable Members:

Pursuant to an agreement between the Board of Legislators and the Utica Common Council with respect to appointments to the Water Board, Mr. Brodsky has expressed an interest in staying on as a member. Therefore, I hereby submit the name of **Bruce Brodsky**, 1109 Matthews Avenue, Utica for re-appointment to the Upper Mohawk Valley Regional Water Board for another three year term to begin January 1, 2021 and expiring on December 31, 2023.

I request that this be considered at the meeting of **October 14, 2020**.

Respectfully submitted,

Gerald J. Fiorini
Chairman of the Board



Cc: Mr. Brodsky, Appointee
Mr. Becher, Executive Director, MV Regional Water Authority



ONEIDA COUNTY
 DEPARTMENT OF PUBLIC WORKS
 George E. Carle Complex
 5999 Judd Road, Oriskany, NY 13424
 Phone: (315) 793-6235 Fax: (315) 768-6299

ANTHONY J. PICENTE JR.
 County Executive

MARK E. LARAMIE, P.E.
 Commissioner

September 28, 2020

FN 20 20-323

Anthony J. Picente Jr.
 Oneida County Executive
 800 Park Avenue
 Utica, NY 13501

PUBLIC WORKS
WAYS & MEANS

Dear County Executive Picente,

The New York State Department of Transportation (NYSDOT) is assisting Oneida County with right-of-way acquisition for the following Locally Administered Federal Aid Projects.

- Harris Road Bridge over Canada Creek, Town of Lee
- Glenmore Road Bridge over Furnace Creek, Town of Annsville
- Carmichael Hill Road Bridge over Big Brook, Town of Steuben

NYSDOT has performed all work required for acquisition of real property, will negotiate and process just compensation, and file maps and descriptions with the County Clerk. Maps and descriptions are enclosed for review.

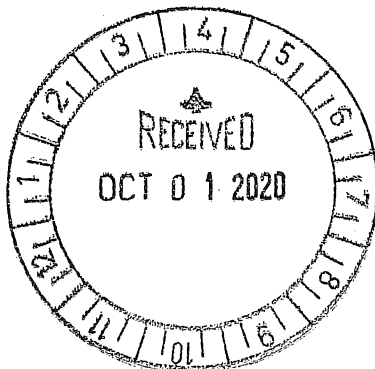
Prior to completion of the aforementioned work items, NYSDOT requires authorization from the Oneida County Board of Legislators to accept said real property obtained by the State of New York.

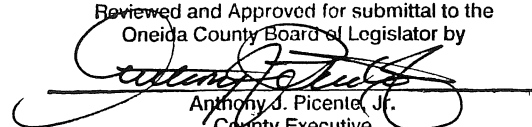
If you concur, please forward a request to the Oneida County Board of Legislators for consideration of a resolution authorizing the County of Oneida to accept real property obtained by the State of New York relative to the aforementioned bridge rehabilitation projects. A Sample Resolution has been provided by New York State for consideration.

Thank you for your continued support.

Sincerely,


 Mark E. Laramie, P.E.
 Commissioner



Reviewed and Approved for submittal to the
 Oneida County Board of Legislator by

 Anthony J. Picente, Jr.
 County Executive
 Date 9-30-20

COUNTY OF ONEIDA

DATE: _____ RESOLUTION NO. _____

MOTION MADE BY: _____

AUTHORIZING THE COUNTY OF ONEIDA TO ACCEPT REAL PROPERTY OBTAINED BY THE STATE OF NEW YORK RELATIVE TO A BRIDGE REHABILITATION PROJECT IN THE TOWNS OF LEE, ANNSVILLE AND STEUBEN; PIN 2754.44

WHEREAS, the County of Oneida has a bridge rehabilitation project at the following sites in Oneida County: **Harris Road over Canada Creek in the Town of Lee; Glenmore Road over Furnace Creek in the Town of Annsville; and Carmichael Hill Road over Big Brook in the Town of Steuben;** and

WHEREAS, this project requires acquisition of real property and County of Oneida requests New York State Department of Transportation acquire the necessary lands as shown on the attached maps (**Harris Road: Map 1, Parcel 1, Map 2, Parcel 2, Map 3, Parcel 3, Map 4, Parcel 4; Glenmore Road: Map 1, Parcel 1, Map 2, Parcel 2 and Map 3, Parcel 3; and Carmichael Road: Map 1, Parcel 1, Map 2, Parcel 2 and Map 3, Parcel 3.**

WHEREAS, the County of Oneida owns and maintains the affected portions of Harris Road, Glenmore Road and Carmichael Hill Road; and

WHEREAS, the State of New York has requested that the County agree to accept the real property.

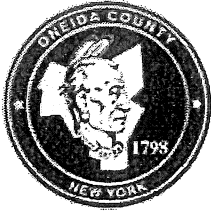
RESOLVED, that upon completion of the bridge rehabilitation project (**PIN 2754.44**) , the County of Oneida is hereby authorized to accept the real property acquired by the State of New York for the project, as described herein, and agrees to accept all responsibility, maintenance and jurisdiction of said property; and be it further

RESOLVED, that the _____ (title of County authority), is hereby authorized and directed to enter into agreements or any other documents to carry out the intent of this Resolution.

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF LEGISLATION DULY ADOPTED BY THE COUNTY BOARD OF COUNTY OF ONEIDA ON THE

_____ DAY OF _____, 20__

(Signature and Title of County authority)



ONEIDA COUNTY
 DEPARTMENT OF PUBLIC WORKS
 George E. Carle Complex
 5999 Judd Road, Oriskany, NY 13424
 Phone: (315) 793-6200 Fax: (315) 768-6299

ANTHONY J. PICENTE JR.
 County Executive
 MARK E. LARAMIE, P.E.
 Commissioner

August 17, 2020

Anthony J. Picente, Jr.
 Oneida County Executive
 800 Park Avenue
 Utica, NY 13501

FN 20 20-324
PUBLIC WORKS
 WAYS & MEANS

Dear County Executive Picente,

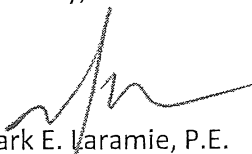
In November 2018 Oneida County contracted with Lochner Engineering to prepare plans and specifications for reconstruction of a bridge (BIN 2263310) on Oneida Street over Sauquoit Creek in the Town of Paris. This bridge is owned by the Town of Paris and all project costs will be covered by federal funds (80%) and the Town of Paris (20%). Total project cost estimate is \$792,000.00. Oneida County is acting as project sponsor but is not responsible for any costs.

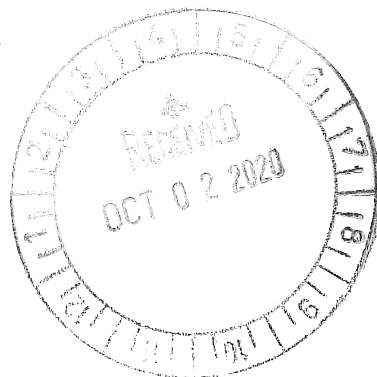
The original agreement with Lochner Engineering specifically excluded hazardous waste screening and design. Subsequently, it was determined that hazardous waste screening is required, primarily for lead and asbestos containing materials, and plans/specifications for abatement of hazardous materials are required.

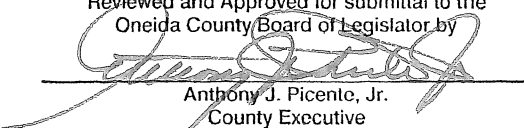
On August 5, 2020, the Oneida County Board of Acquisition and Contract approved enclosed Change Order No. 1 to the contract with Lochner Engineering to provide the aforementioned services for an additional fee in the amount of \$5,425.00. The revised maximum amount payable would be \$175,425.00.00 and funding provided thru Capital Project H-569, HOCT Bridge Program. If this change order is acceptable please forward to the Oneida County Board of Legislators for approval.

Thank you for your continued support.

Sincerely,


 Mark E. Laramie, P.E.
 Commissioner



Reviewed and Approved for submittal to the
 Oneida County Board of Legislator by

 Anthony J. Picente, Jr.
 County Executive
 Date 10-2-20

Competing Proposal	_____
Only Respondent	_____
Sole Source RFP	_____
Other	<u> X </u>

ONEIDA COUNTY BOARD OF LEGISLATORS

Name & Address of Vendor: Lochner Engineering, .P.C.
181 Genesee Street, Suite 300
Utica, NY 13501

Title of Activity or Service: Amendment to Professional Consulting Services
Oneida Street over Sauquoit Creek Bridge
Town of Paris

Proposed Dates of Operation: Start on Execution - 09/30/2021

Client Population/Number to be Served: N/A

Summary Statements

1) Narrative Description of Proposed Services:

This bridge is owned and maintained by the Town of Paris. Oneida County offered assistance to the Town of Paris regarding PIN 2754.45 and NYSDOT designated Oneida County as Project Sponsor. The original agreement with Lochner Engineering specifically excluded hazardous waste screening and design. Subsequently, it was determined that hazardous waste screening is required, primarily for lead and asbestos containing materials, and plans/specifications for abatement of hazardous materials are required. Additional funding is now required in the amount of \$5,425.00 to cover the additional project costs.

2) Program/Service Objectives and Outcomes: N/A

3) Program Design and Staffing: N/A

4) Funding

Account #:	H-569
Total Funding Requested:	\$175,425.00
Oneida County Dept. Funding Recommendation:	\$175,425.00

Proposed Funding Sources

Federal:	\$140,340.00
New York State:	\$0.00
Town of Paris:	\$35,085.00
Oneida County:	\$0.00

Past Performance Data: N/A

O.C. Department Staff Comments: None

Prior Contract No. 67362
Project No. PIN 2754.35
Change Order No. 1
Effective Date August 24, 2020

CHANGE ORDER

This Change Order modifies the original Engineering Services Agreement entered into the 15th day of November 2018, between Oneida County ("COUNTY"), Town of Paris ("TOWN") and Lochner Engineering ("CONSULTANT"), as follows:

1. **Change in Services:**

Provide hazardous waste screening and design services as described in Exhibit A, attached hereto and incorporated herein.

2. **Change in time of Performance:**

No Change.

3. **Change in CONSULTANT's Compensation:**

Additional Lump Sum Fee in the amount of \$5,425.00. Maximum amount payable revised to \$175,425.00.

All other terms and conditions, not inconsistent hereto, remain unchanged.

COUNTY

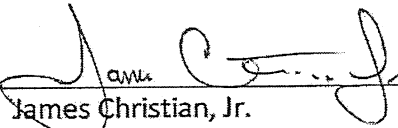
Anthony J. Picente, Jr.
Oneida County Executive

Date _____

Approved _____

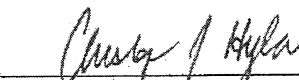
Linda Bylica Lark
Assistant County Attorney

TOWN


James Christian, Jr.
Town Supervisor

Date 9/10/2020

CONSULTANT


Christopher Hylas, P.E.
Resident Engineer

Date 9/30/20

EXHIBIT A SCOPE OF SERVICES

Cost and Progress Reporting

For the duration of this Agreement, the **Consultant** will prepare and submit to the **County** on a monthly basis a Progress Report in a format approved by the **County**. The Progress Report must contain the "Progress Report Summary Sheet" (Appendix 6-H of the "Locally Administered Federal Aid Procedures Manual"). The beginning and ending dates defining the reporting period must correspond to the beginning and ending dates for billing periods, so that this reporting process can also serve to explain billing charges. (In cases where all work under this contract is officially suspended by the **County**, this task will not be performed during the suspension period.)

As part of the Cost Control Report, certified payrolls will be provided. Non-direct salary cost for mileage reimbursement shall not exceed the federal rate.

The **Consultant** will prepare federal and state reimbursement forms for their transmittal to NYSDOT.

Screenings and Preliminary Investigations

The **Consultant** will screen and perform preliminary investigations to determine potential impacts resulting from the design alternative for the following:

- **Hazardous Waste** –The **Consultant** will screen for the potential for hazardous wastes and contaminated materials to be encountered within the project site and corridor (existing or proposed right-of-way, including easements). This preliminary screening is a general review to identify properties within the right-of-way or in close proximity that could contain or be a source of hazardous wastes or contaminated materials. The screening will include:
 - A review of existing information about past and current land use to identify possible sources of contamination within the project site and corridor, including:
 - A. NYSDEC records such as: Registry of Inactive Hazardous Waste Sites; Hazardous Substance Waste Disposal Site Study Reports; records of chemical or petroleum storage tanks; waste incident and chemical release reports.
 - B. The **County** and other municipal agency sources such as: local assessor and building permit records; title abstracts; local historical society records.
 - C. Records of discussions with former employees of industries and other businesses located within or near the project area.
 - A site visit to look for observable physical evidence of contamination (e.g., stained soil, seepage, and stressed or dead vegetation).

The project area is not within an Environmental Justice area. A detailed Hazardous Waste Assessment is not anticipated.

- **Asbestos** – The **Consultant** will maintain a valid asbestos handling license for the duration of this Agreement and all personnel engaged in asbestos-related work will be appropriately certified for the work being performed, as described in Section 56-2.2 of Industrial Code Rule 56 (12 NYCRR Part 56). The **Consultant** will perform a preliminary investigation for the presence of asbestos-containing materials

(ACM's) within the project site and corridor, using the following screening techniques:

- A review of available as-built drawings, record plans, and other construction drawings of all structures and facilities in the project area, including but not limited to pavement, shoulders, subgrade, underground utilities, buildings, and bridges which could potentially require alterations or demolition as part of the project.
- An on-site visual inspection of all structures and facilities.
- *Lead Based Paint* – The **Consultant** will visually inspect all structures for paint. If painted surfaces are observed, The **Consultant** will collect a paint chip sample from that surface for analysis of lead. The **Consultant** assumes that a detailed lead-based paint survey beyond the preliminary screening will not be necessary.

Work will be performed, as detailed in the NYSDOT Project Development Manual to determine whether further detailed analysis or study is required. The results of these screenings and preliminary investigations will be summarized in the appropriate sections of the PSR/FDR.

Detailed Studies and Analyses

The following Detailed Studies are assumed:

Hazardous Waste

The **Consultant** will screen for hazardous wastes and contaminated materials within the project site and corridor (existing or proposed right-of-way, including easements). This preliminary screening is a general review to identify properties within the right-of-way or in close proximity that could contain or be a source of hazardous wastes or contaminated materials. The screening will include:

- a review of existing information about past and current land use to identify possible sources of contamination within the project site and corridor, including:
- NYSDEC records such as: Registry of Inactive Hazardous Waste Sites; Hazardous Substance Waste Disposal Site Study Reports; records of chemical or petroleum storage tanks; waste incident and chemical release reports.
- County and municipal agency sources such as: local assessor and building permit records; title abstracts; local historical society records.
- Records of discussions with former employees of industries and other businesses located within or near the project area.
- a site visit to look for observable physical evidence of contamination (e.g., stained soil, seepage, and stressed or dead vegetation).

The **Consultant** will complete a Hazardous Waste/Contaminated Materials Screening Form and include it in the Appendix of the DAD.

Asbestos

- The **Consultant** must maintain a valid asbestos handling license for the duration of this Agreement and all **Consultant** personnel engaged in asbestos-related work must be appropriately certified for the work being performed, as described in Section 56-2.2 of Industrial Code Rule 56 (12 NYCRR Part 56).
- The **Consultant** will perform a preliminary investigation for the presence of asbestos-containing materials (ACM's) within the project site and corridor, using the following screening techniques:
 - A review of available as-built drawings, record plans, and other construction drawings of all structures and facilities in the project area, including but not limited to pavement, shoulders, subgrade, underground utilities, buildings, and bridges which could potentially require alterations or demolition as part of the project.
 - An on-site visual inspection of all structures and facilities.

Additional Estimating Assumptions

The following additional assumptions have been made for estimating purposes:

Estimate 1 cost and progress reporting period will occur during the life of this Agreement.

Estimate 0 permits will be required.

Estimate 2 lead samples will be taken.

Estimate 2 asbestos samples will be taken.

A Phase 2 ESA will not be required.



ONEIDA COUNTY DEPARTMENT OF WATER QUALITY & WATER POLLUTION CONTROL

51 Leland Ave, PO Box 442, Utica, NY 13503-0442
Phone: (315) 798-5656 Email: wpc@ocgov.net Fax: (315) 724-9812

Anthony J. Picente, Jr. County Executive

Steven P. Devan, P.E. Commissioner

September 23, 2020

The Honorable Anthony J. Picente, Jr. Oneida County Executive 800 Park Ave Utica, NY 13501

Handwritten: FN 20 20-325

Re: Oneida County Water Pollution Control Plant Secondary Treatment System Upgrades (Contract C-8) Work Order #33.4, Amendment 4

PUBLIC WORKS

Dear County Executive Picente:

WAYS & MEANS

A detailed engineering evaluation of the Water Pollution Control Plant (WPCP) and the Sauquoit Creek Pumping Station (SCPS) was submitted by Oneida County to the New York State Department of Environmental Conservation (NYSDEC) on August 27, 2012. This was done in response to the requirements of the Consent Order (No. R620060823-67) between NYSDEC and Oneida County due to sanitary sewer overflows (SSO) at the SCPS. The evaluation, which was prepared as Work Order No. 12, expanded upon the preliminary capacity assessment of the WPCP that was performed under Work Order No. 5 in 2007. The timeline included with the evaluation identified construction of a new Sauquoit Creek Force Main (SCFM) and upgrades to the SCPS. The WPCP evaluation was approved by NYSDEC in November 2012.

Final Design of the Secondary Treatment Upgrades (Contract C-8) was previously completed under Work Orders 33-Amendment No. 3. Under this currently proposed Work Order, Work Order 33, Amendment No. 4, construction management/administration, resident representation, startup/ commissioning, and engineering services during construction will be provided for the construction phase of Contract C-8.

GHD has proposed Work Order #33, Amendment 4 in the amount of \$6,192,000 as the budget to accomplish the tasks listed above. Department staff has reviewed this Work Order Amendment and found it to be acceptable, given the amount of contractual work it oversees. Funding for this work is provided by capital projects HG-572 and HG-573.

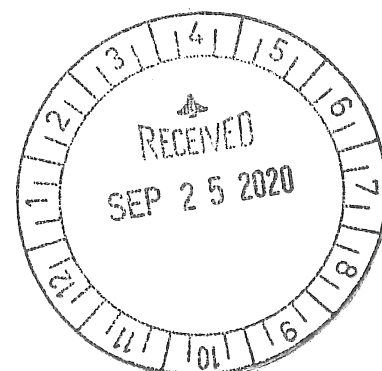
I would appreciate consideration of this Work Order Amendment by you and the Board of Legislators at your earliest possible convenience. I am available to meet with you and the Board at your convenience, to discuss this request and explain this Work Order Amendment in more detail.

Thank you for your consideration in this matter.

Sincerely, THE ONEIDA COUNTY DEPARTMENT OF WATER QUALITY AND WATER POLLUTION CONTROL

Steven P. Devan, P.E. Commissioner

Attachments: Contract Summary Sheet Work Order #33, Amendment 4



Reviewed and Approved for submittal to the Oneida County Board of Legislators by

Signature of Anthony J. Picente, Jr.

Anthony J. Picente, Jr. County Executive

Date 9-25-20

Competing Proposal X
Only Respondent
Sole Source RFP
Other

**ONEIDA COUNTY BOARD OF LEGISLATORS
CONTRACT SUMMARY**

Name & Address of Vendor: GHD Consulting Services, Inc.
5788 Widewaters Pkwy
Syracuse, NY 13214

Title of Activity or Service: Work Order #33, Amendment 4
Secondary Treatment System Upgrades (Contract C-8)

Proposed Dates of Operation: Upon contract execution until completion of
Work, anticipated by December 31, 2023

Client Population/Number to be Served: 110,000 people

Summary Statements

- 1) Narrative Description of Proposed Services: GHD has proposed Work Order #33, Amendment 4 in the amount of \$6,192,000 to accomplish construction management/administration, resident representation, startup/ commissioning, and engineering services during construction for Contract C-8.
- 2) Program/Service Objectives and Outcomes: Provide the necessary construction phase services and bid /design services for the contract listed.
- 3) Program Design and Staffing: GHD Consulting Services, Inc. and other members of the engineering team will provide the services with over site from WQ&WPC

Total Funding Requested: \$6,192,000 **Account #:** HG-572 and HG-573

Oneida County Dept. Funding Recommendation: Capital Fund HG-572 and HG-573

Proposed Funding Sources (Federal \$/ State \$/County \$): Funding will come from borrowing money from the New York State Environmental Facilities Corporation.

Cost Per Client Served: \$56.29

Past Performance Data: GHD and the rest of the engineering team are providing similar construction phase services for other portions of the plant upgrades.

O.C. Department Staff Comments: The total projected contractual work being managed with under this Work Order approaches \$60,000,000.

**AMENDMENT NO. 4 TO
WORK ORDER 33**

**WPCP SECONDARY TREATMENT UPGRADES
CONSTRUCTION PHASE SERVICES**

CWSRF PROJECT NO. C6-6070-08-15

I. PROJECT UNDERSTANDING

A detailed engineering evaluation of the Water Pollution Control Plant (WPCP) and the Sauquoit Creek Pumping Station (SCPS) was submitted by Oneida County (Owner) to the New York State Department of Environmental Conservation (NYSDEC) on August 27, 2012. This was done in response to the requirements of the Consent Order (No. R620060823-67) between NYSDEC and Oneida County due to sanitary sewer overflows (SSO) at the SCPS. The evaluation, which was prepared as Work Order No. 12, expanded upon the preliminary capacity assessment of the WPCP that was performed under Work Order No. 5 in 2007. The timeline included with the evaluation identified construction of a new Sauquoit Creek Force Main (SCFM) and upgrades to the SCPS. The WPCP evaluation was approved by NYSDEC in November 2012.

Final Design of the Secondary Treatment Upgrades (Contract C-8) was previously completed under Work Orders 33-Amendment No. 3. Under this Work Order (Work Order 33, Amendment No. 4), construction management/administration, resident representation, startup/commissioning, and engineering services during construction will be provided for the construction phase of C-8.

II. CONSTRUCTION SERVICES APPROACH

Construction of the Work Order 33 related components constitutes additional major construction projects of the entire program. The comprehensive construction program includes the new SCFM and upgrades to the SCPS, as well as the WPCP upgrades. Under Work Order 24, Amendment No. 2, the Solids Handling Upgrades project (C-2), the first major construction project, the services included, not only those specific to the Work Order, but also those to establish the organizational and management systems to support a program of this size over the entire construction period. It is anticipated that construction will be completed in 2022, with warranties in effect into 2023. As the overall Program Managers, our Project Team has prepared a comprehensive Program Construction Management (PCM) approach for the entire 6-year construction period to assist Owner with constructing and commissioning these significant upgrades. This approach provides the following features/advantages:

- overall Program Construction Manager providing a single source of responsibility (point of contact)
- a consistent approach across all projects/contracts in managing correspondence, submittals, RFIs, modifications, claims, and other project elements
- schedule management of both the overall Program, as well as those related to each individual project
- program-wide document control system to standardize and streamline project controls and communication
- program-wide cost tracking and control
 - built-in coordination between the engineering design team, Resident Project Representatives (RPRs), and PCM staff
- establishment of Risk Management processes
- monitoring site logistics and coordination between individual projects and ongoing WPCP operations
- institutional knowledge through the continuity of the design team's involvement

The following section presents the PCM organization structure and staffing, amended to include the Work Order 33 tasks, including individuals knowledgeable of Owner's consent order compliance Program and experienced in construction management, engineering during construction services, and experienced resident site representatives.

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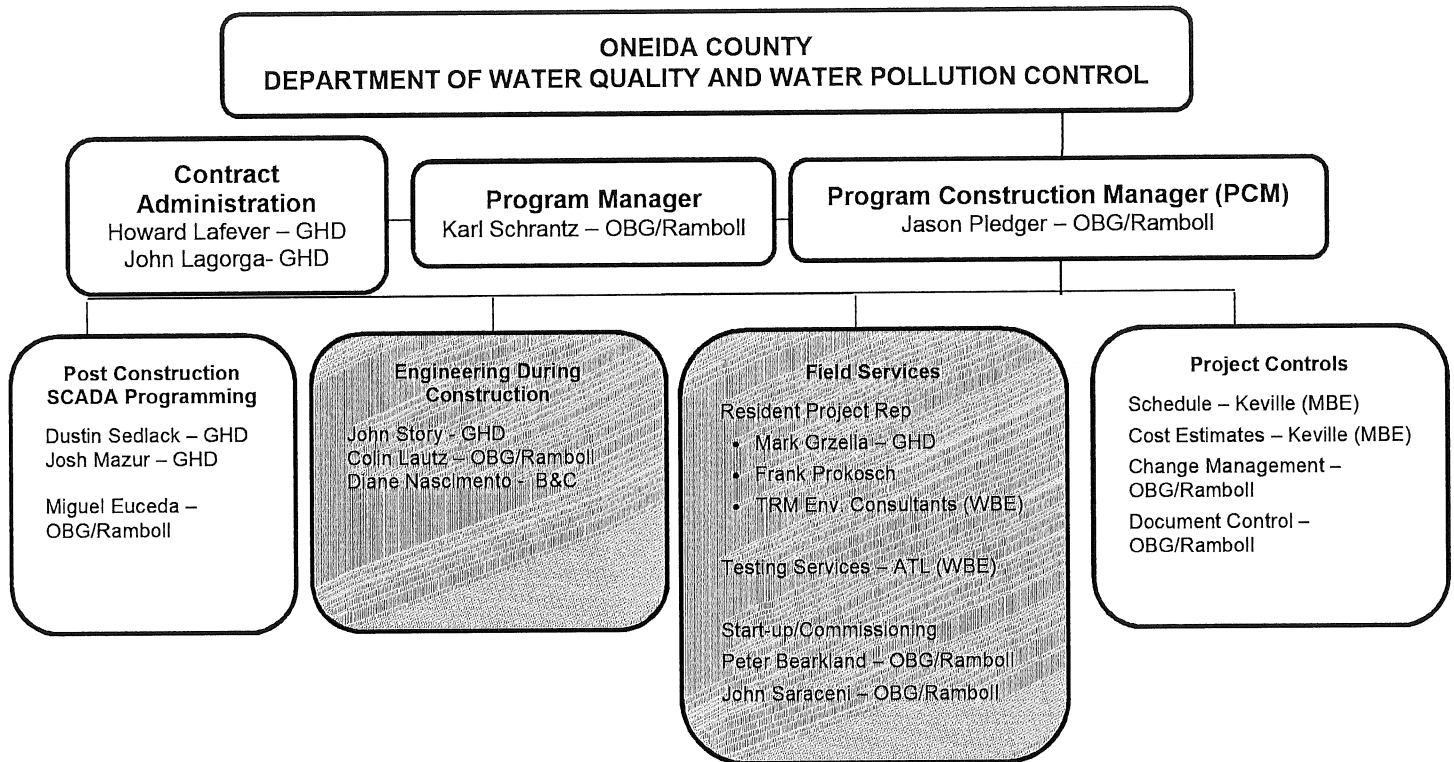
Subsequent to the Project Organization Section, is a comprehensive presentation of the construction phase Scope of Services, mainly following Engineers Joint Contract Document Committee (EJCDC) format, customized for this Program, similar to that adopted for Contracts C-2, C-5, C-6, and C-7, currently under construction.

The EJCDC language included in this proposed Work Order 33, Amendment No. 4 is similar to that EJCDC language included in the Contract Documents, which establishes the limits of responsibilities of Engineer (on behalf of Owner). Engineer’s reviews of various submittals, certifications, payment requests, and schedules do not relieve the Contractor from completing the Work in accordance with the Contract Documents. None of the above put Engineer (or Owner) in the position of supervising or directing the Contractor, nor putting them in control of the Work, including Contractor means and methods. However, Engineer, by virtue of their scope of work with Owner, is responsible for monitoring the Contractor’s work, in accordance with the Contract Documents.

Work Order 24 Amendment 2 (C-2) included the initial establishment of the PCM function (such as Master Schedule development and Document Control setup), as well as the services specific to that Work Order. Subsequent Work Orders and/or amendments, such as that for Work Order 33, relative to the remaining upgrades to the WPCP, will include the appropriate level of increased PCM services, as well as those related to the specific project to be constructed.

III. PROJECT ORGANIZATION

The construction phase services, to include both the PCM and Work Order 33 services, is proposed to be organized as shown on the following diagram:



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OBG/Ramboll will continue to serve as the PCM, as it is their role on Contracts C-2 through C-7, consistent with their role as overall Program Manager. This PCM role will focus on coordinating the overall Program construction activities, including those of this Work Order, as well as other construction activities at the SCPS/FM and WPCP. The PCM will proactively interface with the OCWPCF Commissioner and operations staff to understand operational issues associated with the construction.

As the Engineers of Record (Engineers) for the designs: OBG/Ramboll for process/mechanical, and Brown and Caldwell for electrical, they will provide Engineering Services during Construction for their respective designs. In this role, they will determine that the construction of the projects is consistent with the Construction Contract Documents.

GHD's role during construction of C-8 will include the post construction phase services of overall SCADA programming, consistent with their role for the overall Program. Engineering during Construction and SCADA Programming services are outlined in more detail in the Scope of Services section of this Work Order Amendment.

For this Work Order, Field Services assume two (2) full-time Resident Project Representatives (RPRs) for the 25-month construction duration anticipated for Contract C-8. For consistency with previous contracts, the likely RPRs are Mark Grzella of GHD and Frank Prokosch. A subcontracted testing firm (likely Atlantic Testing Laboratories) will provide Owner's required materials testing during construction for each contract. The prime Contractors will also be responsible to hire their own independent testing firm, as required during construction, as specified in the Contract Documents. A dedicated startup and commissioning team will work with the Contractors, PCM, Engineering and RPR staff on the two contracts, to efficiently and effectively place equipment components and systems into service.

Project Controls will be a function of the PCM/Engineer, who will work closely to manage scheduling, cost estimating/change management, and document control.

IV. SCOPE OF SERVICES

The following Scope of Services is adapted in part from the Engineers Joint Construction Documents Council (EJCDC), Document No. E-500, "Agreement between Owner and Engineer for Professional Services, Exhibit A," customized to reflect Owner's Program needs. As previously indicated, the EJCDC language included in the proposed Work Order 33, Amendment No. 4 is similar to that EJCDC language included in the Contract Documents, which establishes the limits of responsibilities of Engineer (on behalf of Owner). Engineer's reviews of various submittals, certifications, payment requests, and schedules do not relieve the Contractor from completing the Work in accordance with the Contract Documents. None of the above put Engineer, PCM (or Owner) in the position of supervising or directing the Contractor, nor putting them in control of the Work, including Contractor means and methods. However, Engineer and the PCM, by virtue of their scope of work with Owner, are responsible for monitoring the Contractor's work, in accordance with the Contract Documents.

Throughout this document, the term "Engineer" is used to refer to the Work Order 33 design team of B&C, GHD, and/or OBG/Ramboll. In addition, the term PCM refers to the Program Construction Management Team, which includes the entire Team or PCM task-specific members, Engineer, and RPRs. The PCM Team provides singular, unit responsibility for conducting the tasks defined in this Amendment. Throughout the document, Oneida County is referred to as "Owner."

The Scope of Services is based upon the following:

1. Establishment of the PCM structure and associated management systems related to Contract C-8.
2. Assumed on-site construction duration of 25 months for Contract C-8.
3. Contract C-8 will be constructed with multiple prime contracts:

- General
- Electrical
- HVAC
- Plumbing

A. Program Construction Management (PCM).

1. This task allows for the management, administration, and coordination of the work efforts for construction phase services. Included in this task is the appropriate coordination with Owner and engineering team members, management of the project, monitoring of budget and schedule, cost control, and administrative assistance to the Commissioner on an as-needed basis.
2. The PCM will oversee and coordinate the engineering efforts of the Project Team during construction. The PCM will be responsible for working with the various Contractors in coordinating their construction activities associated with this Work Order with other planned construction activities.
3. Specific duties of the PCM during construction include:
 - a. Delegate shop drawing review to the appropriate personnel. Shop drawing review will be conducted by the Engineering team members who were involved during the design phase of the item being reviewed. The PCM, utilizing the document control software, will maintain the overall shop drawing log, broken down by contract. Regarding Electronic Transmittal Protocols, the Construction Contract Documents will specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, utilizing a secure Document Control Software System. Configuration and implementation of the Document Control Software System will be developed together with Owner and Engineer jointly for such protocols for transmittals between and among Owner, Contractor, Engineer, and PCM during the Construction Phase and Post-Construction Phase.
 - b. Review initial schedules submitted by individual Contractors and prepare a project Baseline Schedule for Contract C-8. Considering the progress of work to date on existing contracts, we believe that preparing a Master Schedule is not necessary and is therefore not included in this Scope of Work. Review Contractors' monthly updates and update the project Baseline Schedule. Observe construction progress and report deviations from the schedules which will jeopardize job progress. Work with the Contractors to develop recovery plans as necessary. Update the Baseline Schedule as appropriate to incorporate such activities and dates.
 - c. Applications for Payment: Based on PCM, Engineer, and RPR observations as experienced and qualified professionals and on review of Applications for Payment and accompanying supporting documentation:
 - 1) Determine the amounts that PCM recommends Contractors be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute PCM's representation to Owner, based on such observations and review by Engineer and RPR, that, to the best of PCM's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled. In the case of unit price Work, PCM's recommendations of payment will

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include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

- 2) By recommending payment, the PCM will not thereby be deemed to have represented that observations made by the PCM to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to the PCM in this Agreement. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

d. Assist the RPRs for the various construction projects to:

- 1) Observe Work in progress for conformance with plans and specifications and report and track defects and deficiencies.
- 2) Coordinate the work of separate testing agencies engaged by Owner.

Assist in the selection of independent testing agencies. Coordinate their work, review their reports and make recommendations regarding their findings. Selection of Independent Testing Laboratory: Through the PCM, Owner will provide the services of an independent testing laboratory to perform the required inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractors), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Owner will provide the PCM with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor. The PCM will assist Owner in the selection of an independent testing laboratory to perform such services.

- 3) Maintain a complete and current record of Project contracts, drawings and specifications, progress photos, testing and inspection reports, etc. Maintain a file of Project correspondence, directives, and meeting minutes. Original Documents: If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
 - 4) Coordinate site access, temporary office space, and material and equipment staging areas with the various Contractors. Review regularly with Owner to minimize disruption to the ongoing operations and maintenance of the WPCP during construction.
- e. Coordinate and chair regular job site meetings with Owner, Contractor representatives, and Engineer's team as appropriate; discuss job progress, track and record key actions and decisions and prepare and/or review meeting notes as required.
- f. Identify and attempt to facilitate the resolution of construction issues/disputes as they arise and prior to engagement of legal counsel and prior to invoking the "Dispute Resolution Clause of the Construction Contract" by the involved parties to handle the matter.

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- g. Support Owner in the defense and resolution of any claims related to the Project. Assemble and analyze data as required for such defense. Assistance related to claims that advance to litigation, if desired by Owner, will be supported under additional authorization.
 - h. Develop and implement a system for the preparation, review, and processing of construction change directives and change orders. Estimate the cost of change orders and negotiate them with the Contractors on behalf of Owner.
 - i. In collaboration with the Contractors, Engineers, and RPRs, develop a schedule of close-out activities, including punch lists, equipment testing, start-up procedures, and occupancy. Incorporate such schedule into the Master Schedule and distribute it to Project team members as appropriate.
 - j. Together with the RPRs, schedule and direct inspections to develop punch lists. Establish dates of Substantial and Final Completion. Monitor and confirm Contractor compliance with the facilities turnover requirements.
4. Specific duties of the PCM during the post-construction period include:
- a. Coordinate, catalogue, and confirm delivery to Owner of keys, manuals, warranties, Record Drawings, plans and specifications, lien releases, spare parts, etc. Contractor's Completion Documents: Receive from Contractor, and together with Engineer, review and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates, or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of the PCM's review of record documents will be to check that Contractor has submitted all pages.
 - b. Work with the Contractors to monitor the completion of punch list items and to finalize outstanding changes in their scope of work. Verify the payment of retainages.
 - c. Schedule and monitor product and equipment demonstrations and training. Monitor initial start-up and testing of systems to confirm compliance with specifications.
 - d. Coordinate performance of corrective and warranty work.

B. Engineering Services During Construction.

1. **Conformed Contract Documents.** Prepare updated documents for construction purposes that incorporate and integrate the content of all Addenda and any amendments that were agreed upon prior to issuance of Notice of Award.
2. **Pre-Construction Conference.** Participate in a pre-construction conference prior to commencement of Work at the Site.
3. **Schedules.** Review the acceptability of the schedules that Contractors are required to submit, including the Baseline Construction Schedule and Monthly Schedule Updates.
4. **Visits to Site and Observation of Construction.** In connection with observations of Contractors' Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits

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and observations by Engineer and RPR, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to PCM or Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the RPR, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer together with the PCM will keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to the Site, and representation by the RPR, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents.
5. **Defective Work.** Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to PCM and Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
6. **Compatibility with Design Concept.** If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform PCM and Owner of such incompatibility, and provide recommendations for addressing such Work.
7. **Clarifications and Interpretations.** Accept from Contractor and PCM submittal of all matters in question concerning the requirements of the Construction Contract Documents [sometimes referred to as requests for information or interpretation (RFIs)], or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
8. **Field Orders.** Engineer may prepare Field Orders, to be issued by the PCM, requiring minor changes in the Work.
9. **Change Orders and Work Change Directives.** Recommend Change Orders and Work Change Directives to PCM and Owner, as appropriate, and assist in preparing Change Orders and Work Change Directives as required.
10. **Differing Site Conditions.** Respond to PCM regarding any notice from Contractor of differing site conditions, including conditions relating to underground facilities, such as utilities and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for PCM's and Owner's use.
11. **Shop Drawings, Samples, and Other Submittals.** Review and approve, or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto.

12. **Substitutes and “Or-Equal.”** Evaluate and determine the acceptability of substitute or “or-equal” materials and equipment proposed by Contractor. (This is part of shop submittal task.)
13. **Inspections and Tests.** (This is part of submittal and site visit tasks.)
 - a. Receive and review certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents.
 - b. As deemed reasonably necessary, request of the PCM that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, through the PCM, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
14. **Change Proposals and Claims.**
 - a. In conjunction with the PCM, Engineer will review and respond to Change Proposals. Engineer will review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, recommend to the PCM denial of the Change Proposal in whole, approval of it in whole, or denial it in part and approval in part. As the single point of contact on all Contracts, the PCM will issue written response to all Change Proposals. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then the PCM will notify the parties that Engineer will not resolve the Change Proposal. Notification will include a brief summary basis for that determination.
 - b. Provide information or data to the PCM, Owner regarding engineering or technical matters pertaining to Claims. (This is part of RFI and change order tasks.)
15. **Substantial Completion.** Promptly after notice from the PCM that Contractor considers the entire Work ready for its intended use, Engineer, in company with the PCM, RPR, Owner, and Contractor, visit the Site to review the Work and determine the status of completion. Engineer will follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Engineer will assist the PCM and Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion. (This is part of site visit task.)
16. **Final Notice of Acceptability of the Work.** Engineer and the PCM will conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing to the PCM, final payment to Contractor. Accompanying the recommendation for final payment, Engineer will also provide a notice to the PCM, Owner and Contractor in a form acceptable to Owner (“Notice of Acceptability of Work”) that the Work is acceptable to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement. (This is part of site visit task.)
17. **Standards for Certain Construction-Phase Decisions.** Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work.
18. **Duration of Construction Phase.** The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by PCM and Engineer for final payment to Contractors. Since the Project involves more than one prime contract, the Construction Phase services may be rendered at different times in respect to the separate contracts.

- C. **Resident Project Representative (RPR).** Provide the services of RPRs at the Site to assist the PCM and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit A. The furnishing of such RPR's services will not limit, extend, or modify the PCM or Engineer's responsibilities or authority except as expressly set forth in Exhibit A.
- D. **Post-Construction Phase.**
1. Together with PCM and Owner, Engineer will visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist the PCM and Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with the PCM and Owner, Engineer will visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective, and therefore, subject to correction by Contractor.
 3. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Agreement, will terminate 12 months after the commencement of the Construction Contract's correction period.
 4. The Contractor will provide, for Engineer's review, a draft Operations and Maintenance Manual for each major equipment item. Engineer will provide comments to the Contractor prior to Contractor submission of a paper copy of the final O&M Manual for each equipment item. Engineer will compile O&M manuals submitted by Contractor to prepare an overall Operations and Maintenance Manual for Contract C-8. The manual will be subdivided by major process equipment. At a minimum the manual will include:
 - a. Flow schematics.
 - b. "Nameplate" design data including number of units, capacity, motor horsepower, manufacturer/model, etc.
 - c. Operation and control descriptions (functional description of major equipment in narrative format). Descriptions will include functionality in the manual and/or automatic modes, as applicable.
 - d. Startup procedures.
 - e. Routine troubleshooting.
 - f. Alarms and remedial actions.
 - g. Other operations/maintenance information necessary for individual equipment items necessary for WPCP operators.
 - h. Three (3) paper copies of the Operations and Maintenance Manual, along with one electronic (PDF) copy of the manual will be provided. Paper copies will be bound in a three-ring binder.
 5. Engineer will assist the PCM and Owner during the one-year warranty period following issuance of substantial completion to the Contractor. These services may include, but are not limited to:
 - a. Assist in coordinating between the PCM, the Contractor, and/or equipment suppliers for operational or maintenance issues that arise during the one-year warranty period. In conjunction with the PCM, ensure proper remedial action is provided by the Contractor.

- b. Assist the PCM in coordinating with Contractor, Owner, and equipment suppliers to verify proper start-up services are provided for major pieces of equipment.
 - c. Assist the PCM in coordinating with the Contractor, Owner, and equipment suppliers to verify proper training is provided on major pieces of equipment.
 - d. Obtain required manufacturer startup reports.
 - e. Obtain specified extended warranties.
6. Engineer will prepare Record Drawings in the form of updated conformed CADD files based on Contractor and RPR “as built” documentation. The PCM will furnish the Record Drawings to Owner.

E. Startup/Commissioning.

- 1. The PCM will designate a Commissioning Agent to perform the following start-up and commissioning activities during construction of the C-8 Contract:
 - a. **Document Preparation.**
 - 1) Prepare a Commissioning Plan document outlining the organization, schedule, responsibilities, and documentation requirements of the commissioning process.
 - 2) Prepare Installation Commissioning (IC), Operational Commissioning (OC), and Performance Commissioning (PC) documents (i.e., protocols, checklists, etc.).
 - 3) Create and maintain supporting documentation filing system.
 - 4) Prepare final commissioning summary report.
 - 5) Compile documentation of operator training, in accordance with the contract documents.
 - 6) Track items of non-conformance to satisfactory resolution.
 - b. **Commissioning Meetings.** Conduct commissioning team meetings during construction. Commissioning meetings are in addition to regular progress and coordination meetings.
 - 1) Create and maintain a rolling schedule for commissioning meetings.
 - 2) Attend meetings commencing prior to and through completion of commissioning activities.
 - 3) Meeting attendance will be mandatory for representatives of all prime Contractors, Owner, Engineer and PCM.
 - 4) Commissioning meetings will be held at the WPCP site.
 - 5) Prepare and distribute meeting notes and tracking of open issues and action items.
 - c. **Installation Commissioning (IC) and Operational Commissioning (OC) Execution.**
 - 1) Coordinate with PCM and Contractors regarding staging and preparation for inspection and operational testing.

- 2) Coordinate with Contractors regarding manufacturer's onsite inspection and start-up activities in support of commissioning.
 - 3) Record and track non-conformance items.
 - 4) Provide commissioning status updates to the commissioning team.
 - 5) Engage Owner's personnel in commissioning activities.
 - 6) Coordinate field commissioning services to be performed by RPR personnel.
- d. **Performance Commissioning (PC) Execution.**
- 1) Perform activities designed to verify performance of the complete facility in an integrated fashion over a wide range of potential operating conditions.
 - 2) Track analytical acceptance testing to be performed.
 - 3) Coordinate phased system start-up.
2. The Contract Documents will have a Commissioning Specification that will inform Contractors of the roles and responsibilities during facilities commissioning, including items such as the following:
- a. Contractors shall be responsible for startup and commissioning of all equipment in accordance with the Contract Documents. The Contractors shall submit a functional testing plan at least 30 days prior to the startup of each piece of equipment.
 - b. The Commissioning Agent and Engineer will review the functional testing plan and provide a written approval, denial, and applicable comments.
 - c. The Contractors shall prepare a system delivery plan defining each system to be independently delivered to Owner. The Contractors' plan shall include the schedule for preliminary, testing, functional testing, demonstration testing and startup. The PCM shall incorporate such plans into the overall construction schedule.
 - d. The Contractors shall perform the following activities, in the order listed below, to be witnessed by the Commissioning Agent, PCM, Engineer, and Owner:
 - 1) Preliminary Field Test – To demonstrate that equipment is properly installed and ready for operation.
 - 2) Functional Test – Field test to demonstrate successful operation and performance of equipment in all intended modes of operation, including remote operation.
 - 3) System Demonstration Test – Continuous successful operation of a System in its entirety utilizing a testing fluid prescribed by Owner for seven (7) consecutive days prior to startup.
 - 4) Startup – Continuous successful online operation of a System in its entirety utilizing actual process fluid and at actual service conditions for seven (7) consecutive days prior to delivery of that System to Owner.
 - e. Engineer will approve all testing activities listed above prior to commencing the next activity.

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- f. A tagging or similar system will be provided by the Contractors and used by the Commissioning Agent to document testing and startup procedures.
 - Yellow Tag – Preliminary Field Test Complete
 - Red Tag – Functional Testing Complete
 - Blue Tag – Successful Completion of Startup
 - g. Tags will be signed and dated by the Commissioning Agent upon acceptance and shall remain attached to the item until ordered removed by the Commissioning Agent.
 - h. At least 14 days prior to the start of each System Demonstration Test, Contractors shall conduct a meeting with the Commissioning Agent, Owner, PCM, and Engineer to review testing plans, finalize testing procedures, verify status of associated equipment and prerequisites, and coordinate all aspects of the System Demonstration Testing and Startup.
- F. **Training.** The PCM will work closely with the Contractors to ensure the proper training is provided, including monitoring compliance with the following requirements of the Contract Documents:
- 1. The Contractor shall be responsible to provide training by qualified, factory trained, operations and maintenance personnel to instruct Owner in proper care, operation, and maintenance of equipment.
 - 2. At a minimum, Contractor provided training shall include:
 - Theory of Operation
 - Actual Operation
 - Mechanical Maintenance
 - Electrical Maintenance
 - Instrumentation and Alarms
 - Optimization of Operation
 - Operation of Safety Devices
 - Troubleshooting
 - Demonstration of Equipment Startup Procedures, Operating, and Shutdown Procedures
 - 3. Contractors shall provide a schedule of training activities for review and approval by Engineer and PCM. PCM shall incorporate training schedule into overall construction schedule.
 - 4. Contractors shall provide a written report for each training session for review and approval by the PCM, Owner, and Engineer.
 - 5. Contractors shall provide one (1) digital DVD recording of each training session.
- G. **SCADA Programming.**
- 1. **Deliverables.** The Engineer, through the PCM, will provide the following deliverables for the control systems designed by Engineer under Work Order 33:
 - Complete and Annotated Programmable Logic Controller (PLC)

- Complete and Annotated Supervisory Software Development
 - Specific Ancillary Software Programming
 - Preliminary Testing
 - Startup/Commissioning
 - Software Training
2. **PLC Development.** Engineer will develop the PLC programs for the complete control system as shown on the bid set of Contract Documents. These PLC's include:
- The above PLCs will be programmed by Engineer. The logic will be based on the control system descriptions specified in Section 17900 of the Contract Specifications.
3. **Packaged Control Systems.** This project includes multiple PLC-based control systems that are specified in the Contract Documents to be performance-based systems. The supplying manufacturer, or OEM, is responsible for programming the supplied PLC(s) and Operator Interface Terminals (OITs) accompanying the respective packaged control system. While the respective OEM is responsible for the performance and extent of automation of their system, Engineer will integrate data obtained from each OEM system into the plant's new supervisory application.
4. **Supervisory Software Development.** Engineer will configure the supervisory software, which includes database development, graphics development, alarming, data logging/historization, and report development at the Sauquoit pumping station. The supervisory software program will be Wonderware System Platform and will be furnished by the Contractor. As with the PLC program, a preliminary configuration will be developed for review and approval by Engineer and Owner. Revisions will be implemented into the supervisory configuration, based on the preliminary review comments, and a final configuration will be developed. Also, as with the PLC programming, a close relationship with Owner and Engineer will be necessary to provide configuration of the supervisory system during this phase.
5. **Ancillary Software.** One (1) licensed copy of reporting software and one (1) licensed copy of a software-based auto dialer program will be supplied by the Contractor. Engineer will configure the reporting software to generate up to two (2) reports. Report content and format will be coordinated with Owner during construction. Reporting software will be SyTech XLReporter. Engineer will configure the software-based auto dialer program to notify Owner personnel of up to 100 alarms via cell phone, text messaging, or email notification, as selected by Owner. Alarms, contact information, alarm priority, and alarm voice message will be coordinated with Owner during construction.
6. **Preliminary Testing.** Engineer will perform in-house simulation of PLC and supervisory programs to validate programs are ready for onsite deployment. Upon confirmation by the PCM that all point-to-point testing required in the Contract Documents has been fully and successfully demonstrated by the Contractor, Engineer will commit to a startup schedule for the confirmed system(s).
7. Engineer will perform the field testing of the control system for each process. Site visits will be based on the progress of construction and the needs of individual systems. Engineer will assist the project team in verification and startup of the PLCs and supervisory software programmed by Engineer. Engineer will provide programming to facilitate monitoring and control as designed, which includes tuning of the programs to resolve nuisance operation incurred by the PLC or supervisory programs.
8. Engineer will provide the operations staff training on use of the supervisory software, reporting software, and software-based dialer software. Two (2) hours of training for each Contract will be provided to the operations staff. Training on use of the OEM systems will be provided by the respective OEM.

H. Asset Management

Owner is required to implement an Asset Management Plan (AMP) as a condition of the Order on Consent. The AMP is required for the long term sustainability of Owner owned equipment related to the WPCP. Per the Order on Consent, assets to be included in the AMP are limited to those valued at greater than \$50,000. The purpose of this task is to develop an AMP that will satisfy Consent Order requirements. The scope of work contained herein was developed to comply with the New York State Department of Environmental Conservation Municipal Sewer System Asset Management Guide (2015). An Asset Register was developed under a previous authorization. Under this task, the Engineering Team will:

1. Develop and assign Management Strategy Groups (MSGs) to assets in the asset register. MSGs define default attributes for an asset and provide a set of inputs to the investment modelling process via three treatment options: (1) replacement, (2) rehabilitation, and (3) operations & maintenance. At a minimum, MSG attributes will include the following:
 - Asset type
 - Asset sub-type
 - Asset material
 - Physical effective life
 - Condition decay curve
 - Installation year
 - Replacement cost
2. Assign desktop condition ratings to all assets in the asset register. Each asset will be assigned a condition score from 1 to 5. The asset condition will be directly translated to a probability of failure (POF) score. The desktop rating will consider asset age and OCSD staff knowledge (including asset performance and work order history).
3. Develop a Consequence of Failure (COF) scoring matrix. Consequence of Failure (COF) is often referred to as “criticality”, and these terms (COF and criticality) are frequently used interchangeably. Asset COF is evaluated based on estimating the social, financial, and environmental/regulatory impacts of an asset failure. These three broad categories of consequence of failure are often referred to as the Triple Bottom Line (TBL) and go beyond simply assessing the direct financial consequences of an asset’s failure (e.g. cost to repair or resource impacts).
4. Define the levels of service (LOS) that customers, end users, and key stakeholders experience. LOS describes the outcomes that a utility expects to achieve in providing services to its customers. LOS connects the strategic direction of the utility to the performance requirements established within the various parts of the organization. A LOS framework identifies the metrics that have the most significant and direct impact on service delivery to customers and stakeholders. It also enables utility organizations to track trends, report progress against targets, and make critical adjustments when necessary.
5. Develop a Business Risk Exposure (BRE) profile for all assets in the asset register. BRE is an advanced asset management methodology used to focus management teams on high risk assets and issues. The BRE for an asset is the product of the asset’s consequence of failure (COF) and probability of failure (POF), adjusted for any risk mitigation measures currently in place, such as redundancy.

6. Develop a Draft and Final Asset Management Plan (AMP) for the WPCP. The table of contents of the AMP is anticipated to include the following sections:
 1. Executive Summary
 2. Introduction
 3. Description of Asset Management Framework
 4. Overview of the WPCP
 5. Current State of the Assets
 - a. Asset Inventory
 - b. Condition
 - c. Life Consumed
 6. Criticality and Risk Management
 7. Infrastructure Improvement Plan
 - a. Recommended Operations & Maintenance Strategies and Practices
 - b. 10 and 30-Year Investment Profile
 8. Appendices

I. Computerized Maintenance Management System (CMMS)

An integral component of the Asset Management system will be a new Computerized Maintenance Management System (CMMS). Under a previous authorization, the Engineering Team assisted Owner with the process of receiving proposals for the new CMMS. Several candidate vendors provided demonstrations of their systems. Based on the proposals and demonstrations received, the "Sprocket" CMMS system by Dematic is the preferred software application for the WPCP. The preferred Software Implementer is Barton & Loguidice. Under Work Order 33, Amendment 4, the Engineering Team will continue to support the implementation of the CMMS. Under this task, the Engineering Team and Software Implementer will:

1. Provide the Sprocket CMMS system.
2. Configure the new CMMS system with applicable data, such as:
 - Employees - Names, Tiles, email address, hourly rate, login name, and their permissions
 - Crews – the employees that compose the various crews
 - Material List – Part number, description, manufacturer, supplier, model, min qty, unit cost, cost type, where it is stored
 - Equipment – Type of equipment, manufacturer, model, hourly or fixed rate, unit cost
 - Contractors – Contractor name, contractor number, description
 - Work Order Templates – description, category (Preventive/Reactive), Priority, Submit To, repeat intervals, security, custom fields
 - Service Request Templates – Description, priority, dispatched to, duration, model, keywords to search for, security, questions and answers
 - Inspection Templates – name, description, submit to, priority, duration, model, work order its attached to, security, questions and answers
3. Develop a test plan and test scripts. The plan will document the following:
 - Goals for the testing program
 - Testing methodology including the test environment, involved participants, the testing process and schedule requirements
 - Change control documentation process

- Acceptance procedures
 - Test scripts for each Service Request, Work Order, Inspection type, and integration component
 - Final acceptance sign-off document
4. Provide training of WPCP staff on the use of the configured CMMS.
 5. Provide as-needed support to the WPCP to close out the CMMS implementation project with the software implementer.

J. Additional Services Requiring Owner's Written Authorization.

1. If authorized in writing by Owner, Engineer will provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for separately by Owner.
2. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
3. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
4. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
5. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in this Scope of Services.
6. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
7. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
8. Undertaking investigations and studies including, but not limited to:
 - a. Detailed consideration of operations, maintenance, and overhead expenses.
 - b. The preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities.
 - c. Preparation of appraisals.
 - d. Evaluating processes available for licensing and assisting Owner in obtaining process licensing.
 - e. Detailed quantity surveys of materials, equipment, and labor.

Work Order 33 – Amendment No. 4
Contract C-8 Construction Phase Services

- f. Audits or inventories required in connection with construction performed or furnished by Owner.
 - 9. Furnishing services of Consultants for other than Basic Services.
 - 10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor and administering Owner's contract for such services.
 - 11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required elsewhere in this Scope of Services.
- K. Additional Services Not Requiring Owner's Written Authorization.**
- 1. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
 - 2. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 - 3. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
 - 4. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 - 5. Additional or extended services arising from (a) the presence at the Site of any contamination or constituents of concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
 - 6. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
 - 7. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
 - 8. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
 - 9. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by Federal, State, or local safety authorities for similar construction sites.

V. SCHEDULE

The Engineering Team will complete the work outlined above according to the construction schedule submitted by the Contractors. We anticipate the construction phase to last approximately 25 months for Contract C-8, with an additional 12 months of Contractors post construction warranty period.

VI. COMPENSATION

- A. Owner will be billed for actual labor hours charged at the billing rates contained in Attachment A, plus direct project expenses (e.g., identifiable reproduction costs, shipping charges, etc.). The Compensation for Work Order 33, Amendment No. 4, Scope of Services outlined in Section IV is as indicated on attached Tables 1 and 2 and summarized below:

Task	Fee	Reference
Construction Phase Engineering	\$2,909,000.00	Table 1
Construction Management	\$3,283,000.00	Table 2
Total	\$6,192,000.00	

- B. Payments for the work will be due monthly on the basis of statements submitted by GHD Consulting Services Inc. for the work performed during the period.
- C. Additional services beyond the Scope of Services will be considered extra work and will necessitate additional compensation. An allowance of \$300,000 is included to fund Additional Services authorized by Owner that may be encountered. Billing will be in accordance with Paragraph VI.A, above. The actual cost will be based on the hours and documented expenses required to provide those services in accordance with Attachment A.

VII. STANDARD TERMS AND CONDITIONS

The services described above will be completed as Amendment No. 4 to Work Order No. 33 under the Terms and Conditions of the Master Agreement for Consulting Services dated July 16, 2007 between Shumaker Consulting Engineering & Land Surveying, P.C. and Oneida County and assigned to GHD Consulting Services Inc. dated March 29, 2013.

VIII. NEW YORK CLEAN WATER STATE REVOLVING FUND CONTRACTING REQUIREMENTS

GHD Consulting Services Inc. will comply with the applicable provisions of "Required Terms for Project Contracts and Subcontracts" as defined in the NY State Revolving Fund Bid Packet for Non-construction Contracts and Service Providers (effective date October 1, 2017), as prepared by the New York State Environmental Facilities Corporation. Refer to Attachment B.

IX. ATTACHMENTS

The following attachments are made part of this Work Order 33, Amendment No 4:

- Exhibit A – Duties, Responsibilities, and Limitations of Authority of Resident Project Representatives.
- Tables 1 and 2 – Work Order 33, Amendment No. 4 – Fee Estimate
- Attachment A – Rate Schedule
- Attachment B – Required Contract Language

**Work Order 33 – Amendment No. 4
Contract C-8 Construction Phase Services**

This Work Order is duly executed between Consultant and Owner. Upon execution of this Work Order, Consultant is authorized to proceed with the work.

CONSULTANT:

OWNER:

GHD CONSULTING SERVICES INC.

COUNTY OF ONEIDA

By: _____
John J. LaGorga, PE

By: _____
Anthony J. Picente, Jr.

Title: Vice President _____

Title: County Executive _____

Date: _____

Date: _____

Exhibit A

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

Work Order 33, Amendment No. 4 is supplemented to include the following agreement of the parties:

Resident Project Representative

- A. A Resident Project Representative (RPR) will be provided under this Work Order amendment to assist the PCM and Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree if conditions warrant. RPR is the PCM's and Engineer's representative at the project site, will act as directed by and under the supervision of the PCM.
- B. Through RPRs observations of the Work, including field checks of materials and installed equipment, PCM and Engineer will endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, the PCM and Engineer will not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor will the PCM (including the RPR), nor Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any type of work in progress, for the coordination of the Contractors' work or schedules, or for any failure of any Contractors to comply with Laws and Regulations applicable to the performing and furnishing of its work. The PCM, the RPR and Engineer neither guarantee the performances of any Contractors, nor assumes responsibility for any Contractors' failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
- C. The duties and responsibilities of the RPR are as follows:
1. **General.** RPRs dealings in matters pertaining to the Work in general will be with PCM and Contractors. RPR's dealings with Subcontractors will only be through or with the full knowledge and approval of Contractors. RPR will generally communicate with Owner only with the knowledge of and under the direction of PCM.
 2. **Schedules.** Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractors and consult with PCM and Engineer concerning acceptability of such schedules.
 3. **Conferences and Meetings.** Attend meetings with Contractors, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractors' safety meetings), and as appropriate prepare and circulate copies of notes thereof.
 4. **Safety Compliance.** Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Project site.
 5. **Liaison.**
 - a. Serve as PCMs liaison with Contractors. Working principally through Contractors' authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist PCM in serving as Owner's liaison with Contractors when Contractors' operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

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

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

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*This document has been modified from its original form as an EJCDC document and the user did not highlight the modifications.
You are encouraged to read the document carefully and consult Legal Counsel prior to its execution.*

Exhibit A

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

6. **Clarifications and Interpretations.** Receive from Contractors submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to PCM regarding such RFIs. Report to PCM when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractors RFI or otherwise. Transmit PCM's clarifications, interpretations, and decisions to Contractors.
7. **Shop Drawings and Samples.**
 - a. Review the date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractors, and notify PCM of availability of Samples for examination.
 - c. Advise PCM and Contractors of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or PCM.
8. **Proposed Modifications.** Consider and evaluate Contractors' suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to PCM and Engineer. Transmit Engineer's response (if any) to such suggestions to Contractors upon concurrence of the PCM.
9. **Review of Work; Defective Work.**
 - a. Report to PCM and Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
 - b. Inform PCM and Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to PCM and Engineer for addressing such Work.
 - c. Advise PCM and Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.
10. **Inspections, Tests, and System Start-Ups.**
 - a. Consult with PCM and Engineer in advance of scheduled inspections, tests, and systems start-ups.
 - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractors maintain adequate records thereof.
 - c. Observe, record, and report to PCM and Engineer appropriate details relative to the test procedures and systems start-ups.
 - d. Observe whether Contractors have arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.

Exhibit A

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

- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to PCM.

11. Records.

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

12. Reports.

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

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

14. **Certificates, Operation and Maintenance Manuals.** During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractors are applicable to the items actually installed and

Exhibit A

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

in accordance with the Contract Documents, and have these documents delivered to the PCM and Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. Completion.

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

D. Resident Project Representative will not:

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

**ATTACHMENT A
RATE SCHEDULE**

1.0 O'BRIEN & GERE ENGINEERS, INC.

1.1 Hourly Rates

CLIENT shall pay Compensation for labor based on CONSULTANT's rate schedule below. The Rate Schedule provided below shall be in effect through December 31, 2022:

Labor Category	Hourly Rate
Project Officer	\$236.00
Project Manager 2	\$210.00
Project Manager 1	\$190.00
Construction Project Manager 2	\$183.00
Construction Project Manager 1	\$164.00
Architect/Engineer/Scientist 3	\$154.00
Architect/Engineer/Scientist 2	\$121.00
Architect/Engineer/Scientist 1	\$102.00
Engineering Technician 3	\$108.00
Engineering Technician 2	\$88.00
Engineering Technician 1	\$75.00
Plant Operations Manager 1	\$153.00
Plant Operator 3	\$94.00
Plant Operator 2	\$80.00
Plant Operator 1	\$67.00
Const Mgt Prof/Estimator 3	\$136.00
Const Mgt Prof/Estimator 2	\$109.00
Const Mgt Prof/Estimator 1	\$94.00
Intern	\$43.00
Administrative Assistant	\$74.00
Construction Management Assistant 3	\$64.00
Project Manager 1 (Commissioning)	\$182.00
Project Manager 1 (SCADA)	\$164.00
Engineer 3 (Commissioning /Integration)	\$156.00
Engineer 2 (Commissioning/Integration)	\$132.00
Wastewater Operator – NYSDEC Class 4A	\$132.00
Construction Management Prof. 1 (Commissioning)	\$102.00

1.2 Non-salary expenses and outside services attributable to the Project

CLIENT shall pay Compensation for expenses based on CONSULTANT's rate schedule below. The Rate Schedule provided below shall be in effect through December 31, 2022:

- 1.2.1 Living and traveling expenses of employees when away from the home office on business connected with services at rates established by the U.S. General Services Administration;
- 1.2.2 The identifiable costs of reproduction, printing, and binding and postage and shipping applicable to the Project;
- 1.2.3 The actual cost of outside services and subcontractors;
- 1.2.4 Not used;
- 1.2.5 Mileage calculated at the federal reimbursement rate established by the U.S. General Services Administration for privately owned vehicles in effect on the date of the occurrence;
- 1.2.6 Actual receipted cost of field equipment rental supplied by a vendor for use on the Project;

- 1.2.7 The actual cost of permits and fees required for the project and paid by CONSULTANT;
- 1.2.8 The actual cost for additional insurance required by the Owner in excess of CONSULTANT's normal coverage's or limits;
- 1.2.9 The actual cost of premiums paid on overtime worked.

2.0 GHD CONSULTING SERVICES, INC.

2.1 Hourly Rates

CLIENT shall pay Compensation for labor based on CONSULTANT's rate schedule below. The Rate Schedule provided below shall be in effect through December 31, 2022:

Labor Category	Hourly Rate
Vice President/Technical Advisor	\$239.00
Senior Associate	\$230.00
Associate	\$212.00
Senior Project Manager	\$180.00
Senior Engineer	\$175.00
Project Manager	\$170.00
Project Engineer III	\$160.00
Project Engineer II	\$145.00
Project Engineer I	\$135.00
Engineer/Scientist II	\$120.00
Engineer/Scientist I	\$110.00
Architect	\$125.00
Managing Designer	\$160.00
Senior Designer	\$125.00
Designer	\$115.00
Junior Designer	\$100.00
Senior Drafter	\$95.00
Drafter	\$80.00
Technician	\$60.00
Senior Construction Project Representative	\$120.00
Construction Project Representative	\$115.00
Field Technician	\$65.00
Secretarial/Word Processing	\$80.00

2.2 Non-salary expenses and outside services attributable to the Project

CLIENT shall pay Compensation for expenses based on CONSULTANT's rate schedule below. The Rate Schedule provided below shall be in effect through December 31, 2022:

- 2.2.1 Living and traveling expenses of employees when away from the home office on business connected with services at rates established by the U.S. General Services Administration;
- 2.2.2 The identifiable costs of reproduction, printing, and binding and postage and shipping applicable to the Project;
- 2.2.3 The actual cost of outside services and subcontractors;
- 2.2.4 Not used.
- 2.2.5 Mileage calculated at the federal reimbursement rate established by the U.S. General Services Administration for privately owned vehicles in effect on the date of the occurrence;
- 2.2.6 Actual receipted cost of field equipment rental supplied by a vendor for use on the Project;
- 2.2.7 The actual cost of permits and fees required for the project and paid by CONSULTANT;
- 2.2.8 The actual cost for additional insurance required by the Owner in excess of CONSULTANT's normal coverage's or limits;
- 2.2.9 The actual cost of premiums paid on overtime worked.

3.0 BROWN AND CALDWELL ASSOCIATES

3.1 Hourly Rates

CLIENT shall pay Compensation for labor based on CONSULTANT's rate schedule below. The Rate Schedule provided below shall be in effect through December 31, 2022:

Labor Category	Hourly Rate
Vice President/Technical Advisor	\$239.00
Associate/Managing Engineer	\$225.00
Supervising Engineer	\$200.00
Principal Engineer	\$192.00
Managing Designer	\$182.00
Senior Engineer	\$152.00
Project Engineer	\$141.00
Engineer/Scientist II	\$114.00
Engineer/Scientist I	\$112.00
Designer	\$128.00
Senior Drafter	\$133.00
Drafter	\$94.00
Secretarial/Office Support	\$86.00

3.2 Non-salary expenses and outside services attributable to the Project

CLIENT shall pay Compensation for expenses based on CONSULTANT's rate schedule below. The Rate Schedule provided below shall be in effect through December 31, 2022:

- 3.2.1 Living and traveling expenses of employees when away from the home office on business connected with services at rates established by the U.S. General Services Administration;
- 3.2.2 The identifiable costs of reproduction, printing, and binding and postage and shipping applicable to the Project;
- 3.2.3 The actual cost of outside services and subcontractors;
- 3.2.4 Not used.
- 3.2.5 Not used.
- 3.2.6 Mileage calculated at the federal reimbursement rate established by the U.S. General Services Administration for privately owned vehicles in effect on the date of the occurrence;
- 3.2.7 Actual receipted cost of field equipment rental supplied by a vendor for use on the Project;
- 3.2.8 The actual cost of permits and fees required for the project and paid by CONSULTANT;
- 3.2.9 The actual cost for additional insurance required by the Owner in excess of CONSULTANT's normal coverage's or limits;
- 3.2.10 The actual cost of premiums paid on overtime worked.



**Environmental
Facilities Corporation**

ANDREW M. CUOMO
Governor

Program Requirements and Bid Packet for Non-Construction Contracts

(For Treatment Works and Drinking Water 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, 2017

**New York State Environmental Facilities Corporation
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ATTACHMENTS (REQUIRED FORMS)

- Attachment 1 - EEO Policy Statement
- Attachment 2 - EEO Staffing Plan
- 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
- Attachment 8 - EPA Form 6100-3 - DBE Subcontractor Performance Form
- Attachment 9 - EPA Form 6100-4 - DBE Subcontractor Utilization Form
- 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 and Drinking Water 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;
- Non-discrimination requirements pursuant to Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972;
- Encouragement of participation of Service-Disabled Veteran-Owned Business Enterprises ("SDVOB") in accordance with New York State Executive Law, Article 17-B and 9 NYCRR Part 252;
- 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 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, with the exception of the EEO Workforce Employment Utilization Report requirement which applies to construction Contracts and Subcontracts greater than \$25,000.

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, 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 of 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.
4. Section 504 of the Rehabilitation Act of 1973 ("Section 504") for any program or activity receiving federal financial assistance, as those terms are defined therein.
5. The Age Discrimination Act of 1975 ("Age Discrimination Act") for any program or activity receiving federal financial assistance, as those terms are defined therein.
6. Section 13 of the Federal Water Pollution Control Act ("Clean Water Act") Amendments of 1972 ("Section 13") for any program or activity receiving federal financial assistance under the Clean Water Act, as those terms are defined therein.

B. 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, Section 504, Age Discrimination Act, Section 13, and all other State and Federal

statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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 Infrastructure Improvement Act Grants (also receiving EFC loan)	Clean Water project 23% Drinking Water project 26%
NYS Intermunicipal Grants (also receiving EFC loan)	Clean Water project 24% Drinking Water project 24%
NYS financial assistance only	30%
Engineering Planning Grant	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. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards achievement of applicable MWBE participation goals. For construction-related services Contracts or Subcontracts, the portion of the Contract or Subcontract with an MWBE serving as a supplier, and so designated in ESD's Directory, that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the Contract or Subcontract. The portion of a Contract or Subcontract with an MWBE serving as a broker, as denoted by NAICS code 425120, that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE. 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 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES

New York State Executive Law Article 17-B and 9 NYCRR Part 252 provide for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. EFC recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of EFC contracts.

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

Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <http://ogs.ny.gov/Core/SDVOBA.asp>

Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

SECTION 3 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 4 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 (M/WBE) 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, with the exception of the EEO Workforce Employment Utilization Report requirement which applies to construction Contracts and Subcontracts greater than \$25,000	1	1
Service-Disabled Veteran-Owned Businesses (SDVOB)	Not required, but strongly encouraged	2	2
Suspension and Debarment	All Contracts and Subcontracts	3	3
Restrictions on Lobbying	All Contracts and Subcontracts greater than \$100,000	4	4

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. An exemplar form with instructions is attached hereto as Attachment 3. The actual Excel fillable form for Contractors and Subcontractors to complete will be e-mailed to MBOs by EFC at the start of the Contract term. 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, 2017. 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	MWBE 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.
 - c. For construction-related services Contracts or Subcontracts, the following rules apply when calculating MWBE utilization:
 - i. The portion of a Contract or Subcontract with an MWBE serving as a manufacturer that shall be deemed to represent the commercially useful function performed by the MWBE shall be 100% of the total value of the Contract or Subcontract.
 - ii. the portion of a Contract or Subcontract with an MWBE serving as a supplier (as denoted by a NAICS code beginning with 423 or 424, or a

NIGP code that does not begin with the number 9), and so designated in ESD's Directory, that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the Contract or Subcontract.

- iii. the portion of a Contract or Subcontract with an MWBE serving as a broker (as denoted by NAICS code 425120) that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.
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 NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES (“SDVOB”) PARTICIPATION OPPORTUNITIES

Contractor may contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract. The directory of New York State Certified SDVOBs can be viewed at: <http://ogs.ny.gov/Core/SDVOBA.asp>

Please contact EFC if you have any questions about utilizing SDVOBs on the Contract.

SECTION 3 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>

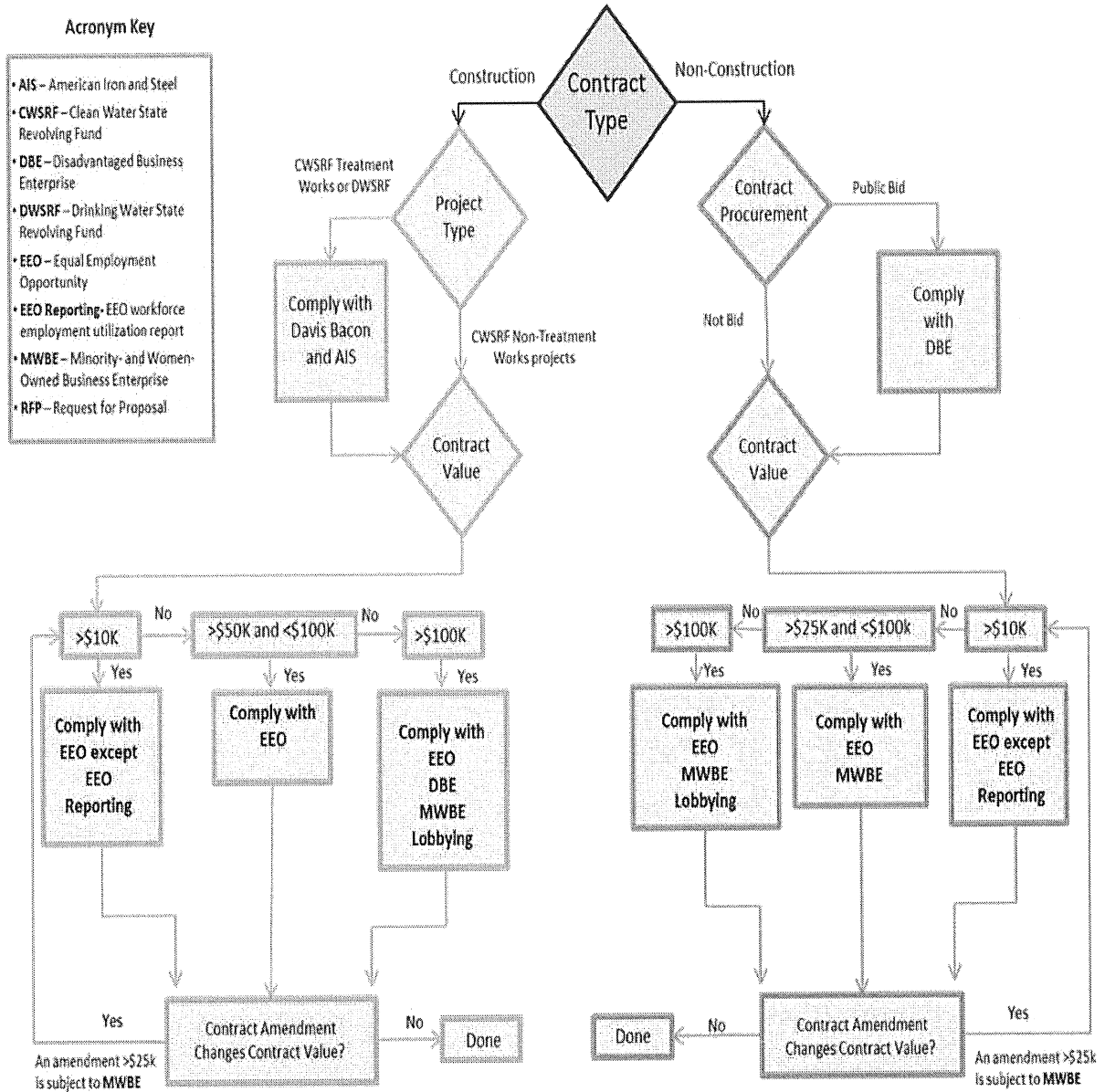
A list of contractors deemed ineligible to submit a bid is maintained by Empire State Development's Division of Minority and Women's Business Development.

SECTION 4 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 5

PROGRAM CONTRACT REQUIREMENT DECISION TREE



SECTION 6 SUMMARY OF CONTRACTOR REQUIREMENTS FOR SRF-FUNDED PROJECTS

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

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

To be submitted with this bid:

- EEO Policy Statement
- Documented Proof that EPA Form 6100-2 - DBE Subcontractor Participation Form was given to MWBE Subcontractors
- EPA Form 6100-3 - DBE Subcontractor Performance Form
- EPA Form 6100-4 - DBE Subcontractor Utilization Form
- Lobbying Certification

Refer to Part 3 Guidance Section

Section 1
Section 1
Section 1
Section 1
Section 4

To be submitted prior to or upon Contract award:

- Executed Contracts, Subcontracts, agreements, and purchase orders
- MWBE Utilization Plan and/or Waiver Request
- EEO Staffing Plan

Section 1
Section 1

Ongoing documentation & tasks:

- EEO Workforce Utilization Report
- Submit Monthly MWBE Reports to MBO
- Maintain proof of payments for MWBE Subcontractors
- Ensure that all Subcontracts contain Part 2: Required Contract Language

Section 1
Section 1
Section 1

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, 41 CFR Part 60-4, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. 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											
			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	0	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	0
Professionals	0	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	0
Sales Workers	0	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	0
Skilled Craftsmen	0	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	0
Laborers & Helpers	0	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	0
TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Journeypersons														
Apprentices														
Trainees														

Electronic Signature of Service Provider: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge. Name (Please Type):	Date:
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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 or your designated MBO for further guidance.

Attachment 3
Instructions for Completing and Submitting the
Equal Employment Opportunity Workforce Utilization Report

The Equal Employment Opportunity (“EEO”) Workforce Utilization Report (“Report”) is used by contractors and subcontractors to report the actual workforce utilized in the performance of the contract broken down by job title for a particular reporting period. When the workforce utilized in the performance of the contract can be separated out from the contractor’s and/or subcontractor’s total workforce, the contractor and/or subcontractor shall submit a Report of the 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, information on the contractor’s and/or subcontractor’s total workforce shall be included in the Report.

Instructions for Completing the Report

1. **Reporting Entity.** Check off the appropriate box to indicate if the entity completing the Report is the contractor or a subcontractor.
2. **Federal Employer Identification Number (“FEIN”).** Enter the FEIN assigned by the Internal Revenue Service (“IRS”) to the contractor or subcontractor for which the Report has been prepared. If the contractor or subcontractor uses a social security number instead of a FEIN, leave this field blank. The contractors and subcontractors for recipients of a grant only (such as an Engineering Planning Grant (EPG), a Water Infrastructure Improvement Act (WIIA) grant, or an Intermunicipal Grant Program (IMG) grant) do not need to fill out this section of the Report.
3. **Name.** Enter the name of the contractor or subcontractor for which the Report has been prepared.
4. **Address.** Enter the address of the contractor or subcontractor for which the Report has been prepared.
5. **Contract Number.** Enter the number of contract that the Report applies to, if applicable.
6. **Reporting Period / Month.** Check off the box that corresponds to the applicable quarterly or monthly (not both) reporting period for this Report. The Report is to be submitted on a monthly basis for construction contracts, and a quarterly basis based on the calendar quarter for all other contracts, during the life of the contract.
7. **Workforce Identified in Report.** Check off the appropriate box to indicate if the workforce being reported is just for the contract or the contractor’s or subcontractor’s total workforce.
8. **Preparer’s Name, Preparer’s Title, Date.** Enter the name and title for the person completing the Report, enter the date upon which the Report was completed, and check the box accepting the name entered into the Report as the digital signature of the preparer.
9. **Occupation Classifications (SOC Major Group) and SOC Job Title.** First, enter the applicable Occupation Classification (SOC Major Group) so a dropdown menu appears under SOC Job Title. Choose the SOC Job Title that best describes the worker.
10. **EEO Job Title and SOC Job Code.** The EEO Job Title and the SOC Job Code will automatically populate in the spreadsheet based upon the Occupation Classifications (SOC Major Group) and SOC Job Title selected. Please do not modify the information populated in these fields.

11. **Race/Ethnic Identification.** Race/ethnic designations do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this Report are:
- **WHITE** (not of Hispanic origin) all persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
 - **BLACK/AFRICAN AMERICAN** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
 - **HISPANIC/LATINO** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
 - **ASIAN, NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
 - **NATIVE AMERICAN/ALASKAN NATIVE** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.
12. **Number of Employees and Number of Hours.** Enter the number of employees and the total number of hours worked by such employees for each SOC Job Title under the columns corresponding to the gender and racial/ethnic groups with which the employees most closely identify.
13. **Total Compensation.** Enter the total compensation paid to all employees for each SOC Job Title, each gender, and each racial/ethnic group. Contractors and subcontractors should report only compensation for work on the contract paid to employees during the period covered by the Report. Compensation should include only sums which must be reported in Box 1 of IRS Form W-2. The contractors and subcontractors for recipients of a grant only (such as an EPG, a WIIA, or an IMG grant) do not need to fill out this section of the Report.
14. **For EFC Use Only.** This section is for EFC use only and does not need to be filled out by the contractor/subcontractor.

Instructions for Submitting the Report

The Report is to be submitted on a monthly basis for construction contracts, and a quarterly basis based on the calendar quarter for all other contracts, during the life of the contract.

EFC will provide a Report form in Excel format to the Recipient's Minority Business Officer ("MBO"). The Recipient's MBO is responsible for providing the Report form to all contractors. Each contractor is responsible for providing the Report form to all subcontractors.

Reports are to be submitted electronically in Excel format, using the Report form provided, within ten (10) days of the end of each month or quarter, whichever is applicable. For example, the January monthly Report for a construction contract is due by February 10th and the January – March quarterly Report for a non-construction contract is due by April 10th.

Once the Report form has been completed, each contractor/subcontractor must submit the Report form to EFC and the Recipient's MBO. The Report form must be submitted to EFC according to the following instructions:

1. Go to www.efc.ny.gov/eeoreporting.
2. Enter the requested information pursuant to the instructions on the page. Make sure to choose the correct applicable funding program (Clean Water State Revolving Fund (SRF), Drinking Water SRF, non-SRF Grant Only (e.g. EPG, WIIA, IMG)) and the correct reporting period (reporting

quarter for non-construction OR reporting month for construction). Enter the reporting period of the data, not the date it's submitted.

3. Submit your Report(s) pursuant to the instructions on the page.
4. If you are a contractor, use the naming convention provided by EFC (in the "For EFC Use Only" section of the Report form) for naming the file for upload (i.e., Funding Program – Project Number– Contractor short name (up to fifteen characters) – MWBE ID). The funding programs include CW (clean water SRF), DW (drinking water SRF), and GO (non-SRF grant only). If you are a subcontractor, use the naming convention provided by EFC and replace the contractor's short name with the first fifteen characters of the subcontractor's name, omitting any spaces or special characters.

Questions

If you have questions about or require assistance completing or submitting the Report, please contact EFC at mwbe@efc.ny.gov or 518-402-6924.

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 Recipient's Minority Business Officer ("MBO") on a monthly basis.
- If you require additional pages, you may find them on EFC's website at www.efc.ny.gov.
- **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:	
Project No.:		GIGP/EPG No.:		Registration No. (NYC only):				
Prime Contractor/Service Provider:				Award Date:		Start Date:		
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: \$ (Goals are applied to this amount and includes eligible change orders, amendments & waivers)		EFC MWBE Goals		Total Paid to Prime		
Revised Contract Amt: \$				MBE: _____ % MBE Amt: \$ _____ WBE: _____ % WBE Amt: \$ _____ Total: _____ % Total Amt: \$ _____		Total Paid this Month: \$ _____ Total Paid to Date: \$ _____		
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#: Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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 M/WBE 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#: Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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")

Name: Fed. Employer ID#: Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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 and note the scope of work that new subcontractors will be providing. Please note that change orders over \$25K may require that good faith efforts be made to obtain additional MWBE participation:						

Attachment 5
NYS 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 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 on EFC's website.

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

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

See the Bid Packet at www.efc.ny.gov 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, Project 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
NYS Environmental Facilities Corporation
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan

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

SECTION 2: PRIME CONTRACTOR / SERVICE PROVIDER INFORMATION				
Firm Name:		Contract Type: <input type="checkbox"/> Construction <input type="checkbox"/> Other Services		
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:	MWBE GOAL Total	PROPOSED MWBE Participation
Total Contract Amount: \$			MBE: % \$	MBE: % \$
MWBE Eligible Contract Amount: \$ (MWBE Goals are applied to this amount and includes all change orders, amendments, & waivers)			WBE: % \$	WBE: % \$
			Total: % \$	Total: % \$

Attachment 5
 NYS 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		Contract Amount:		For EFC Use:
		MBE (\$)	WBE (\$)	
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:		
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		Completion Date:		
Full Contract Amount: \$				
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:		
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		Completion Date:		
Full Contract Amount: \$				
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:		
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		Completion Date:		
Full Contract Amount: \$				
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:		
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		Completion Date:		
Full Contract Amount: \$				

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

SECTION 3: M/WBE 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:			
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:			
Full Contract Amount: \$				
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:			
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:			
Full Contract Amount: \$				
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:			
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:			
Full Contract Amount: \$				
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:			
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:			
Full Contract Amount: \$				
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.				Date:
Name (Please Type):				

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 Recipient's designated Minority Business Officer (MBO).** Incomplete forms will be found deficient.

See the Bid Packet at www.efc.ny.gov 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, Project 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:	
Project No.:	GIGP/EPG No.:	Contract ID:	Registration No. (NYC only):
Minority Business Officer (MBO):		Email:	Phone #:
Address of MBO:			
Signature of MBO: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief.			Date:

SECTION 2: PRIME CONTRACTOR / SERVICE PROVIDER INFORMATION			
Firm Name:		Contract Type: <input type="checkbox"/> Construction <input type="checkbox"/> Other Services	
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:			
Name:		Title:	Phone #:
		E-mail:	
Description of Work:		EFC MWBE GOAL Total	
Award Date:	Start Date:	Completion Date:	MBE: % \$
Total Contract Amount: \$		WBE: % \$	
MWBE Eligible Contract Amount: \$ (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.

Date:

Name: (Please Type):

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.

**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 checked="" type="radio"/> YES	<input 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.



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

**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: _____

Fee Estimate
C-8 CONSTRUCTION PHASE ENGINEERING

TABLE 1

	Task E-1	Task E-3	Task E-4	Task E-6	Task E-7	Task E-8	Task E-9	Task E-10	Task E-11	Task E-12	Task E-13	Task E-14	Task E-16	Total Qty	Billing Rate	Total Cost	Subtotals
	Project Meetings/Field Visits	Project Management	Contractor Schedules	RFI's / Field Questions	Field Orders/Change Orders	Shop Drawings	Pay Applications	Confirmed Documents/Record Drawings	Start up, O&M Manuals, Training	Closure/Warranty	Asset Management	CHMS	CR Issue For Bid Design				
OSBORN & GERE ENGINEERS, INC.																	
Project Office		40												16	56	\$236.00	\$3,776.00
Project Manager 2	480	2160							12	20				160	2484	\$110.00	\$289,440.00
Construction Project Manager 2									60	112				80	272	\$120.00	\$32,640.00
Construction Project Manager 1														0	0	\$183.00	\$0.00
Architect/Engineer/Scientist 3	160		100	300	200	1760	160	120	400	276				504	2490	\$124.00	\$537,480.00
Architect/Engineer/Scientist 2	80		100	200	200	1000	100	120	200	212				200	2020	\$122.00	\$246,400.00
Architect/Engineer/Scientist 1					200									240	620	\$100.00	\$24,000.00
Engineer/Technician 3								240						0	0	\$88.00	\$0.00
Engineer/Technician 2														0	0	\$120.00	\$0.00
Engineer/Technician 1														0	0	\$153.00	\$0.00
Plant Operations Manager 1														0	0	\$84.00	\$0.00
Plant Operator 3														0	0	\$80.00	\$0.00
Plant Operator 2														0	0	\$82.00	\$0.00
Plant Operator 1														0	0	\$136.00	\$0.00
Const. Mgt. Professional 3														0	0	\$100.00	\$0.00
Const. Mgt. Prof./Estimator 2														0	0	\$84.00	\$0.00
Const. Mgt. Professional 1														0	0	\$122.00	\$0.00
Administrative Assistant								16						40	56	\$14.00	\$784.00
SUBTOTAL: O&G LABOR	\$135,120	\$463,040	\$27,500	\$77,600	\$76,600	\$313,500	\$27,500	\$60,104	\$120,680	\$45,316	\$0	\$0	\$0	\$219,192			\$1,615,212.00
Mileage - O&G Rochester (No. Trips @ 10 Miles Ex 1)									20					20	\$150.00	\$3,000.00	
Mileage - O&G Syracuse (No. Trips @ 120 Miles Ex 1)									80					80	\$12.00	\$960.00	
Lodging (USA Rate Per Night)														0	\$81.00	\$0.00	
Per Diem (USA Rate Per Day)														0	\$41.00	\$0.00	
Printing/Reproduction (Lump Sum Allowance)														0	\$1.00	\$0.00	
Shoonya														0	\$1.00	\$0.00	
SUBTOTAL: O&G EXPENSES	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,580	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,580.00
GHD CONSULTING SERVICES, INC.																	
Vice President/Technical Advisor	200	292		30	30					8	216			20	804	\$239.00	\$192,156.00
Senior Associate														0	0	\$230.00	\$0.00
Associate														466	\$12.00	\$5,592.00	
Senior Project Manager	200	476		40	40				16	8	8			240	1844	\$180.00	\$487,920.00
Project Manager														0	0	\$170.00	\$0.00
Project Engineer III														0	0	\$160.00	\$0.00
Project Engineer II														0	0	\$110.00	\$0.00
Project Engineer I			40	40					40	40	224	244		260	400	\$145.00	\$58,000.00
Engineer/Scientist II														468	\$135.00	\$63,180.00	
Engineer/Scientist I														0	\$120.00	\$0.00	
Architect														0	\$110.00	\$0.00	
Manufacturing Designer														0	\$160.00	\$0.00	
Senior Designer														240	\$135.00	\$32,400.00	
Designer														100	\$100.00	\$10,000.00	
Junior Designer														0	\$90.00	\$0.00	
Senior Drafter														0	\$100.00	\$0.00	
Drafter														0	\$80.00	\$0.00	
Technician														0	\$50.00	\$0.00	
Field Technician														0	\$80.00	\$0.00	
Secretary/Ward Processing														40	40	\$80.00	\$3,200.00
SUBTOTAL: GHG LABOR	\$87,152	\$155,468	\$0	\$20,170	\$20,170	\$0	\$0	\$0	\$8,880	\$9,152	\$83,304	\$133,172	\$0	\$127,480			\$844,748.00
Mileage - GHG Cayuga (No. Trips @ 90 Miles Ex 1)	50													50	\$80.00	\$4,000.00	
Mileage - GHG Buffalo (No. Trips @ 380 Miles Ex 1)	20													20	\$15.00	\$300.00	
Lodging (USA Rate Per Night)	10													10	\$93.00	\$930.00	
Per Diem (USA Rate Per Day)														0	\$41.00	\$0.00	
Printing/Reproduction														0	\$1.00	\$0.00	
Shoonya														0	\$1.00	\$0.00	
SUBTOTAL: GHG EXPENSES	\$10,251	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$10,251.00
BROWN AND CALDWELL ASSOCIATES																	
Vice President/Technical Advisor	320	32		160	160									48	32	\$239.00	\$17,648.00
Associate/Manufacturing Engineer		32												105	\$226.00	\$23,730.00	
Project Engineer														308	\$200.00	\$61,600.00	
Principal Engineer														0	\$192.00	\$0.00	
Manufacturing Designer														88	\$73	\$11,916.00	
Principal Engineer	172			74						28				8	\$182.00	\$1,456.00	
Senior Engineer	144		8	100						40				8	\$182.00	\$1,456.00	
Project Engineer														80	\$141.00	\$11,280.00	
Engineer/Scientist II					80									304	\$114.00	\$34,656.00	
Engineer/Scientist I					64					80				0	\$112.00	\$7,168.00	
Designer														0	\$124.00	\$0.00	
Senior Drafter														0	\$132.00	\$0.00	
Drafter														72	\$72	\$5,184.00	
Office Support														98	\$86.00	\$8,428.00	
SUBTOTAL: BC LABOR	\$138,142	\$21,276	\$7,164	\$72,300	\$70,194	\$123,720	\$8,288	\$97,366	\$35,120	\$24,680	\$3,050	\$0	\$48,860				\$812,305.00
Mileage - BC Albany (No. Trips @ 550 Miles Ex 1)	20													20	\$282.00	\$5,640.00	
Mileage - BC Albany/Syracuse (No. Trips @ 120 Miles Ex 1)	50													50	\$61.20	\$3,060.00	
Lodging (USA Rate Per Night)	25													25	\$10.00	\$250.00	
Per Diem (USA Rate Per Day)	15													15	\$41.00	\$615.00	
Printing/Reproduction														0	\$1.00	\$0.00	
Shoonya														0	\$1.00	\$0.00	
SUBTOTAL: BC EXPENSES	\$15,815	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$15,815.00
SUBTOTAL LABOR (ALL FIRMS)	\$388,424	\$641,784	\$34,664	\$110,130	\$116,994	\$437,220	\$35,788	\$117,000	\$164,480	\$126,140	\$10,254	\$0	\$133,172				\$2,872,465.00
SUBTOTAL EXPENSE (ALL FIRMS)	\$28,106	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,580	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$28,106.00
PROJECT TOTAL	\$398,600.10	\$641,784.00	\$34,664.00	\$110,130.00	\$116,994.00	\$437,220.00	\$35,788.00	\$117,000.00	\$174,060.00	\$126,140.00	\$10,254.00	\$0.00	\$133,172.00				\$2,900,571.10
ESTIMATED COMPENSATION																\$2,900,000.00	

**Fee Estimate
C-8 CONSTRUCTION MANAGEMENT**

TABLE 2

	Task CM-1	Task CM-2	Task CM-3	Task CM-4	Task CM-5	Task CM-6	Task CM-7	Task CM-8	Total Hours	Billing Rate	Total Cost	Subtotals
	C-8	C-8	C-8	C-8	C-8	C-8	C-8	C-8				
	Program Construction Management	C-8 Startup/Commissioning	Construction Administration	Administrative Assistance	C-8 Resident Project Representative	SCADA Programming	Contingency	Misc. Subconsultant Tasks				
O'BRIEN & GERE ENGINEERS, INC.												
Construction Project Manager 1	2502								2502	\$164.00	\$410,088.00	
Construction Management Assistant 3			3456						3456	\$64.00	\$221,184.00	
Project Manager 1 (Commissioning)		624							624	\$187.00	\$113,568.00	
Project Manager 1 (SCADA)		624				256			624	\$164.00	\$102,944.00	
Engineer 3 (Commissioning/Integration)		624				1400			1400	\$132.00	\$184,800.00	
Engineer 2 (Commissioning/Integration)		1680				1400			1680	\$132.00	\$222,960.00	
Wastewater Operator - NYSDEC Class 4A		1560							1560	\$102.00	\$159,120.00	
Construction Management Prof. 1 (Commissioning)		1560							1560	\$102.00	\$159,120.00	
Administrative Assistant				480	\$0	55			535	\$74.00	\$39,590.00	
SUBTOTAL: OBG LABOR	\$425,088	\$575,952	\$221,184	\$35,520	\$0	\$230,854						\$1,488,598.00
Mileage - OBG Utica (No. Trips @ 10 Miles Ea.)									0	\$5.35	\$0.00	
Mileage - OBG Syracuse (No. Trips @ 120 Miles Ea.)	324	250	216			44			834	\$72.00	\$60,048.00	
Lodging (GSA Rate Per Night)									0	\$91.00	\$0.00	
Per Diem (GSA Rate Per Day)									0	\$41.00	\$0.00	
Printing/Reproduction									1		\$0.00	
Shipping		20							20	\$13.00	\$260.00	
SUBTOTAL: OBG EXPENSES	\$23,328	\$18,260	\$15,552	\$0	\$0	\$3,168	\$0	\$0				\$60,308.00
GHD CONSULTING SERVICES, INC.												
Associate						180			180	\$212.00	\$38,160.00	
Project Engineer II						840			840	\$145.00	\$121,800.00	
Engineer/Scientist II						0			0	\$120.00	\$0.00	
Senior Construction Project Representative					5200				5200	\$120.00	\$624,000.00	
Construction Project Representative									0	\$115.00	\$0.00	
SUBTOTAL: GHD LABOR	\$0	\$0	\$0	\$0	\$624,000	\$159,960	\$0	\$0				\$783,960.00
Mileage - GHD Cazenovia (No. Trips @ 90 Miles Ea.)					500	50			550	\$48.15	\$26,482.50	
Mileage - GHD Buffalo (No. Trips @ 360 Miles Ea.)									0	\$192.60	\$0.00	
Lodging (GSA Rate Per Night)									0	\$91.00	\$0.00	
Per Diem (GSA Rate Per Day)									0	\$41.00	\$0.00	
Printing/Reproduction									1		\$0.00	
Misc. SCADA Equipment (U.S. Allowance)						20,000			20,000	\$1.00	\$20,000.00	
SUBTOTAL: GHD EXPENSES	\$0	\$0	\$0	\$0	\$24,075	\$22,408	\$0	\$0				\$46,482.50
BROWN AND CALDWELL ASSOCIATES												
Principal Engineer									0	\$174.00	\$0.00	
Senior Engineer									0	\$159.50	\$0.00	
Project Engineer									0	\$130.00	\$0.00	
Resident Project Representative									0	\$118.00	\$0.00	
SUBTOTAL: BC LABOR	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0				\$0.00
Mileage - BC Andover (No. Trips @ 550 Miles Ea.)									0	\$394.20	\$0.00	
Mileage - BC Syracuse (No. Trips @ 120 Miles Ea.)									0	\$64.20	\$0.00	
Lodging (GSA Rate Per Night)									0	\$91.00	\$0.00	
Per Diem (GSA Rate Per Day)									1	\$41.00	\$0.00	
Printing/Reproduction									1		\$0.00	
Shipping									1		\$0.00	
SUBTOTAL: BC EXPENSES	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0				\$0
MWB FIRM TO BE DECIDED												
Resident Project Representative (Hourly Rate Includes Mileage)					2080				2080	\$105.00	\$218,400.00	
SUBTOTAL: MWBE LABOR	\$0	\$0	\$0	\$0	\$218,400	\$0	\$0	\$0				\$218,400.00
ATL - Special Inspections										\$150,000		
ATL - Project Monitoring/Asst-Mat										\$120,000		
Kennedy - Geotech Support										\$10,000		
Keville - Construction Phase Scheduling										\$20,000		
TRM										\$85,000		
Contingency										\$300,000		
TOTAL LABOR (OBG, GHD, BC, and Subs)	\$425,088.00	\$575,952.00	\$221,184.00	\$35,520.00	\$842,400.00	\$390,814.00	\$300,000.00	\$385,000.00				\$3,175,958
TOTAL EXPENSES	\$23,328.00	\$18,260.00	\$15,552.00	\$0.00	\$24,075.00	\$25,575.50	\$0.00	\$0.00				\$106,791
PROJECT TOTAL	\$448,416.00	\$594,212.00	\$236,736.00	\$35,520.00	\$866,475.00	\$416,389.50	\$300,000.00	\$385,000.00				\$3,282,749
												ESTIMATED COMPENSATION \$3,283,000.00



ONEIDA COUNTY DEPARTMENT OF WATER QUALITY & WATER POLLUTION CONTROL

51 Leland Ave, PO Box 442, Utica, NY 13503-0442
Phone: (315) 798-5656 Email: wpc@ocgov.net Fax: (315) 724-9812

Anthony J. Picente, Jr. County Executive

Steven P. Devan, P.E. Commissioner

September 23, 2020

The Honorable Anthony J. Picente, Jr.
Oneida County Executive
800 Park Ave
Utica, NY 13501

FN 20 20-320

Re: Oneida County Water Pollution Control Plant
Secondary Treatment System Upgrades (Contract C-8)
Work Order #33.4, Amendment 4

PUBLIC WORKS

WAYS & MEANS

Dear County Executive Picente:

A detailed engineering evaluation of the Water Pollution Control Plant (WPCP) and the Sauquoit Creek Pumping Station (SCPS) was submitted by Oneida County to the New York State Department of Environmental Conservation (NYSDEC) on August 27, 2012. This was done in response to the requirements of the Consent Order (No. R620060823-67) between NYSDEC and Oneida County due to sanitary sewer overflows (SSO) at the SCPS. The evaluation, which was prepared as Work Order No. 12, expanded upon the preliminary capacity assessment of the WPCP that was performed under Work Order No. 5 in 2007. The timeline included with the evaluation identified construction of a new Sauquoit Creek Force Main (SCFM) and upgrades to the SCPS. The WPCP evaluation was approved by NYSDEC in November 2012.

Final Design of the Secondary Treatment Upgrades (Contract C-8) was previously completed under Work Orders 33-Amendment No. 3. Under this currently proposed Work Order, Work Order 33, Amendment No. 4, construction management/administration, resident representation, startup/ commissioning, and engineering services during construction will be provided for the construction phase of Contract C-8.

GHD has proposed Work Order #33, Amendment 4 in the amount of \$6,192,000 as the budget to accomplish the tasks listed above. Department staff has reviewed this Work Order Amendment and found it to be acceptable, given the amount of contractual work it oversees. Funding for this work is provided by capital projects HG-572 and HG-573.

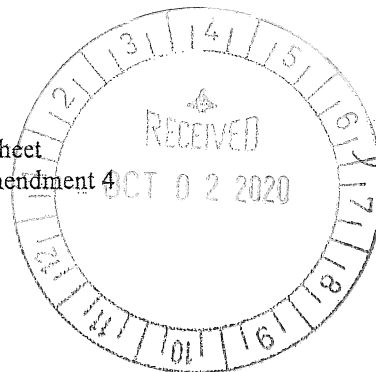
I would appreciate consideration of this Work Order Amendment by you and the Board of Legislators at your earliest possible convenience. I am available to meet with you and the Board at your convenience, to discuss this request and explain this Work Order Amendment in more detail.

Thank you for your consideration in this matter.

Sincerely,
THE ONEIDA COUNTY DEPARTMENT OF WATER QUALITY AND WATER POLLUTION CONTROL

Signature of Steven P. Devan, P.E.
Steven P. Devan, P.E.
Commissioner

Attachments: Contract Summary Sheet
Work Order #33, Amendment 4



Reviewed and Approved for submittal to the Oneida County Board of Legislators by

Signature of Anthony J. Picente, Jr.
Anthony J. Picente, Jr.
County Executive

Date 10-1-20

Competing Proposal X
Only Respondent
Sole Source RFP
Other

**ONEIDA COUNTY BOARD OF LEGISLATORS
CONTRACT SUMMARY**

Name & Address of Vendor: GHD Consulting Services, Inc.
5788 Widewaters Pkwy
Syracuse, NY 13214

Title of Activity or Service: Work Order #33, Amendment 4
Secondary Treatment System Upgrades (Contract C-8)

Proposed Dates of Operation: Upon contract execution until completion of
Work, anticipated by December 31, 2023

Client Population/Number to be Served: 110,000 people

Summary Statements

- 1) Narrative Description of Proposed Services: GHD has proposed Work Order #33, Amendment 4 in the amount of \$6,192,000 to accomplish construction management/administration, resident representation, startup/ commissioning, and engineering services during construction for Contract C-8.
- 2) Program/Service Objectives and Outcomes: Provide the necessary construction phase services and bid /design services for the contract listed.
- 3) Program Design and Staffing: GHD Consulting Services, Inc. and other members of the engineering team will provide the services with over site from WQ&WPC

Total Funding Requested: \$6,192,000 **Account #:** HG-572 and HG-573

Oneida County Dept. Funding Recommendation: Capital Fund HG-572 and HG-573

Proposed Funding Sources (Federal \$/ State \$/County \$): Funding will come from borrowing money from the New York State Environmental Facilities Corporation.

Cost Per Client Served: \$56.29

Past Performance Data: GHD and the rest of the engineering team are providing similar construction phase services for other portions of the plant upgrades.

O.C. Department Staff Comments: The total projected contractual work being managed with under this Work Order approaches \$60,000,000.

**AMENDMENT NO. 4 TO
WORK ORDER 33**

**WPCP SECONDARY TREATMENT UPGRADES
CONSTRUCTION PHASE SERVICES**

CWSRF PROJECT NO. C6-6070-08-15

I. PROJECT UNDERSTANDING

A detailed engineering evaluation of the Water Pollution Control Plant (WPCP) and the Sauquoit Creek Pumping Station (SCPS) was submitted by Oneida County (Owner) to the New York State Department of Environmental Conservation (NYSDEC) on August 27, 2012. This was done in response to the requirements of the Consent Order (No. R620060823-67) between NYSDEC and Oneida County due to sanitary sewer overflows (SSO) at the SCPS. The evaluation, which was prepared as Work Order No. 12, expanded upon the preliminary capacity assessment of the WPCP that was performed under Work Order No. 5 in 2007. The timeline included with the evaluation identified construction of a new Sauquoit Creek Force Main (SCFM) and upgrades to the SCPS. The WPCP evaluation was approved by NYSDEC in November 2012.

Final Design of the Secondary Treatment Upgrades (Contract C-8) was previously completed under Work Orders 33-Amendment No. 3. Under this Work Order (Work Order 33, Amendment No. 4), construction management/administration, resident representation, startup/commissioning, and engineering services during construction will be provided for the construction phase of C-8.

II. CONSTRUCTION SERVICES APPROACH

Construction of the Work Order 33 related components constitutes additional major construction projects of the entire program. The comprehensive construction program includes the new SCFM and upgrades to the SCPS, as well as the WPCP upgrades. Under Work Order 24, Amendment No. 2, the Solids Handling Upgrades project (C-2), the first major construction project, the services included, not only those specific to the Work Order, but also those to establish the organizational and management systems to support a program of this size over the entire construction period. It is anticipated that construction will be completed in 2022, with warranties in effect into 2023. As the overall Program Managers, our Project Team has prepared a comprehensive Program Construction Management (PCM) approach for the entire 6-year construction period to assist Owner with constructing and commissioning these significant upgrades. This approach provides the following features/advantages:

- overall Program Construction Manager providing a single source of responsibility (point of contact)
- a consistent approach across all projects/contracts in managing correspondence, submittals, RFIs, modifications, claims, and other project elements
- schedule management of both the overall Program, as well as those related to each individual project
- program-wide document control system to standardize and streamline project controls and communication
- program-wide cost tracking and control
 - built-in coordination between the engineering design team, Resident Project Representatives (RPRs), and PCM staff
- establishment of Risk Management processes
- monitoring site logistics and coordination between individual projects and ongoing WPCP operations
- institutional knowledge through the continuity of the design team's involvement

The following section presents the PCM organization structure and staffing, amended to include the Work Order 33 tasks, including individuals knowledgeable of Owner's consent order compliance Program and experienced in construction management, engineering during construction services, and experienced resident site representatives.

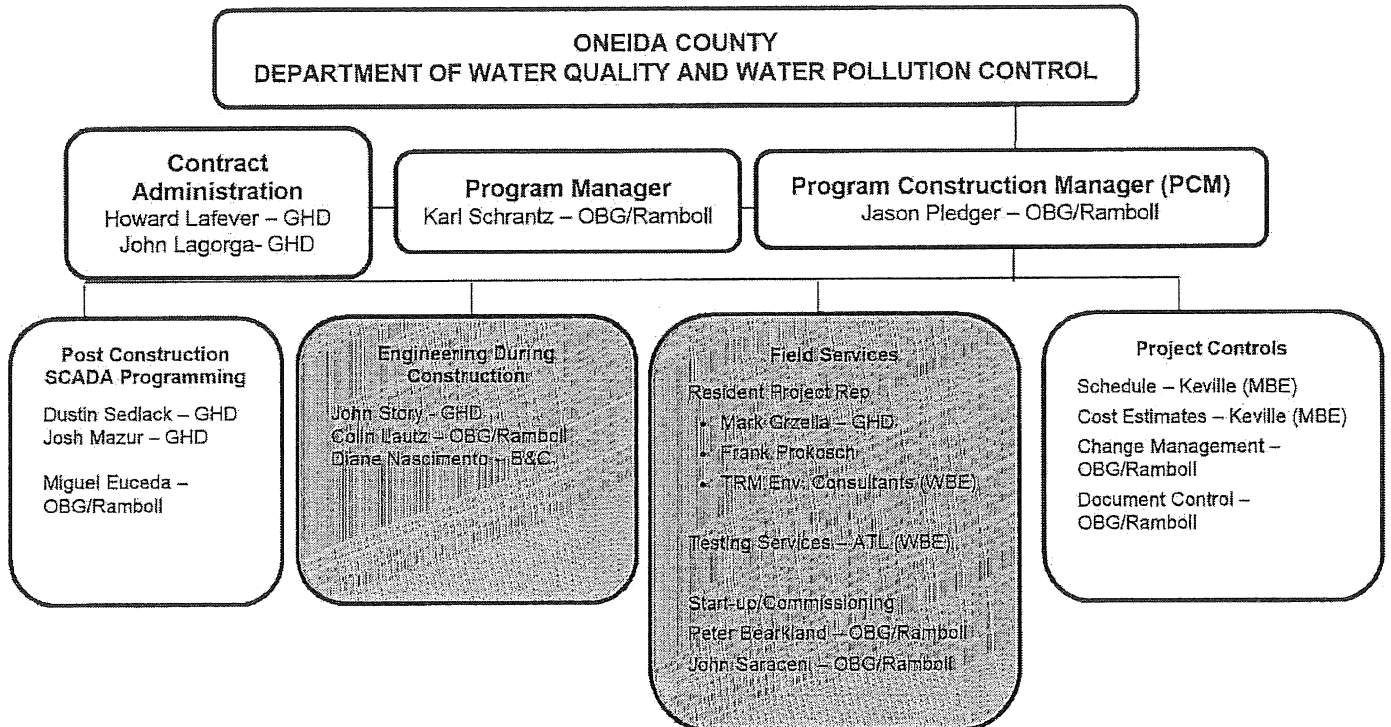
Subsequent to the Project Organization Section, is a comprehensive presentation of the construction phase Scope of Services, mainly following Engineers Joint Contract Document Committee (EJCDC) format, customized for this Program, similar to that adopted for Contracts C-2, C-5, C-6, and C-7, currently under construction.

The EJCDC language included in this proposed Work Order 33, Amendment No. 4 is similar to that EJCDC language included in the Contract Documents, which establishes the limits of responsibilities of Engineer (on behalf of Owner). Engineer's reviews of various submittals, certifications, payment requests, and schedules do not relieve the Contractor from completing the Work in accordance with the Contract Documents. None of the above put Engineer (or Owner) in the position of supervising or directing the Contractor, nor putting them in control of the Work, including Contractor means and methods. However, Engineer, by virtue of their scope of work with Owner, is responsible for monitoring the Contractor's work, in accordance with the Contract Documents.

Work Order 24 Amendment 2 (C-2) included the initial establishment of the PCM function (such as Master Schedule development and Document Control setup), as well as the services specific to that Work Order. Subsequent Work Orders and/or amendments, such as that for Work Order 33, relative to the remaining upgrades to the WPCP, will include the appropriate level of increased PCM services, as well as those related to the specific project to be constructed.

III. PROJECT ORGANIZATION

The construction phase services, to include both the PCM and Work Order 33 services, is proposed to be organized as shown on the following diagram:



OBG/Ramboll will continue to serve as the PCM, as it is their role on Contracts C-2 through C-7, consistent with their role as overall Program Manager. This PCM role will focus on coordinating the overall Program construction activities, including those of this Work Order, as well as other construction activities at the SCPS/FM and WPCP. The PCM will proactively interface with the OCWPCF Commissioner and operations staff to understand operational issues associated with the construction.

As the Engineers of Record (Engineers) for the designs: OBG/Ramboll for process/mechanical, and Brown and Caldwell for electrical, they will provide Engineering Services during Construction for their respective designs. In this role, they will determine that the construction of the projects is consistent with the Construction Contract Documents.

GHD's role during construction of C-8 will include the post construction phase services of overall SCADA programming, consistent with their role for the overall Program. Engineering during Construction and SCADA Programming services are outlined in more detail in the Scope of Services section of this Work Order Amendment.

For this Work Order, Field Services assume two (2) full-time Resident Project Representatives (RPRs) for the 25-month construction duration anticipated for Contract C-8. For consistency with previous contracts, the likely RPRs are Mark Grzella of GHD and Frank Prokosch. A subcontracted testing firm (likely Atlantic Testing Laboratories) will provide Owner's required materials testing during construction for each contract. The prime Contractors will also be responsible to hire their own independent testing firm, as required during construction, as specified in the Contract Documents. A dedicated startup and commissioning team will work with the Contractors, PCM, Engineering and RPR staff on the two contracts, to efficiently and effectively place equipment components and systems into service.

Project Controls will be a function of the PCM/Engineer, who will work closely to manage scheduling, cost estimating/change management, and document control.

IV. SCOPE OF SERVICES

The following Scope of Services is adapted in part from the Engineers Joint Construction Documents Council (EJCDC), Document No. E-500, "Agreement between Owner and Engineer for Professional Services, Exhibit A," customized to reflect Owner's Program needs. As previously indicated, the EJCDC language included in the proposed Work Order 33, Amendment No. 4 is similar to that EJCDC language included in the Contract Documents, which establishes the limits of responsibilities of Engineer (on behalf of Owner). Engineer's reviews of various submittals, certifications, payment requests, and schedules do not relieve the Contractor from completing the Work in accordance with the Contract Documents. None of the above put Engineer, PCM (or Owner) in the position of supervising or directing the Contractor, nor putting them in control of the Work, including Contractor means and methods. However, Engineer and the PCM, by virtue of their scope of work with Owner, are responsible for monitoring the Contractor's work, in accordance with the Contract Documents.

Throughout this document, the term "Engineer" is used to refer to the Work Order 33 design team of B&C, GHD, and/or OBG/Ramboll. In addition, the term PCM refers to the Program Construction Management Team, which includes the entire Team or PCM task-specific members, Engineer, and RPRs. The PCM Team provides singular, unit responsibility for conducting the tasks defined in this Amendment. Throughout the document, Oneida County is referred to as "Owner."

The Scope of Services is based upon the following:

1. Establishment of the PCM structure and associated management systems related to Contract C-8.
2. Assumed on-site construction duration of 25 months for Contract C-8.
3. Contract C-8 will be constructed with multiple prime contracts:

- General
- Electrical
- HVAC
- Plumbing

A. Program Construction Management (PCM).

1. This task allows for the management, administration, and coordination of the work efforts for construction phase services. Included in this task is the appropriate coordination with Owner and engineering team members, management of the project, monitoring of budget and schedule, cost control, and administrative assistance to the Commissioner on an as-needed basis.
2. The PCM will oversee and coordinate the engineering efforts of the Project Team during construction. The PCM will be responsible for working with the various Contractors in coordinating their construction activities associated with this Work Order with other planned construction activities.
3. Specific duties of the PCM during construction include:
 - a. Delegate shop drawing review to the appropriate personnel. Shop drawing review will be conducted by the Engineering team members who were involved during the design phase of the item being reviewed. The PCM, utilizing the document control software, will maintain the overall shop drawing log, broken down by contract. Regarding Electronic Transmittal Protocols, the Construction Contract Documents will specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, utilizing a secure Document Control Software System. Configuration and implementation of the Document Control Software System will be developed together with Owner and Engineer jointly for such protocols for transmittals between and among Owner, Contractor, Engineer, and PCM during the Construction Phase and Post-Construction Phase.
 - b. Review initial schedules submitted by individual Contractors and prepare a project Baseline Schedule for Contract C-8. Considering the progress of work to date on existing contracts, we believe that preparing a Master Schedule is not necessary and is therefore not included in this Scope of Work. Review Contractors' monthly updates and update the project Baseline Schedule. Observe construction progress and report deviations from the schedules which will jeopardize job progress. Work with the Contractors to develop recovery plans as necessary. Update the Baseline Schedule as appropriate to incorporate such activities and dates.
 - c. Applications for Payment: Based on PCM, Engineer, and RPR observations as experienced and qualified professionals and on review of Applications for Payment and accompanying supporting documentation:
 - 1) Determine the amounts that PCM recommends Contractors be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute PCM's representation to Owner, based on such observations and review by Engineer and RPR, that, to the best of PCM's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled. In the case of unit price Work, PCM's recommendations of payment will

include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

- 2) By recommending payment, the PCM will not thereby be deemed to have represented that observations made by the PCM to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to the PCM in this Agreement. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
- d. Assist the RPRs for the various construction projects to:
- 1) Observe Work in progress for conformance with plans and specifications and report and track defects and deficiencies.
 - 2) Coordinate the work of separate testing agencies engaged by Owner.

Assist in the selection of independent testing agencies. Coordinate their work, review their reports and make recommendations regarding their findings. Selection of Independent Testing Laboratory: Through the PCM, Owner will provide the services of an independent testing laboratory to perform the required inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractors), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Owner will provide the PCM with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor. The PCM will assist Owner in the selection of an independent testing laboratory to perform such services.
 - 3) Maintain a complete and current record of Project contracts, drawings and specifications, progress photos, testing and inspection reports, etc. Maintain a file of Project correspondence, directives, and meeting minutes. Original Documents: If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
 - 4) Coordinate site access, temporary office space, and material and equipment staging areas with the various Contractors. Review regularly with Owner to minimize disruption to the ongoing operations and maintenance of the WPCP during construction.
- e. Coordinate and chair regular job site meetings with Owner, Contractor representatives, and Engineer's team as appropriate; discuss job progress, track and record key actions and decisions and prepare and/or review meeting notes as required.
- f. Identify and attempt to facilitate the resolution of construction issues/disputes as they arise and prior to engagement of legal counsel and prior to invoking the "Dispute Resolution Clause of the Construction Contract" by the involved parties to handle the matter.

- g. Support Owner in the defense and resolution of any claims related to the Project. Assemble and analyze data as required for such defense. Assistance related to claims that advance to litigation, if desired by Owner, will be supported under additional authorization.
 - h. Develop and implement a system for the preparation, review, and processing of construction change directives and change orders. Estimate the cost of change orders and negotiate them with the Contractors on behalf of Owner.
 - i. In collaboration with the Contractors, Engineers, and RPRs, develop a schedule of close-out activities, including punch lists, equipment testing, start-up procedures, and occupancy. Incorporate such schedule into the Master Schedule and distribute it to Project team members as appropriate.
 - j. Together with the RPRs, schedule and direct inspections to develop punch lists. Establish dates of Substantial and Final Completion. Monitor and confirm Contractor compliance with the facilities turnover requirements.
4. Specific duties of the PCM during the post-construction period include:
- a. Coordinate, catalogue, and confirm delivery to Owner of keys, manuals, warranties, Record Drawings, plans and specifications, lien releases, spare parts, etc. Contractor's Completion Documents: Receive from Contractor, and together with Engineer, review and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates, or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of the PCM's review of record documents will be to check that Contractor has submitted all pages.
 - b. Work with the Contractors to monitor the completion of punch list items and to finalize outstanding changes in their scope of work. Verify the payment of retainages.
 - c. Schedule and monitor product and equipment demonstrations and training. Monitor initial start-up and testing of systems to confirm compliance with specifications.
 - d. Coordinate performance of corrective and warranty work.

B. Engineering Services During Construction.

1. **Conformed Contract Documents.** Prepare updated documents for construction purposes that incorporate and integrate the content of all Addenda and any amendments that were agreed upon prior to issuance of Notice of Award.
2. **Pre-Construction Conference.** Participate in a pre-construction conference prior to commencement of Work at the Site.
3. **Schedules.** Review the acceptability of the schedules that Contractors are required to submit, including the Baseline Construction Schedule and Monthly Schedule Updates.
4. **Visits to Site and Observation of Construction.** In connection with observations of Contractors' Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits

- and observations by Engineer and RPR, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to PCM or Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the RPR, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer together with the PCM will keep Owner informed of the progress of the Work.
- b. The purpose of Engineer's visits to the Site, and representation by the RPR, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents.
5. **Defective Work.** Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to PCM and Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
6. **Compatibility with Design Concept.** If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform PCM and Owner of such incompatibility, and provide recommendations for addressing such Work.
7. **Clarifications and Interpretations.** Accept from Contractor and PCM submittal of all matters in question concerning the requirements of the Construction Contract Documents [sometimes referred to as requests for information or interpretation (RFIs)], or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
8. **Field Orders.** Engineer may prepare Field Orders, to be issued by the PCM, requiring minor changes in the Work.
9. **Change Orders and Work Change Directives.** Recommend Change Orders and Work Change Directives to PCM and Owner, as appropriate, and assist in preparing Change Orders and Work Change Directives as required.
10. **Differing Site Conditions.** Respond to PCM regarding any notice from Contractor of differing site conditions, including conditions relating to underground facilities, such as utilities and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for PCM's and Owner's use.
11. **Shop Drawings, Samples, and Other Submittals.** Review and approve, or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto.

12. **Substitutes and “Or-Equal.”** Evaluate and determine the acceptability of substitute or “or-equal” materials and equipment proposed by Contractor. (This is part of shop submittal task.)
13. **Inspections and Tests.** (This is part of submittal and site visit tasks.)
 - a. Receive and review certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents.
 - b. As deemed reasonably necessary, request of the PCM that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, through the PCM, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
14. **Change Proposals and Claims.**
 - a. In conjunction with the PCM, Engineer will review and respond to Change Proposals. Engineer will review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, recommend to the PCM denial of the Change Proposal in whole, approval of it in whole, or denial it in part and approval in part. As the single point of contact on all Contracts, the PCM will issue written response to all Change Proposals. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then the PCM will notify the parties that Engineer will not resolve the Change Proposal. Notification will include a brief summary basis for that determination.
 - b. Provide information or data to the PCM, Owner regarding engineering or technical matters pertaining to Claims. (This is part of RFI and change order tasks.)
15. **Substantial Completion.** Promptly after notice from the PCM that Contractor considers the entire Work ready for its intended use, Engineer, in company with the PCM, RPR, Owner, and Contractor, visit the Site to review the Work and determine the status of completion. Engineer will follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Engineer will assist the PCM and Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion. (This is part of site visit task.)
16. **Final Notice of Acceptability of the Work.** Engineer and the PCM will conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing to the PCM, final payment to Contractor. Accompanying the recommendation for final payment, Engineer will also provide a notice to the PCM, Owner and Contractor in a form acceptable to Owner (“Notice of Acceptability of Work”) that the Work is acceptable to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement. (This is part of site visit task.)
17. **Standards for Certain Construction-Phase Decisions.** Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work.
18. **Duration of Construction Phase.** The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by PCM and Engineer for final payment to Contractors. Since the Project involves more than one prime contract, the Construction Phase services may be rendered at different times in respect to the separate contracts.

- C. **Resident Project Representative (RPR).** Provide the services of RPRs at the Site to assist the PCM and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit A. The furnishing of such RPR's services will not limit, extend, or modify the PCM or Engineer's responsibilities or authority except as expressly set forth in Exhibit A.
- D. **Post-Construction Phase.**
1. Together with PCM and Owner, Engineer will visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist the PCM and Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with the PCM and Owner, Engineer will visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective, and therefore, subject to correction by Contractor.
 3. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Agreement, will terminate 12 months after the commencement of the Construction Contract's correction period.
 4. The Contractor will provide, for Engineer's review, a draft Operations and Maintenance Manual for each major equipment item. Engineer will provide comments to the Contractor prior to Contractor submission of a paper copy of the final O&M Manual for each equipment item. Engineer will compile O&M manuals submitted by Contractor to prepare an overall Operations and Maintenance Manual for Contract C-8. The manual will be subdivided by major process equipment. At a minimum the manual will include:
 - a. Flow schematics.
 - b. "Nameplate" design data including number of units, capacity, motor horsepower, manufacturer/model, etc.
 - c. Operation and control descriptions (functional description of major equipment in narrative format). Descriptions will include functionality in the manual and/or automatic modes, as applicable.
 - d. Startup procedures.
 - e. Routine troubleshooting.
 - f. Alarms and remedial actions.
 - g. Other operations/maintenance information necessary for individual equipment items necessary for WPCP operators.
 - h. Three (3) paper copies of the Operations and Maintenance Manual, along with one electronic (PDF) copy of the manual will be provided. Paper copies will be bound in a three-ring binder.
 5. Engineer will assist the PCM and Owner during the one-year warranty period following issuance of substantial completion to the Contractor. These services may include, but are not limited to:
 - a. Assist in coordinating between the PCM, the Contractor, and/or equipment suppliers for operational or maintenance issues that arise during the one-year warranty period. In conjunction with the PCM, ensure proper remedial action is provided by the Contractor.

- b. Assist the PCM in coordinating with Contractor, Owner, and equipment suppliers to verify proper start-up services are provided for major pieces of equipment.
 - c. Assist the PCM in coordinating with the Contractor, Owner, and equipment suppliers to verify proper training is provided on major pieces of equipment.
 - d. Obtain required manufacturer startup reports.
 - e. Obtain specified extended warranties.
6. Engineer will prepare Record Drawings in the form of updated conformed CADD files based on Contractor and RPR "as built" documentation. The PCM will furnish the Record Drawings to Owner.

E. Startup/Commissioning.

- 1. The PCM will designate a Commissioning Agent to perform the following start-up and commissioning activities during construction of the C-8 Contract:
 - a. **Document Preparation.**
 - 1) Prepare a Commissioning Plan document outlining the organization, schedule, responsibilities, and documentation requirements of the commissioning process.
 - 2) Prepare Installation Commissioning (IC), Operational Commissioning (OC), and Performance Commissioning (PC) documents (i.e., protocols, checklists, etc.).
 - 3) Create and maintain supporting documentation filing system.
 - 4) Prepare final commissioning summary report.
 - 5) Compile documentation of operator training, in accordance with the contract documents.
 - 6) Track items of non-conformance to satisfactory resolution.
 - b. **Commissioning Meetings.** Conduct commissioning team meetings during construction. Commissioning meetings are in addition to regular progress and coordination meetings.
 - 1) Create and maintain a rolling schedule for commissioning meetings.
 - 2) Attend meetings commencing prior to and through completion of commissioning activities.
 - 3) Meeting attendance will be mandatory for representatives of all prime Contractors, Owner, Engineer and PCM.
 - 4) Commissioning meetings will be held at the WPCP site.
 - 5) Prepare and distribute meeting notes and tracking of open issues and action items.
 - c. **Installation Commissioning (IC) and Operational Commissioning (OC) Execution.**
 - 1) Coordinate with PCM and Contractors regarding staging and preparation for inspection and operational testing.

- 2) Coordinate with Contractors regarding manufacturer's onsite inspection and start-up activities in support of commissioning.
 - 3) Record and track non-conformance items.
 - 4) Provide commissioning status updates to the commissioning team.
 - 5) Engage Owner's personnel in commissioning activities.
 - 6) Coordinate field commissioning services to be performed by RPR personnel.
- d. **Performance Commissioning (PC) Execution.**
- 1) Perform activities designed to verify performance of the complete facility in an integrated fashion over a wide range of potential operating conditions.
 - 2) Track analytical acceptance testing to be performed.
 - 3) Coordinate phased system start-up.
2. The Contract Documents will have a Commissioning Specification that will inform Contractors of the roles and responsibilities during facilities commissioning, including items such as the following:
- a. Contractors shall be responsible for startup and commissioning of all equipment in accordance with the Contract Documents. The Contractors shall submit a functional testing plan at least 30 days prior to the startup of each piece of equipment.
 - b. The Commissioning Agent and Engineer will review the functional testing plan and provide a written approval, denial, and applicable comments.
 - c. The Contractors shall prepare a system delivery plan defining each system to be independently delivered to Owner. The Contractors' plan shall include the schedule for preliminary, testing, functional testing, demonstration testing and startup. The PCM shall incorporate such plans into the overall construction schedule.
 - d. The Contractors shall perform the following activities, in the order listed below, to be witnessed by the Commissioning Agent, PCM, Engineer, and Owner:
 - 1) Preliminary Field Test – To demonstrate that equipment is properly installed and ready for operation.
 - 2) Functional Test – Field test to demonstrate successful operation and performance of equipment in all intended modes of operation, including remote operation.
 - 3) System Demonstration Test – Continuous successful operation of a System in its entirety utilizing a testing fluid prescribed by Owner for seven (7) consecutive days prior to startup.
 - 4) Startup – Continuous successful online operation of a System in its entirety utilizing actual process fluid and at actual service conditions for seven (7) consecutive days prior to delivery of that System to Owner.
 - e. Engineer will approve all testing activities listed above prior to commencing the next activity.

- f. A tagging or similar system will be provided by the Contractors and used by the Commissioning Agent to document testing and startup procedures.
 - Yellow Tag – Preliminary Field Test Complete
 - Red Tag – Functional Testing Complete
 - Blue Tag – Successful Completion of Startup
 - g. Tags will be signed and dated by the Commissioning Agent upon acceptance and shall remain attached to the item until ordered removed by the Commissioning Agent.
 - h. At least 14 days prior to the start of each System Demonstration Test, Contractors shall conduct a meeting with the Commissioning Agent, Owner, PCM, and Engineer to review testing plans, finalize testing procedures, verify status of associated equipment and prerequisites, and coordinate all aspects of the System Demonstration Testing and Startup.
- F. **Training.** The PCM will work closely with the Contractors to ensure the proper training is provided, including monitoring compliance with the following requirements of the Contract Documents:
1. The Contractor shall be responsible to provide training by qualified, factory trained, operations and maintenance personnel to instruct Owner in proper care, operation, and maintenance of equipment.
 2. At a minimum, Contractor provided training shall include:
 - Theory of Operation
 - Actual Operation
 - Mechanical Maintenance
 - Electrical Maintenance
 - Instrumentation and Alarms
 - Optimization of Operation
 - Operation of Safety Devices
 - Troubleshooting
 - Demonstration of Equipment Startup Procedures, Operating, and Shutdown Procedures
 3. Contractors shall provide a schedule of training activities for review and approval by Engineer and PCM. PCM shall incorporate training schedule into overall construction schedule.
 4. Contractors shall provide a written report for each training session for review and approval by the PCM, Owner, and Engineer.
 5. Contractors shall provide one (1) digital DVD recording of each training session.
- G. **SCADA Programming.**
1. **Deliverables.** The Engineer, through the PCM, will provide the following deliverables for the control systems designed by Engineer under Work Order 33:
 - Complete and Annotated Programmable Logic Controller (PLC)

- Complete and Annotated Supervisory Software Development
- Specific Ancillary Software Programming
- Preliminary Testing
- Startup/Commissioning
- Software Training

2. **PLC Development.** Engineer will develop the PLC programs for the complete control system as shown on the bid set of Contract Documents. These PLC's include:

The above PLCs will be programmed by Engineer. The logic will be based on the control system descriptions specified in Section 17900 of the Contract Specifications.

3. **Packaged Control Systems.** This project includes multiple PLC-based control systems that are specified in the Contract Documents to be performance-based systems. The supplying manufacturer, or OEM, is responsible for programming the supplied PLC(s) and Operator Interface Terminals (OITs) accompanying the respective packaged control system. While the respective OEM is responsible for the performance and extent of automation of their system, Engineer will integrate data obtained from each OEM system into the plant's new supervisory application.
4. **Supervisory Software Development.** Engineer will configure the supervisory software, which includes database development, graphics development, alarming, data logging/historization, and report development at the Sauquoit pumping station. The supervisory software program will be Wonderware System Platform and will be furnished by the Contractor. As with the PLC program, a preliminary configuration will be developed for review and approval by Engineer and Owner. Revisions will be implemented into the supervisory configuration, based on the preliminary review comments, and a final configuration will be developed. Also, as with the PLC programming, a close relationship with Owner and Engineer will be necessary to provide configuration of the supervisory system during this phase.
5. **Ancillary Software.** One (1) licensed copy of reporting software and one (1) licensed copy of a software-based auto dialer program will be supplied by the Contractor. Engineer will configure the reporting software to generate up to two (2) reports. Report content and format will be coordinated with Owner during construction. Reporting software will be SyTech XLReporter. Engineer will configure the software-based auto dialer program to notify Owner personnel of up to 100 alarms via cell phone, text messaging, or email notification, as selected by Owner. Alarms, contact information, alarm priority, and alarm voice message will be coordinated with Owner during construction.
6. **Preliminary Testing.** Engineer will perform in-house simulation of PLC and supervisory programs to validate programs are ready for onsite deployment. Upon confirmation by the PCM that all point-to-point testing required in the Contract Documents has been fully and successfully demonstrated by the Contractor, Engineer will commit to a startup schedule for the confirmed system(s).
7. Engineer will perform the field testing of the control system for each process. Site visits will be based on the progress of construction and the needs of individual systems. Engineer will assist the project team in verification and startup of the PLCs and supervisory software programmed by Engineer. Engineer will provide programming to facilitate monitoring and control as designed, which includes tuning of the programs to resolve nuisance operation incurred by the PLC or supervisory programs.
8. Engineer will provide the operations staff training on use of the supervisory software, reporting software, and software-based dialer software. Two (2) hours of training for each Contract will be provided to the operations staff. Training on use of the OEM systems will be provided by the respective OEM.

H. Asset Management

Owner is required to implement an Asset Management Plan (AMP) as a condition of the Order on Consent. The AMP is required for the long term sustainability of Owner-owned equipment related to the WPCP. Per the Order on Consent, assets to be included in the AMP are limited to those valued at greater than \$50,000. The purpose of this task is to develop an AMP that will satisfy Consent Order requirements. The scope of work contained herein was developed to comply with the New York State Department of Environmental Conservation Municipal Sewer System Asset Management Guide (2015). An Asset Register was developed under a previous authorization. Under this task, the Engineering Team will:

1. Develop and assign Management Strategy Groups (MSGs) to assets in the asset register. MSGs define default attributes for an asset and provide a set of inputs to the investment modelling process via three treatment options: (1) replacement, (2) rehabilitation, and (3) operations & maintenance. At a minimum, MSG attributes will include the following:
 - Asset type
 - Asset sub-type
 - Asset material
 - Physical effective life
 - Condition decay curve
 - Installation year
 - Replacement cost
2. Assign desktop condition ratings to all assets in the asset register. Each asset will be assigned a condition score from 1 to 5. The asset condition will be directly translated to a probability of failure (POF) score. The desktop rating will consider asset age and OCSD staff knowledge (including asset performance and work order history).
3. Develop a Consequence of Failure (COF) scoring matrix. Consequence of Failure (COF) is often referred to as “criticality”, and these terms (COF and criticality) are frequently used interchangeably. Asset COF is evaluated based on estimating the social, financial, and environmental/regulatory impacts of an asset failure. These three broad categories of consequence of failure are often referred to as the Triple Bottom Line (TBL) and go beyond simply assessing the direct financial consequences of an asset’s failure (e.g. cost to repair or resource impacts).
4. Define the levels of service (LOS) that customers, end users, and key stakeholders experience. LOS describes the outcomes that a utility expects to achieve in providing services to its customers. LOS connects the strategic direction of the utility to the performance requirements established within the various parts of the organization. A LOS framework identifies the metrics that have the most significant and direct impact on service delivery to customers and stakeholders. It also enables utility organizations to track trends, report progress against targets, and make critical adjustments when necessary.
5. Develop a Business Risk Exposure (BRE) profile for all assets in the asset register. BRE is an advanced asset management methodology used to focus management teams on high risk assets and issues. The BRE for an asset is the product of the asset’s consequence of failure (COF) and probability of failure (POF), adjusted for any risk mitigation measures currently in place, such as redundancy.

6. Develop a Draft and Final Asset Management Plan (AMP) for the WPCP. The table of contents of the AMP is anticipated to include the following sections:
 1. Executive Summary
 2. Introduction
 3. Description of Asset Management Framework
 4. Overview of the WPCP
 5. Current State of the Assets
 - a. Asset Inventory
 - b. Condition
 - c. Life Consumed
 6. Criticality and Risk Management
 7. Infrastructure Improvement Plan
 - a. Recommended Operations & Maintenance Strategies and Practices
 - b. 10 and 30-Year Investment Profile
 8. Appendices

I. Computerized Maintenance Management System (CMMS)

An integral component of the Asset Management system will be a new Computerized Maintenance Management System (CMMS). Under a previous authorization, the Engineering Team assisted Owner with the process of receiving proposals for the new CMMS. Several candidate vendors provided demonstrations of their systems. Based on the proposals and demonstrations received, the "Sprocket" CMMS system by Dematic is the preferred software application for the WPCP. The preferred Software Implementer is Barton & Loguidice. Under Work Order 33, Amendment 4, the Engineering Team will continue to support the implementation of the CMMS. Under this task, the Engineering Team and Software Implementer will:

1. Provide the Sprocket CMMS system.
2. Configure the new CMMS system with applicable data, such as:
 - Employees - Names, Titles, email address, hourly rate, login name, and their permissions
 - Crews – the employees that compose the various crews
 - Material List – Part number, description, manufacturer, supplier, model, min qty, unit cost, cost type, where it is stored
 - Equipment – Type of equipment, manufacturer, model, hourly or fixed rate, unit cost
 - Contractors – Contractor name, contractor number, description
 - Work Order Templates – description, category (Preventive/Reactive), Priority, Submit To, repeat intervals, security, custom fields
 - Service Request Templates – Description, priority, dispatched to, duration, model, keywords to search for, security, questions and answers
 - Inspection Templates – name, description, submit to, priority, duration, model, work order its attached to, security, questions and answers
3. Develop a test plan and test scripts. The plan will document the following:
 - Goals for the testing program
 - Testing methodology including the test environment, involved participants, the testing process and schedule requirements
 - Change control documentation process

- Acceptance procedures
 - Test scripts for each Service Request, Work Order, Inspection type, and integration component
 - Final acceptance sign-off document
4. Provide training of WPCP staff on the use of the configured CMMS.
 5. Provide as-needed support to the WPCP to close out the CMMS implementation project with the software implementer.

J. Additional Services Requiring Owner's Written Authorization.

1. If authorized in writing by Owner, Engineer will provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for separately by Owner.
2. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
3. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
4. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
5. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in this Scope of Services.
6. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
7. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
8. Undertaking investigations and studies including, but not limited to:
 - a. Detailed consideration of operations, maintenance, and overhead expenses.
 - b. The preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities.
 - c. Preparation of appraisals.
 - d. Evaluating processes available for licensing and assisting Owner in obtaining process licensing.
 - e. Detailed quantity surveys of materials, equipment, and labor.

- f. Audits or inventories required in connection with construction performed or furnished by Owner.
- 9. Furnishing services of Consultants for other than Basic Services.
- 10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor and administering Owner's contract for such services.
- 11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required elsewhere in this Scope of Services.

K. Additional Services Not Requiring Owner's Written Authorization.

- 1. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
- 2. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
- 3. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
- 4. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
- 5. Additional or extended services arising from (a) the presence at the Site of any contamination or constituents of concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
- 6. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
- 7. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
- 8. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
- 9. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by Federal, State, or local safety authorities for similar construction sites.

V. SCHEDULE

The Engineering Team will complete the work outlined above according to the construction schedule submitted by the Contractors. We anticipate the construction phase to last approximately 25 months for Contract C-8, with an additional 12 months of Contractors post construction warranty period.

VI. COMPENSATION

- A. Owner will be billed for actual labor hours charged at the billing rates contained in Attachment A, plus direct project expenses (e.g., identifiable reproduction costs, shipping charges, etc.). The Compensation for Work Order 33, Amendment No. 4, Scope of Services outlined in Section IV is as indicated on attached Tables 1 and 2 and summarized below:

Task	Fee	Reference
Construction Phase Engineering	\$2,909,000.00	Table 1
Construction Management	\$3,283,000.00	Table 2
Total	\$6,192,000.00	

- B. Payments for the work will be due monthly on the basis of statements submitted by GHD Consulting Services Inc. for the work performed during the period.
- C. Additional services beyond the Scope of Services will be considered extra work and will necessitate additional compensation. An allowance of \$300,000 is included to fund Additional Services authorized by Owner that may be encountered. Billing will be in accordance with Paragraph VI.A, above. The actual cost will be based on the hours and documented expenses required to provide those services in accordance with Attachment A.

VII. STANDARD TERMS AND CONDITIONS

The services described above will be completed as Amendment No. 4 to Work Order No. 33 under the Terms and Conditions of the Master Agreement for Consulting Services dated July 16, 2007 between Shumaker Consulting Engineering & Land Surveying, P.C. and Oneida County and assigned to GHD Consulting Services Inc. dated March 29, 2013.

VIII. NEW YORK CLEAN WATER STATE REVOLVING FUND CONTRACTING REQUIREMENTS

GHD Consulting Services Inc. will comply with the applicable provisions of "Required Terms for Project Contracts and Subcontracts" as defined in the NY State Revolving Fund Bid Packet for Non-construction Contracts and Service Providers (effective date October 1, 2017), as prepared by the New York State Environmental Facilities Corporation. Refer to Attachment B.

IX. ATTACHMENTS

The following attachments are made part of this Work Order 33, Amendment No 4:

- Exhibit A – Duties, Responsibilities, and Limitations of Authority of Resident Project Representatives.
- Tables 1 and 2 – Work Order 33, Amendment No. 4 – Fee Estimate
- Attachment A – Rate Schedule
- Attachment B – Required Contract Language

Work Order 33 – Amendment No. 4
Contract C-8 Construction Phase Services

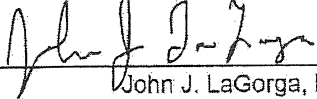
This Work Order is duly executed between Consultant and Owner. Upon execution of this Work Order, Consultant is authorized to proceed with the work.

CONSULTANT:

OWNER:

GHD CONSULTING SERVICES INC.

COUNTY OF ONEIDA

By: 
John J. LaGorga, PE

By: _____
Anthony J. Picente, Jr.

Title: Vice President

Title: County Executive

Date: 9/24/2020

Date: _____

Exhibit A

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

Work Order 33, Amendment No. 4 is supplemented to include the following agreement of the parties:

Resident Project Representative

- A. A Resident Project Representative (RPR) will be provided under this Work Order amendment to assist the PCM and Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree if conditions warrant. RPR is the PCM's and Engineer's representative at the project site, will act as directed by and under the supervision of the PCM.
- B. Through RPRs observations of the Work, including field checks of materials and installed equipment, PCM and Engineer will endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, the PCM and Engineer will not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor will the PCM (including the RPR), nor Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any type of work in progress, for the coordination of the Contractors' work or schedules, or for any failure of any Contractors to comply with Laws and Regulations applicable to the performing and furnishing of its work. The PCM, the RPR and Engineer neither guarantee the performances of any Contractors, nor assumes responsibility for any Contractors' failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
- C. The duties and responsibilities of the RPR are as follows:
1. **General.** RPRs dealings in matters pertaining to the Work in general will be with PCM and Contractors. RPR's dealings with Subcontractors will only be through or with the full knowledge and approval of Contractors. RPR will generally communicate with Owner only with the knowledge of and under the direction of PCM.
 2. **Schedules.** Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractors and consult with PCM and Engineer concerning acceptability of such schedules.
 3. **Conferences and Meetings.** Attend meetings with Contractors, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractors' safety meetings), and as appropriate prepare and circulate copies of notes thereof.
 4. **Safety Compliance.** Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Project site.
 5. **Liaison.**
 - a. Serve as PCMs liaison with Contractors. Working principally through Contractors' authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist PCM in serving as Owner's liaison with Contractors when Contractors' operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

Exhibit A

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

6. **Clarifications and Interpretations.** Receive from Contractors submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to PCM regarding such RFIs. Report to PCM when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractors RFI or otherwise. Transmit PCM's clarifications, interpretations, and decisions to Contractors.
7. **Shop Drawings and Samples.**
 - a. Review the date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractors, and notify PCM of availability of Samples for examination.
 - c. Advise PCM and Contractors of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or PCM.
8. **Proposed Modifications.** Consider and evaluate Contractors' suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to PCM and Engineer. Transmit Engineer's response (if any) to such suggestions to Contractors upon concurrence of the PCM.
9. **Review of Work; Defective Work.**
 - a. Report to PCM and Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
 - b. Inform PCM and Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to PCM and Engineer for addressing such Work.
 - c. Advise PCM and Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.
10. **Inspections, Tests, and System Start-Ups.**
 - a. Consult with PCM and Engineer in advance of scheduled inspections, tests, and systems start-ups.
 - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractors maintain adequate records thereof.
 - c. Observe, record, and report to PCM and Engineer appropriate details relative to the test procedures and systems start-ups.
 - d. Observe whether Contractors have arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.

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

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

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and American Society of Civil Engineers. All rights reserved.

Page 2

This document has been modified from its original form as an EJCDC document and the user did not highlight the modifications.

You are encouraged to read the document carefully and consult Legal Counsel prior to its execution.

Exhibit A

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

- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to PCM.

11. Records.

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

12. Reports.

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

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

14. **Certificates, Operation and Maintenance Manuals.** During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractors are applicable to the items actually installed and

Exhibit A

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

in accordance with the Contract Documents, and have these documents delivered to the PCM and Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. Completion.

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

D. Resident Project Representative will not:

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

**ATTACHMENT A
RATE SCHEDULE**

1.0 O'BRIEN & GERE ENGINEERS, INC.

1.1 Hourly Rates

CLIENT shall pay Compensation for labor based on CONSULTANT's rate schedule below. The Rate Schedule provided below shall be in effect through December 31, 2022:

Labor Category	Hourly Rate
Project Officer	\$236.00
Project Manager 2	\$210.00
Project Manager 1	\$190.00
Construction Project Manager 2	\$183.00
Construction Project Manager 1	\$164.00
Architect/Engineer/Scientist 3	\$154.00
Architect/Engineer/Scientist 2	\$121.00
Architect/Engineer/Scientist 1	\$102.00
Engineering Technician 3	\$108.00
Engineering Technician 2	\$88.00
Engineering Technician 1	\$75.00
Plant Operations Manager 1	\$153.00
Plant Operator 3	\$94.00
Plant Operator 2	\$80.00
Plant Operator 1	\$67.00
Const Mgt Prof/Estimator 3	\$136.00
Const Mgt Prof/Estimator 2	\$109.00
Const Mgt Prof/Estimator 1	\$94.00
Intern	\$43.00
Administrative Assistant	\$74.00
Construction Management Assistant 3	\$64.00
Project Manager 1 (Commissioning)	\$182.00
Project Manager 1 (SCADA)	\$164.00
Engineer 3 (Commissioning/Integration)	\$156.00
Engineer 2 (Commissioning/Integration)	\$132.00
Wastewater Operator – NYSDEC Class 4A	\$132.00
Construction Management Prof. 1 (Commissioning)	\$102.00

1.2 Non-salary expenses and outside services attributable to the Project

CLIENT shall pay Compensation for expenses based on CONSULTANT's rate schedule below. The Rate Schedule provided below shall be in effect through December 31, 2022:

- 1.2.1 Living and traveling expenses of employees when away from the home office on business connected with services at rates established by the U.S. General Services Administration;
- 1.2.2 The identifiable costs of reproduction, printing, and binding and postage and shipping applicable to the Project;
- 1.2.3 The actual cost of outside services and subcontractors;
- 1.2.4 Not used;
- 1.2.5 Mileage calculated at the federal reimbursement rate established by the U.S. General Services Administration for privately owned vehicles in effect on the date of the occurrence;
- 1.2.6 Actual receipted cost of field equipment rental supplied by a vendor for use on the Project;

- 1.2.7 The actual cost of permits and fees required for the project and paid by CONSULTANT;
- 1.2.8 The actual cost for additional insurance required by the Owner in excess of CONSULTANT's normal coverage's or limits;
- 1.2.9 The actual cost of premiums paid on overtime worked.

2.0 GHD CONSULTING SERVICES, INC.

2.1 Hourly Rates

CLIENT shall pay Compensation for labor based on CONSULTANT's rate schedule below. The Rate Schedule provided below shall be in effect through December 31, 2022:

Labor Category	Hourly Rate
Vice President/Technical Advisor	\$239.00
Senior Associate	\$230.00
Associate	\$212.00
Senior Project Manager	\$180.00
Senior Engineer	\$175.00
Project Manager	\$170.00
Project Engineer III	\$160.00
Project Engineer II	\$145.00
Project Engineer I	\$135.00
Engineer/Scientist II	\$120.00
Engineer/Scientist I	\$110.00
Architect	\$125.00
Managing Designer	\$160.00
Senior Designer	\$125.00
Designer	\$115.00
Junior Designer	\$100.00
Senior Drafter	\$95.00
Drafter	\$80.00
Technician	\$60.00
Senior Construction Project Representative	\$120.00
Construction Project Representative	\$115.00
Field Technician	\$65.00
Secretarial/Word Processing	\$80.00

2.2 Non-salary expenses and outside services attributable to the Project

CLIENT shall pay Compensation for expenses based on CONSULTANT's rate schedule below. The Rate Schedule provided below shall be in effect through December 31, 2022:

- 2.2.1 Living and traveling expenses of employees when away from the home office on business connected with services at rates established by the U.S. General Services Administration;
- 2.2.2 The identifiable costs of reproduction, printing, and binding and postage and shipping applicable to the Project;
- 2.2.3 The actual cost of outside services and subcontractors;
- 2.2.4 Not used.
- 2.2.5 Mileage calculated at the federal reimbursement rate established by the U.S. General Services Administration for privately owned vehicles in effect on the date of the occurrence;
- 2.2.6 Actual receipted cost of field equipment rental supplied by a vendor for use on the Project;
- 2.2.7 The actual cost of permits and fees required for the project and paid by CONSULTANT;
- 2.2.8 The actual cost for additional insurance required by the Owner in excess of CONSULTANT's normal coverage's or limits;
- 2.2.9 The actual cost of premiums paid on overtime worked.

3.0 BROWN AND CALDWELL ASSOCIATES

3.1 Hourly Rates

CLIENT shall pay Compensation for labor based on CONSULTANT's rate schedule below. The Rate Schedule provided below shall be in effect through December 31, 2022:

Labor Category	Hourly Rate
Vice President/Technical Advisor	\$239.00
Associate/Managing Engineer	\$225.00
Supervising Engineer	\$200.00
Principal Engineer	\$192.00
Managing Designer	\$182.00
Senior Engineer	\$152.00
Project Engineer	\$141.00
Engineer/Scientist II	\$114.00
Engineer/Scientist I	\$112.00
Designer	\$128.00
Senior Drafter	\$133.00
Drafter	\$94.00
Secretarial/Office Support	\$86.00

3.2 Non-salary expenses and outside services attributable to the Project

CLIENT shall pay Compensation for expenses based on CONSULTANT's rate schedule below. The Rate Schedule provided below shall be in effect through December 31, 2022:

- 3.2.1 Living and traveling expenses of employees when away from the home office on business connected with services at rates established by the U.S. General Services Administration;
- 3.2.2 The identifiable costs of reproduction, printing, and binding and postage and shipping applicable to the Project;
- 3.2.3 The actual cost of outside services and subcontractors;
- 3.2.4 Not used.
- 3.2.5 Not used.
- 3.2.6 Mileage calculated at the federal reimbursement rate established by the U.S. General Services Administration for privately owned vehicles in effect on the date of the occurrence;
- 3.2.7 Actual receipted cost of field equipment rental supplied by a vendor for use on the Project;
- 3.2.8 The actual cost of permits and fees required for the project and paid by CONSULTANT;
- 3.2.9 The actual cost for additional insurance required by the Owner in excess of CONSULTANT's normal coverage's or limits;
- 3.2.10 The actual cost of premiums paid on overtime worked.

ATTACHMENT B



**Environmental
Facilities Corporation**

ANDREW M. CUOMO
Governor

Program Requirements and Bid Packet for Non-Construction Contracts

(For Treatment Works and Drinking Water 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, 2017

New York State Environmental Facilities Corporation
625 Broadway, Albany, NY 12207-2997
P: (518) 402-6924 F: (518) 402-7456
www.efc.ny.gov

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ATTACHMENTS (REQUIRED FORMS)

- Attachment 1 - EEO Policy Statement
- Attachment 2 - EEO Staffing Plan
- 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
- Attachment 8 - EPA Form 6100-3 - DBE Subcontractor Performance Form
- Attachment 9 - EPA Form 6100-4 - DBE Subcontractor Utilization Form
- 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 and Drinking Water 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;
- Non-discrimination requirements pursuant to Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972;
- Encouragement of participation of Service-Disabled Veteran-Owned Business Enterprises ("SDVOB") in accordance with New York State Executive Law, Article 17-B and 9 NYCRR Part 252;
- 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 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, with the exception of the EEO Workforce Employment Utilization Report requirement which applies to construction Contracts and Subcontracts greater than \$25,000.

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, 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 of 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.
4. Section 504 of the Rehabilitation Act of 1973 ("Section 504") for any program or activity receiving federal financial assistance, as those terms are defined therein.
5. The Age Discrimination Act of 1975 ("Age Discrimination Act") for any program or activity receiving federal financial assistance, as those terms are defined therein.
6. Section 13 of the Federal Water Pollution Control Act ("Clean Water Act") Amendments of 1972 ("Section 13") for any program or activity receiving federal financial assistance under the Clean Water Act, as those terms are defined therein.

B. 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, Section 504, Age Discrimination Act, Section 13, and all other State and Federal

statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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 Infrastructure Improvement Act Grants (also receiving EFC loan)	Clean Water project 23% Drinking Water project 26%
NYS Intermunicipal Grants (also receiving EFC loan)	Clean Water project 24% Drinking Water project 24%
NYS financial assistance only	30%
Engineering Planning Grant	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. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards achievement of applicable MWBE participation goals. For construction-related services Contracts or Subcontracts, the portion of the Contract or Subcontract with an MWBE serving as a supplier, and so designated in ESD's Directory, that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the Contract or Subcontract. The portion of a Contract or Subcontract with an MWBE serving as a broker, as denoted by NAICS code 425120, that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE. 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 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES

New York State Executive Law Article 17-B and 9 NYCRR Part 252 provide for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. EFC recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of EFC contracts.

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

Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <http://ogs.ny.gov/Core/SDVOBA.asp>

Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

SECTION 3 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 4 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, with the exception of the EEO Workforce Employment Utilization Report requirement which applies to construction Contracts and Subcontracts greater than \$25,000	1	1
Service-Disabled Veteran-Owned Businesses (SDVOB)	Not required, but strongly encouraged	2	2
Suspension and Debarment	All Contracts and Subcontracts	3	3
Restrictions on Lobbying	All Contracts and Subcontracts greater than \$100,000	4	4

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. An exemplar form with instructions is attached hereto as Attachment 3. The actual Excel fillable form for Contractors and Subcontractors to complete will be e-mailed to MBOs by EFC at the start of the Contract term. 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, 2017. 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.
 - c. For construction-related services Contracts or Subcontracts, the following rules apply when calculating MWBE utilization:
 - i. The portion of a Contract or Subcontract with an MWBE serving as a manufacturer that shall be deemed to represent the commercially useful function performed by the MWBE shall be 100% of the total value of the Contract or Subcontract.
 - ii. the portion of a Contract or Subcontract with an MWBE serving as a supplier (as denoted by a NAICS code beginning with 423 or 424, or a

NIGP code that does not begin with the number 9), and so designated in ESD's Directory, that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the Contract or Subcontract.

- iii. the portion of a Contract or Subcontract with an MWBE serving as a broker (as denoted by NAICS code 425120) that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.
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 NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES (“SDVOB”) PARTICIPATION OPPORTUNITIES

Contractor may contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract. The directory of New York State Certified SDVOBs can be viewed at: <http://ogs.ny.gov/Core/SDVOBA.asp>

Please contact EFC if you have any questions about utilizing SDVOBs on the Contract.

SECTION 3 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>

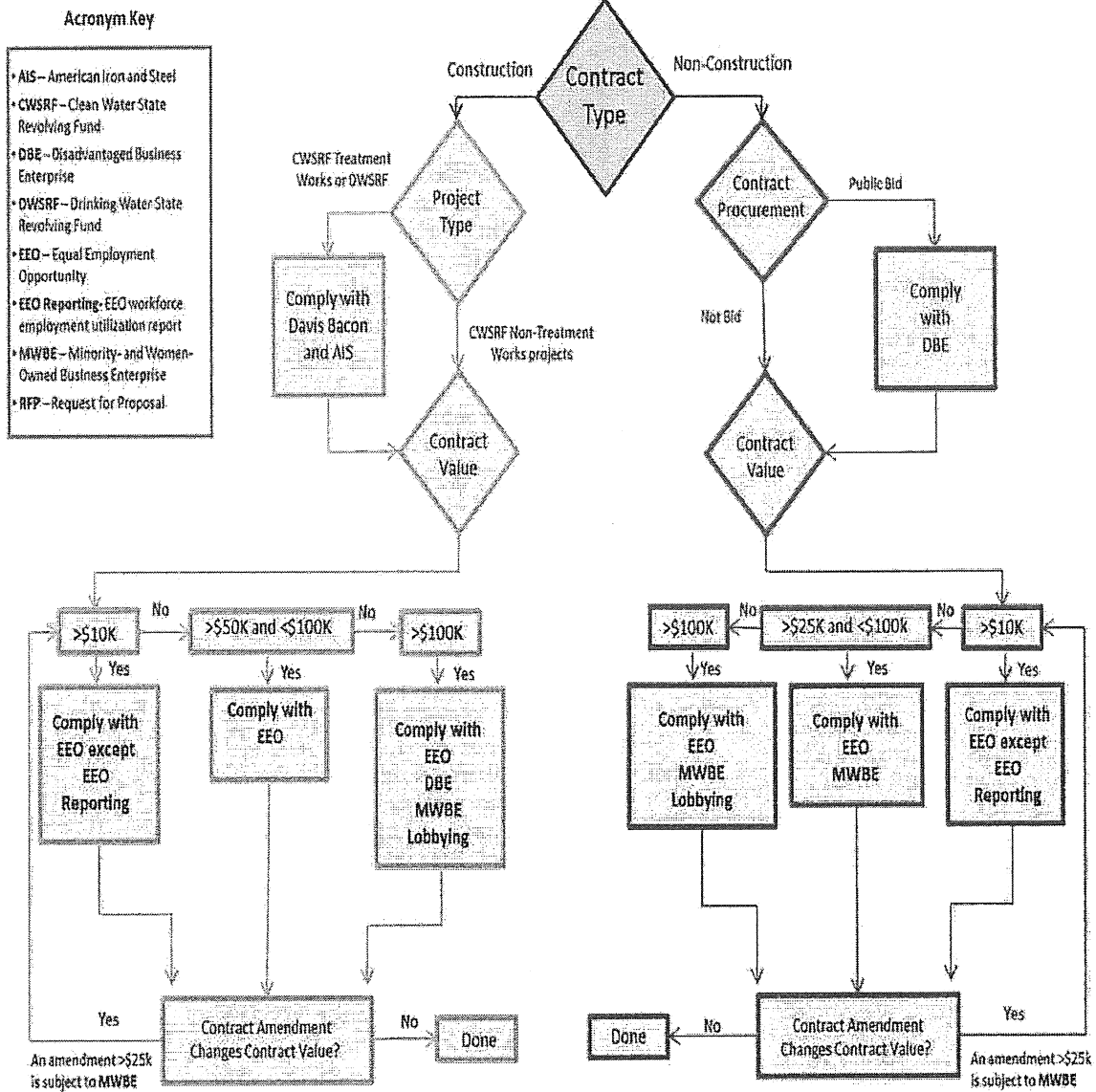
A list of contractors deemed ineligible to submit a bid is maintained by Empire State Development's Division of Minority and Women's Business Development.

SECTION 4 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 5

PROGRAM CONTRACT REQUIREMENT DECISION TREE



SECTION 6 SUMMARY OF CONTRACTOR REQUIREMENTS FOR SRF-FUNDED PROJECTS

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

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

To be submitted with this bid:

- EEO Policy Statement
- Documented Proof that EPA Form 6100-2 - DBE Subcontractor Participation Form was given to MWBE Subcontractors
- EPA Form 6100-3 - DBE Subcontractor Performance Form
- EPA Form 6100-4 - DBE Subcontractor Utilization Form
- Lobbying Certification

Refer to Part 3

Guidance Section

- Section 1
- Section 1
- Section 1
- Section 1
- Section 4

To be submitted prior to or upon Contract award:

- Executed Contracts, Subcontracts, agreements, and purchase orders
- MWBE Utilization Plan and/or Waiver Request
- EEO Staffing Plan

- Section 1
- Section 1

Ongoing documentation & tasks:

- EEO Workforce Utilization Report
- Submit Monthly MWBE Reports to MBO
- Maintain proof of payments for MWBE Subcontractors
- Ensure that all Subcontracts contain Part 2: Required Contract Language

- Section 1
- Section 1
- Section 1

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, 41 CFR Part 60-4, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. 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: Reporting Entity – Please select one from the options below:

- Workforce utilized on this contract Prime Service Provider
 Contractor/subcontractor's total workforce Subcontractor

Job Categories	Hispanic/Latino		Not Hispanic or Latino						Female												
	Male	Female	Male			Female			Black/ African American	White	Two or More Races	Native American/ Alaska Native	Asian	Native Hawaiian/ Other Pacific Islander	Black/ African American	Two or More Races	Native American/ Alaska Native	Asian	Native Hawaiian/ Other Pacific Islander	Two or More Races	
			Black/ African American	White	Two or More Races	Native American/ Alaska Native	Asian	Native Hawaiian/ Other Pacific Islander													
Senior Level Officials/Managers	0	0	0	0	0	0	0	0	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	0	0	0	0	0	0	0	0
Professionals	0	0	0	0	0	0	0	0	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	0	0	0	0	0	0	0	0
Sales Workers	0	0	0	0	0	0	0	0	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	0	0	0	0	0	0	0	0
Skilled Craftsmen	0	0	0	0	0	0	0	0	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	0	0	0	0	0	0	0	0
Laborers & Helpers	0	0	0	0	0	0	0	0	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	0	0	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Journeypersons																					
Apprentices																					
Trainees																					
Electronic Signature of Service Provider: <input type="checkbox"/> 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 or your designated MBO for further guidance.

Attachment 3
Instructions for Completing and Submitting the
Equal Employment Opportunity Workforce Utilization Report

The Equal Employment Opportunity ("EEO") Workforce Utilization Report ("Report") is used by contractors and subcontractors to report the actual workforce utilized in the performance of the contract broken down by job title for a particular reporting period. When the workforce utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total workforce, the contractor and/or subcontractor shall submit a Report of the 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, information on the contractor's and/or subcontractor's total workforce shall be included in the Report.

Instructions for Completing the Report

1. **Reporting Entity.** Check off the appropriate box to indicate if the entity completing the Report is the contractor or a subcontractor.
2. **Federal Employer Identification Number ("FEIN").** Enter the FEIN assigned by the Internal Revenue Service ("IRS") to the contractor or subcontractor for which the Report has been prepared. If the contractor or subcontractor uses a social security number instead of a FEIN, leave this field blank. The contractors and subcontractors for recipients of a grant only (such as an Engineering Planning Grant (EPG), a Water Infrastructure Improvement Act (WIIA) grant, or an Intermunicipal Grant Program (IMG) grant) do not need to fill out this section of the Report.
3. **Name.** Enter the name of the contractor or subcontractor for which the Report has been prepared.
4. **Address.** Enter the address of the contractor or subcontractor for which the Report has been prepared.
5. **Contract Number.** Enter the number of contract that the Report applies to, if applicable.
6. **Reporting Period / Month.** Check off the box that corresponds to the applicable quarterly or monthly (not both) reporting period for this Report. The Report is to be submitted on a monthly basis for construction contracts, and a quarterly basis based on the calendar quarter for all other contracts, during the life of the contract.
7. **Workforce Identified in Report.** Check off the appropriate box to indicate if the workforce being reported is just for the contract or the contractor's or subcontractor's total workforce.
8. **Preparer's Name, Preparer's Title, Date.** Enter the name and title for the person completing the Report, enter the date upon which the Report was completed, and check the box accepting the name entered into the Report as the digital signature of the preparer.
9. **Occupation Classifications (SOC Major Group) and SOC Job Title.** First, enter the applicable Occupation Classification (SOC Major Group) so a dropdown menu appears under SOC Job Title. Choose the SOC Job Title that best describes the worker.
10. **EEO Job Title and SOC Job Code.** The EEO Job Title and the SOC Job Code will automatically populate in the spreadsheet based upon the Occupation Classifications (SOC Major Group) and SOC Job Title selected. Please do not modify the information populated in these fields.

11. **Race/Ethnic Identification.** Race/ethnic designations do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this Report are:
- o **WHITE** (not of Hispanic origin) all persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
 - o **BLACK/AFRICAN AMERICAN** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
 - o **HISPANIC/LATINO** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
 - o **ASIAN, NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
 - o **NATIVE AMERICAN/ALASKAN NATIVE** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.
12. **Number of Employees and Number of Hours.** Enter the number of employees and the total number of hours worked by such employees for each SOC Job Title under the columns corresponding to the gender and racial/ethnic groups with which the employees most closely identify.
13. **Total Compensation.** Enter the total compensation paid to all employees for each SOC Job Title, each gender, and each racial/ethnic group. Contractors and subcontractors should report only compensation for work on the contract paid to employees during the period covered by the Report. Compensation should include only sums which must be reported in Box 1 of IRS Form W-2. The contractors and subcontractors for recipients of a grant only (such as an EPG, a WIIA, or an IMG grant) do not need to fill out this section of the Report.
14. **For EFC Use Only.** This section is for EFC use only and does not need to be filled out by the contractor/subcontractor.

Instructions for Submitting the Report

The Report is to be submitted on a monthly basis for construction contracts, and a quarterly basis based on the calendar quarter for all other contracts, during the life of the contract.

EFC will provide a Report form in Excel format to the Recipient's Minority Business Officer ("MBO"). The Recipient's MBO is responsible for providing the Report form to all contractors. Each contractor is responsible for providing the Report form to all subcontractors.

Reports are to be submitted electronically in Excel format, using the Report form provided, within ten (10) days of the end of each month or quarter, whichever is applicable. For example, the January monthly Report for a construction contract is due by February 10th and the January – March quarterly Report for a non-construction contract is due by April 10th.

Once the Report form has been completed, each contractor/subcontractor must submit the Report form to EFC and the Recipient's MBO. The Report form must be submitted to EFC according to the following instructions:

1. Go to www.efc.ny.gov/eeoreporting.
2. Enter the requested information pursuant to the instructions on the page. Make sure to choose the correct applicable funding program (Clean Water State Revolving Fund (SRF), Drinking Water SRF, non-SRF Grant Only (e.g. EPG, WIIA, IMG)) and the correct reporting period (reporting

- quarter for non-construction OR reporting month for construction). Enter the reporting period of the data, not the date it's submitted.
3. Submit your Report(s) pursuant to the instructions on the page.
 4. If you are a contractor, use the naming convention provided by EFC (in the "For EFC Use Only" section of the Report form) for naming the file for upload (i.e., Funding Program – Project Number– Contractor short name (up to fifteen characters) – MWBE ID). The funding programs include CW (clean water SRF), DW (drinking water SRF), and GO (non-SRF grant only). If you are a subcontractor, use the naming convention provided by EFC and replace the contractor's short name with the first fifteen characters of the subcontractor's name, omitting any spaces or special characters.

Questions

If you have questions about or require assistance completing or submitting the Report, please contact EFC at mwbe@efc.ny.gov or 518-402-6924.

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 Recipient's Minority Business Officer ("MBO") on a monthly basis.
- If you require additional pages, you may find them on EFC's website at www.efc.ny.gov.
- 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:	
Project No.:		GIGP/EPG 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 this Month: \$		Total Paid to Prime	
Revised Contract Amt: \$		(Goals are applied to this amount and includes eligible change orders, amendments & waivers)		MBE: %		Total Paid to Date: \$		Total Payments Made to	
				WBE: %		Payments this Month		Date	
				Total: %		Subcontractor Total Amount Revised		Previous Payments	
NYS Certified MWBE Contractor & Subcontractor		Please Specify Any Revisions this Month.		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							
Select Only One:									
<input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A									
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							
Select Only One:									
<input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A									
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							
Select Only One:									
<input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A									

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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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#: _____ Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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")

Name: Fed. Employer ID#: _____ Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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 and note the scope of work that new subcontractors will be providing. Please note that change orders over \$25K may require that good faith efforts be made to obtain additional MWBE participation:			

Attachment 5
NYS 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 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 on EFC's website.

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

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

See the Bid Packet at www.efc.ny.gov 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, Project 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
 NYS Environmental Facilities Corporation
 Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan

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

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

SECTION 3: M/WBE SUBCONTRACTOR INFORMATION				
This Submittal is:	NYS Certified M/WBE Subcontractor Info		Contract Amount:	For EFC Use:
	<input type="checkbox"/> The First/Original Utilization Plan	<input type="checkbox"/> Revised Utilization Plan #:	MBE (\$)	WBE (\$)
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: _____ Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A Completion Date: _____ Full Contract Amount: \$ _____				
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: _____ Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A Completion Date: _____ Full Contract Amount: \$ _____				
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: _____ Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A Completion Date: _____ Full Contract Amount: \$ _____				
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: _____ Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A Completion Date: _____ Full Contract Amount: \$ _____				

Attachment 5
 NYS 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:		
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		Completion Date:		
Full Contract Amount: \$				
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:		
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		Completion Date:		
Full Contract Amount: \$				
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:		
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		Completion Date:		
Full Contract Amount: \$				
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 Recipient's designated Minority Business Officer (MBO).** Incomplete forms will be found deficient.

See the Bid Packet at www.efc.ny.gov 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, Project 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:		
Project No.:	GIG/EPG No.:	Contract ID:	Registration No. (NYC only):
Minority Business Officer (MBO):	Email:		Phone #:
Address of MBO:			Date:
Signature of MBO: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief.			

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:		EFC MWBE GOAL Total	
Award Date:	Start Date:	Completion Date:	
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	
<p>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. Name: (Please Type):</p>	<p>Date:</p>

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 checked="" 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 checked="" type="radio"/> YES	<input 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.



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

**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: _____



**ONEIDA COUNTY DEPARTMENT OF
WATER QUALITY & WATER POLLUTION CONTROL**
51 Leland Ave, PO Box 442, Utica, NY 13503-0442
Phone: (315) 798-5656 Email: wpc@ocgov.net Fax: (315) 724-9812

Anthony J. Picente, Jr.
County Executive

Steven P. Devan, P.E.
Commissioner

September 23, 2020

The Honorable Anthony J. Picente, Jr.
Oneida County Executive
800 Park Ave
Utica, NY 13501

FN 20 20-327

Re: Oneida County Water Pollution Control Plant
Barnes Ave Pumping Station
Work Order #36

PUBLIC WORKS

WAYS & MEANS

Dear County Executive Picente:


A detailed engineering evaluation of the Water Pollution Control Plant (WPCP) and the Sauquoit Creek Pumping Station (SCPS) was submitted by Oneida County to the New York State Department of Environmental Conservation (NYSDEC) on August 27, 2012. This was done in response to the requirements of the Consent Order (No. R620060823-67) between NYSDEC and Oneida County due to sanitary sewer overflows (SSO) at the SCPS. The evaluation, which was prepared as Work Order No. 12, expanded upon the preliminary capacity assessment of the WPCP that was performed under Work Order No. 5 in 2007. The timeline included with the evaluation identified construction of a new Sauquoit Creek Force Main (SCFM) and upgrades to the SCPS. The WPCP evaluation was approved by NYSDEC in November 2012.

The purpose of Work Order 36 is to provide preliminary design services, final design services, project bidding and construction administration/management for the upgrades to the Barnes Ave Pumping Station. The term begins upon execution and ends upon completion of the work, anticipated before December 31, 2023. GHD has proposed Work Order #36 in the amount of \$516,000 as the budget to accomplish the tasks listed above. Department staff has reviewed the Work Order and found it to be acceptable, given the amount of contractual work it oversees. Funding for this work is provided by capital project HG-573.

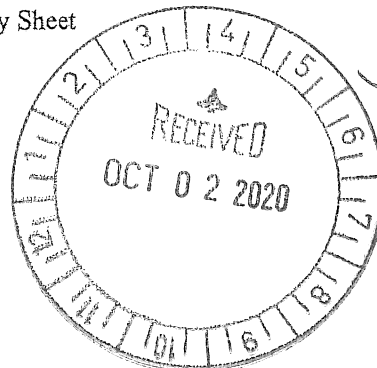
I would appreciate consideration of this Work Order by you and the Board of Legislators at your earliest possible convenience. I am available to meet with you and the Board at your convenience, to discuss this request and explain the Work Order in more detail.

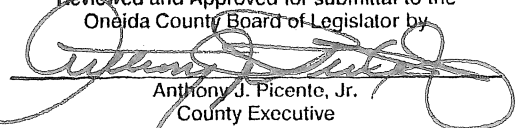
Thank you for your consideration in this matter.

Sincerely,
**THE ONEIDA COUNTY DEPARTMENT OF
WATER QUALITY AND WATER POLLUTION CONTROL**


Steven P. Devan, P.E.
Commissioner

Attachments: Contract Summary Sheet
Work Order #36



Reviewed and Approved for submittal to the
Oneida County Board of Legislators by

Anthony J. Picente, Jr.
County Executive
Date 10-1-20

Competing Proposal X
Only Respondent
Sole Source RFP
Other

**ONEIDA COUNTY BOARD OF LEGISLATORS
CONTRACT SUMMARY**

Name & Address of Vendor: GHD Consulting Services, Inc.
5788 Widewaters Pkwy
Syracuse, NY 13214

Title of Activity or Service: Work Order #36
Barnes Ave Pumping Station

Proposed Dates of Operation: Upon contract execution until completion of work,
anticipated by December 31, 2023

Client Population/Number to be Served: 110,000 people

Summary Statements

- 1) Narrative Description of Proposed Services: GHD has proposed Work Order #36 in the amount of \$516,000 to accomplish construction management/administration, resident representation, startup/ commissioning, and engineering services during construction for the Barnes Ave Pumping Station.
- 2) Program/Service Objectives and Outcomes: Produce the necessary construction phase services and bid /design services for the contract listed.
- 3) Program Design and Staffing: GHD Consulting Services, Inc. and other members of the Engineering Team will provide the services with oversight from WQ&WPC

Total Funding Requested: \$516,000 **Account #:** HG-573
Mandated/Not Mandated: Mandated

Oneida County Dept. Funding Recommendation: Capital Fund HG-573

Proposed Funding Sources (Federal \$/ State \$/County \$): Funding will come from borrowing money from the New York State Environmental Facilities Corporation.

Cost Per Client Served: \$4.69

Past Performance Data: GHD and the rest of the Engineering Team are providing similar construction phase services for other portions of the plant upgrades.

O.C. Department Staff Comments: The projected contractual work being managed with under this work order approaches \$4,000,000.



WORK ORDER 36

BARNES AVE PUMPING STATION UPGRADE AND NEW FORCEMAIN DESIGN AND ENGINEERING SERVICES DURING CONSTRUCTION

CWSRF Project No. C6-6070-08-04

I. PROJECT UNDERSTANDING

A detailed engineering evaluation of the Water Pollution Control Plant (WPCP) and the Sauquoit Creek Pump Station (SCPS) was submitted by Oneida County to the New York State Department of Environmental Conservation (NYSDEC) on August 27, 2012. This was done in response to the requirements of the Consent Order (No. R620060823-67) between NYSDEC and Oneida County due to sanitary sewer overflows (SSO) at the SCPS. The WPCP and SCPS evaluation was approved by the NYSDEC in November 2012. In addition to modifications to be done at the SCPS, modifications to the Barnes Ave Pump Station (BAPS) were also approved.

The purpose of this Work Order (WO-36) is to provide preliminary design services, final design services, project bidding and construction administration/management for the upgrades to the BAPS.

Planned upgrades to the BAPS include new influent screening, new pumps, piping, heating and associated ductwork, new hoisting equipment, new valve vault and a new standby generator. In addition, code-required mechanical, electrical, control and HVAC modifications will be made at the BAPS. A new dual forcemain will be provided from the BAPS to the SCPS forcemain. The majority of the new BAPS forcemains work be constructed under the SCPS forcemain contract, but a portion will be designed and constructed under WO-36.

Work associated with WO-36 will include: preliminary design and development of basis of design information including hydraulic assessments, identification of replacement/upgrade of equipment, regulatory coordination and summary of permitting requirements. The preliminary design effort will include the development of preliminary design drawings associated with modifications to the BAPS and the associated connection to the SCPS forcemain routing.

Once preliminary design effort is complete, final design services phase will commence. Final design services shall include providing final design recommendations for equipment selection options presented during the preliminary design effort, advancing the preliminary BAPS upgrades to 100% biddable documents. Once 100% biddable documents are complete, the project will be publically bid. Construction administration and management will be performed, including document control, submittal review, responding to RFIs, testing and turnover.

The design will incorporate the following major scope elements.

A. BAPS Modifications

1. Screening

The intent is to replace the existing trash monster screening system with a new mechanical bar screen rated for design capacity of the BAPS. A new manual bar screen that will replace the existing manual bar screen in the bypass channel will also be included in the design. It is anticipated that the bar spacing will be ½ inch, but will be designed to handle flow fluctuations and potential grease concerns. The mechanical screen at the BAPS will be on emergency power and therefore, operable during power outages.

2. Emergency Generator / Electrical Upgrade

A new standalone emergency generator will be provided at the BAPS along with a new automatic transfer switch and associated conduit and wiring. The generator will be sized to power critical equipment during a power outage to allow the station to pump peak flows. The generator shall be placed upon a concrete pad in accordance to applicable New York State building codes. In addition, electrical power upgrades will be provided to be compatible with proposed utility service upgrades and the generator output voltage.

3. Vault Installation

A new flow control vault is proposed, located outside the BAPS building. The vault location will be determined during the preliminary design effort. The flow control vault will be designed with electrically actuated valves to control flow to the dual forcemains. A new flow meter within the BAPS will be used to regulate flow between the two forcemains via the actuated valves and will be automated in association with the SCPS force main valving to maintain sufficient scouring velocities between the two forcemains, isolating forcemains as required. Flow rate set points will dictate which forcemain remains in operation. A remote control panel that communicates to the Oneida County SCADA system will provide control of the valves, indicate valve position, and provide flow rate readout.

The valve vault will be designed for the connection of the BAPS forcemains into the new SCPS forcemains. This vault will contain actuated valves that will allow discharge into either the 30 or 42-inch SCPS forcemains depending on the status of system operation. Valve status at the SCPS will automatically direct Barnes Ave flow to the appropriate forcemain.

4. Pump and Pump Station Modifications

The modifications to the existing pump station shall include:

- Replace existing pumps / motors / drives
- Replace existing suction and discharge piping
- Replace existing suction isolation valves and addition of double redundancy
- Replace existing discharge check valves
- Install new heating equipment and associated HVAC piping
- Replace existing walkway grating above sump pit and above influent channels
- Install new sliding access gate at the exterior fence
- Replace existing concrete door slab

- Install new monorail in the screenings area on the top floor to the awning area / wet side front door for screenings removal
- Install new monorail above pumps for pump maintenance
- Install new chain fall / hoist for pump maintenance
- Replace existing chain hoist and install new electrically operated hoist / chain fall for manual and mechanical screen operations.
- Install new hoist for lifting waste bucket / dumpster into truck (outdoor wet well front door)
- Install new door and door accessories
- Replace MCC, PLC Controllers,
- Interior and exterior lighting to be upgraded to LED lights
- Install SCADA integration for pumps, levels, alarms
- Electrical service upgrade
- Replace existing and install new conduit and wire

Additional work items include:

- Re-grade and pave access road to BAPS
- Install new temporary bridge over Nail Creek
- New interior piping and exposed metal surfaces to be painted
- Re-coating of existing floor

Optional work items:

- Installation of natural gas conveyance line and associated equipment
- Installation of new fiber optic cable to BAPS
- Installation of new security cameras
- New fire extinguishing equipment

II. SCOPE OF SERVICES

A. Task 1 Project Management

1. Subtask 1.1 – Project Management Administration

This task allows for the routine management, administration, and coordination of the work efforts for engineering activities. Included in this task is the appropriate coordination with Oneida County and engineering team members, management of the project, monitoring of budget and schedule, cost control, and administrative assistance to the Commissioner on an as needed basis. Karl Schrantz, P.E. from Ramboll Engineering (O'Brien and Gere Inc.) will be the Project Manager and will be responsible for project administration. John LaGorga, P.E and Ben Watkins will act as the Project Managers from GHD and will be responsible for overall technical/engineering coordination.

2. Subtask 1.2 – Project Meetings and Workshop

An initial meeting with Oneida County (County) will be conducted to kick-off the preliminary design, review the scope of work, and review the schedule for conducting the work. A number of subsequent meetings will be required to meet with the County, regulators, etc. It is anticipated that a total of four (4) formal meetings/workshops will be held over the course of this Work Order. Two (2) workshops will be held during preliminary design and two (2) workshops will be held during final design.

3. **Subtask 1.3 – Technical Quality Reviews**

Under this subtask, technical reviews of the project will be conducted by senior staff members. It is anticipated that senior Ramboll and GHD personnel will be involved to review design concept, hydraulics and equipment sizing, coordination amongst trades and bid documents, and constructability/biddability.

4. **Subtask 1.4 – Meeting notes from project team meetings**

All project meetings and technical quality reviews will be noted and meeting minutes will be provided to the project team.

B. **Task 2 Basis of Design**

1. **Basis of Design**

a. **Subtask 2.1 – Site Visits/Condition Assessment**

Two (2) site visits will be conducted at the BAPS to determine the status and condition of the existing equipment within the pumps station. Along with this site visit, existing information and documents will be reviewed to begin the work, including BAPS As-built drawings and historical reports.

For expense budgeting purposes, it was assumed that these two (2) meetings will occur on the same day as the preliminary site visit in Subtask 1.2; therefore, no additional travel expenses are assumed for this subtask.

b. **Subtask 2.2 – BAPS Hydraulic Analysis**

The pumping capacity of the station will have the potential to increase with the new forcemain and the design will incorporate new automated valves to control flow to the new and existing forcemains. To document the potential hydraulic impacts due to the planned increase in flow and addition of valving, a transient analysis to model hydraulic behavior will be performed and recommended modifications will be described. A technical memorandum will be developed to provide rationale for proposed additional flow rate capacity.

c. **Subtask 2.3 – Basis of Design Report**

A Basis of Design Report will be prepared and submitted which will include a summary of the preliminary design findings, recommendations, and basis of design information. The report will identify key design criteria and concepts, constructability, construction phasing, operation and control strategy. The report will also identify approvals and permits necessary to construct the project (no permits are anticipated for this upgrade work). The report will also identify documents and information needed to procure any required permanent and construction easements. A preliminary cost estimate and schedule will also be provided.

Task 2 Deliverable: Three (3) copies of a Draft Basis of Design Report and an electronic copy. Three (3) copies of a Final Basis of Design Report and an electronic copy.

2. **Task 3 Preliminary Design**

Preliminary Design Submittal

The objective of this subtask is to provide the County with a summary of the proposed improvements inclusive of the BAPS forcemains, BAPS modifications, equipment features and layouts, P&IDs, control descriptions and a draft description of how existing facilities will operate during construction. Preliminary design submittal (defined as 30-percent level of completion) will also include a preliminary list of specifications that will be included within the construction bid documents. The design development will be in accordance with the latest edition of the Recommended Standards for Wastewater Facilities (Ten State Standards).

a. **Subtask 3.1 – BAPS General/Civil Preliminary Design**

General/civil preliminary design will include development of the valve vault layout, forcemain routing alignment and location of new and modified outside piping. Drawings will also show access roadway modifications, potential storm water mitigation and applicable civil construction details. Drawings will also show demolition of existing piping and structures, modifications to topography and applicable civil construction. No landscaping modifications are assumed beyond that required for restoration.

b. **Subtask 3.2 – BAPS Structural Preliminary Design**

Structural preliminary design will include development of structural design criteria, selection of structural construction materials, preliminary design of foundations for the valve vault and required modifications inside the pump station. Modifications within the pump station shall include modifications to the channel, floor, walls and installing a new monorail system to aid in grit removal activities. Additional structural modifications include replacing front door concrete slab that has settled making the surface uneven.

c. **Subtask 3.3 - Mechanical Preliminary Design**

Mechanical preliminary design will include determination of BAPS mechanical screen equipment performance and specifications, selection of mechanical and manual screen equipment, selection of pumps and associated valves and piping, selection of hoists and associated monorails and location and arrangement of the equipment to ensure the arrangement fits within the constraints of the existing structure.

d. **Subtask 3.4 – BAPS Electrical/Instrumentation Preliminary Design**

Electrical preliminary design will include initial investigations for power and grounding at the BAPS for the mechanical equipment and along the forcemain for the valve vault. Also included will be design requirements for the new standalone generator. Instrumentation design will include preliminary process and instrumentation diagrams (PIDs) to accomplish the control and operation scheme required and preliminary selection of control and monitoring instruments, including SCADA development for integration into the SCS. This task includes evaluation of communication methods to transmit data for automatic operation of valves in the forcemain valve vault.

e. **Subtask 3.5 – BAPS Architectural Preliminary Design**

Architectural preliminary design will include replacing the existing roof and main door. The roof will need to be removed for mechanical screen installation. The main doorframe and door is also to be replaced. Door accessories to also be replaced.

f. **Subtask 3.6 – BAPS HVAC/Plumbing Preliminary Design**

Heating Ventilation and Air Conditioning preliminary design shall consist of replacing the existing heating units with new high efficiency heating units. New ventilation fans will also be installed to maintain the required air changes required by 10 State Standards. New potable water piping, valves and a new water heater shall be installed.

g. **Subtask 3.7 - Construction Cost Estimates**

A preliminary design construction cost estimate will be prepared based on the Preliminary Design submittal and will include a breakdown of projected probable construction costs. Estimates will be based on the latest available local price data available.

Task 3 Deliverable: Three (3) sets of full size plans for the Preliminary Design drawings. Three (3) copies of the Preliminary Design half-size (11x17) drawings, preliminary list of specifications, control descriptions, and estimate of probable construction cost. An electronic copy of the submittal will also be provided.

3. **Task 4 Final Design Phase Services**

Final Design Phase Services

The objective of this task is to provide a final design for the following improvements to the BAPS:

a. **Subtask 4.1 Mechanical and Manual Bar Screen Design**

The existing comminutors will be replaced by a mechanical bar screen rated for the design capacity of the BAPS. A manual bar screen in the bypass channel in parallel with the first channel and equal to design capacity will also be included in the design. The mechanical screen will be on emergency power and therefore, operable under power outages. A screenings washer/compactor will also be included for each screen and screenings will be routed to a dumpster for screenings removal. The redesign of the existing facility will be in accordance with the preliminary design report.

b. **Subtask 4.2 New Outdoor Standby Electrical Generator System Design**

A new outdoor emergency generator will be provided at the BAPS along with a new automatic transfer switch and associated conduit and wiring. The generator will be sized to power critical equipment during a power outage to allow the station to pump peak design flows. In addition, electrical power upgrades will be provided to be compatible with proposed utility service upgrades and the generator output voltage.

c. Subtask 4.3 New Dual Forcemain and Control Vault for BAPS Design

A new dual forcemain from the BAPS to the new 36-inch SCPS forcemain is estimated to be 8 inches in diameter based on the hydraulic analysis. The majority of the new BAPS forcemain work will be constructed under the SCPS forcemain contract, but a portion will be designed and constructed under this project.

A new flow control vault will be designed for the connection of the Barnes Ave Pump Station forcemain into the new SCPS forcemain. This vault will contain automated valves, which will allow effluent discharge into either the existing or the new SCPS forcemain depending on the status of system operation. Valve status at the SCPS will automatically direct Barnes Ave flow to the appropriate forcemain.

d. Subtask 4.4 Pump Design

The existing three (3) 20 horse power four inch (4") variable speed raw sewage pumps, motors and corresponding drives shall be replaced by either a similar design or dry-pit submersible design. The hydraulic evaluation will determine the pump sizing requirements.

e. Subtask 4.4 General Final Design Work Items

Included with each of Scope Items above, the following tasks will be performed by the Engineering Team:

Meet with Oneida County at approximately monthly intervals to review progress toward the final design. Comments and input from the County will be incorporated into the plans and specifications.

Structural and architectural improvements as necessary to existing facilities, and structural and architectural design for new facilities.

Electrical and instrumentation design for all modified facilities.

Plumbing design for all modified facilities.

Heating and ventilating design for the existing BAPS.

Progress all components of the preliminary design to 100% design. There will be one construction contract, which may contain multiple prime contracts. Prime contracts will be consistent with Wick's Law as applicable (i.e. General, Electrical, HVAC, and Plumbing).

Provide two (2) interim submittals (plans and specifications) to the Oneida County Sewer District (District) at the 60% and 90% stages for review and comment by the District.

- 60% documents will include outline specifications and detailed drawings depicting approved comments from the preliminary design.

- 90% documents will include detailed general and technical specifications, and construction drawings including specific construction details.
 - i. Finalized 100% documents will be submitted to the NYSDEC for review, comment, and approval.

Coordinate and facilitate meetings with the NYSDEC. Incorporate NYSDEC comments as necessary.

f. **Subtask 4.5 Hazardous Materials Survey**

Asbestos Survey and PCB and Lead Survey

The team will conduct a visual inspection of the BAPS to identify and record the location, condition, homogeneous areas and approximate quantities of suspect asbestos-containing material (ACM). Bulk samples of suspect ACM will be collected for subsequent laboratory analysis.

Full depth samples of suspect roofing materials, not previously sampled or assessed, will be collected and analyzed. Roofing and other sample locations will be patched at the time of the survey. The inspectors do not guarantee or warranty temporary roofing repairs. It is recommended a roofing contractor be retained by the County to complete permanent roofing repairs; the Engineering Team will coordinate with the County roofing contractor, if requested.

We will also conduct a visual inspection of the facility to identify potential PCB and lead-containing caulks and paint.

Reporting

The Engineering Team will provide the County with a letter report summarizing our findings, in accordance with 12 NYCRR 56, Subpart 5 (f)(3). The report will include the following:

- The building/structure name and address,
- The building/structure Owner's name and address,
- The name and address of the Owner's agent, if applicable,
- The names of the firm and personnel conducting the survey, with copies of their respective licenses and certifications,
- A tabulation of homogeneous areas of suspect ACM sampled during the survey,
- A tabulation of ACM identified during the survey, including approximate locations, types, estimated quantities, friability and condition for each ACM,
- Drawings for each building, based on base maps to be provided by the Client, depicting the locations of samples and identified ACM,

- A discussion of applicable regulations and requirements for handling and disposal of ACM prior to building renovation, and
- A tabulation of lead and PCB-containing materials, along with quantities, conditions, and locations, on a room-by-room basis; and a discussion of applicable regulations and requirements for handling and disposal prior to building renovation.

The report will meet the requirements for a pre-renovation asbestos survey, in accordance with state and federal regulations, and as required to obtain a renovation permit. Submission of the report to state and local governments, as required by 12 NYCRR 56, Subpart 5, is the responsibility of the Owner. If requested, the Engineering Team will assist the County in submitting the asbestos survey report to the appropriate regulators.

Remediation Design Support Services

The Engineering Team will incorporate the Hazardous Waste Report into the bid documents, and provide scope and specifications for Hazardous Waste Remediation.

4. Task 5 Bid Phase Services

Provide electronic bidding documents and bidding administration, and assist the County with uploading project information to their procurement website.

Attend and facilitate one (1) pre-bid meeting per contract.

Prepare and issue necessary addenda based upon regulatory agency or contractor questions or comments.

Attend one (1) bid opening per contract.

For each contract, review bids, prepare a tabulation of bids, and provide the Oneida County Sewer District with a recommendation of award to the lowest responsible bidder.

5. Task 6 Peer Review

Although GHD will be the Lead Engineer for this Work Order, the Engineering Team recognizes the importance of an independent peer review to the overall quality management of the project.

Senior design personnel from GHD and Ramboll will review the project at the 50% design stage (approximate). The personnel utilized for the peer review will not be involved in the day-to-day design or management of the project, to provide an independent "fresh look" at the plans and specifications.

In addition to the peer review at the 50% design stage (approximate), a "constructability review" will be conducted at the 90% design stage (approximate). Similar to the peer review, the constructability review will be conducted by personnel from GHD and/or Ramboll including senior personnel with extensive construction experience. The constructability review will focus on

reviewing the project from a contractor's perspective to identify potential issues with staging, phasing/scheduling, maintaining BAPS/SCPS operations during construction, coordination with other contractors and the Owner during construction, etc.

Comments from the 50% design peer review and the 90% design constructability review will be shared with Oneida County and incorporated into the Contract Documents as applicable.

6. Task 7 Engineering Services During Construction

GHD shall provide Engineering Services during the anticipated 12 months of construction activities. Engineering services shall include responding to Request for Information (RFIs), reviewing equipment submittals, scheduling any potential inspections, holding construction status meetings, and providing engineer's observations during construction.

It is anticipated that part-time resident representation services is needed. These services are not included in this Work Order 36. These services will be coordinated with the like services ongoing at the WPCP. At the time of BAPS construction, an amendment to this Work Order 36 will be provided that includes the resident representation services, and reflects savings through coordination with the WPCP services.

III. SCHEDULE

The engineering team will perform the work outlined above within twenty-five (25) months of authorization to proceed. It is assumed that authorization will be granted no later than November 30, 2020.

Task	Anticipated Completion
Task 2 Basis of Design	2 months from date of County signature
Task 3 Preliminary Design	5 months from date of County signature
Task 4 Final Design Phase Services	90% documents within 8 months from date of County signature 100% submittal to NYSDEC within 10 months from date of County signature
Task 5 Bid Phase Services	Bidding packets completed within 13 months from the date of County signature, and remaining bid services per schedule established by County
Task 7 Engineering Services During Construction	12 months after County enters into agreement with Contractors

IV. COMPENSATION

- A. Oneida County will be billed for the Scope of Services described above based on actual labor hours charged at the billing rates contained in Table 1, plus direct project expenses (e.g., identifiable reproduction costs, shipping charges, etc.). The Compensation for the Scope of Services outlined in Section II is estimated to be \$516,000, as indicated in Table 1.
- B. Payments for the work will be due monthly on the basis of statements submitted by the Engineer for the work performed during the period.

- C. Additional services beyond the Scope of Services will be considered extra work and will necessitate additional compensation.

V. STANDARD TERMS AND CONDITIONS

The services described above will be completed as Work Order No. 36 under the Terms and Conditions of the Master Agreement for Consulting Services dated July 16, 2007, between Shumaker Consulting Engineering & Land Surveying, P.C. and Oneida County and assigned to GHD Consulting Services Inc. dated March 29, 2013.

VI. NEW YORK STATE CLEAN WATER STATE REVOLVING FUND CONTRACT REQUIREMENTS

GHD Consulting Services Inc. will comply with the applicable provisions of "Required Terms for Project Contracts and Subcontract" as defined in the NY State Revolving Fund Bid Packet for Non-construction Contracts and Service Providers (effective date October 1, 2017), as prepared by the New York Environmental Facilities Corporation. Refer to Attachment A.

VII. ATTACHMENTS

The following attachments are made part of this Work Order 36:

- Table 1 – Work order No. 36 – Fee Estimate
- Attachment A – Required Contract Language

This work order is duly executed between Consultant and Client. Upon execution of this Work Order, Consultant is authorized to proceed with the work.

Consultant
GHD CONSULTING SERVICES INC

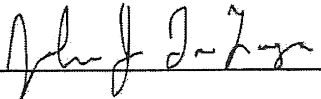
Client
COUNTY OF ONEIDA

By: John J. LaGorga, P.E.

By: Anthony J. Picente, Jr.

Title: Vice President

Title: County Executive

Signature: 

Signature: _____

Date: 9/28/2020

Date: _____

Fee Estimate
 Work Order 38

TABLE 1

Description	MARK 1	MARK 2	MARK 3	MARK 4	MARK 5	MARK 6	MARK 7	MARK 8	MARK 9	MARK 10	MARK 11	MARK 12	MARK 13	MARK 14	Total Hrs	Billing Rate (2020)	Total Cost	Estimate
Randall (Orion) & Gene Engineers, Inc.																		
Senior Engineer	40	8	8	8	8										0	\$228.00	\$0.00	
Project Manager 2															0	\$270.00	\$0.00	
Project Manager 1 (Commissioning)															0	\$270.00	\$0.00	
Senior Engineer 2															0	\$182.00	\$0.00	
Senior Engineer 1 (Commissioning)															0	\$106.00	\$0.00	
Senior Engineer 3															0	\$102.00	\$0.00	
Engineering Technician 1															0	\$106.00	\$0.00	
Engineering Technician 2															0	\$106.00	\$0.00	
Engineering Technician 3															0	\$45.00	\$0.00	
Construction Management Asst. 3 (General)															0	\$84.00	\$0.00	
Construction Management Asst. 3 (General)															0	\$89.00	\$0.00	
CH2M HILL SERVICES, INC.																		
V/E/Technical Advisor															0	\$228.00	\$0.00	
Senior Associate	40	16	32	27	8										205	\$228.00	\$46,128.00	
Associate															205	\$167.00	\$34,235.00	
Senior Project Member															335	\$167.00	\$56,112.00	
Senior Engineer															435	\$160.00	\$69,600.00	
Senior Engineer	60	68	172	56	40										800	\$155.00	\$124,000.00	
Project Engineer II															108	\$122.00	\$13,176.00	
Project Engineer I															400	\$115.00	\$46,000.00	
Engineer/Designer I															108	\$172.00	\$18,576.00	
Designer															56	\$115.00	\$6,440.00	
Junior Officer															924	\$101.00	\$93,984.00	
Secretary/Word Processing															26	\$74.00	\$1,924.00	
Subtotal Labor	\$27,000.00	\$36,858.00	\$107,060.00	\$79,321.00	\$22,572.00	\$84,100.00	\$33,848.00	\$0.00	\$11,380.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2885		\$508,129.00	
Direct Expenses																		
Travel	\$117.52	\$235.04	\$235.04	\$203.80	\$117.52	\$117.52	\$117.52	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0		\$1,233.96	
Telephone/Photocopy	\$23.40	\$23.40	\$23.40	\$23.40	\$23.40	\$23.40	\$23.40	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0		\$163.80	
Office Expenses	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0		\$700.00	
Subcontractors	\$0.00	\$0.00	\$115,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0		\$1,150,000.00	
Subtotal Disbursements	\$240.92	\$358.44	\$115,368.44	\$417.20	\$240.92	\$240.92	\$240.92	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0		\$117,087.78	
PROJECT TOTAL	\$27,240.92	\$37,216.44	\$222,418.44	\$79,738.20	\$22,812.92	\$84,340.92	\$34,088.92	\$0.00	\$11,380.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00			\$516,000.00	\$516,000.00
ESTIMATED COMPENSATION																		

Y:\Users\jgarcia\Documents\Projects\Burner Ave Pumping Station Upgrades\Work Order 38\WOT\Draw 38\Final 1_31.mxd



**Environmental
Facilities Corporation**

ANDREW M. CUOMO
Governor

Program Requirements and Bid Packet for Non-Construction Contracts

(For Treatment Works and Drinking Water 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, 2017

New York State Environmental Facilities Corporation
625 Broadway, Albany, NY 12207-2997
P: (518) 402-6924 F: (518) 402-7456
www.efc.ny.gov

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ATTACHMENTS (REQUIRED FORMS)

- Attachment 1 - EEO Policy Statement
- Attachment 2 - EEO Staffing Plan
- 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
- Attachment 8 - EPA Form 6100-3 - DBE Subcontractor Performance Form
- Attachment 9 - EPA Form 6100-4 - DBE Subcontractor Utilization Form
- 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 and Drinking Water 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;
- Non-discrimination requirements pursuant to Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972;
- Encouragement of participation of Service-Disabled Veteran-Owned Business Enterprises ("SDVOB") in accordance with New York State Executive Law, Article 17-B and 9 NYCRR Part 252;
- 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 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, with the exception of the EEO Workforce Employment Utilization Report requirement which applies to construction Contracts and Subcontracts greater than \$25,000.

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, 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 of 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.
4. Section 504 of the Rehabilitation Act of 1973 ("Section 504") for any program or activity receiving federal financial assistance, as those terms are defined therein.
5. The Age Discrimination Act of 1975 ("Age Discrimination Act") for any program or activity receiving federal financial assistance, as those terms are defined therein.
6. Section 13 of the Federal Water Pollution Control Act ("Clean Water Act") Amendments of 1972 ("Section 13") for any program or activity receiving federal financial assistance under the Clean Water Act, as those terms are defined therein.

B. 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, Section 504, Age Discrimination Act, Section 13, and all other State and Federal

statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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 Infrastructure Improvement Act Grants (also receiving EFC loan)	Clean Water project 23% Drinking Water project 26%
NYS Intermunicipal Grants (also receiving EFC loan)	Clean Water project 24% Drinking Water project 24%
NYS financial assistance only	30%
Engineering Planning Grant	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. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards achievement of applicable MWBE participation goals. For construction-related services Contracts or Subcontracts, the portion of the Contract or Subcontract with an MWBE serving as a supplier, and so designated in ESD's Directory, that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the Contract or Subcontract. The portion of a Contract or Subcontract with an MWBE serving as a broker, as denoted by NAICS code 425120, that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE. 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 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES

New York State Executive Law Article 17-B and 9 NYCRR Part 252 provide for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. EFC recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of EFC contracts.

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

Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <http://ogs.ny.gov/Core/SDVOBA.asp>

Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

SECTION 3 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 4 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, with the exception of the EEO Workforce Employment Utilization Report requirement which applies to construction Contracts and Subcontracts greater than \$25,000	1	1
Service-Disabled Veteran-Owned Businesses (SDVOB)	Not required, but strongly encouraged	2	2
Suspension and Debarment	All Contracts and Subcontracts	3	3
Restrictions on Lobbying	All Contracts and Subcontracts greater than \$100,000	4	4

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. An exemplar form with instructions is attached hereto as Attachment 3. The actual Excel fillable form for Contractors and Subcontractors to complete will be e-mailed to MBOs by EFC at the start of the Contract term. 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, 2017. 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.
 - c. For construction-related services Contracts or Subcontracts, the following rules apply when calculating MWBE utilization:
 - i. The portion of a Contract or Subcontract with an MWBE serving as a manufacturer that shall be deemed to represent the commercially useful function performed by the MWBE shall be 100% of the total value of the Contract or Subcontract.
 - ii. the portion of a Contract or Subcontract with an MWBE serving as a supplier (as denoted by a NAICS code beginning with 423 or 424, or a

NIGP code that does not begin with the number 9), and so designated in ESD's Directory, that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the Contract or Subcontract.

- iii. the portion of a Contract or Subcontract with an MWBE serving as a broker (as denoted by NAICS code 425120) that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.
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 NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES (“SDVOB”) PARTICIPATION OPPORTUNITIES

Contractor may contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract. The directory of New York State Certified SDVOBs can be viewed at: <http://ogs.ny.gov/Core/SDVOBA.asp>

Please contact EFC if you have any questions about utilizing SDVOBs on the Contract.

SECTION 3 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>

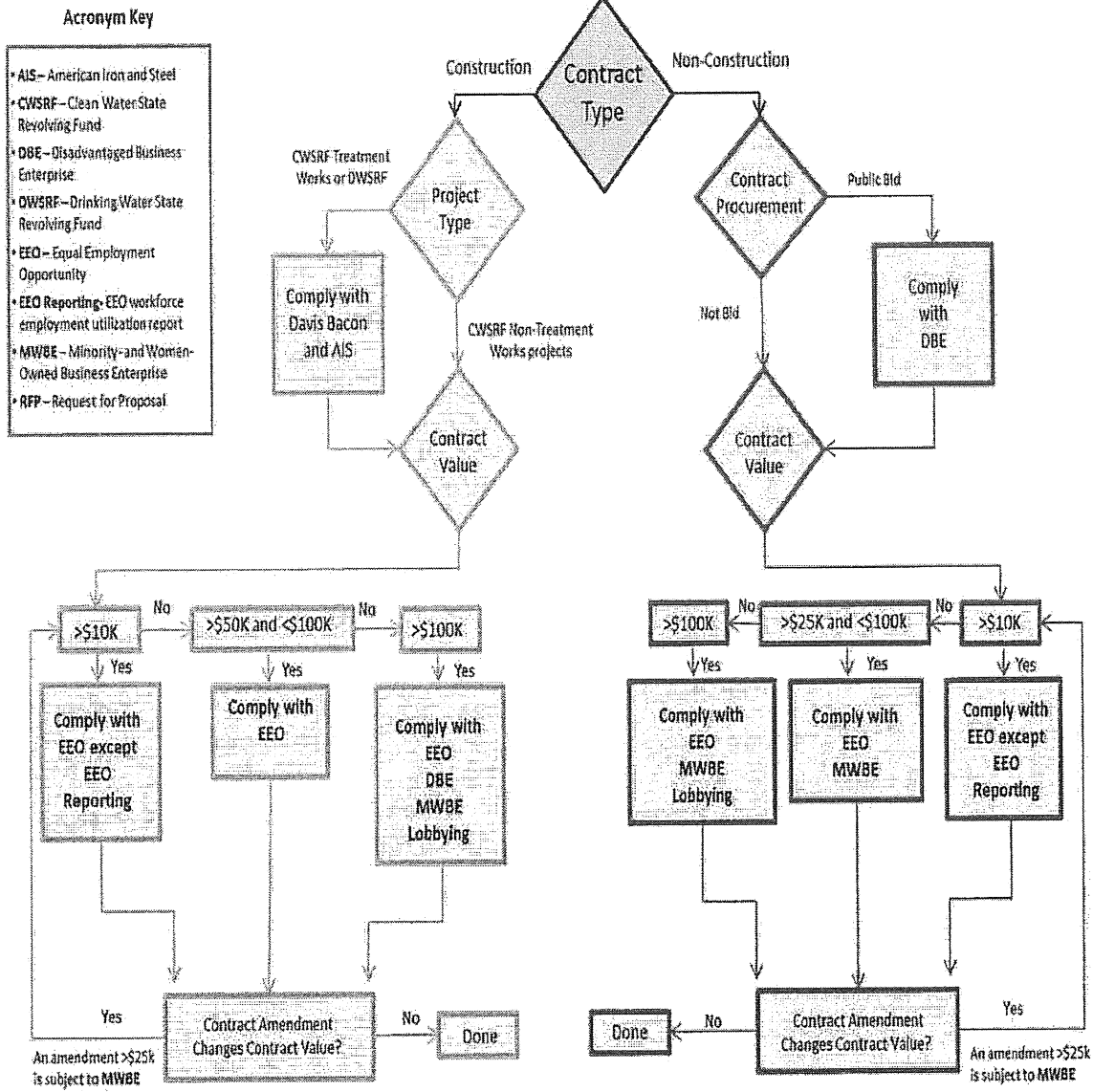
A list of contractors deemed ineligible to submit a bid is maintained by Empire State Development's Division of Minority and Women's Business Development.

SECTION 4 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 5

PROGRAM CONTRACT REQUIREMENT DECISION TREE



SECTION 6 SUMMARY OF CONTRACTOR REQUIREMENTS FOR SRF-FUNDED PROJECTS

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

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

To be submitted with this bid:

- EEO Policy Statement
- Documented Proof that EPA Form 6100-2 - DBE Subcontractor Participation Form was given to MWBE Subcontractors
- EPA Form 6100-3 - DBE Subcontractor Performance Form
- EPA Form 6100-4 - DBE Subcontractor Utilization Form
- Lobbying Certification

Refer to Part 3

Guidance Section

- Section 1
- Section 1
- Section 1
- Section 1
- Section 4

To be submitted prior to or upon Contract award:

- Executed Contracts, Subcontracts, agreements, and purchase orders
- MWBE Utilization Plan and/or Waiver Request
- EEO Staffing Plan

- Section 1
- Section 1

Ongoing documentation & tasks:

- EEO Workforce Utilization Report
- Submit Monthly MWBE Reports to MBO
- Maintain proof of payments for MWBE Subcontractors
- Ensure that all Subcontracts contain Part 2: Required Contract Language

- Section 1
- Section 1
- Section 1

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, 41 CFR Part 60-4, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. 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
 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.
Name (Please Type): _____ 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 or your designated MBO for further guidance.

Attachment 3
Instructions for Completing and Submitting the
Equal Employment Opportunity Workforce Utilization Report

The Equal Employment Opportunity ("EEO") Workforce Utilization Report ("Report") is used by contractors and subcontractors to report the actual workforce utilized in the performance of the contract broken down by job title for a particular reporting period. When the workforce utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total workforce, the contractor and/or subcontractor shall submit a Report of the 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, information on the contractor's and/or subcontractor's total workforce shall be included in the Report.

Instructions for Completing the Report

1. **Reporting Entity.** Check off the appropriate box to indicate if the entity completing the Report is the contractor or a subcontractor.
2. **Federal Employer Identification Number ("FEIN").** Enter the FEIN assigned by the Internal Revenue Service ("IRS") to the contractor or subcontractor for which the Report has been prepared. If the contractor or subcontractor uses a social security number instead of a FEIN, leave this field blank. The contractors and subcontractors for recipients of a grant only (such as an Engineering Planning Grant (EPG), a Water Infrastructure Improvement Act (WIIA) grant, or an Intermunicipal Grant Program (IMG) grant) do not need to fill out this section of the Report.
3. **Name.** Enter the name of the contractor or subcontractor for which the Report has been prepared.
4. **Address.** Enter the address of the contractor or subcontractor for which the Report has been prepared.
5. **Contract Number.** Enter the number of contract that the Report applies to, if applicable.
6. **Reporting Period / Month.** Check off the box that corresponds to the applicable quarterly or monthly (not both) reporting period for this Report. The Report is to be submitted on a monthly basis for construction contracts, and a quarterly basis based on the calendar quarter for all other contracts, during the life of the contract.
7. **Workforce Identified in Report.** Check off the appropriate box to indicate if the workforce being reported is just for the contract or the contractor's or subcontractor's total workforce.
8. **Preparer's Name, Preparer's Title, Date.** Enter the name and title for the person completing the Report, enter the date upon which the Report was completed, and check the box accepting the name entered into the Report as the digital signature of the preparer.
9. **Occupation Classifications (SOC Major Group) and SOC Job Title.** First, enter the applicable Occupation Classification (SOC Major Group) so a dropdown menu appears under SOC Job Title. Choose the SOC Job Title that best describes the worker.
10. **EEO Job Title and SOC Job Code.** The EEO Job Title and the SOC Job Code will automatically populate in the spreadsheet based upon the Occupation Classifications (SOC Major Group) and SOC Job Title selected. Please do not modify the information populated in these fields.

11. **Race/Ethnic Identification.** Race/ethnic designations do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this Report are:
- **WHITE** (not of Hispanic origin) all persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
 - **BLACK/AFRICAN AMERICAN** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
 - **HISPANIC/LATINO** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
 - **ASIAN, NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
 - **NATIVE AMERICAN/ALASKAN NATIVE** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.
12. **Number of Employees and Number of Hours.** Enter the number of employees and the total number of hours worked by such employees for each SOC Job Title under the columns corresponding to the gender and racial/ethnic groups with which the employees most closely identify.
13. **Total Compensation.** Enter the total compensation paid to all employees for each SOC Job Title, each gender, and each racial/ethnic group. Contractors and subcontractors should report only compensation for work on the contract paid to employees during the period covered by the Report. Compensation should include only sums which must be reported in Box 1 of IRS Form W-2. The contractors and subcontractors for recipients of a grant only (such as an EPG, a WIIA, or an IMG grant) do not need to fill out this section of the Report.
14. **For EFC Use Only.** This section is for EFC use only and does not need to be filled out by the contractor/subcontractor.

Instructions for Submitting the Report

The Report is to be submitted on a monthly basis for construction contracts, and a quarterly basis based on the calendar quarter for all other contracts, during the life of the contract.

EFC will provide a Report form in Excel format to the Recipient's Minority Business Officer ("MBO"). The Recipient's MBO is responsible for providing the Report form to all contractors. Each contractor is responsible for providing the Report form to all subcontractors.

Reports are to be submitted electronically in Excel format, using the Report form provided, within ten (10) days of the end of each month or quarter, whichever is applicable. For example, the January monthly Report for a construction contract is due by February 10th and the January – March quarterly Report for a non-construction contract is due by April 10th.

Once the Report form has been completed, each contractor/subcontractor must submit the Report form to EFC and the Recipient's MBO. The Report form must be submitted to EFC according to the following instructions:

1. Go to www.efc.ny.gov/eeoreporting.
2. Enter the requested information pursuant to the instructions on the page. Make sure to choose the correct applicable funding program (Clean Water State Revolving Fund (SRF), Drinking Water SRF, non-SRF Grant Only (e.g. EPG, WIIA, IMG)) and the correct reporting period (reporting

quarter for non-construction OR reporting month for construction). Enter the reporting period of the data, not the date it's submitted.

3. Submit your Report(s) pursuant to the instructions on the page.
4. If you are a contractor, use the naming convention provided by EFC (in the "For EFC Use Only" section of the Report form) for naming the file for upload (i.e., Funding Program – Project Number– Contractor short name (up to fifteen characters) – MWBE ID). The funding programs include CW (clean water SRF), DW (drinking water SRF), and GO (non-SRF grant only). If you are a subcontractor, use the naming convention provided by EFC and replace the contractor's short name with the first fifteen characters of the subcontractor's name, omitting any spaces or special characters.

Questions

If you have questions about or require assistance completing or submitting the Report, please contact EFC at mwbe@efc.ny.gov or 518-402-6924.

NYSEEC EEO Workforce Utilization Report

Reporting Entity: Contractor Subcontractor
 EEO# _____
 Contractor Name: _____
 Contractor Address: _____
 Contract Number: _____

Reporting Period: Select One
 January 1 - March 31 April 1 - June 30
 July 1 - September 30 October 1 - December 31
 Reporting Period: Select One
 January February March April
 May June July August
 September October November December
 Workforce Utilization Report
 Includes Unpaid Internships & Contract
 Contract/Temporary Work Positions

Preparer's Name: _____
 Preparer's Title: _____
 Date: _____

Do not include in work load amounts under the heading of each race and ethnicity unless you can identify the individual employee.

Race/Ethnicity Category (DOE Major Group)	SOC Job Title	EEO Job Title	SOC Job Code	White		Black/African American		Hispanic/Latino		Asian		Native Hawaiian or Other Pacific Islander		Unpaid Internships		Total		Minority/Protected Classes		
				No. of Employees	% of Total Employees	No. of Employees	% of Total Employees	No. of Employees	% of Total Employees	No. of Employees	% of Total Employees	No. of Employees	% of Total Employees	No. of Employees	% of Total Employees	No. of Employees	% of Total Employees	No. of Employees	% of Total Employees	
ASIAN																				
BLACK																				
Hispanic																				
Other																				
TOTAL																				

For EEO Use Only
 Multiplier: _____
 Adjusted: _____
 Minorities/Protected Classes: _____
 Total Contract/Temporary: _____
 Contract/Temporary: _____
 Total: _____

Contractor: _____
 Project: _____
 Location: _____
 Date: _____

Contractor Address: _____
 City: _____
 State: _____
 Zip: _____

Contractor Representative: _____
 Title: _____

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 Recipient's Minority Business Officer ("MBO") on a monthly basis.
- If you require additional pages, you may find them on EFC's website at www.efc.ny.gov.
- 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:	
Project No.:		GIGP/EPG 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 this Month: \$		Total Paid to Prime	
Revised Contract Amt: \$		(Goals are applied to this amount and includes eligible change orders, amendments & waivers)		MBE: % WBE: % Total: %		MBE Amt: \$ WBE Amt: \$ Total Amt: \$			
NYS Certified MWBE Contractor & Subcontractor Name: Fed. Employer ID#: _____ Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		Please Specify Any Revisions this Month: <input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED		Subcontractor Total Amount Original Revised		Payments this Month Total Paid to Date: \$		Previous Payments Total Payments Made to Date	
Name: Fed. Employer ID#: _____ Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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#: _____ Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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")

Name: Fed. Employer ID#: _____ Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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: Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<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 and note the scope of work that new subcontractors will be providing. Please note that change orders over \$25K may require that good faith efforts be made to obtain additional MWBE participation.			

Attachment 5
NYS 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 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 on EFC's website.

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

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

See the Bid Packet at www.efc.ny.gov 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, Project 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
 NYS Environmental Facilities Corporation
 Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan

SECTION 1: MUNICIPAL INFORMATION			
Recipient/Municipality:	County:		
Project No.:	GIG/EPG No.:	Contract ID:	Registration No. (NYC only):
Minority Business Officer:	Email:		Phone #:
Address of MBO:			
Electronic Signature of MBO:			
<input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief.			
<i>Complete if applicable:</i>			
Authorized Representative:	Title:		Date:
Authorized Rep. Company:	Email:		Phone #:
Electronic Signature of Authorized Rep.:			
<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: \$		PROPOSED MWBE Participation	
MWBE Eligible Contract Amount: \$		MBE: % \$	MBE: % \$
(MWBE Goals are applied to this amount and includes all change orders, amendments, & waivers)		WBE: % \$	WBE: % \$
		Total: % \$	Total: % \$

Attachment 5
 NYS 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 M/WBE 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:			
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		Completion Date:			
Full Contract Amount: \$					
NYS Certified M/WBE 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:			
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		Completion Date:			
Full Contract Amount: \$					
NYS Certified M/WBE 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:			
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		Completion Date:			
Full Contract Amount: \$					
NYS Certified M/WBE 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:			
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		Completion Date:			
Full Contract Amount: \$					
				Contract Amount:	For EFC Use:
				MBE (\$)	WBE (\$)

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

SECTION 3: MWBE SUBCONTRACTOR INFORMATION continued	
Name:	
Address:	
Scope of Work:	
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	
Full Contract Amount: \$	
Fed. Employer ID#:	
Phone #:	
Email:	
Start Date:	
Completion Date:	
Name:	
Address:	
Scope of Work:	
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	
Full Contract Amount: \$	
Fed. Employer ID#:	
Phone #:	
Email:	
Start Date:	
Completion Date:	
Name:	
Address:	
Scope of Work:	
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	
Full Contract Amount: \$	
Fed. Employer ID#:	
Phone #:	
Email:	
Start Date:	
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 Recipient's designated Minority Business Officer (MBO). Incomplete forms will be found deficient.

See the Bid Packet at www.efc.ny.gov 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, Project 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:	
Project No.:	GIGP/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:	Phone #:	Fed. Employer ID #:
Address:			
Contact Information of Firm Representative Authorized to Discuss Waiver Request:		E-mail:	
Name:	Title:	Phone #:	
Description of Work:		EFC MWBE GOAL Total	
Award Date:	Start Date:	Completion Date:	
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 except 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.

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



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

**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.



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

**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 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.



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

**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: _____



ONEIDA COUNTY PUBLIC DEFENDER
CRIMINAL DIVISION

Boehlert Center at Union Station
321 Main St., Utica NY 13501
Phone: (315) 798-5870 Fax: (315) 734-0364

LELAND D. MCCORMAC, Esq.
Chief Trial Counsel

PATRICK J. MARTHAGE, Esq.
Chief Appellate Counsel

JOHN A. PANZONE, Esq.
Attorney-In-Charge
City Courts and CAFA Sections

FRANK J. NEBUSH, JR., Esq.
Public Defender

FN 20 20-328

Thursday, August 27, 2020

Hon. Anthony J. Picente, Jr.
Oneida County Executive
800 Park Avenue
Utica, New York 13501

PUBLIC SAFETY

WAYS & MEANS

Re: Certification of Section 606 Expenses

Kip Banks, Cody Barnes, Destin Burks, Timothy Canty, Daikwan Carter, Melvin Cheeks, Eric Crawford, Matthew L. Danforth, Devin Daniels, Carmelo Deleon Jr., Luis A. Delgado, Miguel Diaz, Edwin Duclosel, Karon Farrell, Devante Fields, Michael Ford, Lavonne Freeman, Adam J. Hall, Taiquan M. Howard, Michael Tyrone Hudson, David Iglesia, Alvin Inoa, Davon Knighton, Anthony C. Leno, James Manno, Jason Melendez, Billy Moore, Ediberto Mulero, Michael Negron, Rafael Negronvargas, John P. Patterson, Kimate Patton, Victor Pedroza, Justin Prince, Edwin Rios, Troy W. Rockwell, Moshe E. Rodriguez, Zamori Simmons, Dylan Stewart, Marcos Felizola Torres, and Khalil Wilkens, being inmates of the State of New York.

Dear Mr. Picente:

Enclosed are the following documents I am requesting be submitted to the Oneida County Board of Legislators for a resolution from them certifying my claim for reimbursement from the State of New York for representing the above state inmates pursuant to Section 606 of the Correction Law and Title 7, Part 410 of the NYCRR:

- 1) Proposed resolution certifying our expenses,
- 2) Sworn affidavit of the Oneida County Public Defender, Criminal Division setting forth the indictments and the time spent representing the above clients.

Upon approval by the Board of Legislators, the certification needs to be attached to this packet and forwarded to the Oneida County Comptroller for his signature on the payment voucher prior to submission to the State.

Should you need further information regarding this matter, please do not hesitate to contact me.

Sincerely,

Frank J. Nebush, Jr.
Oneida County Public Defender, Criminal Division

Reviewed and Approved for submittal to the
Oneida County Board of Legislator by

Anthony J. Picente, Jr.
County Executive
Date 9/30/20

PROPOSED RESOLUTION

WHEREAS, certain inmates in the custody of the New York State Department of Correctional Services were charged with crimes while residing in a New York State correctional facility located in the County of Oneida, and said inmates having required the services of the Oneida County Public Defender, Criminal Division to represent them before the various courts in Oneida County while incarcerated herein, and

WHEREAS, the Oneida County Public Defender, Criminal Division duly represented said inmates, and

WHEREAS, Section 606 of the Correction Law of the State of New York mandates reimbursement for such services to the County of Oneida for such legal defense, and

WHEREAS, the Oneida County Public Defender, Criminal Division has certified to the Oneida County Board of Legislators that the expenses incurred by him while undertaking said legal representation amounted to the sum of **\$26,228.47** for undertaking the legal defense of:

Kip Banks, Cody Barnes, Destin Burks, Timothy Canty, Daikwan Carter, Melvin Cheeks, Eric Crawford, Matthew L. Danforth, Devin Daniels, Carmelo Deleon Jr., Luis A. Delgado, Miguel Diaz, Edwin Duclosel, Karon Farrell, Devante Fields, Michael Ford, Lavonne Freeman, Adam J. Hall, Taiquan M. Howard, Michael Tyrone Hudson, David Iglesia, Alvin Inoa, Davon Knighton, Anthony C. Leno, James Manno, Jason Melendez, Billy Moore, Ediberto Mulero, Michael Negron, Rafael Negronvargas, John P. Patterson, Kimate Patton, Victor Pedroza, Justin Prince, Edwin Rios, Troy W. Rockwell, Moshe E. Rodriguez, Zamori Simmons, Dylan Stewart, Marcos Felizola Torres, and Khalil Wilkens, being inmates of the State of New York.

WHEREAS, we have examined the documents provided by the Oneida County Public Defender, Criminal Division and find them to be a true and accurate account of his expenses concerning these matters,

NOW, THEREFORE BE IT RESOLVED, that this resolution and the vouchers, documents and affidavits of the Oneida County Public Defender, Criminal Division be forwarded to the Budget and Finance Office of the New York State Department of Correctional Services as required by Section 606 of the Correction Law and Title 7, Part 410 of the New York Code of Rules and Regulations for payment.

In the Matter of the Claim of the

Oneida County Public Defender, Criminal Division

under Section 606 of the Correction Law for Payment
of Legal Expenses Incurred in the Defense of Inmates
of the State of New York

**AFFIDAVIT IN SUPPORT OF
CLAIM FOR PAYMENT OF
OF
SECTION 606 EXPENSES**

STATE OF NEW YORK) ss:
COUNTY OF ONEIDA)

Frank J. Nebush, Jr., being duly sworn, deposes and says:

1. I am a duly licensed attorney-at-law in the State of New York and the Public Defender, Criminal Division in and for the County of Oneida and make this affidavit for the purpose of certifying to the Oneida County Board of Legislators and the State of New York that the legal services of the attorneys and staff assigned to the above-mentioned matters are true and accurate.

2. All rates for legal services are based upon Section 722-b of the County Law of the State of New York.

3. The following times and dates represent legal services provided by this office on behalf of the following inmates, to wit:

Kip Banks, Cody Barnes, Destin Burks, Timothy Canty, Daikwan Carter, Melvin Cheeks, Eric Crawford, Matthew L. Danforth, Devin Daniels, Carmelo Deleon Jr., Luis A. Delgado, Miguel Diaz, Edwin Duclosel, Karon Farrell, Devante Fields, Michael Ford, Lavonne Freeman, Adam J. Hall, Taiquan M. Howard, Michael Tyrone Hudson, David Iglesia, Alvin Inoa, Davon Knighton, Anthony C. Leno, James Manno, Jason Melendez, Billy Moore, Ediberto Mulero, Michael Negron, Rafael Negronvargas, John P. Patterson, Klimate Patton, Victor Pedroza, Justin Prince, Edwin Rios, Troy W. Rockwell, Moshe E. Rodriguez, Zamori Simmons, Dylan Stewart, Marcos Felizola Torres, and Khalil Wilkens, being inmates of the State of New York.

A true and accurate copy of the indictment follows the itemization of expenses for each inmate.

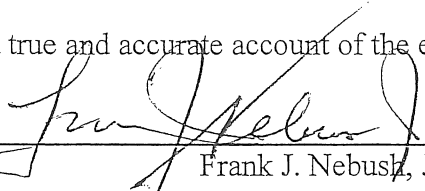
TOTAL OF EXPENSES

1 of 2 Pages

People v. Kip Banks	\$	1,432.87
People v. Cody Barnes	\$	129.48
People v. Destin Burks	\$	296.46
People v. Timothy Canty	\$	151.98
People v. Daikwan Carter	\$	221.46
People v. Melvin Cheeks	\$	868.84
People v. Eric Crawford	\$	166.98
People v. Matthew L. Danforth	\$	512.51
People v. Devin Daniels	\$	1,212.26
People v. Carmelo Deleon Jr.	\$	1,077.56
People v. Luis A. Delgado	\$	150.39
People v. Miguel Diaz	\$	431.46
People v. Edwin Duclosel	\$	669.34
People v. Karon Farrell	\$	129.48
People v. Devante Fields	\$	129.48
People v. Michael Ford	\$	640.08
People v. Lavonne Freeman	\$	99.48
People v. Adam J. Hall	\$	1,072.10
People v. Taiquan M. Howard	\$	1,202.03
People v. Michael Tyrone Hudson	\$	282.95
People v. David Iglesia	\$	144.48
People v. Alvin Inoa	\$	204.48
People v. Davon Knighton	\$	1,677.95
People v. Anthony C. Leno	\$	728.75
People v. James Manno	\$	312.95
People v. Jason Melendez	\$	1,053.05
People v. Billy Moore	\$	1,010.02
People v. Ediberto Mulero	\$	129.48
People v. Michael Negron	\$	3,054.51
People v. Rafael Negronvargas	\$	129.48
People v. John P. Patterson	\$	1,125.25
People v. Kimate Patton	\$	151.98
People v. Victor Pedroza	\$	258.96
People v. Justin Prince	\$	586.14
People v. Edwin Rios	\$	296.46
People v. Troy W. Rockwell	\$	129.48
People v. Moshe E. Rodriguez	\$	1,777.29
People v. Zamori Simmons	\$	498.96
People v. Dylan Stewart	\$	129.48
People v. Marcos Felizola Torres	\$	296.46
People v. Khalil Wilkens	\$	1,655.67
TOTAL	\$	26,228.47

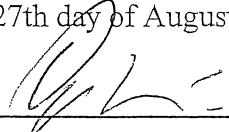
I hereby certify that the above statement is a true and accurate account of the expenses incurred in the defense of the above matters.

Dated: August 27, 2020



Frank J. Nebush, Jr.

Sworn and subscribed to before me this
27th day of August, 2020



JUSTIN LAMBERTO
Notary Public, State of New York
Qualified in Oneida County
My Commission Expires 7/21



ONEIDA COUNTY
DEPARTMENT OF EMERGENCY SERVICES
FIRE COORDINATOR
911 CENTER

ANTHONY J. PICENTE, JR.
County Executive

EDWARD T. STEVENS
Director

120 Base Road ♦ Oriskany, New York 13424
Phone: (315) 765-2526 ♦ Fax: (315) 765-2529

September 11, 2020

FN 20 20-329

Mr. Anthony J. Picente, Jr.
Oneida County Executive
800 Park Avenue
Utica, NY 13501

PUBLIC SAFETY

WAYS & MEANS

Dear County Executive Picente,

Attached is a grant contract from the New York State Division of Homeland Security and Emergency Services awarding Oneida County \$189,731.00 through its State Homeland Security Program. The funds will be used to purchase computer equipment, interoperable radio equipment, cyber security software, and related items for the purpose of enhancing terrorism intelligence and early-warning system infrastructure capabilities.

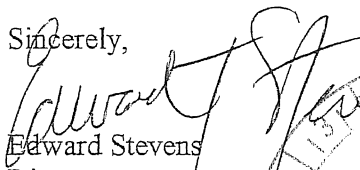
There is no funding match required. No County dollars will be necessary for this project. If you find this grant contract acceptable, I ask that you forward same to the Board of Legislators for their approval.

I ask approval of the following:

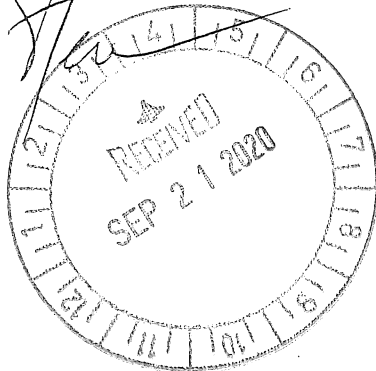
- A.) Establishment of Capital Project H-620 Emergency Services – SH20-1030-D00 SHSP Grant, and
- B.) Funding for Capital Project H-620 as follows:
H-620 State Aid.....\$189,731.00
- C.) Approval of the attached grant contract, which also needs electronic signature.

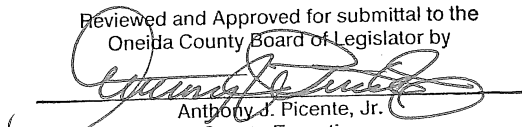
If you have any questions, please advise me. Thank you for your assistance.

Sincerely,


Edward Stevens
Director

Cc: Tom Keeler
Sheryl Brown



Reviewed and Approved for submittal to the
Oneida County Board of Legislators by

Anthony J. Picente, Jr.
County Executive

Date 9-21-20

Oneida Co. Department: Emergency Services

Competing Proposal _____
Only Respondent _____
Sole Source RFP _____
Other _____

Oneida County Board of Legislators
Contract Summary

Name & Address of Vendor: New York State Division of Homeland Security
1220 Washington Avenue
Building 7A, Suite 710
Albany, New York 12242

Title of Activity or Service: Homeland Security Contract SH20-1030-D00 SHSP

Proposed Dates of Operation: September 1, 2020 – August 31, 2023

Client Population/Number to be Served: Oneida County

Summary Statements

- 1) **Narrative Description of Proposed Services:** This grant will provide funding for interoperable communications equipment and related items, cyber security software and related items, and detection equipment (laser spectrometry, biological equipment, etc.).
- 2) **Program/Service Objectives and Outcomes:** Program will assist in covering costs related to communications equipment.
- 3) **Program Design and Staffing:** N/A

Total Funding Requested: \$189,731.00

Account # H-620

Oneida County Dept. Funding Recommendation: \$189,731.00

Proposed Funding Sources (Federal \$/ State \$/County \$): State Grant Funds

Cost Per Client Served: N/A

Past Performance Data: N/A

O.C. Department Staff Comments: None

<u>STATE AGENCY</u> New York State Division of Homeland Security and Emergency Services 1220 Washington Avenue Building 7A Suite 710 Albany, NY 12242	<u>NYS COMPTROLLER'S NUMBER:</u> C972000 (Contract Number) <u>ORIGINATING AGENCY CODE:</u> 01077
<u>GRANTEE/CONTRACTOR:</u> (Name & Address) Oneida County 800 Park Avenue Utica, NY 13501	<u>TYPE OF PROGRAMS:</u> WM2020 SHSP <u>CFDA NUMBER:</u> 97.067 <u>DHSES NUMBERS:</u> WM20972000
<u>FEDERAL TAX IDENTIFICATION NO:</u> 15-6000460 <u>MUNICIPALITY NO:</u> (if applicable) 300100000 000 <u>SFS VENDER NO:</u> 1000002595 <u>DUN & BRADSTREET NO:</u> 075814186	<u>INITIAL CONTRACT PERIOD:</u> FROM 09/01/2020 TO 08/31/2023 <u>FUNDING AMOUNT FOR INITIAL PERIOD:</u> \$189,731.00
<u>STATUS:</u> Contractor is not a sectarian entry. Contractor is not a not-for-profit organization.	<u>MULTI-YEAR TERM:</u> (if applicable)
<u>CHARITIES REGISTRATION NUMBER:</u> <div style="border: 1px solid black; padding: 2px; width: fit-content;">n/a</div> (Enter number of Exempt) if "Exempt" is entered above, reason for exemption. <u>n/a</u> <div style="border: 1px solid black; padding: 5px; width: fit-content;"> Contractor has _____ has not _____ timely filed with the Attorney General's Charities Bureau all required periodic or annual written reports. </div>	<u>APPENDIX ATTACHED AND PART OF THIS AGREEMENT</u> ___ APPENDIX A Standard Clauses required by the Attorney General for all State contracts <input checked="" type="checkbox"/> APPENDIX A1 Agency-specific Clauses <input checked="" type="checkbox"/> APPENDIX B Budget <input checked="" type="checkbox"/> APPENDIX C Payment and Reporting Schedule <input checked="" type="checkbox"/> APPENDIX D Program Workplan and Special Conditions ___ APPENDIX X Modification Agreement Form (to accompany modified appendices for changes in terms or considerations on an existing period or for renewal periods) ___ DHSES-55 Budget Amendment/Grant Extension Request ___ Other - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion _____ _____
IN WITNESS THEREOF, the parties hereto have electronically executed or approved this AGREEMENT on the dates of their signatures.	
NYS Division of Homeland Security and Emergency Services BY: _____ Date: _____ <u>State Agency Certification:</u> "In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract". GRANTEE: BY: Hon. Anthony J. Picente jr., County Executive Date: _____	
<u>ATTORNEY GENERAL'S SIGNATURE</u> _____ Title: _____ Date: _____	<u>COMPTROLLER'S SIGNATURE</u> _____ Title: _____ Date: _____

Award Contract

Project No.
SH20-1030-D00

Grantee Name
Oneida County

08/20/2020

Award Contract

SHSP

Project No.
SH20-1030-D00

Grantee Name
Oneida County

08/20/2020

Award Contract

Project No.
SH20-1030-D00

Grantee Name
Oneida County

08/20/2020

Award Contract

Project No.
SH20-1030-D00

Grantee Name
Oneida County

08/20/2020

Budget Summary by Participant

Oneida County
Oneida County Emergency Services - Version 1

#	Equipment	AEL	Number	Unit Cost	Total Cost	Grant Funds	Matching Funds
1	Interoperable Communications Equipment and Related Items (portable radios, chargers, mics, etc.)	06CP-01-PORT	1	\$139,136.00	\$139,136.00	\$139,136.00	\$0.00
2	Cyber Security Software and Related Items	05	1	\$12,649.00	\$12,649.00	\$12,649.00	\$0.00
3	Detection Equipment and Related Items (laser spectrometry, biological equipment, etc.)	07CD-01-DPGC	1	\$13,530.00	\$13,530.00	\$13,530.00	\$0.00
Total					\$165,315.00	\$165,315.00	\$0.00

#	All Other Expenses	Number	Unit Cost	Total Cost	Grant Funds	Matching Funds
1	Data Fees and Related Items	1	\$24,416.00	\$24,416.00	\$24,416.00	\$0.00
Total				\$24,416.00	\$24,416.00	\$0.00

Total Project Costs	Total Cost	Grant Funds	Matching Funds
	\$189,731.00	\$189,731.00	\$0.00

Total Contract Costs	Total Cost	Grant Funds	Matching Funds
	\$189,731.00	\$189,731.00	\$0.00

Award Contract

Project No.
SH20-1030-D00

Grantee Name
Oneida County

08/20/2020

Award Contract

Project No.

Grantee Name

SH20-1030-D00

Oneida County

08/20/2020

Work Plan**Goal**

Prevent terrorist attacks and mitigate against man-made and natural hazards; protect the people of New York, our critical infrastructure and key resources; prepare to respond to and recover from both man-made and natural disasters.

Objective #1

G & T Workplan Code - 03. Establish/enhance cyber security program.

Investment Justification - Enhance Cyber Security Capabilities

NYS Critical Capability

Primary - Cyber Security

Strengthen networking infrastructure by upgrading outdated infrastructure and introducing technologies that vastly improve security within State and local government agencies during elections.

Task #1 for Objective #1

Purchase allowable cyber security equipment (software, etc.). Train appropriate personnel in the proper use of the equipment and place the equipment into service.

Performance Measure

1 Identify equipment ordered and received. Provide a brief narrative on the training of personnel and the deployment of equipment. Describe how the project enhanced cyber security capabilities in the jurisdiction. Equipment accountability records are properly maintained. Provide explanation if equipment is received but not deployed, and include deployment plans as appropriate.

Objective #2

G & T Workplan Code - 14. Develop/enhance interoperable communications system.

Investment Justification - Advance Public Safety Interoperable and Emergency Communications

NYS Critical Capability

Primary - Interoperable and Emergency Communications

The development, sustainment and/or enhancement of interoperable communications systems.

Task #1 for Objective #2

Purchase allowable interoperable communications equipment (interoperable communications equipment including portable radios, base stations, servers, etc.). Train appropriate personnel in the proper use of the equipment and place the equipment into service.

Performance Measure

1 Identify equipment ordered and received. Provide a brief narrative on the training of personnel and the deployment of equipment. Describe how the project enhanced interoperable communications capabilities in the jurisdiction. Equipment accountability records are properly maintained. Provide explanation if equipment is received but not deployed, and include deployment plans as appropriate.

Objective #3

G & T Workplan Code - 01. Establish/enhance a terrorism intelligence/early warning system, center, or task force.

Investment Justification - Strengthen Counter-Terrorism and Law Enforcement Response Capabilities

NYS Critical Capability

Primary - Law Enforcement Counter-Terrorism Operations

Adopt and implement law enforcement information technology systems that build law enforcement counter-terrorism capabilities and increase intelligence and information sharing among various local, state, and federal partners

Task #1 for Objective #3

Acquire Services for information technology equipment (Data fees, etc.).

Performance Measure

- 1 Services acquired and/or Maintenance activities conducted. Provide a brief narrative reporting activities conducted and how the project enhanced the law enforcement counter terrorism capabilities in the jurisdiction.

Objective #4

G & T Workplan Code - 29. Enhance capabilities to recover from all-hazards event.

Investment Justification - Addressing Emerging Threats & Build and Sustain CBRNE Detection and Response Capabilities

NYS Critical Capability

Primary - CBRNE Response and Decontamination

The development, sustainment and/or enhancement of HazMat team assets. Oneida County will use FY20 funds to purchase equipment to support their HazMat team to include the purchase of biological detection equipment and detectors.

Task #1 for Objective #4

Purchase allowable CBRNE response equipment (laser spectrometry, etc.). Train appropriate personnel in the proper use of the equipment and place the equipment into service.

Performance Measure

- 1 Identify equipment ordered and received. Provide a brief narrative on the training of personnel and the deployment of equipment. Describe how the project enhanced CBRNE response capabilities in the jurisdiction. Equipment accountability records are properly maintained. Provide explanation if equipment is received but not deployed, and include deployment plans as appropriate.

Award Contract

Project No.

SH20-1030-D00

Grantee Name

Oneida County

08/20/2020

NEW YORK STATE
DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES
GRANT CONTRACT

APPENDIX A-1

The Contract is hereby made by and between the State of New York, acting by and through the New York State Division of Homeland Security and Emergency Services (DHSES or State Agency) and the public or private entity ('Contractor' or 'Subrecipient') identified on the face page hereof (Face Page).

WITNESSETH:

WHEREAS, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

WHEREAS, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Contract;

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

STANDARD TERMS AND CONDITIONS

I. GENERAL TERMS AND CONDITIONS

A. Executory Clause: In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Contract.

B. Required Approvals: In accordance with Section 112 of the State Finance Law (or, if the Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Contract exceeds \$50,000 (or \$85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the AG and OSC.

Budget Changes: An amendment that would result in a transfer of funds among program activities or budget categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the Offices of the State Comptroller and Attorney General where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Appendix C (Payment and Reporting Schedule).

C. Contract Parts: This Contract incorporates the face pages attached, this Appendix and all of the marked Appendices identified on the face page hereof.

D. Order of Precedence: In the event of a conflict among (i) the terms of the Contract (including any and all Appendices and amendments) or (ii) between the terms of the Contract and the original request for proposal, the program application or other Appendix that was completed and executed by the Contractor in connection with the Contract, the order of precedence is as follows:

1. Appendix A-1¹

2. Modifications to the Face Page
3. Modifications to Appendices B, C and D
4. The Face Page
5. Appendices B, C and D
6. Other attachments, including, but not limited to, the request for proposal or program application

E. Governing Law: This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

F. Funding: Funding for the entire Contract Period shall not exceed the funding amount specified as 'Funding Amount for the Initial Period' on the Face Page hereof or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Contract shall not exceed the applicable amounts specified in the applicable Appendix B form (Budget).

G. Contract Period: The period of this Contract shall be as specified on the face page hereof.

H. Contract Performance: The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Appendix D (Work Plan and Special Conditions) in accordance with the provisions of the Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program. For federally-funded grants, DHSES will conduct an evaluation to determine risks posted by Contractors in managing federal awards. Consistent with 2 CFR §200.331, the results of the evaluation may result in the imposition special conditions to this Contract including but not limited to increased monitoring, suspension of reimbursements and cancellation of the Contract.

I. Modifications: To modify the Contract, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, change in scope, or change in the term, is subject to the approval of the NYS Office of the State Comptroller. Any other modifications shall be processed in accordance with DHSES guidelines as stated in this Contract.

J. Severability: Any provision of the Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Contract shall attempt in good faith to reform the Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

K. Interpretation: The headings in the Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

L. Notice:

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:

- a. by certified or registered United States mail, return receipt requested;
- b. by facsimile transmission;
- c. by personal delivery;
- d. by expedited delivery service; or
- e. by e-mail.

2. Notices to the State shall be addressed to the Program Office.

3. Notices to the Contractor shall be addressed to the Contractor's designee.

4. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited

delivery services or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.

5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the Contract by giving fifteen (15) calendar days prior written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

M. Service of Process: In addition to the methods of service allowed by the State Civil Practice Law & Rules (CPLR), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. The Contractor shall have thirty (30) calendar days after service hereunder is complete in which to respond.

N. Set-Off Rights: The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold, for the purposes of set-off, any moneys due to the Contractor under the Contract up to any amounts due and owing to the State with regard to the Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of setoff pursuant to an audit, the finalization of such audit by DHSES, its representatives, or OSC.

O. Indemnification: The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Contract.

P. Non-Assignment Clause: In accordance with Section 138 of the State Finance Law, the Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the State's previous written consent, and attempts to do so shall be considered to be null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract, let pursuant to Article XI of the State Finance Law, may be waived at the discretion of DHSES and with the concurrence of OSC, where the original contract was subject to OSC's approval, where the assignment is due to a reorganization, merger, or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that the merged contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless the Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

Q. Legal Action: No litigation or regulatory action shall be brought against the federal government, the State of New York, DHSES or against any county or other local government entity with the funds provided under the Contract. The term 'litigation' shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from any of the federal government, the State of New York, DHSES or any county or other local government entity. The term 'regulatory action' shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

R. No Arbitration: Disputes involving the Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

S. Secular Purpose: Services performed pursuant to the Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

T. Partisan Political Activity and Lobbying: Funds provided pursuant to the Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

U. Reciprocity and Sanctions Provisions: The Contractor is hereby notified that if its principal place of business is located in a country, nation, province, state, or political subdivision that penalizes New York State vendors, and if the goods or services it offers shall be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that it be denied contracts which it would otherwise obtain.²

V. Reporting Fraud and Abuse: Contractor acknowledges that it has reviewed information on how to prevent, detect, and report

fraud, waste and abuse of public funds, including information about the federal False Claims Act, the New York State False Claims Act and whistleblower protections.

W. Non-Collusive Bidding: By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor's behalf.

X. Federally Funded Grants: All of the specific federal requirements that are applicable to the Contract are identified in Section V (FEDERALLY FUNDED GRANT REQUIREMENTS) of this Appendix. To the extent that the Contract is funded in whole or part with federal funds, (i) the provisions of the Contract that conflict with federal rules, federal regulations, or federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Section V (FEDERALLY FUNDED GRANT REQUIREMENTS) of this Appendix. To the extent that section V (FEDERALLY FUNDED GRANT REQUIREMENTS) conflict with any other provisions of the Contract, the federal requirements of Section V shall supersede all other provisions of the Contract where required.

Y. The Contractor must meet the program objectives summarized in the Program Work Plan and Special Conditions (Appendix D) to the satisfaction of DHSES in accordance with provisions of the Contract, relevant laws, rules and regulations, administrative and fiscal guidelines and, where applicable, operating certificates for facilities or license for an activity or program.

II. TERM, TERMINATION AND SUSPENSION

A. Term: The term of the Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

B. Renewal:

1. General Renewal: The Contract may consist of successive periods on the same terms and conditions, as specified within the Contract (a 'Simplified Renewal Contract'). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Contract.

2. Renewal Notice to Not-for-Profit Contractors:

a. Pursuant to State Finance Law §179-t, if the Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State's intent to renew or not to renew the Contract no later than ninety (90) calendar days prior to the end of the term of the Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State's intent to renew or not to renew the Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State ('Unusual Circumstances'), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, 'Unusual Circumstances' shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

b. Notification to the not-for-profit Contractor of the State's intent to not renew the Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Contract as required in this Section and State Finance Law §179-t, the Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Contract.

C. Termination:

1. Grounds:

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

b. Cause: The State may terminate the Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Contract.

- c. **Non-Responsibility:** In accordance with the provisions of this Contract, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.
- d. **Convenience:** The State may terminate the Contract in its sole discretion upon thirty (30) calendar days prior written notice.
- e. **Lack of Funds:** If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Contract, the Contract may be terminated or reduced at DHSES's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to DHSES for payment of such costs. Upon termination or reduction of the Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to DHSES. In any event, no liability shall be incurred by the State (including DHSES) beyond monies available for the purposes of the Contract. The Contractor acknowledges that any funds due to DHSES or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.
- f. **Force Majeure:** The State may terminate or suspend its performance under the Contract immediately upon the occurrence of a 'force majeure'. For purposes of the Contract, 'Force majeure' shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

2. Notice of Termination:

a. **Service of notice:** Written notice of termination shall be sent by:

- i. personal messenger service; or
- ii. certified mail, return receipt requested and first class mail.

b. **Effective date of termination:** The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:

- i. if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or
- ii. if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

3. Effect of Notice and Termination on State's Payment Obligations:

- a. Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.
- b. The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Contract after its termination date.

4. Effect of Termination Based on Misuse or Conversion of State or Federal Property:

Where the Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Contract for the purposes set forth herein, the State may, at its option, require:

- a. the repayment to the State of any monies previously paid to the Contractor; or
- b. the return of any real property or equipment purchased under the terms of the Contract; or
- c. an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

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

D. **Suspension:** The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time.

In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time as the State issues a formal written notice authorizing a resumption of performance under the Contract.

III. PAYMENT AND REPORTING

A. Terms and Conditions:

1. In full consideration of contract services to be performed, DHSES agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.
2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Contract shall not be reimbursed.
3. The Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Appendix C (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.
4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of DHSES, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments. Authorization for electronic payment must be made through the Statewide Financial System's (SFS) Vendor Portal: <https://esupplier.sfs.ny.gov/psp/fscm/SUPPLIER/?cmd=login>. For assistance to access the SFS Vendor Portal, please contact the SFS Help Desk at 518-457-7717 or 855-233-8363 or email HelpDesk@sfs.ny.gov. Contractor acknowledges that it will not receive payment on any vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Director has expressly authorized payment by paper check as set forth above.
5. If travel expenses are an approved expenditure under this Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.
6. Timeliness of advance payments or other claims for reimbursement, and any interest to be paid to Contractor for late payment, shall be governed by Article 11-A of the State Finance Law to the extent required by law.
7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, 'Full Execution' shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

B. Advance Payment and Recoupment:

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Appendix C (Payment and Reporting Schedule).
2. Advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page.
3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Appendix C) will be modified as part of the renewal process.
4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Appendix C (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.
5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then

subsequent claims may be reduced until the advance is fully recovered.

C. Claims for Reimbursement:

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Contract in accordance with this Section and the applicable claiming schedule in Appendix C (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Appendix B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Appendix C (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:

a. Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Appendix D (Work Plan and Special Conditions). The Contractor shall submit to DHSES quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to DHSES in accordance with the procedures set forth in Section III(A)(3) herein.

b. Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Appendix D (Work Plan and Special Conditions). The Contractor shall submit to DHSES monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to DHSES in accordance with the procedures set forth in Section III(A)(3) herein.

c. Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Appendix D (Work Plan and Special Conditions). The Contractor shall submit to DHSES biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to DHSES in accordance with the procedures set forth in Section III(A)(3) herein.

d. Milestone/Performance Reimbursement:³ Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event. Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Appendix C (Payment and Reporting Schedule). DHSES shall make milestone payments subject to the Contractor's satisfactory performance.

e. Fee for Service Reimbursement:⁴ Payment shall be limited to only those fees specifically agreed upon in the Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f. Rate Based Reimbursement:⁵ Payment shall be limited to rate(s) established in the Contract. Payment may be requested no more frequently than monthly.

g. Scheduled Reimbursement:⁶ DHSES shall generate vouchers at the frequencies and amounts as set forth in Appendix C (Payment and Reporting Schedule).

h. Interim Reimbursement: DHSES may generate vouchers on an interim basis and the amounts requested by the Contract as set forth in Attachment C (Payment and Reporting Schedule).

i. Fifth Quarter Payments:⁷ Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. DHSES shall use a written directive for fifth quarter financing. DHSES shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.

4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Contract as security for the faithful completion of services or work, as applicable, under the Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.

5. The State shall not be liable for payments on the Contract if it is made pursuant to a Community Projects Fund appropriation

if insufficient monies are available pursuant to Section 99-d of the State Finance Law.

6. All vouchers submitted by the Contractor pursuant to the Contract shall be submitted to DHSES no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by DHSES, and, if actual expenditures by the Contractor are less than such sum, the amount payable by DHSES to the Contractor shall not exceed the amount of actual expenditures.

7. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to thirty (30) calendar days after the contract end date to make expenditures.

D. Identifying Information and Privacy Notification:

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property, must include the Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number, (ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.

2. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. The personal information is requested by the purchasing unit of DHSES contracting to purchase the goods or services or lease the real or personal property covered by the Contract. This information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York, 12236.

E. Refunds:

1. In the event that the Contractor must make a refund to the State for Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in this Appendix. The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Office address listed in Appendix C.

2. If at the end or termination of the Contract, there remains any unexpended balance of the monies advanced under the Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

F. Outstanding Amounts Owed to the State: Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

G. Program and Fiscal Reporting Requirements:

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Appendix C (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to DHSES in order for the Contractor to be eligible for payment.

2. Consistent with the selected reporting options in Appendix C (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:

a. If the Expenditure Based Reports option is indicated in Appendix C (Payment and Reporting Schedule), the Contractor shall provide DHSES with one or more of the following reports as required by the following provisions and Appendix C (Payment and Reporting Schedule) as applicable:

- i. Narrative/Qualitative Report: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Appendix C (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Appendix D (Work Plan and Special Conditions). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.
 - ii. Statistical/Quantitative Report: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Appendix C (Payment and Reporting Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.).
 - iii. Expenditure Report: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Appendix C (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.
 - iv. Final Report: The Contractor shall submit a final report as required by the Contract, not later than the time period listed in Appendix C (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Appendix D (Work Plan and Special Conditions).
 - v. Consolidated Fiscal Report (CFR): The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Appendix C (Payment and Reporting Schedule).
- b. If the Performance-Based Reports option is indicated in Appendix C (Payment and Reporting Schedule), the Contractor shall provide DHSES with the following reports as required by the following provisions and Appendix C (Payment and Reporting Schedule) as applicable:
- i. Progress Report: The Contractor shall provide DHSES with a written progress report using the forms and formats as provided by DHSES, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Appendix D (Work Plan and Special Conditions). Progress reports shall be submitted in a format prescribed in the Contract.
 - ii. Final Progress Report: Final scheduled payment is due during the time period set forth in Appendix C (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Appendix C (Payment and Reporting Schedule). DHSES shall complete its audit and notify the Contractor of the results no later than the date set forth in Appendix C (Payment and Reporting Schedule). Payment shall be adjusted by DHSES to reflect only those services/expenditures that were made in accordance with the Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Appendix C (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.
3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Appendix C (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Appendix C (Payment and Reporting Schedule).

H. Notification of Significant Occurrences:

1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to DHSES within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.
2. The Contractor shall immediately notify in writing the program manager assigned to the Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

A. Contractor as an Independent Contractor/Employees:

1. The State and the Contractor agree that the Contractor is an independent contractor and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. The Contractor shall be solely responsible for the recruitment,

hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Contract, and all applicable Federal and State laws and regulations.

2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Contract and/or any subcontract entered into under the Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Contract, Contractor shall immediately notify the State.

B. Subcontractors:

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.

2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of \$100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of \$100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Contract, and (3) that nothing contained in the subcontract, nor under the Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.

3. If requested by the State, prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.

4. If requested by the State, when a subcontract equals or exceeds \$100,000, the subcontractor must submit a Vendor Responsibility Questionnaire (Questionnaire).

5. If requested by the State, when a subcontract is executed, the Contractor must provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.

6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to DHSES, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Appendix C (Payment and Reporting Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

C. Use of Material, Equipment, or Personnel:

1. The Contractor shall not use materials, equipment, or personnel paid for under the Contract for any activity other than those provided for under the Contract, except with the State's prior written permission.

2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Contract.

D. Property:

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.

a. If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.

b. If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein,

after the termination of the Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Contract.

c. In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.

d. The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to DHSES naming DHSES as an additional insured, covering the loss, theft or destruction of such equipment.

e. A rental charge to the Contract for a piece of Property owned by the Contractor shall not be allowed.

f. The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.

g. No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.

2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Contract:

a. For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.

b. For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.

3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Contract shall be governed by the terms and conditions of Section V (FEDERALLY FUNDED GRANT REQUIREMENTS) contained herein.

4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.

5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

E. Records and Audits:

1. General:

a. The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Contract (collectively, Records).

b. The Contractor agrees to produce and retain for the balance of the term of the Contract, and for a period of six years from the later of the date of (i) the Contract and (ii) the most recent renewal of the Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Contract. Such Records may include, but not be limited to, original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

i. personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders, detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

ii. payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

iii. non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, cost allocation plans, and bid and procurement documentation, such as quotes, proposals and selection

records, if applicable.

iv. receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.

c. The OSC, AG and any other person or entity authorized to conduct an examination, as well as DHSES or State Agencies involved in the Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

d. The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records, as exempt under Section 87 of the Public Officers Law, is reasonable.

e. Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

2. Cost Allocation:

a. For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of 2 CFR Part 200. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.

b. For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

3. Federal Funds: For records and audit provisions governing Federal funds, please see Section V (FEDERALLY FUNDED GRANT REQUIREMENTS) of this Appendix A-1.

F. Confidentiality: The Contractor agrees that it shall use and maintain information relating to individuals who may receive services, and their families pursuant to the Contract, or any other information, data or records deemed confidential by the State (Confidential Information) only for the limited purposes of the Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

G. Publicity:

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.

2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:

a. Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and

b. State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.

3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Master Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Master Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) day period in which to review each manuscript for compliance with Confidential Information requirements; or (ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first submits such manuscripts to the State forty-five (45)

calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section IV(G)(2) (Publicity) hereof.

H. Web-Based Applications-Accessibility: Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by DHSES and the results of such testing must be satisfactory to DHSES before web content shall be considered a qualified deliverable under the Contract or procurement.

I. Non-Discrimination Requirements: Pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional nondiscrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender identity or expression), 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. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that the Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Contract. The Contractor shall be subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises: In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting State Agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State Agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting State Agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;
2. The Contractor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts;
3. The Contractor shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
4. At the request of the State, 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 shall not discriminate on the basis of race, creed, color, national origin sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and
5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race,

creed, color, national origin, sex, age, disability or marital status.

6. The Contractor shall have institutional policies or practices that address harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sexual orientation, gender identity, military status, sex, marital status, disability, or other protected basis.

The Contractor shall include the provisions of subclauses 1 – 6 of this Section (IV)(J), in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law and if such duplication or conflict exists, the State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

K. Omnibus Procurement Act of 1992: It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises, as bidders, subcontractors and suppliers on its procurement contracts.

1. If the total dollar amount of the Contract is greater than \$1 million, the Omnibus Procurement Act of 1992 requires that by signing the Contract, the Contractor certifies the following:

a. The Contractor has made reasonable efforts to encourage the participation of State business enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

b. The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

c. The Contractor agrees to make reasonable efforts to provide notification to State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

d. The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of the Contract and agrees to cooperate with the State in these efforts.

L. Workers' Compensation Benefits:

1. In accordance with Section 142 of the State Finance Law, the Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of the Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

M. Unemployment Insurance Compliance: The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to DHSES staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

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

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of

such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Contract.

N. Vendor Responsibility:

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may obtain a paper form from the OSC prior to execution of the Contract. The Contractor further covenants and represents that as of the date of execution of the Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.

2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.

3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.

4. The State reserves the right, in its sole discretion, at any time during the term of the Contract:

a. to require updates or clarifications to the Questionnaire upon written request;

b. to inquire about information included in or required information omitted from the Questionnaire;

c. to require the Contractor to provide such information to the State within a reasonable timeframe; and

d. to require as a condition precedent to entering into the Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and

e. to require the Contractor to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. By signing the Contract, the Contractor agrees to comply with any such additional conditions that have been made a part of the Contract.

5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Contract.

6. The State, in its sole discretion, reserves the right to make a final Determination of Non-Responsibility at any time during the term of the Contract based on:

a. any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or

b. the State's discovery of any material information which pertains to the Contractor's responsibility.

7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non-responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

O. Charities Registration: If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish DHSES with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Contract.

P. Consultant Disclosure Law:⁸ If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services, then in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

Q. Wage and Hours Provisions: If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

R. Participation By Minority Group Members And Women With Respect To Grant Contracts: Requirements And Procedures (state-funded grants only)

1. General Provisions

a. The Division of Homeland Security and Emergency Services (DHSES) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ('MWBE Regulations') for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

b. The Contractor to the subject contract (the 'Contractor' and the 'Contract', respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the DHSES, to fully comply and cooperate with the DHSES in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ('EEO') and contracting opportunities for certified minority and women-owned business enterprises ('MWBEs'). Contractor's demonstration of 'good faith efforts' pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the 'Human Rights Law') or other applicable federal, state or local laws.

c. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

2. Contract Goals

a. For purposes of this contract, DHSES has established overall goals for Minority and Women-Owned Business Enterprises ('MWBE') participation which are specified in the contract work plan.

b. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in the contract work plan hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>. Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development (518) 292-5250; (212) 803-2414; or (716) 846-8200 to discuss additional methods of maximizing participation by MWBEs on the Contract.

c. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, 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 Contractor 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 DHSES for liquidated or other appropriate damages, as set forth herein.

3. Equal Employment Opportunity (EEO)

a. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the 'Division'). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

b. Contractor shall comply with the following provisions of Article 15-A:

- i. Contractor and Subcontractors 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.
- ii. The Contractor shall maintain an EEO policy statement and submit it to the DHSES if requested.

iii. If Contractor or Subcontractor does not have an existing EEO policy statement, Section 4 below may be used to develop one.

iv. The Contractor's EEO policy statement shall include the following, or similar, language:

- a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
- b) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- c) 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 (a) through (c) of this Subsection (iv) and Paragraph 'e' of this Section 3, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

c. Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan 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. Contractors shall complete the Local Assistance MWBE Equal Employment Opportunity Staffing Plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

d. Workforce Employment Utilization Report

- i. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the DHSES of any changes to the previously submitted Local Assistance MWBE Equal Employment Opportunity Staffing Plan. This information is to be submitted annually or as otherwise required by the DHSES during the term of the contract, for the purpose of reporting the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Local Assistance MWBE Workforce Employment Utilization Report form must be used to report this information.
- ii. Separate forms shall be completed by Contractor and any Subcontractor performing work on the Contract.
- iii. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Local Assistance MWBE Workforce Employment Utilization Report and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Local Assistance MWBE Workforce Employment Utilization Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

e. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. 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.

4. MWBE Utilization Plan

- a. The Contractor represents and warrants that Contractor has submitted a Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form either prior to, or at the time of, the execution of the contract.
- b. Contractor agrees to use such Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in the contract workplan.
- c. Contractor further agrees that a failure to submit and/or use such Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, DHSES shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

5. Waivers

If the DHSES, upon review of the Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Plan, the Detailed Itemization Forms or the Local Assistance MWBE Workforce Employment Utilization Report determines that a Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the DHSES 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.

6. MWBE Subcontractor Utilization Quarterly Report

Contractor is required to report MWBE Subcontractor utilization, as part of the quarterly claim process, to the DHSES by the last day of the month following the end of each calendar quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

7. Liquidated Damages - MWBE Participation

a. Where DHSES determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, such finding constitutes a breach of Contract and DHSES may withhold payment from the Contractor as liquidated damages and/or provide for other appropriate remedies.

b. Such liquidated damages shall be calculated as an amount equaling the difference between:

- 1) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
- 2) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

c. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the DHSES, Contractor shall pay such liquidated damages to the DHSES within sixty (60) days after they are assessed by the DHSES unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the DHSES.

8. M/WBE AND EEO Policy Statement

a. The Contractor agrees to adopt the following policies or similar policies with respect to the project being developed or services rendered in this contract with the Division of Homeland Security and Emergency Services:

M/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. 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.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Contractor agrees to comply with all MWBE and EEO contract goals reflected on the MWBE Utilization Plan and Staffing Plan respectively, that have been submitted with the application for this contract.

S. Additional Terms

1. The Contractor agrees that if the project is not operational within 60 days of the execution date of the Contract, it will report by letter to DHSES the steps taken to initiate the project, the reasons for delay, and the expected starting date. If the project is not operational within 90 days of the execution date of the Contract, the Contractor will submit a second statement to DHSES explaining the delay. DHSES may either cancel the project and redistribute the funds or extend the implementation date of the project beyond the 90-day period when warranted by extenuating circumstances.

2. The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of DHSES, or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability prior performance, and financial capacity.

a. The DHSES Commissioner, or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when DHSES discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of the notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of DHSES, or his or her designee, issues a written notice authorizing a resumption of performance under the Contract.

b. Upon written notice to the Contractor, and a reasonable opportunity to be heard with the appropriate DHSES officials or staff, the Contract may be terminated by the DHSES Commissioner, or his or her designee at the Contractor's expense where the Contractor is determined by the DHSES Commissioner, or his or her designee, to be non-responsible. In such event, the Commissioner, or his or her designee, may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

3. DHSES shall make payments and any reconciliation in accordance with the Payment and Reporting Schedule (Appendix C). DHSES shall pay the Contractor for completed, approved projects, a sum not to exceed the amount noted on the Face Page hereof. The Contractor must not request payments or reimbursements that duplicate funding or reimbursement from any other source for Contractor costs and services pursuant to this Contract.

4. The Contractor shall submit detailed itemization forms or a form deemed acceptable to DHSES for personal service, fringe benefit and non-personal service expenditures with any voucher and fiscal cost report requesting reimbursement. Grant-related expenditures shall be reported on Fiscal Cost Reports approved by DHSES. For Federally-funded awards, the detailed itemization forms shall include the required certifications pursuant to 2 CFR §200.415. These reports must be prepared periodically and as defined in Appendix C of this Contract. All reported expenditures must reconcile to the program accounting records and the approved budget. Prior period adjustments shall be reported in the same accounting period that the correction is made.

5. The Contractor's request for travel, meals or lodging reimbursement shall be in accordance with Appendix B, Budget, and, unless written authorization has been received from DHSES, shall not exceed rates authorized by the NYS Office Of State Comptroller (Audit and Control). Rates may be viewed online at: <http://www.osc.state.ny.us/state-agencies/travel>.

6. The Contractor's employment of a consultant must be supported by a written Contract executed by the Contractor and the consultant. A consultant is defined as an individual or organization hired by the Contractor for the stated purpose of accomplishing a specific task relative to the funded project. All consultant services must be obtained in a manner that provides for fair and open competition. The Contractor shall retain copies of all solicitations seeking a consultant, written Contracts and documentation justifying the cost and selection of the consultant, and make them available to DHSES upon request. The Contractor further agrees that it shall assume sole and complete responsibility for fulfilling all the obligations set forth in the Contract and the Contractor must guarantee the work of the consultant as if it were its own. Failure to follow these guidelines may result in a disallowance of costs.

7. Additionally, Contractor must adhere to the following guidelines at a minimum when making all procurements, including consultant services. Failure to follow these guidelines may result in a disallowance of costs.

a. A Contractor who proposes to purchase goods or services from a particular vendor without competitive bidding must obtain the prior written approval of DHSES. The request for approval must be in writing and set forth, at a minimum, a detailed justification for selection and the basis upon which the price was determined to be reasonable. Further, such procurement must be in accordance with the guidelines, bulletins and regulations of the Office of the State Comptroller, State Procurement Council, and the U.S. Department of Homeland Security. For Federally-funded awards, contractor must comply with 2 CFR §200.320(f). A copy of DHSES' approval must also be submitted with the voucher for payment.

b. The rate for consultant services, and cost of equipment or goods, shall be reasonable and consistent with the amount paid for similar services or goods and equipment in the marketplace. Time and effort reports are required for consultants.

c. Written justification and documentation for all procurements must be maintained on file, and made available to DHSES upon request. All procurements must be made in a fair and open manner and in accordance with the pre-determined methodology established for evaluating bids (e.g., lowest responsible bidder or best value).

d. A Contractor that is a State entity must make all procurements in accordance with State Finance Law Article 11 and any other applicable regulations.

e. A Contractor that is a local government must make all procurements in accordance with General Municipal Law Article 5-A, and any other applicable regulations.

f. A Contractor that is a not-for-profit and all other entities that do not meet the descriptions in Section III(S)(7)(d) or (e) herein must make all procurements as noted below:

i. If the Contractor is eligible to purchase an item or service from a government contract or is able to purchase such item or service elsewhere at a lower than or equal price, then such purchase may be made immediately.

ii. A Contractor may purchase any single piece of equipment, single service or multiples of each that cost up to \$999 at its discretion.

iii. Before purchasing any piece of equipment, service or multiples of each that have an aggregate cost between \$1,000 and \$4,999, a Contractor must secure at least three telephone quotes and create a record for audit of such quotes.

iv. Before purchasing any piece of equipment, service or multiples of each that have an aggregate cost of between \$5,000 and \$9,999, the Contractor must secure at least three written quotes on a vendor's stationery and maintain a record of the competitive procurement process for audit purposes.

v. A Contractor spending in aggregate of \$10,000 and above must use a competitive bidding process. Guidance may be obtained from DHSES. At a minimum, the competitive bidding process must incorporate the following: open, fair advertisement of the opportunity to provide services; equal provision of information to all interested parties; reasonable deadlines; sealed bids opened at one time before a committee who will certify the process; establishment of the methodology for evaluating bids before the bids are opened; and maintenance of a record of competitive procurement process.

g. Acceptance of State support for interoperable and emergency communications projects, including funding through the Interoperable Emergency Communication Grant Program, requires that Contractors must use open-standard/vendor-neutral technologies to allow for other public safety/public service agencies (including State agencies and authorities) and jurisdictions in your region to operate on your radio system(s) when required, regardless of the total percentage of system funding from the State. This access for other agencies must be permitted to support operational and interoperable goals, and without restriction as to specific manufacturers' subscriber equipment. All reasonably compatible subscriber equipment must be permitted to be operated on your system by outside agencies, thus allowing coordinated efforts between local and state public safety/public service agencies and maximizing resources and capabilities.

h. DHSES reserves the right to suspend program funds if the Contractor is found to be in noncompliance with the provisions of

this Contract or other grant Contracts between the Contractor and DHSES or, if the Contractor or principals of the Contractor are under investigation by a New York State or local law enforcement agency for noncompliance with State or federal laws or regulatory provisions or, if in DHSES' judgment, the services provided by the Contractor under the Contract are unsatisfactory or untimely.

i. DHSES shall provide the Contractor with written notice of noncompliance.

ii. Upon the Contractor's failure to correct or comply with the written notice by DHSES, DHSES reserves the right to terminate this Contract, recoup funds and recover any assets purchased with the proceeds of this Contract.

i. DHSES reserves the right to use approved grant related expenditures to offset disallowed expenditures from any grant funded through its offices upon appropriate notification to the Contractor, or upon reasonable assurance that the Contractor is not in compliance with these terms.

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

i. By entering into this Contract, Contractor (or any assignee) certifies in accordance with State Finance Law §165-a that it is not on the 'Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012' ('Prohibited Entities List') posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

ii. Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

iii. During the term of the Contract, should DHSES receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

iv. DHSES reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

V. FEDERALLY FUNDED GRANT REQUIREMENTS

A. Hatch Act. The Contractor agrees, as a material condition of the Contract, to comply with all applicable provisions of the Hatch Act (5 U.S.C. 1501 et seq.), as amended.

B. Requirement for System of Award Management: Unless you are exempted from this requirement under 2 CFR 25.110, you as the subrecipient must maintain the currency of your information in the System of Award Management (SAM) until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term. Pursuant to section 2 CFR §200.210(a)(2), Contractors must maintain a current unique entity identifier prior to and during the life of the Contract. Nonprofit organizations that are first-tier subrecipients for Nonprofit Security Grant Program (NSGP) funding must have a DUNS number, but are not required to be registered in SAM.

C. In accordance with 2 CFR §§200.112 and 200.113, Contractor understands and agrees that it must: (1) disclose in writing any potential conflict of interest to DHSES; and (2) disclose, in a timely manner, in writing to DHSES all violations of federal and state criminal law involving fraud, bribery, or gratuity violations potentially affecting the grant award. Failure to make required disclosures can result in any remedy available to DHSES for Contractor's noncompliance, including suspension or debarment.

D. The Contractor must ensure that, for all contracts entered into by the Contractor, the contract provisions required by 2 CFR §200.326 (and Appendix II to 2 CFR Part 200) are included in such contracts. The Contractor further agrees to impose and enforce this requirement for any Contractor subaward agreements.

E. Where advance payments are approved by DHSES, the Contractor agrees to expend the advance payments in accordance with the purposes set forth in Appendix D and consistent with Appendix B. The advanced funds must be placed in an interest-

bearing account and are subject to the rules outlined in 2 CFR Part 200, (Uniform Administrative Requirements for Grants and Cooperative Contracts to State and Local Governments) which require Contractors to promptly remit back to the federal government, through New York State Division of Homeland Security and Emergency Services, any interest earned on these advanced funds. The Contractor may keep interest earned up to \$500 per federal fiscal year for administrative expenses. This maximum limit is not per award; it is inclusive of all interest earned as the result of all federal grant program funds received per year. Interest must be reported on Fiscal Cost Reports and remitted to DHSES quarterly.

F. Audit Requirements. This Contract, and any sub-awards resulting from this Contract, may be subject to fiscal and program audits by DHSES, NYS Office of State Comptroller, pertinent federal agencies, and other designated entities to ascertain financial compliance with federal and/or State laws, regulations, and guidelines applicable to this Contract. The Contractor shall meet all audit requirements of the federal government and State of New York. Such audits may include review of the Contractor's accounting, financial, and reporting practices to determine compliance with the Contract and reporting requirements; maintenance of accurate and reliable original accounting records in accordance with governmental accounting standards as well as generally accepted accounting principles; and specific compliance with allowable cost and expenditure documentation standards prescribed by applicable federal, State, and DHSES guidelines.

G. Equipment Markings. The Contractor further agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: 'Purchased with funds provided by the U.S. Department of Homeland Security.'

H. Administrative, Cost and Audit Requirements: The Contractor must comply with the most recent version of the Administrative Requirements, Cost Principles, and Audit requirements. Failure to do so may result in disallowance of costs upon audit. A list of regulations and guidance applicable to United States Department of Homeland Security (DHS) grants are listed below:

1. General Administrative Requirements:

a. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

2. Cost Principles:

a. 2 CFR Part 200, Subpart E

3. Audit Requirements:

a. 2 CFR Part 200, Subpart F

I. Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

1. Consistent with 2 CFR §200.321, the grantee and any subgrantees will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

2. Affirmative steps must include:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subsections (2)(a) through (e) of this section.

J. Compliance with Laws, Regulations and Program Guidance. The Contractor shall ensure it is aware of and complies with all applicable laws, regulations and program guidance. It is the responsibility of the Contractor to become familiar with and comply with all terms and conditions associated with acceptance of funds.

K. Adequate Documentation: The Contractor must ensure full compliance with all cost documentation requirements, including specific personal service documentation, as applicable directly to the Contractor, sub-recipient or collaborative agency/organization. The Contractor must maintain specific documentation as support for project related personal service expenditures as this Contract is supported by federal funds. Depending upon the nature or extent of personal service provided under this Contract, the Contractor shall maintain semi-annual (or more frequent) personal service certifications and/or an after-the-fact personnel activity reporting system (or equivalent) which complies with all applicable laws, regulations and

program guidance. Failure to do so may result in disallowance of costs.

L. Single Audit Requirements: For audits of fiscal years beginning on or after December 26, 2014, recipients that expend \$750,000 or more from all federal funding sources during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with the requirements of GAO's Government Auditing Standards, located at <http://www.gao.gov/govaud/ybk01.htm>, and the requirements of Subpart F of 2 C.F.R. Part 200, located at <http://www.ecfr.gov/cgi-bin/text-idx?SID=63811dc3410c008e2f8e28c325cdc09e&mc=true&node=sp2.1.200.f&rgn=div6>.

The final report for such audit must be completed within nine months of the end of the Contractor's fiscal year. The Contractor must provide one copy of such audit report to DHSES within nine (9) months of the end of its fiscal year, or communicate in writing to DHSES that Contractor is exempt from such requirement.

M. Program Income: Program income earned by the Contractor during the grant funding Period must be reported in writing to DHSES, in addition to any other statutory reporting requirements. Program income consists of income earned by the grant recipient that is directly generated by a supported activity or earned as a result of the grant program. Program income includes, but is not limited to, income from fees for services performed, the use of rental or real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights and interest on loans made with federal award funds. For example, if the purpose of a grant is to conduct conferences, any training fees that are generated would be considered program income. Interest earned on grant funds is not considered program income unless specified in Appendix D. The Contractor agrees to report the receipt and expenditures of grant program income to DHSES. Program income (not to include interest earned), generated by the use of these grant funds will be used to enhance the grant project.

N. Intellectual Property: Any creative or literary work developed or commissioned by the Contractor with grant support provided by DHSES shall become the property of DHSES, entitling DHSES to assert a copyright therein, unless the parties have expressly agreed otherwise in a written instrument signed by them.

1. If DHSES shares its right to copyright such work with the Contractor, DHSES reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use: (a) the copyright in any work developed under a grant, sub-grant, or contract under a grant or sub-grant; and (b) any rights of copyright to which a Contractor, sub-Contractor, or a contractor purchases ownership with grant support.
2. If the grant support provided by DHSES is federally-sponsored, the federal awarding agency also reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use: (a) the copyright in any work developed under a grant, sub-grant or contract under a grant or sub-grant; and (b) any rights of copyright to which a Contractor, sub-Contractor, or a contractor purchases ownership with such grant support.
3. The Contractor shall submit one copy of all reports and publications resulting from this Contract to DHSES within thirty (30) calendar days of completion. Any document generated pursuant to this grant must contain the following language:

'This project was supported by a grant administered by the New York State Division of Homeland Security and Emergency Services and the U.S. Department of Homeland Security. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the New York State Division of Homeland Security and Emergency Services or the U.S. Department of Homeland Security.'

O. Accounting for Grant Expenditures:

1. Grant funds may be expended only for purposes and activities set forth in this Contract. Accordingly, the most important single requirement of accounting for this grant is the complete and accurate documentation of grant expenditures. If the Contractor receives funding from two or more sources, all necessary steps must be taken to ensure that grant-related transactions are not commingled. This includes, but is not limited to, the establishment of unique budget codes, a separate cost center, or a separate chart of accounts. Expenditures must be cross-referenced to supporting source documents (purchase orders, contracts, real estate leases, invoices, vouchers, timesheets, mileage logs, etc.).
2. Contractor agrees that it shall maintain adequate internal controls and adhere to Generally Accepted Accounting Principles for Government or Generally Accepted Accounting Principles for Not-for-Profit Organizations.
3. None of the goals, objectives or tasks, as set forth in Appendix D, shall be sub-awarded to another organization without specific prior written approval by DHSES. Where the intention to make sub-awards is clearly indicated in the application, DHSES approval is deemed given, if these activities are funded, as proposed.
4. If this Contract makes provisions for the Contractor to sub-grant funds to other recipients, the Contractor agrees that all sub-Contractors shall be held accountable by the Contractor for all terms and conditions set forth in this Contract in its entirety. The Contractor further agrees that it shall assume sole and complete responsibility for fulfilling all the obligations set forth in the

Contract and the Contractor must guarantee the work of any sub-Contractor as if it were its own.

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

- Activities to be performed;
- Time schedule;
- Project policies;
- Other policies and procedures to be followed;
- Dollar limitation of the Contract;
- Appendix A-1, Appendix C, Certified Assurances for Federally Supported Projects, Certification Regarding Lobbying, Debarment and Suspension and any special conditions set forth in the Contract;
- Applicable federal and/or State cost principles to be used in determining allowable costs; and
- Property Records or Equipment Inventory Reports.

P. The Contractor will not be reimbursed for sub-granted funds unless all expenditures by a sub-Contractor are listed on detailed itemization forms or a form deemed acceptable to DHSES. Backup documentation for such expenditures must be made available to DHSES upon request. All expenditures must be programmatically consistent with the goals and objectives of this Contract and with the Budget set forth in Appendix B.

Q. Space rental provided by this Contract must be supported by a written lease, maintained on file and made available by the Contractor upon request.

R. Equipment and Property:

1. Any equipment, furniture or supplies or other property purchased pursuant to this Contract is deemed to be the property of the State, except as may otherwise be governed by federal or State laws, rules or regulations or stated in this Contract.
2. Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A Contractor may use its own definition of equipment provided that such definition would at least include all equipment defined above. A copy of the property record(s) or equipment inventory report(s) with relevant purchasing and supporting documentation must be made available to DHSES upon request. Property records or equipment inventory reports must be maintained, by award, that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property. The Contractor must document receipt of all applicable equipment purchased with grant funds. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two (2) years.
3. Upon completion of all contractual requirements by the Contractor, DHSES will consider a request for continued use and possession of the equipment purchased with grant funds provided the equipment continues to be used in connection with a public security program. When disposing of equipment purchased with homeland security grant funding, a State agency must dispose of equipment in accordance with State Laws and procedures. All other Contractors shall dispose of equipment as follows:
 - a. Items of equipment with a current per unit market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.
 - b. Items of equipment with a current per unit fair market value of \$5,000 or more may be retained or sold. If sold, the awarding agency shall have a right to an amount calculated by multiplying the proceeds from the sale by the awarding agency's share of the equipment. If retained, the current market value is to be used in the calculation. To remit payments, award recipients should contact DHSES at 1-866-837-9133 for guidance.
4. Upon completion of all contractual requirements by the Contractor under this Contract, DHSES shall accept a request for continued use and possession of the equipment purchased with grant funds providing the equipment continues to be used in accordance with the contracted activities and guidelines in this Contract.
5. The Contractor must conduct a physical inventory of property records at least once every two years to verify the existence, current utilization and continued need for the property. In the event the property is no longer required by the Contractor, this fact should be reported to DHSES as soon as possible and appropriate guidelines followed, as specified in this Appendix.
6. If Contractor disposes of any equipment purchased under this Contract during the active lifespan of said equipment, Contractor must reinvest any proceeds from the disposal into additional equipment items to continue Contractor's organization's activities subject to the guidelines of this Contract. If the Contractor does not reinvest proceeds to continue activities subject to this Contract, the percentage of the proceeds equal to the proportion of the original purchase price paid by

funds for the Contract must be repaid to the State of New York.

ENDNOTES:

¹ To the extent that Section V-Federally Funding Grant Requirements conflict with any other provisions of the Contract, the Federal requirements of Section V shall supersede all other provisions of the Contract.

² As of 2019, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Indiana, Louisiana, Mississippi, North Carolina, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

³ A milestone/performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Contract effort.

⁴ Fee for Service is a rate established by the Contractor for a service or services rendered.

⁵ Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.

⁶ Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

⁷ Fifth Quarter Payments occur where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract.

⁸ Not applicable to not-for-profit entities

VER 07/2020

Certified by - on

Award Contract

Project No.

Grantee Name

SH20-1030-D00

Oneida County

08/20/2020

APPENDIX C
PAYMENT AND REPORTING SCHEDULE

For All Contractors:

I. PAYMENT PROVISIONS

1. In full consideration of contract services to be performed, DHSES agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page hereof. All payments shall be in accordance with the budget contained in the applicable Attachment B form (Budget), which is attached hereto.

A. Payment and Recoupment Language

1. Contractor shall provide complete and accurate vouchers to DHSES in order to receive payment. Vouchers submitted to DHSES must contain all information and supporting documentation required by the Agreement, DHSES and the State Comptroller. Payment for vouchers submitted by the Contractor shall only be rendered electronically, unless a paper check is expressly authorized by the Director of DHSES, at the Director's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with the ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization for electronic payment must be made through the Statewide Financial System's (SFS) Vendor Portal: <https://esupplier.sfs.ny.gov/psp/fscm/SUPPLIER/?cmd=login>. For assistance to access the SFS Vendor Portal, please contact the SFS Help Desk at 518-457-7717 or 855-233-8363 or email HelpDesk@sfs.ny.gov. Contractor acknowledges that it will not receive payment on any vouchers submitted under this Agreement if it does not comply with the State Comptroller's electronic payment procedures, except where the Director has expressly authorized payment by paper check as set forth above.

2. The Contractor agrees that this is a reimbursement-based contract; an advance may be provided as specified in Appendix D. All requests for reimbursement must reflect actual costs that have been disbursed by the Contractor. Items or services not received are not eligible for reimbursement.

Reimbursement requests need to include the following documents:

- Signed Voucher and Fiscal Cost Report
- Detailed Itemization Forms or other forms deemed acceptable by DHSES of any budgeted category for which reimbursement is requested
- Written documentation of all required DHSES approvals, as appropriate

3. Vouchers shall be submitted in a format acceptable to DHSES and the Office of the State Comptroller. Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the Project Budget (Appendix B) and during the contract period. Such voucher shall also be deemed to certify that: a) the payments requested do not duplicate reimbursement from other sources of funding; and b) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program.

B. Interim and/or Final Claims for Reimbursement

1. Contractors must submit all required fiscal reports, supporting documentation and program progress reports. Failure to meet these requirements will result in the rejection of associated vouchers. Final vouchers, reimbursement requests and reports must be submitted within 30 days of the end of the grant contract period. Failure to voucher within this period may result in the loss of grant funds. The Contractor must also refund all unexpended advances and interest earned over \$500 on the advanced funds pursuant to 2 CFR Part 200, §200.305(b)(9). Property Records or Equipment Inventory Reports as defined in Appendix A-1, Section V, Paragraph R, must be available at the conclusion of the contract period and submitted to DHSES upon request.

2. If at the end of this contract there remain any monies (advanced or interest earned over \$500 on the advanced funds) associated with this contract in the possession of the Contractor, the Contractor shall submit a check or money order for that amount payable to the order of the New York State Division of Homeland Security and Emergency Services. Remit the check along with the final fiscal cost report within 30 days of termination of this grant contract to:

NYS Division of Homeland Security and Emergency Services
Federal Fiscal Unit
State Campus - Building 7A

1220 Washington Avenue
Albany, NY 12242

3. For purposes of prompt payment provisions, the Designated Payment Office for the processing of all vouchers is the Contract Unit of DHSES. Payment of grant vouchers shall be made in accordance with the provisions of Article XI-A of the State Finance Law. Payment shall be preceded by an inspection period of 15 business days which shall be excluded from calculations of the payment due date for purposes of determining eligibility for interest payments. The Contractor must notify the Federal Fiscal Unit in writing of a change of address in order to benefit from the prompt payment provision of the State Finance Law. When progress reports are overdue, vouchers will not be eligible for prompt payment.

4. Timely and properly completed New York State vouchers, with supporting documentation when required, shall be submitted to:

NYS Division of Homeland Security and Emergency Services
Attention: Contracts Unit
State Office Building Campus – Bldg. 7A
1220 Washington Avenue, Suite 610
Albany, NY 12242

II. REPORTING PROVISIONS

A. Required Reports:

Narrative/Qualitative Report (Progress Report)

The Contractor will submit, on a quarterly basis, not later than 30 days from the end of the quarter, the report described in Section III(G)(2)(a)(i) of Appendix A-1 of the Contract.

Expenditure Report (Fiscal Cost Report)

The Contractor will submit, on a quarterly basis, not later than 30 days after the end date for which reimbursement is being claimed, the report described in Section III, Paragraph G(2)(a)(iii) of the Appendix A-1 of the Contract.

Final Report

The Contractor will submit the final report as described in Section III, Paragraph G(2)(a)(iv) of Appendix A-1 of the Contract, no later than 30 days after the end of the contract period.

1. Fiscal cost reports must be submitted showing grant expenditures. They must also show the amount of interest earned to date on any advanced funds.

All submitted vouchers will reflect the Contractor's actual expenditures and will be accompanied by supporting detailed itemization forms or a form deemed acceptable to DHSES for personal service, fringe benefit and non-personal service expenditures or other documentation as required, and by a fiscal cost report for the reporting period. In the event that any expenditure for which the Contractor has been reimbursed by grant funds is subsequently disallowed, DHSES, in its sole discretion, may reduce the voucher payment by the amount disallowed. If necessary, the Contractor may be required to submit a final budget reallocation.

DHSES reserves the right not to release subsequent grant awards pending Contractor compliance with this Agreement.

2. The Contractor will submit program progress reports and one final report to DHSES on a prescribed form provided by DHSES as well as any additional information or amended data as required.

Progress reports will be due within 30 days of the last day of each calendar quarter or on an alternate schedule as prescribed in Appendix D. Progress reports will be due within 30 days of the last day of the calendar quarter from the start date of the program and the final report will be due upon completion of the project or termination of this Agreement. Calendar quarters, for the purposes of making program progress reports, shall be as follows:

Calendar Quarter: January 1 - March 31 -- Report Due: April 30

Calendar Quarter: April 1 - June 30 -- Report Due: July 30

Calendar Quarter: July 1 - September 30 -- Report Due: October 30

Calendar Quarter: October 1 - December 31 -- Report Due: January 30

The final report, or where applicable interim progress reports, will summarize the project's achievements as well as describe

activities for that quarter.

Rev. 07/2020

Certified by - on

Award Contract

Project No.

SH20-1030-D00

Grantee Name

Oneida County

08/20/2020

Special Conditions

I. ALL GRANT FUNDS:

Federal grant funds provided are a subaward of Homeland Security Grant Program (HSGP) funds awarded to the New York State Division of Homeland Security and Emergency Services (DHSES) from the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA).

A. Permissible Use of Funding

1. HSGP funds must be used in accordance with the guidelines set forth in the HSGP Notice of Funding Opportunity, which can be located at <https://www.fema.gov/grants>

2. All expenditures under this grant must support the Goals and Objectives outlined in the 2017 2020 NYS Homeland Security Strategy and approved investment justifications. New York State's Homeland Security Strategy can be located on the DHSES website at <http://www.dhSES.ny.gov/planning/#strat>.

3. Designated Urban Areas under the Urban Areas Security Initiative (UASI) must have a charter document on file with the Federal Emergency Management Agency (FEMA) prior to drawing down UASI funding. The charter must address critical issues such as membership, governance structure, voting rights, grant management and administration responsibilities, and funding allocation methodologies.

B. Record Requirements

1. Subrecipients shall keep an agenda and meeting minutes on file for all meetings conducted regarding HSGP funded activities.

2. Any documents produced as a result of these meetings such as plans, schedules, or procedures, will also be kept on file and be made available to DHSES, upon request.

C. Equipment Purchases

1. Equipment purchased with grant funds must fall within the allowable equipment categories for HSGP as listed on the Authorized Equipment List (AEL) (<https://www.fema.gov/authorized-equipment-list>).

2. Subrecipients are responsible to request a determination of eligibility from the U.S. Department of Homeland Security (DHS), through DHSES, for any equipment item in question. Unless otherwise stated in the program guidance, equipment must meet all mandatory regulatory and/or DHS adopted standards to be eligible for purchase using HSGP funds.

3. The New York State Communication Interoperability Plan (SCIP), as well as DHS Grant Guidance for grant funding, requires that all interoperable communications equipment must be on the Authorized Equipment List (AEL) and must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

D. Training & Exercise Related Activities

1. Any non DHS training course to be supported by this award must be submitted in advance to DHSES for written approval.

2. All exercises conducted must be managed and executed in accordance with the Homeland Security Exercise and Evaluation Program (HSEEP). Report scheduled exercises to the DHSES Office of Emergency Management (OEM) Training and Exercise Section using NY Responds 60 days prior to the start of the exercise. An After Action Report/Improvement Plan (AAR/IP) must be prepared and submitted to DHSES following every exercise, regardless of type or scope. AAR/IPs must conform to the HSEEP format and must be submitted to DHSES using NY Responds within 60 days of completion of the exercise.

3. Subrecipients are required to be NIMS compliant. DHSES requires that subrecipients contact their county point of contact to determine how the particular county requires reporting. Subrecipients are expected to provide DHSES upon request any data

required for annual NIMS certification purposes.

E. Law Enforcement Requirements

1. Subrecipients that are law enforcement agencies agree that such funding shall be utilized for prevention, preparedness, and response initiatives consistent with the New York State Homeland Security Strategy, and with Counter Terrorism Zone (CTZ) efforts at the State and local level. This will ensure that fiscal resources are used for seamless and effective counter terrorism planning, training, information sharing, investigation, equipment acquisition, and response functions.
2. Particular attention must be paid to equipment and technology acquisitions, and, where similar technology already exists in the State's law enforcement communities, subrecipients will ensure that interoperability between and among existing law enforcement systems, and the New York State Intelligence Center (NYSIC), is accomplished.
3. Subrecipients further agree to consult with the NYSIC to ensure agency participation and inclusion in New York State's Field Intelligence Officer (FIO) Program.

F. EHP Requirements

1. Subrecipients shall comply with all applicable federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable laws including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898).
2. Failure of subrecipients to meet federal, State, and local EHP requirements and obtain applicable permits may jeopardize federal funding. Subrecipients shall not undertake any project having the potential to impact EHP resources without the prior approval of FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings. Subrecipients must comply with all conditions placed on the project as the result of the EHP review.
3. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements.
4. If ground disturbing activities occur during project implementation, subrecipients must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, such subrecipient will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office.
5. Any activities requiring environmental and historic preservation review that have been initiated prior to FEMA approval could result in non-compliance finding. For your convenience, the screening form is available at: <http://www.dhSES.ny.gov/grants/eph.cfm>.

G. Equipment Maintenance Requirements

1. Subrecipients must track grant funds used for maintenance contracts, warranties, repair or replacement costs and upgrades, and report such expenditures in fiscal and program reports.

H. New York State Emergency Management Certification and Training Program

1. Participation in and successful completion of the New York State Emergency Management Certification and Training Program (EMC Training Program) is a mandatory requirement under this Contract and a condition of funding. The EMC Training Program will be made available to, and required for, DHSES specified county and city government officials in order to ensure a consistent emergency management preparedness and response strategy across the State. Attendee substitutions, except as expressly approved by DHSES, shall not be permitted or deemed to be in compliance with this requirement.
2. To fulfill the EMC Training Program requirement of the Contract and in order to be eligible for funding under this Contract, subrecipients must arrange for DHSES specified subrecipient employees to receive and acknowledge receipt of EMC Training no later than 180 days after execution of this Contract. Copies of the training certificates for each required participant must be submitted to DHSES upon execution of the Contract, or, in the event that training is scheduled, but not yet complete, the subrecipient will be required to submit a signed statement indicating the scheduled future dates of attendance, and no later than thirty (30) days after the training is complete, forward such training certificates to DHSES. Continued compliance with the EMC Training Program also requires an annual refresher training of one day per 365 day cycle from the date of initial training for previously trained individuals if such person remains employed by the subrecipient and fulfilling the same functions as he or she fulfilled during the initial training. Should a new employee be designated to serve in the DHSES specified positions, then he or she must come into compliance with the EMC Training Program requirements not later than 180 days after taking office.
3. Subrecipient must commit to active participation in a DHSES Annual Capabilities Assessment as a condition of funding. Active participation includes making reasonable staff, records, information, and time resources available to DHSES to perform

the Annual Capabilities Assessment and meet the objectives and goals of the program. Subrecipients must be aware that the process of conducting a DHSES Annual Capabilities Assessment is an ongoing process and requires a continued commitment on the part of the subrecipient to ensure that it is effective.

4. All subrecipients funded through this program agree to provide DHSES, upon request at any time during the life of the grant contract, such cooperation and information deemed necessary by DHSES to ascertain: (1) the nature and extent of any threats or hazards that may pose a risk to the subrecipient ; and (2) the status of any corresponding subrecipient plans, capabilities, or other resources for preventing, protecting against, mitigating, responding to, and recovering from such threats or hazards.

5. Additionally, pursuant to Article 26 of the NYS Executive law, DHSES is authorized to undertake periodic drills and simulations designed to assess and prepare responses to terrorist acts or threats and other natural and man made disasters. Funded subrecipients agree to attend and participate in any DHSES sponsored conferences, training, workshops or meetings (excluding those identified by DHSES as voluntary) that may be conducted, by and at the request of DHSES, during the life of the grant contract.

6. Failure to comply with any of the requirements, as listed above, may result in sanctions up to and including the immediate suspension and/or revocation of the grant award.

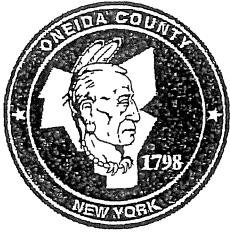
I. National Cyber Security Review

1. Completion of the National Cybersecurity Review (NCSR) is a mandatory annual requirement under this Contract and a condition of funding. The NCSR will be open from October to December each year and enables agencies to benchmark and measure progress of improving their cybersecurity posture. The Chief Information Officer (CIO), Chief Information Security Officer (CISO), or equivalent for each subrecipient should complete the NCSR. If there is no CIO/CISO, the most senior cybersecurity professional should complete the assessment. The NCSR is available at no cost to the user. The Multi-State Information Sharing and Analysis Center (MS-ISAC) improves the overall cybersecurity posture of the nation's state, local, tribal, territorial, nonprofit, and private sector agencies through focused cyber threat prevention, protection, response, and recovery. It is a no-cost, membership-based community that includes 24/7 cybersecurity support, analysis and monitoring, and a central location for reporting threats and suspicious activities. The MS-ISAC is available for both technical and administrative assistance on the NCSR. For more on the MS-ISAC, visit <https://www.cisecurity.org/ms-isac/services/ncsr/> or email ncsr@cisecurity.org.

2. Failure to comply with any of the requirements, as listed above, may result in sanctions up to and including the immediate suspension and/or revocation of the grant award.

J. National Priorities

The FY2020 HSGP Notice of Funding Opportunity (NOFO) identified four priority areas: Cyber Security, Protection of Soft Targets/Crowded Places, Intelligence and Information Sharing, and Addressing Emerging Threats. As outlined in the NOFO, a minimum of 5% of the jurisdiction's overall award for the State Homeland Security Program (SHSP) and Urban Area Security Initiative (UASI) must be allocated to each priority area.



ONEIDA COUNTY
DEPARTMENT OF EMERGENCY SERVICES
FIRE COORDINATOR
911 CENTER

ANTHONY J. PICENTE, JR.
County Executive

KEVIN W. REVERE
Director

120 Base Road ♦ Oriskany, New York 13424
Phone: (315) 765-2526 ♦ Fax: (315) 765-2529

September 11, 2020

The Honorable Anthony J. Picente, Jr.
Oneida County Executive
800 Park Avenue
Utica, New York 13501

FN 20 20-330
PUBLIC SAFETY
WAYS & MEANS

Dear County Executive Picente,

This is a grant contract awarded to Oneida County under the FY2020 Emergency Management Performance Grant (EMPG-S). Funding for this grant is provided by the United States Department of Homeland Security, Federal Emergency Management Agency (FEMA). This grant covers the period from January 27, 2020 to July 31, 2021.

The FY2020 EMPG-S program provides funding for emergency management agencies to prevent, prepare for, and to respond to the Covid-19 public health emergency. All proposed projects must have a clear nexus to Covid-19.

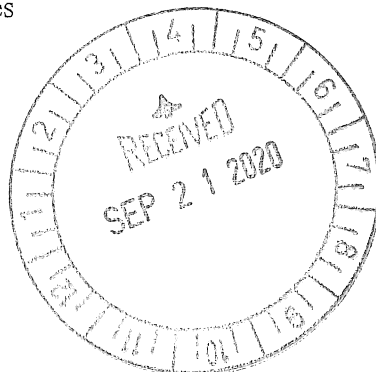
The amount of this grant is \$51,347.00 and requires a match from the County in the amount of \$51,347.00, bringing the total amount of this project to \$102,694.00. This grant funding is for personal protective equipment (isolation gowns, N95 masks, etc.).

I respectfully request that this contract be submitted to the Board of Legislators for approval, and when approved, please have it electronically signed. If you have any questions, please contact me.

Sincerely,

Edward Stevens
Director of Emergency Services

mle



Reviewed and Approved for submittal to the
Oneida County Board of Legislators by

Anthony J. Picente, Jr.
County Executive

Date 9-21-20

Oneida Co. Department:

Competing Proposal _____
Only Respondent _____
Sole Source RFP _____
Other X

**ONEIDA COUNTY BOARD OF LEGISLATORS
CONTRACT SUMMARY**

Name & Address of Vendor: New York State Division of Homeland Security
and Emergency Services
1220 Washington Avenue
Building 7A Suite 710
Albany, NY 12242

Title of Activity or Service: FY2020 Emergency Management Performance
Covid-19 Supplemental Grant (EMPG-S)

Proposed Dates of Operation: 01/27/2020 – 7/31/2021

Client Population/Number to be Served: Population of Oneida County

Summary Statements

1) Narrative Description of Proposed Services: Funding to assist in responding to the COVID-19 pandemic. These funds are to be used for personal protective equipment.

2) Program/Service Objectives and Outcomes: To support the development and maintenance of a comprehensive emergency management effort in the county. To prevent, prepare for and to respond to Covid-19 public health emergencies.

Total Funding Requested: \$102,694.00 **Account #:** A4960

Oneida County Dept. Funding Recommendation: \$102,694.00

Proposed Funding Sources (Federal \$/ State \$/County \$): **State:** \$51,347.00
County Match: \$51,347.00

Cost Per Client Served: N/A

Past Performance Data: N/A

O.C. Department Staff Comments: Supplemental grant to assist in response to the COVID-19 pandemic.

<p><u>STATE AGENCY</u> New York State Division of Homeland Security and Emergency Services 1220 Washington Avenue Building 7A Suite 710 Albany, NY 12242</p>	<p><u>NYS COMPTROLLER'S NUMBER:</u> C972004 (Contract Number) <u>ORIGINATING AGENCY CODE:</u> 01077</p>
<p><u>GRANTEE/CONTRACTOR:</u> (Name & Address) Oneida County 800 Park Avenue Utica, NY 13501</p>	<p><u>TYPE OF PROGRAMS:</u> WM2020 EMPG-Sup <u>CFDA NUMBER:</u> 97.042 <u>DHSES NUMBERS:</u> WM20972004</p>
<p><u>FEDERAL TAX IDENTIFICATION NO:</u> 15-6000460 <u>MUNICIPALITY NO:</u> (if applicable) 300100000 000 <u>SFS VENDER NO:</u> 1000002595 <u>DUN & BRADSTREET NO:</u> 075814186</p>	<p><u>INITIAL CONTRACT PERIOD:</u> FROM 01/27/2020 TO 07/31/2021 <u>FUNDING AMOUNT FOR INITIAL PERIOD:</u> \$51,347.00</p>
<p><u>STATUS:</u> Contractor is not a sectarian entry. Contractor is not a not-for-profit organization.</p>	<p><u>MULTI-YEAR TERM:</u> (if applicable)</p>
<p><u>CHARITIES REGISTRATION NUMBER:</u> n/a (Enter number of Exempt) if "Exempt" is entered above, reason for exemption. n/a</p> <div style="border: 1px solid black; padding: 5px; width: fit-content;"> <p>Contractor has _____ has not _____ timely filed with the Attorney General's Charities Bureau all required periodic or annual written reports.</p> </div>	<p><u>APPENDIX ATTACHED AND PART OF THIS AGREEMENT</u> ___ APPENDIX A Standard Clauses required by the Attorney General for all State contracts <input checked="" type="checkbox"/> APPENDIX A1 Agency-specific Clauses <input checked="" type="checkbox"/> APPENDIX B Budget <input checked="" type="checkbox"/> APPENDIX C Payment and Reporting Schedule <input checked="" type="checkbox"/> APPENDIX D Program Workplan and Special Conditions ___ APPENDIX X Modification Agreement Form (to accompany modified appendices for changes in terms or considerations on an existing period or for renewal periods) ___ DHSES-55 Budget Amendment/Grant Extension Request ___ Other - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion</p>
<p>IN WITNESS THEREOF, the parties hereto have electronically executed or approved this AGREEMENT on the dates of their signatures.</p>	
<p>NYS Division of Homeland Security and Emergency Services BY: _____ Date: _____ <u>State Agency Certification:</u> "In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract". GRANTEE: BY: Hon. Anthony J. Picante jr., County Executive Date: _____</p>	
<p><u>ATTORNEY GENERAL'S SIGNATURE</u> _____ Title: _____ Date: _____</p>	<p><u>COMPTROLLER'S SIGNATURE</u> _____ Title: _____ Date: _____</p>

8/20/2020

Award Contract

EMPG Supplemental

Award Contract

Project No.

ES20-1019-D00

Grantee Name

Oneida County

08/20/2020

8/20/2020

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08/20/2020

Budget Summary by Participant

Oneida County

Oneida County Emergency Services - Version 1

#	Equipment	AEL	Number	Unit Cost	Total Cost	Grant Funds	Matching Funds
1	Personal Protective Equipment (isolation gowns, N95 masks, etc.)	01	1	\$102,694.00	\$102,694.00	\$51,347.00	\$51,347.00
Total					\$102,694.00	\$51,347.00	\$51,347.00

Total Project Costs	Total Cost	Grant Funds	Matching Funds
	\$102,694.00	\$51,347.00	\$51,347.00

Total Contract Costs	Total Cost	Grant Funds	Matching Funds
	\$102,694.00	\$51,347.00	\$51,347.00

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ES20-1019-D00

Grantee Name

Oneida County

08/20/2020

Work Plan**Goal**

To assist local governments in the prevention, preparation for and response to Coronavirus Disease 2019 (COVID-19) public health emergency.

Objective #1

G & T Workplan Code - 24. Develop/enhance homeland security/emergency management organization and structure.

Investment Justification - Emergency Management Performance Grant - Supplemental

NYS Critical Capability

Primary - Health Emergency Preparedness

The enhancement of emergency management capabilities to prevent, prepare and respond to the COVID-19 public health emergency.

Task #1 for Objective #1

Purchase allowable personal protective equipment (isolation gowns, N95 masks, etc.). Train appropriate personnel in the proper use of the equipment and place the equipment into service.

Performance Measure

1 Identify equipment ordered and received. Provide a brief narrative on the training of personnel and the deployment of equipment. Describe how the project enhanced emergency management capabilities related to the COVID-19 public health emergency in the jurisdiction. Equipment accountability records are properly maintained. Provide explanation if equipment is received but not deployed, and include deployment plans as appropriate.

Award Contract

Project No.

ES20-1019-D00

Grantee Name

Oneida County

08/20/2020

NEW YORK STATE
DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES
GRANT CONTRACT

APPENDIX A-1

The Contract is hereby made by and between the State of New York, acting by and through the New York State Division of Homeland Security and Emergency Services (DHSES or State Agency) and the public or private entity ('Contractor' or 'Subrecipient') identified on the face page hereof (Face Page).

WITNESSETH:

WHEREAS, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

WHEREAS, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Contract;

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

STANDARD TERMS AND CONDITIONS

I. GENERAL TERMS AND CONDITIONS

A. Executory Clause: In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Contract.

B. Required Approvals: In accordance with Section 112 of the State Finance Law (or, if the Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Contract exceeds \$50,000 (or \$85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the AG and OSC.

Budget Changes: An amendment that would result in a transfer of funds among program activities or budget categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the Offices of the State Comptroller and Attorney General where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Appendix C (Payment and Reporting Schedule).

C. Contract Parts: This Contract incorporates the face pages attached, this Appendix and all of the marked Appendices identified on the face page hereof.

D. Order of Precedence: In the event of a conflict among (i) the terms of the Contract (including any and all Appendices and amendments) or (ii) between the terms of the Contract and the original request for proposal, the program application or other Appendix that was completed and executed by the Contractor in connection with the Contract, the order of precedence is as follows:

1. Appendix A-1¹

2. Modifications to the Face Page
3. Modifications to Appendices B, C and D
4. The Face Page
5. Appendices B, C and D
6. Other attachments, including, but not limited to, the request for proposal or program application

E. Governing Law: This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

F. Funding: Funding for the entire Contract Period shall not exceed the funding amount specified as 'Funding Amount for the Initial Period' on the Face Page hereof or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Contract shall not exceed the applicable amounts specified in the applicable Appendix B form (Budget).

G. Contract Period: The period of this Contract shall be as specified on the face page hereof.

H. Contract Performance: The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Appendix D (Work Plan and Special Conditions) in accordance with the provisions of the Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program. For federally-funded grants, DHSES will conduct an evaluation to determine risks posted by Contractors in managing federal awards. Consistent with 2 CFR §200.331, the results of the evaluation may result in the imposition special conditions to this Contract including but not limited to increased monitoring, suspension of reimbursements and cancellation of the Contract.

I. Modifications: To modify the Contract, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, change in scope, or change in the term, is subject to the approval of the NYS Office of the State Comptroller. Any other modifications shall be processed in accordance with DHSES guidelines as stated in this Contract.

J. Severability: Any provision of the Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Contract shall attempt in good faith to reform the Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

K. Interpretation: The headings in the Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

L. Notice:

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:

- a. by certified or registered United States mail, return receipt requested;
- b. by facsimile transmission;
- c. by personal delivery;
- d. by expedited delivery service; or
- e. by e-mail.

2. Notices to the State shall be addressed to the Program Office.

3. Notices to the Contractor shall be addressed to the Contractor's designee.

4. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited

delivery services or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.

5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the Contract by giving fifteen (15) calendar days prior written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

M. Service of Process: In addition to the methods of service allowed by the State Civil Practice Law & Rules (CPLR), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. The Contractor shall have thirty (30) calendar days after service hereunder is complete in which to respond.

N. Set-Off Rights: The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold, for the purposes of set-off, any moneys due to the Contractor under the Contract up to any amounts due and owing to the State with regard to the Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of setoff pursuant to an audit, the finalization of such audit by DHSES, its representatives, or OSC.

O. Indemnification: The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Contract.

P. Non-Assignment Clause: In accordance with Section 138 of the State Finance Law, the Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the State's previous written consent, and attempts to do so shall be considered to be null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract, let pursuant to Article XI of the State Finance Law, may be waived at the discretion of DHSES and with the concurrence of OSC, where the original contract was subject to OSC's approval, where the assignment is due to a reorganization, merger, or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that the merged contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless the Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

Q. Legal Action: No litigation or regulatory action shall be brought against the federal government, the State of New York, DHSES or against any county or other local government entity with the funds provided under the Contract. The term 'litigation' shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from any of the federal government, the State of New York, DHSES or any county or other local government entity. The term 'regulatory action' shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

R. No Arbitration: Disputes involving the Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

S. Secular Purpose: Services performed pursuant to the Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

T. Partisan Political Activity and Lobbying: Funds provided pursuant to the Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

U. Reciprocity and Sanctions Provisions: The Contractor is hereby notified that if its principal place of business is located in a country, nation, province, state, or political subdivision that penalizes New York State vendors, and if the goods or services it offers shall be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that it be denied contracts which it would otherwise obtain.²

V. Reporting Fraud and Abuse: Contractor acknowledges that it has reviewed information on how to prevent, detect, and report

fraud, waste and abuse of public funds, including information about the federal False Claims Act, the New York State False Claims Act and whistleblower protections.

W. Non-Collusive Bidding: By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor's behalf.

X. Federally Funded Grants: All of the specific federal requirements that are applicable to the Contract are identified in Section V (FEDERALLY FUNDED GRANT REQUIREMENTS) of this Appendix. To the extent that the Contract is funded in whole or part with federal funds, (i) the provisions of the Contract that conflict with federal rules, federal regulations, or federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Section V (FEDERALLY FUNDED GRANT REQUIREMENTS) of this Appendix. To the extent that section V (FEDERALLY FUNDED GRANT REQUIREMENTS) conflict with any other provisions of the Contract, the federal requirements of Section V shall supersede all other provisions of the Contract where required.

Y. The Contractor must meet the program objectives summarized in the Program Work Plan and Special Conditions (Appendix D) to the satisfaction of DHSES in accordance with provisions of the Contract, relevant laws, rules and regulations, administrative and fiscal guidelines and, where applicable, operating certificates for facilities or license for an activity or program.

II. TERM, TERMINATION AND SUSPENSION

A. Term: The term of the Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

B. Renewal:

1. General Renewal: The Contract may consist of successive periods on the same terms and conditions, as specified within the Contract (a 'Simplified Renewal Contract'). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Contract.

2. Renewal Notice to Not-for-Profit Contractors:

a. Pursuant to State Finance Law §179-t, if the Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State's intent to renew or not to renew the Contract no later than ninety (90) calendar days prior to the end of the term of the Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State's intent to renew or not to renew the Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State ('Unusual Circumstances'), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, 'Unusual Circumstances' shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

b. Notification to the not-for-profit Contractor of the State's intent to not renew the Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Contract as required in this Section and State Finance Law §179-t, the Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Contract.

C. Termination:

1. Grounds:

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

b. Cause: The State may terminate the Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Contract.

c. Non-Responsibility: In accordance with the provisions of this Contract, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.

d. Convenience: The State may terminate the Contract in its sole discretion upon thirty (30) calendar days prior written notice.

e. Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Contract, the Contract may be terminated or reduced at DHSES's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to DHSES for payment of such costs. Upon termination or reduction of the Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to DHSES. In any event, no liability shall be incurred by the State (including DHSES) beyond monies available for the purposes of the Contract. The Contractor acknowledges that any funds due to DHSES or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.

f. Force Majeure: The State may terminate or suspend its performance under the Contract immediately upon the occurrence of a 'force majeure'. For purposes of the Contract, 'Force majeure' shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

2. Notice of Termination:

a. Service of notice: Written notice of termination shall be sent by:

i. personal messenger service; or

ii. certified mail, return receipt requested and first class mail.

b. Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:

i. if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or

ii. if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

3. Effect of Notice and Termination on State's Payment Obligations:

a. Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.

b. The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Contract after its termination date.

4. Effect of Termination Based on Misuse or Conversion of State or Federal Property:

Where the Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Contract for the purposes set forth herein, the State may, at its option, require:

a. the repayment to the State of any monies previously paid to the Contractor; or

b. the return of any real property or equipment purchased under the terms of the Contract; or

c. an appropriate combination of clauses (a) and (b) of Section 11(C)(4) herein.

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

D. Suspension: The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time.

In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time as the State issues a formal written notice authorizing a resumption of performance under the Contract.

III. PAYMENT AND REPORTING

A. Terms and Conditions:

1. In full consideration of contract services to be performed, DHSES agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.

2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Contract shall not be reimbursed.

3. The Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Appendix C (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.

4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of DHSES, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments. Authorization for electronic payment must be made through the Statewide Financial System's (SFS) Vendor Portal: <https://esupplier.sfs.ny.gov/psp/fscm/SUPPLIER/?cmd=login>. For assistance to access the SFS Vendor Portal, please contact the SFS Help Desk at 518-457-7717 or 855-233-8363 or email HelpDesk@sfs.ny.gov. Contractor acknowledges that it will not receive payment on any vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Director has expressly authorized payment by paper check as set forth above.

5. If travel expenses are an approved expenditure under this Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.

6. Timeliness of advance payments or other claims for reimbursement, and any interest to be paid to Contractor for late payment, shall be governed by Article 11-A of the State Finance Law to the extent required by law.

7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, 'Full Execution' shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

B. Advance Payment and Recoupment:

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Appendix C (Payment and Reporting Schedule).

2. Advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page.

3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Appendix C) will be modified as part of the renewal process.

4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Appendix C (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.

5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then

subsequent claims may be reduced until the advance is fully recovered.

C. Claims for Reimbursement:

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Contract in accordance with this Section and the applicable claiming schedule in Appendix C (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Appendix B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Appendix C (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:

a. Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Appendix D (Work Plan and Special Conditions). The Contractor shall submit to DHSES quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to DHSES in accordance with the procedures set forth in Section III(A)(3) herein.

b. Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Appendix D (Work Plan and Special Conditions). The Contractor shall submit to DHSES monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to DHSES in accordance with the procedures set forth in Section III(A)(3) herein.

c. Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Appendix D (Work Plan and Special Conditions). The Contractor shall submit to DHSES biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to DHSES in accordance with the procedures set forth in Section III(A)(3) herein.

d. Milestone/Performance Reimbursement:³ Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event. Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Appendix C (Payment and Reporting Schedule). DHSES shall make milestone payments subject to the Contractor's satisfactory performance.

e. Fee for Service Reimbursement:⁴ Payment shall be limited to only those fees specifically agreed upon in the Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f. Rate Based Reimbursement:⁵ Payment shall be limited to rate(s) established in the Contract. Payment may be requested no more frequently than monthly.

g. Scheduled Reimbursement:⁶ DHSES shall generate vouchers at the frequencies and amounts as set forth in Appendix C(Payment and Reporting Schedule).

h. Interim Reimbursement: DHSES may generate vouchers on an interim basis and the amounts requested by the Contract as set forth in Attachment C (Payment and Reporting Schedule).

i. Fifth Quarter Payments:⁷ Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. DHSES shall use a written directive for fifth quarter financing. DHSES shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.

4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Contract as security for the faithful completion of services or work, as applicable, under the Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.

5. The State shall not be liable for payments on the Contract if it is made pursuant to a Community Projects Fund appropriation

if insufficient monies are available pursuant to Section 99-d of the State Finance Law.

6. All vouchers submitted by the Contractor pursuant to the Contract shall be submitted to DHSES no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by DHSES, and, if actual expenditures by the Contractor are less than such sum, the amount payable by DHSES to the Contractor shall not exceed the amount of actual expenditures.

7. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to thirty (30) calendar days after the contract end date to make expenditures.

D. Identifying Information and Privacy Notification:

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property, must include the Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number, (ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.

2. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. The personal information is requested by the purchasing unit of DHSES contracting to purchase the goods or services or lease the real or personal property covered by the Contract. This information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York, 12236.

E. Refunds:

1. In the event that the Contractor must make a refund to the State for Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in this Appendix. The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Office address listed in Appendix C.

2. If at the end or termination of the Contract, there remains any unexpended balance of the monies advanced under the Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

F. Outstanding Amounts Owed to the State: Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

G. Program and Fiscal Reporting Requirements:

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Appendix C (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to DHSES in order for the Contractor to be eligible for payment.

2. Consistent with the selected reporting options in Appendix C (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:

a. If the Expenditure Based Reports option is indicated in Appendix C (Payment and Reporting Schedule), the Contractor shall provide DHSES with one or more of the following reports as required by the following provisions and Appendix C (Payment and Reporting Schedule) as applicable:

i. Narrative/Qualitative Report: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Appendix C (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Appendix D (Work Plan and Special Conditions). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.

ii. Statistical/Quantitative Report: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Appendix C (Payment and Reporting Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.).

iii. Expenditure Report: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Appendix C (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.

iv. Final Report: The Contractor shall submit a final report as required by the Contract, not later than the time period listed in Appendix C (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Appendix D (Work Plan and Special Conditions).

v. Consolidated Fiscal Report (CFR): The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Appendix C (Payment and Reporting Schedule).

b. If the Performance-Based Reports option is indicated in Appendix C (Payment and Reporting Schedule), the Contractor shall provide DHSES with the following reports as required by the following provisions and Appendix C (Payment and Reporting Schedule) as applicable:

i. Progress Report: The Contractor shall provide DHSES with a written progress report using the forms and formats as provided by DHSES, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Appendix D (Work Plan and Special Conditions). Progress reports shall be submitted in a format prescribed in the Contract.

ii. Final Progress Report: Final scheduled payment is due during the time period set forth in Appendix C (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Appendix C (Payment and Reporting Schedule). DHSES shall complete its audit and notify the Contractor of the results no later than the date set forth in Appendix C (Payment and Reporting Schedule). Payment shall be adjusted by DHSES to reflect only those services/expenditures that were made in accordance with the Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Appendix C (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.

3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Appendix C (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Appendix C (Payment and Reporting Schedule).

H. Notification of Significant Occurrences:

1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to DHSES within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.

2. The Contractor shall immediately notify in writing the program manager assigned to the Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

A. Contractor as an Independent Contractor/Employees:

1. The State and the Contractor agree that the Contractor is an independent contractor and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. The Contractor shall be solely responsible for the recruitment,

hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Contract, and all applicable Federal and State laws and regulations.

2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Contract and/or any subcontract entered into under the Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Contract, Contractor shall immediately notify the State.

B. Subcontractors:

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.

2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of \$100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of \$100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Contract, and (3) that nothing contained in the subcontract, nor under the Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.

3. If requested by the State, prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.

4. If requested by the State, when a subcontract equals or exceeds \$100,000, the subcontractor must submit a Vendor Responsibility Questionnaire (Questionnaire).

5. If requested by the State, when a subcontract is executed, the Contractor must provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.

6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to DHSES, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Appendix C (Payment and Reporting Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

C. Use of Material, Equipment, or Personnel:

1. The Contractor shall not use materials, equipment, or personnel paid for under the Contract for any activity other than those provided for under the Contract, except with the State's prior written permission.

2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Contract.

D. Property:

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.

a. If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.

b. If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein,

after the termination of the Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Contract.

c. In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.

d. The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to DHSES naming DHSES as an additional insured, covering the loss, theft or destruction of such equipment.

e. A rental charge to the Contract for a piece of Property owned by the Contractor shall not be allowed.

f. The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.

g. No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.

2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Contract:

a. For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.

b. For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.

3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Contract shall be governed by the terms and conditions of Section V (FEDERALLY FUNDED GRANT REQUIREMENTS) contained herein.

4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.

5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

E. Records and Audits:

1. General:

a. The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Contract (collectively, Records).

b. The Contractor agrees to produce and retain for the balance of the term of the Contract, and for a period of six years from the later of the date of (i) the Contract and (ii) the most recent renewal of the Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Contract. Such Records may include, but not be limited to, original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

i. personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders, detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

ii. payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

iii. non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, cost allocation plans, and bid and procurement documentation, such as quotes, proposals and selection

records, if applicable.

iv. receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.

c. The OSC, AG and any other person or entity authorized to conduct an examination, as well as DHSES or State Agencies involved in the Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

d. The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records, as exempt under Section 87 of the Public Officers Law, is reasonable.

e. Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

2. Cost Allocation:

a. For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of 2 CFR Part 200. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.

b. For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

3. Federal Funds: For records and audit provisions governing Federal funds, please see Section V (FEDERALLY FUNDED GRANT REQUIREMENTS) of this Appendix A-1.

F. Confidentiality: The Contractor agrees that it shall use and maintain information relating to individuals who may receive services, and their families pursuant to the Contract, or any other information, data or records deemed confidential by the State (Confidential Information) only for the limited purposes of the Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

G. Publicity:

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.

2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:

a. Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and

b. State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.

3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Master Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Master Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) day period in which to review each manuscript for compliance with Confidential Information requirements; or (ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first submits such manuscripts to the State forty-five (45)

calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section IV(G)(2) (Publicity) hereof.

H. Web-Based Applications-Accessibility: Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by DHSES and the results of such testing must be satisfactory to DHSES before web content shall be considered a qualified deliverable under the Contract or procurement.

I. Non-Discrimination Requirements: Pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional nondiscrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender identity or expression), 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. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that the Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Contract. The Contractor shall be subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises: In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting State Agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State Agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting State Agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;
2. The Contractor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts;
3. The Contractor shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
4. At the request of the State, 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 shall not discriminate on the basis of race, creed, color, national origin sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and
5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race,

creed, color, national origin, sex, age, disability or marital status.

6. The Contractor shall have institutional policies or practices that address harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sexual orientation, gender identity, military status, sex, marital status, disability, or other protected basis.

The Contractor shall include the provisions of subclauses 1 – 6 of this Section (IV)(J), in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law and if such duplication or conflict exists, the State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

K. Omnibus Procurement Act of 1992: It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises, as bidders, subcontractors and suppliers on its procurement contracts.

1. If the total dollar amount of the Contract is greater than \$1 million, the Omnibus Procurement Act of 1992 requires that by signing the Contract, the Contractor certifies the following:

a. The Contractor has made reasonable efforts to encourage the participation of State business enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

b. The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

c. The Contractor agrees to make reasonable efforts to provide notification to State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

d. The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of the Contract and agrees to cooperate with the State in these efforts.

L. Workers' Compensation Benefits:

1. In accordance with Section 142 of the State Finance Law, the Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of the Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

M. Unemployment Insurance Compliance: The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to DHSES staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;

2. any debts owed for UI contributions, interest, and/or penalties;

3. the history and results of any audit or investigation; and

4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of

such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Contract.

N. Vendor Responsibility:

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may obtain a paper form from the OSC prior to execution of the Contract. The Contractor further covenants and represents that as of the date of execution of the Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.
2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.
3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.
4. The State reserves the right, in its sole discretion, at any time during the term of the Contract:
 - a. to require updates or clarifications to the Questionnaire upon written request;
 - b. to inquire about information included in or required information omitted from the Questionnaire;
 - c. to require the Contractor to provide such information to the State within a reasonable timeframe; and
 - d. to require as a condition precedent to entering into the Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and
 - e. to require the Contractor to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. By signing the Contract, the Contractor agrees to comply with any such additional conditions that have been made a part of the Contract.
5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Contract.
6. The State, in its sole discretion, reserves the right to make a final Determination of Non-Responsibility at any time during the term of the Contract based on:
 - a. any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or
 - b. the State's discovery of any material information which pertains to the Contractor's responsibility.
7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non-responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

O. Charities Registration: If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish DHSES with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Contract.

P. Consultant Disclosure Law:⁸ If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services, then in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

Q. Wage and Hours Provisions: If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

R. Participation By Minority Group Members And Women With Respect To Grant Contracts: Requirements And Procedures (state-funded grants only)

1. General Provisions

a. The Division of Homeland Security and Emergency Services (DHSES) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ('MWBE Regulations') for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

b. The Contractor to the subject contract (the 'Contractor' and the 'Contract', respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the DHSES, to fully comply and cooperate with the DHSES in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ('EEO') and contracting opportunities for certified minority and women-owned business enterprises ('MWBEs'). Contractor's demonstration of 'good faith efforts' pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the 'Human Rights Law') or other applicable federal, state or local laws.

c. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VI of this Appendix or enforcement proceedings as allowed by the Contract.

2. Contract Goals

a. For purposes of this contract, DHSES has established overall goals for Minority and Women-Owned Business Enterprises ('MWBE') participation which are specified in the contract work plan.

b. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in the contract work plan hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>. Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development (518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

c. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, 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 Contractor 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 DHSES for liquidated or other appropriate damages, as set forth herein.

3. Equal Employment Opportunity (EEO)

a. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the 'Division'). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

b. Contractor shall comply with the following provisions of Article 15-A:

- i. Contractor and Subcontractors 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.
- ii. The Contractor shall maintain an EEO policy statement and submit it to the DHSES if requested.

iii. If Contractor or Subcontractor does not have an existing EEO policy statement, Section 4 below may be used to develop one.

iv. The Contractor's EEO policy statement shall include the following, or similar, language:

- a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
- b) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- c) 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 (a) through (c) of this Subsection (iv) and Paragraph 'e' of this Section 3, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

c. Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan 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. Contractors shall complete the Local Assistance MWBE Equal Employment Opportunity Staffing Plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

d. Workforce Employment Utilization Report

- i. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the DHSES of any changes to the previously submitted Local Assistance MWBE Equal Employment Opportunity Staffing Plan. This information is to be submitted annually or as otherwise required by the DHSES during the term of the contract, for the purpose of reporting the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Local Assistance MWBE Workforce Employment Utilization Report form must be used to report this information.
- ii. Separate forms shall be completed by Contractor and any Subcontractor performing work on the Contract.
- iii. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Local Assistance MWBE Workforce Employment Utilization Report and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Local Assistance MWBE Workforce Employment Utilization Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

e. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. 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.

4. MWBE Utilization Plan

- a. The Contractor represents and warrants that Contractor has submitted a Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form either prior to, or at the time of, the execution of the contract.
- b. Contractor agrees to use such Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in the contract workplan.
- c. Contractor further agrees that a failure to submit and/or use such Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, DHSES shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

5. Waivers

If the DHSES, upon review of the Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Plan, the Detailed Itemization Forms or the Local Assistance MWBE Workforce Employment Utilization Report determines that a Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the DHSES 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.

6. MWBE Subcontractor Utilization Quarterly Report

Contractor is required to report MWBE Subcontractor utilization, as part of the quarterly claim process, to the DHSES by the last day of the month following the end of each calendar quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

7. Liquidated Damages - MWBE Participation

a. Where DHSES determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, such finding constitutes a breach of Contract and DHSES may withhold payment from the Contractor as liquidated damages and/or provide for other appropriate remedies.

b. Such liquidated damages shall be calculated as an amount equaling the difference between:

- 1) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
- 2) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

c. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the DHSES, Contractor shall pay such liquidated damages to the DHSES within sixty (60) days after they are assessed by the DHSES unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the DHSES.

8. M/WBE AND EEO Policy Statement

a. The Contractor agrees to adopt the following policies or similar policies with respect to the project being developed or services rendered in this contract with the Division of Homeland Security and Emergency Services:

M/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. 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.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Contractor agrees to comply with all MWBE and EEO contract goals reflected on the MWBE Utilization Plan and Staffing Plan respectively, that have been submitted with the application for this contract.

S. Additional Terms

1. The Contractor agrees that if the project is not operational within 60 days of the execution date of the Contract, it will report by letter to DHSES the steps taken to initiate the project, the reasons for delay, and the expected starting date. If the project is not operational within 90 days of the execution date of the Contract, the Contractor will submit a second statement to DHSES explaining the delay. DHSES may either cancel the project and redistribute the funds or extend the implementation date of the project beyond the 90-day period when warranted by extenuating circumstances.

2. The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of DHSES, or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability prior performance, and financial capacity.

a. The DHSES Commissioner, or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when DHSES discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of the notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of DHSES, or his or her designee, issues a written notice authorizing a resumption of performance under the Contract.

b. Upon written notice to the Contractor, and a reasonable opportunity to be heard with the appropriate DHSES officials or staff, the Contract may be terminated by the DHSES Commissioner, or his or her designee at the Contractor's expense where the Contractor is determined by the DHSES Commissioner, or his or her designee, to be non-responsible. In such event, the Commissioner, or his or her designee, may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

3. DHSES shall make payments and any reconciliation in accordance with the Payment and Reporting Schedule (Appendix C). DHSES shall pay the Contractor for completed, approved projects, a sum not to exceed the amount noted on the Face Page hereof. The Contractor must not request payments or reimbursements that duplicate funding or reimbursement from any other source for Contractor costs and services pursuant to this Contract.

4. The Contractor shall submit detailed itemization forms or a form deemed acceptable to DHSES for personal service, fringe benefit and non-personal service expenditures with any voucher and fiscal cost report requesting reimbursement. Grant-related expenditures shall be reported on Fiscal Cost Reports approved by DHSES. For Federally-funded awards, the detailed Itemization forms shall include the required certifications pursuant to 2 CFR §200.415. These reports must be prepared periodically and as defined in Appendix C of this Contract. All reported expenditures must reconcile to the program accounting records and the approved budget. Prior period adjustments shall be reported in the same accounting period that the correction is made.

5. The Contractor's request for travel, meals or lodging reimbursement shall be in accordance with Appendix B, Budget, and, unless written authorization has been received from DHSES, shall not exceed rates authorized by the NYS Office Of State Comptroller (Audit and Control). Rates may be viewed online at: <http://www.osc.state.ny.us/state-agencies/travel>.

6. The Contractor's employment of a consultant must be supported by a written Contract executed by the Contractor and the consultant. A consultant is defined as an individual or organization hired by the Contractor for the stated purpose of accomplishing a specific task relative to the funded project. All consultant services must be obtained in a manner that provides for fair and open competition. The Contractor shall retain copies of all solicitations seeking a consultant, written Contracts and documentation justifying the cost and selection of the consultant, and make them available to DHSES upon request. The Contractor further agrees that it shall assume sole and complete responsibility for fulfilling all the obligations set forth in the Contract and the Contractor must guarantee the work of the consultant as if it were its own. Failure to follow these guidelines may result in a disallowance of costs.
7. Additionally, Contractor must adhere to the following guidelines at a minimum when making all procurements, including consultant services. Failure to follow these guidelines may result in a disallowance of costs.
- a. A Contractor who proposes to purchase goods or services from a particular vendor without competitive bidding must obtain the prior written approval of DHSES. The request for approval must be in writing and set forth, at a minimum, a detailed justification for selection and the basis upon which the price was determined to be reasonable. Further, such procurement must be in accordance with the guidelines, bulletins and regulations of the Office of the State Comptroller, State Procurement Council, and the U.S. Department of Homeland Security. For Federally-funded awards, contractor must comply with 2 CFR §200.320(f). A copy of DHSES' approval must also be submitted with the voucher for payment.
 - b. The rate for consultant services, and cost of equipment or goods, shall be reasonable and consistent with the amount paid for similar services or goods and equipment in the marketplace. Time and effort reports are required for consultants.
 - c. Written justification and documentation for all procurements must be maintained on file, and made available to DHSES upon request. All procurements must be made in a fair and open manner and in accordance with the pre-determined methodology established for evaluating bids (e.g., lowest responsible bidder or best value).
 - d. A Contractor that is a State entity must make all procurements in accordance with State Finance Law Article 11 and any other applicable regulations.
 - e. A Contractor that is a local government must make all procurements in accordance with General Municipal Law Article 5-A, and any other applicable regulations.
 - f. A Contractor that is a not-for-profit and all other entities that do not meet the descriptions in Section III(S)(7)(d) or (e) herein must make all procurements as noted below:
 - i. If the Contractor is eligible to purchase an item or service from a government contract or is able to purchase such item or service elsewhere at a lower than or equal price, then such purchase may be made immediately.
 - ii. A Contractor may purchase any single piece of equipment, single service or multiples of each that cost up to \$999 at its discretion.
 - iii. Before purchasing any piece of equipment, service or multiples of each that have an aggregate cost between \$1,000 and \$4,999, a Contractor must secure at least three telephone quotes and create a record for audit of such quotes.
 - iv. Before purchasing any piece of equipment, service or multiples of each that have an aggregate cost of between \$5,000 and \$9,999, the Contractor must secure at least three written quotes on a vendor's stationery and maintain a record of the competitive procurement process for audit purposes.
 - v. A Contractor spending in aggregate of \$10,000 and above must use a competitive bidding process. Guidance may be obtained from DHSES. At a minimum, the competitive bidding process must incorporate the following: open, fair advertisement of the opportunity to provide services; equal provision of information to all interested parties; reasonable deadlines; sealed bids opened at one time before a committee who will certify the process; establishment of the methodology for evaluating bids before the bids are opened; and maintenance of a record of competitive procurement process.
 - g. Acceptance of State support for interoperable and emergency communications projects, including funding through the Interoperable Emergency Communication Grant Program, requires that Contractors must use open-standard/vendor-neutral technologies to allow for other public safety/public service agencies (including State agencies and authorities) and jurisdictions in your region to operate on your radio system(s) when required, regardless of the total percentage of system funding from the State. This access for other agencies must be permitted to support operational and interoperable goals, and without restriction as to specific manufacturers' subscriber equipment. All reasonably compatible subscriber equipment must be permitted to be operated on your system by outside agencies, thus allowing coordinated efforts between local and state public safety/public service agencies and maximizing resources and capabilities.
 - h. DHSES reserves the right to suspend program funds if the Contractor is found to be in noncompliance with the provisions of

this Contract or other grant Contracts between the Contractor and DHSES or, if the Contractor or principals of the Contractor are under investigation by a New York State or local law enforcement agency for noncompliance with State or federal laws or regulatory provisions or, if in DHSES' judgment, the services provided by the Contractor under the Contract are unsatisfactory or untimely.

i. DHSES shall provide the Contractor with written notice of noncompliance.

ii. Upon the Contractor's failure to correct or comply with the written notice by DHSES, DHSES reserves the right to terminate this Contract, recoup funds and recover any assets purchased with the proceeds of this Contract.

i. DHSES reserves the right to use approved grant related expenditures to offset disallowed expenditures from any grant funded through its offices upon appropriate notification to the Contractor, or upon reasonable assurance that the Contractor is not in compliance with these terms.

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

i. By entering into this Contract, Contractor (or any assignee) certifies in accordance with State Finance Law §165-a that it is not on the 'Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012' ('Prohibited Entities List') posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

ii. Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

iii. During the term of the Contract, should DHSES receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

iv. DHSES reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

V. FEDERALLY FUNDED GRANT REQUIREMENTS

A. Hatch Act. The Contractor agrees, as a material condition of the Contract, to comply with all applicable provisions of the Hatch Act (5 U.S.C. 1501 et seq.), as amended.

B. Requirement for System of Award Management: Unless you are exempted from this requirement under 2 CFR 25.110, you as the subrecipient must maintain the currency of your information in the System of Award Management (SAM) until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term. Pursuant to section 2 CFR §200.210(a)(2), Contractors must maintain a current unique entity identifier prior to and during the life of the Contract. Nonprofit organizations that are first-tier subrecipients for Nonprofit Security Grant Program (NSGP) funding must have a DUNS number, but are not required to be registered in SAM.

C. In accordance with 2 CFR §§200.112 and 200.113, Contractor understands and agrees that it must: (1) disclose in writing any potential conflict of interest to DHSES; and (2) disclose, in a timely manner, in writing to DHSES all violations of federal and state criminal law involving fraud, bribery, or gratuity violations potentially affecting the grant award. Failure to make required disclosures can result in any remedy available to DHSES for Contractor's noncompliance, including suspension or debarment.

D. The Contractor must ensure that, for all contracts entered into by the Contractor, the contract provisions required by 2 CFR §200.326 (and Appendix II to 2 CFR Part 200) are included in such contracts. The Contractor further agrees to impose and enforce this requirement for any Contractor subaward agreements.

E. Where advance payments are approved by DHSES, the Contractor agrees to expend the advance payments in accordance with the purposes set forth in Appendix D and consistent with Appendix B. The advanced funds must be placed in an interest-

bearing account and are subject to the rules outlined in 2 CFR Part 200, (Uniform Administrative Requirements for Grants and Cooperative Contracts to State and Local Governments) which require Contractors to promptly remit back to the federal government, through New York State Division of Homeland Security and Emergency Services, any interest earned on these advanced funds. The Contractor may keep interest earned up to \$500 per federal fiscal year for administrative expenses. This maximum limit is not per award; it is inclusive of all interest earned as the result of all federal grant program funds received per year. Interest must be reported on Fiscal Cost Reports and remitted to DHSES quarterly.

F. Audit Requirements. This Contract, and any sub-awards resulting from this Contract, may be subject to fiscal and program audits by DHSES, NYS Office of State Comptroller, pertinent federal agencies, and other designated entities to ascertain financial compliance with federal and/or State laws, regulations, and guidelines applicable to this Contract. The Contractor shall meet all audit requirements of the federal government and State of New York. Such audits may include review of the Contractor's accounting, financial, and reporting practices to determine compliance with the Contract and reporting requirements; maintenance of accurate and reliable original accounting records in accordance with governmental accounting standards as well as generally accepted accounting principles; and specific compliance with allowable cost and expenditure documentation standards prescribed by applicable federal, State, and DHSES guidelines.

G. Equipment Markings. The Contractor further agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: 'Purchased with funds provided by the U.S. Department of Homeland Security.'

H. Administrative, Cost and Audit Requirements: The Contractor must comply with the most recent version of the Administrative Requirements, Cost Principles, and Audit requirements. Failure to do so may result in disallowance of costs upon audit. A list of regulations and guidance applicable to United States Department of Homeland Security (DHS) grants are listed below:

1. General Administrative Requirements:

a. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

2. Cost Principles:

a. 2 CFR Part 200, Subpart E

3. Audit Requirements:

a. 2 CFR Part 200, Subpart F

I. Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

1. Consistent with 2 CFR §200.321, the grantee and any subgrantees will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

2. Affirmative steps must include:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subsections (2)(a) through (e) of this section.

J. Compliance with Laws, Regulations and Program Guidance. The Contractor shall ensure it is aware of and complies with all applicable laws, regulations and program guidance. It is the responsibility of the Contractor to become familiar with and comply with all terms and conditions associated with acceptance of funds.

K. Adequate Documentation: The Contractor must ensure full compliance with all cost documentation requirements, including specific personal service documentation, as applicable directly to the Contractor, sub-recipient or collaborative agency/organization. The Contractor must maintain specific documentation as support for project related personal service expenditures as this Contract is supported by federal funds. Depending upon the nature or extent of personal service provided under this Contract, the Contractor shall maintain semi-annual (or more frequent) personal service certifications and/or an after-the-fact personnel activity reporting system (or equivalent) which complies with all applicable laws, regulations and

program guidance. Failure to do so may result in disallowance of costs.

L. Single Audit Requirements: For audits of fiscal years beginning on or after December 26, 2014, recipients that expend \$750,000 or more from all federal funding sources during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with the requirements of GAO's Government Auditing Standards, located at <http://www.gao.gov/govaud/ybk01.htm>, and the requirements of Subpart F of 2 C.F.R. Part 200, located at <http://www.ecfr.gov/cgi-bin/text-idx?SID=63811dc3410c008e2f8e28c325cdc09e&mc=true&node=sp2.1.200.f&rgn=div6>.

The final report for such audit must be completed within nine months of the end of the Contractor's fiscal year. The Contractor must provide one copy of such audit report to DHSES within nine (9) months of the end of its fiscal year, or communicate in writing to DHSES that Contractor is exempt from such requirement.

M. Program Income: Program income earned by the Contractor during the grant funding Period must be reported in writing to DHSES, in addition to any other statutory reporting requirements. Program income consists of income earned by the grant recipient that is directly generated by a supported activity or earned as a result of the grant program. Program income includes, but is not limited to, income from fees for services performed, the use of rental or real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights and interest on loans made with federal award funds. For example, if the purpose of a grant is to conduct conferences, any training fees that are generated would be considered program income. Interest earned on grant funds is not considered program income unless specified in Appendix D. The Contractor agrees to report the receipt and expenditures of grant program income to DHSES. Program income (not to include interest earned), generated by the use of these grant funds will be used to enhance the grant project.

N. Intellectual Property: Any creative or literary work developed or commissioned by the Contractor with grant support provided by DHSES shall become the property of DHSES, entitling DHSES to assert a copyright therein, unless the parties have expressly agreed otherwise in a written instrument signed by them.

1. If DHSES shares its right to copyright such work with the Contractor, DHSES reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use: (a) the copyright in any work developed under a grant, sub-grant, or contract under a grant or sub-grant; and (b) any rights of copyright to which a Contractor, sub-Contractor, or a contractor purchases ownership with grant support.

2. If the grant support provided by DHSES is federally-sponsored, the federal awarding agency also reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use: (a) the copyright in any work developed under a grant, sub-grant or contract under a grant or sub-grant; and (b) any rights of copyright to which a Contractor, sub-Contractor, or a contractor purchases ownership with such grant support.

3. The Contractor shall submit one copy of all reports and publications resulting from this Contract to DHSES within thirty (30) calendar days of completion. Any document generated pursuant to this grant must contain the following language:

'This project was supported by a grant administered by the New York State Division of Homeland Security and Emergency Services and the U.S. Department of Homeland Security. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the New York State Division of Homeland Security and Emergency Services or the U.S. Department of Homeland Security.'

O. Accounting for Grant Expenditures:

1. Grant funds may be expended only for purposes and activities set forth in this Contract. Accordingly, the most important single requirement of accounting for this grant is the complete and accurate documentation of grant expenditures. If the Contractor receives funding from two or more sources, all necessary steps must be taken to ensure that grant-related transactions are not commingled. This includes, but is not limited to, the establishment of unique budget codes, a separate cost center, or a separate chart of accounts. Expenditures must be cross-referenced to supporting source documents (purchase orders, contracts, real estate leases, invoices, vouchers, timesheets, mileage logs, etc.).

2. Contractor agrees that it shall maintain adequate internal controls and adhere to Generally Accepted Accounting Principles for Government or Generally Accepted Accounting Principles for Not-for-Profit Organizations.

3. None of the goals, objectives or tasks, as set forth in Appendix D, shall be sub-awarded to another organization without specific prior written approval by DHSES. Where the intention to make sub-awards is clearly indicated in the application, DHSES approval is deemed given, if these activities are funded, as proposed.

4. If this Contract makes provisions for the Contractor to sub-grant funds to other recipients, the Contractor agrees that all sub-Contractors shall be held accountable by the Contractor for all terms and conditions set forth in this Contract in its entirety. The Contractor further agrees that it shall assume sole and complete responsibility for fulfilling all the obligations set forth in the

Contract and the Contractor must guarantee the work of any sub-Contractor as if it were its own.

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

- Activities to be performed;
- Time schedule;
- Project policies;
- Other policies and procedures to be followed;
- Dollar limitation of the Contract;
- Appendix A-1, Appendix C, Certified Assurances for Federally Supported Projects, Certification Regarding Lobbying, Debarment and Suspension and any special conditions set forth in the Contract;
- Applicable federal and/or State cost principles to be used in determining allowable costs; and
- Property Records or Equipment Inventory Reports.

P. The Contractor will not be reimbursed for sub-granted funds unless all expenditures by a sub-Contractor are listed on detailed itemization forms or a form deemed acceptable to DHSES. Backup documentation for such expenditures must be made available to DHSES upon request. All expenditures must be programmatically consistent with the goals and objectives of this Contract and with the Budget set forth in Appendix B.

Q. Space rental provided by this Contract must be supported by a written lease, maintained on file and made available by the Contractor upon request.

R. Equipment and Property:

1. Any equipment, furniture or supplies or other property purchased pursuant to this Contract is deemed to be the property of the State, except as may otherwise be governed by federal or State laws, rules or regulations or stated in this Contract.

2. Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A Contractor may use its own definition of equipment provided that such definition would at least include all equipment defined above. A copy of the property record(s) or equipment inventory report(s) with relevant purchasing and supporting documentation must be made available to DHSES upon request. Property records or equipment inventory reports must be maintained, by award, that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property. The Contractor must document receipt of all applicable equipment purchased with grant funds. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two (2) years.

3. Upon completion of all contractual requirements by the Contractor, DHSES will consider a request for continued use and possession of the equipment purchased with grant funds provided the equipment continues to be used in connection with a public security program. When disposing of equipment purchased with homeland security grant funding, a State agency must dispose of equipment in accordance with State Laws and procedures. All other Contractors shall dispose of equipment as follows:

- a. Items of equipment with a current per unit market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.
- b. Items of equipment with a current per unit fair market value of \$5,000 or more may be retained or sold. If sold, the awarding agency shall have a right to an amount calculated by multiplying the proceeds from the sale by the awarding agency's share of the equipment. If retained, the current market value is to be used in the calculation. To remit payments, award recipients should contact DHSES at 1-866-837-9133 for guidance.

4. Upon completion of all contractual requirements by the Contractor under this Contract, DHSES shall accept a request for continued use and possession of the equipment purchased with grant funds providing the equipment continues to be used in accordance with the contracted activities and guidelines in this Contract.

5. The Contractor must conduct a physical inventory of property records at least once every two years to verify the existence, current utilization and continued need for the property. In the event the property is no longer required by the Contractor, this fact should be reported to DHSES as soon as possible and appropriate guidelines followed, as specified in this Appendix.

6. If Contractor disposes of any equipment purchased under this Contract during the active lifespan of said equipment, Contractor must reinvest any proceeds from the disposal into additional equipment items to continue Contractor's organization's activities subject to the guidelines of this Contract. If the Contractor does not reinvest proceeds to continue activities subject to this Contract, the percentage of the proceeds equal to the proportion of the original purchase price paid by

funds for the Contract must be repaid to the State of New York.

ENDNOTES:

¹ To the extent that Section V-Federally Funding Grant Requirements conflict with any other provisions of the Contract, the Federal requirements of Section V shall supersede all other provisions of the Contract.

² As of 2019, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Indiana, Louisiana, Mississippi, North Carolina, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

³ A milestone/performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Contract effort.

⁴ Fee for Service is a rate established by the Contractor for a service or services rendered.

⁵ Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.

⁶ Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

⁷ Fifth Quarter Payments occur where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract.

⁸ Not applicable to not-for-profit entities

VER 07/2020

Certified by - on

Award Contract

Project No.

Grantee Name

ES20-1019-D00

Oneida County

08/20/2020

APPENDIX C
PAYMENT AND REPORTING SCHEDULE

For All Contractors:

I. PAYMENT PROVISIONS

1. In full consideration of contract services to be performed, DHSES agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page hereof. All payments shall be in accordance with the budget contained in the applicable Attachment B form (Budget), which is attached hereto.

A. Payment and Recoupment Language

1. Contractor shall provide complete and accurate vouchers to DHSES in order to receive payment. Vouchers submitted to DHSES must contain all information and supporting documentation required by the Agreement, DHSES and the State Comptroller. Payment for vouchers submitted by the Contractor shall only be rendered electronically, unless a paper check is expressly authorized by the Director of DHSES, at the Director's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with the ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization for electronic payment must be made through the Statewide Financial System's (SFS) Vendor Portal: <https://esupplier.sfs.ny.gov/psp/fscm/SUPPLIER/?cmd=login>. For assistance to access the SFS Vendor Portal, please contact the SFS Help Desk at 518-457-7717 or 855-233-8363 or email HelpDesk@sfs.ny.gov. Contractor acknowledges that it will not receive payment on any vouchers submitted under this Agreement if it does not comply with the State Comptroller's electronic payment procedures, except where the Director has expressly authorized payment by paper check as set forth above.

2. The Contractor agrees that this is a reimbursement-based contract; an advance may be provided as specified in Appendix D. All requests for reimbursement must reflect actual costs that have been disbursed by the Contractor. Items or services not received are not eligible for reimbursement.

Reimbursement requests need to include the following documents:

- Signed Voucher and Fiscal Cost Report
- Detailed Itemization Forms or other forms deemed acceptable by DHSES of any budgeted category for which reimbursement is requested
- Written documentation of all required DHSES approvals, as appropriate

3. Vouchers shall be submitted in a format acceptable to DHSES and the Office of the State Comptroller. Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the Project Budget (Appendix B) and during the contract period. Such voucher shall also be deemed to certify that: a) the payments requested do not duplicate reimbursement from other sources of funding; and b) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program.

B. Interim and/or Final Claims for Reimbursement

1. Contractors must submit all required fiscal reports, supporting documentation and program progress reports. Failure to meet these requirements will result in the rejection of associated vouchers. Final vouchers, reimbursement requests and reports must be submitted within 30 days of the end of the grant contract period. Failure to voucher within this period may result in the loss of grant funds. The Contractor must also refund all unexpended advances and interest earned over \$500 on the advanced funds pursuant to 2 CFR Part 200, §200.305(b)(9). Property Records or Equipment Inventory Reports as defined in Appendix A-1, Section V, Paragraph R, must be available at the conclusion of the contract period and submitted to DHSES upon request.

2. If at the end of this contract there remain any monies (advanced or interest earned over \$500 on the advanced funds) associated with this contract in the possession of the Contractor, the Contractor shall submit a check or money order for that amount payable to the order of the New York State Division of Homeland Security and Emergency Services. Remit the check along with the final fiscal cost report within 30 days of termination of this grant contract to:

NYS Division of Homeland Security and Emergency Services
Federal Fiscal Unit
State Campus - Building 7A

1220 Washington Avenue
Albany, NY 12242

3. For purposes of prompt payment provisions, the Designated Payment Office for the processing of all vouchers is the Contract Unit of DHSES. Payment of grant vouchers shall be made in accordance with the provisions of Article XI-A of the State Finance Law. Payment shall be preceded by an inspection period of 15 business days which shall be excluded from calculations of the payment due date for purposes of determining eligibility for interest payments. The Contractor must notify the Federal Fiscal Unit in writing of a change of address in order to benefit from the prompt payment provision of the State Finance Law. When progress reports are overdue, vouchers will not be eligible for prompt payment.

4. Timely and properly completed New York State vouchers, with supporting documentation when required, shall be submitted to:

NYS Division of Homeland Security and Emergency Services
Attention: Contracts Unit
State Office Building Campus – Bldg. 7A
1220 Washington Avenue, Suite 610
Albany, NY 12242

II. REPORTING PROVISIONS

A. Required Reports:

Narrative/Qualitative Report (Progress Report)

The Contractor will submit, on a quarterly basis, not later than 30 days from the end of the quarter, the report described in Section III(G)(2)(a)(i) of Appendix A-1 of the Contract.

Expenditure Report (Fiscal Cost Report)

The Contractor will submit, on a quarterly basis, not later than 30 days after the end date for which reimbursement is being claimed, the report described in Section III, Paragraph G(2)(a)(iii) of the Appendix A-1 of the Contract.

Final Report

The Contractor will submit the final report as described in Section III, Paragraph G(2)(a)(iv) of Appendix A-1 of the Contract, no later than 30 days after the end of the contract period.

1. Fiscal cost reports must be submitted showing grant expenditures. They must also show the amount of interest earned to date on any advanced funds.

All submitted vouchers will reflect the Contractor's actual expenditures and will be accompanied by supporting detailed itemization forms or a form deemed acceptable to DHSES for personal service, fringe benefit and non-personal service expenditures or other documentation as required, and by a fiscal cost report for the reporting period. In the event that any expenditure for which the Contractor has been reimbursed by grant funds is subsequently disallowed, DHSES, in its sole discretion, may reduce the voucher payment by the amount disallowed. If necessary, the Contractor may be required to submit a final budget reallocation.

DHSES reserves the right not to release subsequent grant awards pending Contractor compliance with this Agreement.

2. The Contractor will submit program progress reports and one final report to DHSES on a prescribed form provided by DHSES as well as any additional information or amended data as required.

Progress reports will be due within 30 days of the last day of each calendar quarter or on an alternate schedule as prescribed in Appendix D. Progress reports will be due within 30 days of the last day of the calendar quarter from the start date of the program and the final report will be due upon completion of the project or termination of this Agreement. Calendar quarters, for the purposes of making program progress reports, shall be as follows:

Calendar Quarter: January 1 - March 31 -- Report Due: April 30
Calendar Quarter: April 1 - June 30 -- Report Due: July 30
Calendar Quarter: July 1 - September 30 -- Report Due: October 30
Calendar Quarter: October 1 - December 31 -- Report Due: January 30

The final report, or where applicable interim progress reports, will summarize the project's achievements as well as describe

8/20/2020

Award Contract

activities for that quarter.

Rev. 07/2020

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Award Contract

Project No.

ES20-1019-D00

Grantee Name

Oneida County

08/20/2020

Special Conditions

I. ALL GRANT FUNDS:

Federal grant funds provided are a subaward of Emergency Management Performance Grant COVID-19 Supplemental (EMPG-S) funds awarded to the New York State Division of Homeland Security and Emergency Services (DHSES) from the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA).

A. Permissible Use of Funding

1. EMPG-S funds must be used in accordance with the guidelines set forth in the EMPG-S Notice of Funding Opportunity, which can be located at <https://www.fema.gov/grants>.
2. All expenditures under this grant must support the Goals and Objectives outlined in the 2017 2020 NYS Homeland Security Strategy and approved investment justifications. New York State's Homeland Security Strategy can be located on the DHSES website at <http://www.dhSES.ny.gov/planning/#strat>.

B. Record Requirements

1. Subrecipients shall keep an agenda and meeting minutes on file for all meetings conducted regarding EMPG-S funded activities.
2. Any documents produced as a result of these meetings such as plans, schedules, or procedures, will also be kept on file and be made available to DHSES, upon request.

C. Equipment Purchases

1. Equipment purchased with grant funds must fall within the allowable equipment categories for EMPG-S as listed on the Authorized Equipment List (AEL) [https://www.fema.gov/authorized equipment list](https://www.fema.gov/authorized%20equipment%20list).
2. Subrecipients are responsible to request a determination of eligibility from the U.S. Department of Homeland Security DHS), through DHSES, for any equipment item in question. Unless otherwise stated in the program guidance, equipment must meet all mandatory regulatory and/or DHS adopted standards to be eligible for purchase using EMPG-S funds.
3. The New York State Communication Interoperability Plan (SCIP), as well as DHS Grant Guidance for grant funding, requires that all interoperable communications equipment must be on the Authorized Equipment List (AEL) and that the use of APCO P 25 compliant equipment is a recommended technology to achieve emergency interoperable communications.

D. Training Related Activities

1. Any non DHS training course to be supported by this award must be submitted in advance to DHSES for written approval.
2. Subrecipients are required to be NIMS compliant. DHSES requires that subrecipients contact their county point of contact to determine how the particular county requires reporting. Subrecipients are expected to provide DHSES upon request any data required for annual NIMS certification purposes.

E. EHP Requirements

1. Subrecipients shall comply with all applicable federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable laws including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898).

2. Failure of subrecipients to meet federal, State, and local EHP requirements and obtain applicable permits may jeopardize federal funding. Subrecipients shall not undertake any project having the potential to impact EHP resources without the prior approval of FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings. Subrecipients must comply with all conditions placed on the project as the result of the EHP review.
3. Any change to the approved project scope of work will require reevaluation for compliance with these EHP requirements.
4. If ground disturbing activities occur during project implementation, subrecipients must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, such subrecipient will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office.
5. Any activities requiring environmental and historic preservation review that have been initiated prior to FEMA approval could result in a non compliance finding. For your convenience, the screening form is available at:
<http://www.dhSES.ny.gov/grants/eph.cfm>

F. Equipment Maintenance Requirements

1. Subrecipients must track grant funds used for maintenance contracts, warranties, repair or replacement costs and upgrades, and report such expenditures in fiscal and program reports.

G. New York State Emergency Management Certification and Training Program

1. Participation in, and successful completion of, the New York State Emergency Management Certification and Training Program (EMC Training Program) is a mandatory requirement under this Contract and a condition of funding. The EMC Training Program will be made available to, and required for, DHSES specified county and city government officials in order to ensure a consistent emergency management preparedness and response strategy across the State. Attendee substitutions, except as expressly approved by DHSES, shall not be permitted or deemed to be in compliance with this requirement.
2. To fulfill the EMC Training Program requirement of the Contract and in order to be eligible for funding under this Contract, subrecipients must arrange for DHSES specified subrecipient employees to receive and acknowledge receipt of EMC Training no later than 180 days after execution of this Contract. Copies of the training certificates for each required participant must be submitted to DHSES upon execution of the Contract, or, in the event that training is scheduled, but not yet complete, the subrecipient will be required to submit a signed statement indicating the scheduled future dates of attendance, and no later than thirty (30) days after the training is complete, forward such training certificates to DHSES. Continued compliance with the EMC Training Program also requires an annual refresher training of one day per 365 day cycle from the date of initial training for previously trained individuals if such person remains employed by the subrecipient and fulfilling the same functions as he or she fulfilled during the initial training. Should a new employee be designated to serve in the DHSES specified positions, then he or she must come into compliance with the EMC Training Program requirements not later than 180 days after taking office.
3. Subrecipient must commit to active participation in a DHSES Annual Capabilities Assessment as a condition of funding. Active participation includes making reasonable staff, records, information, and time resources available to DHSES to perform the Annual Capabilities Assessment and meet the objectives and goals of the program. Subrecipients must be aware that the process of conducting a DHSES Annual Capabilities Assessment is an ongoing process and requires a continued commitment on the part of the subrecipient to ensure that it is effective.
4. All subrecipients funded through this program agree to provide DHSES, upon request at any time during the life of the grant contract, such cooperation and information deemed necessary by DHSES to ascertain: (1) the nature and extent of any threats or hazards that may pose a risk to the subrecipient; and (2) the status of any corresponding subrecipient plans, capabilities, or other resources for preventing, protecting against, mitigating, responding to, and recovering from such threats or hazards.
5. Additionally, pursuant to Article 26 of the NYS Executive law, DHSES is authorized to undertake periodic drills and simulations designed to assess and prepare responses to terrorist acts or threats and other natural and man made disasters. Funded subrecipients agree to attend and participate in any DHSES sponsored conferences, training, workshops or meetings (excluding those identified by DHSES as voluntary) that may be conducted, by and at the request of DHSES, during the life of the grant contract.
6. Failure to comply with any of the requirements, as listed above, may result in sanctions up to and including the immediate suspension and/or revocation of the grant award.



Homeland Security
and Emergency Services

ANDREW M. CUOMO
Governor

PATRICK A. MURPHY
Commissioner

July 2, 2020

The Honorable Anthony J. Picente, Jr.
Oneida County Executive
Oneida County Office Building
800 Park Avenue, #10
Utica, NY 13501

Dear Mr. Picente:

I am pleased to inform you that Oneida County is awarded \$51,347 under the FY2020 Emergency Management Performance Grant COVID-19 Supplemental (EMPG-S) program. Funding for this grant is provided by the U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA). The New York State Division of Homeland Security and Emergency Services (DHSES) will administer this funding on behalf of FEMA. The performance period for this grant is from January 27, 2020 through July 31, 2021.

The FY2020 EMPG-S program provides funding for emergency management agencies to prevent, prepare for, and respond to the COVID-19 public health emergency. All proposed projects must have a clear nexus to COVID-19. The FY2020 EMPG-S application documents and grant guidance are being sent to your designated program points of contact. In order for DHSES to provide these critical funds to you as quickly as possible, your application must be submitted to DHSES no later than July 16, 2020. If you need assistance in completing your application, please contact the DHSES Grants Program Administration Office at (866) 837-9133.

Thank you for your continued support of New York State's homeland security efforts. DHSES remains committed to providing you with outstanding support in the administration of your homeland security programs. If you have any questions, please contact my Program Manager of Grants Program Administration, Eric Abramson, at (518) 402-2123.

Sincerely,

Patrick A. Murphy
Commissioner

cc: Edward Stevens, Director, Oneida County Emergency Services



ONEIDA COUNTY
DEPARTMENT OF PROBATION

Boehlert Center at Union Station
321 Main Street, 2nd Floor, Utica, New York 13501
Utica ~ Phone: (315) 798-5914 Fax: (315) 624-3684

300 West Dominick Street, Rome, New York 13440
Rome ~ Phone: (315) 356-2900 Fax: (315) 337-5025

E-mail: probation@ocgov.net · Web Site: www.ocgov.net

ANTHONY J. PICENTE, JR.
County Executive

Patrick Cady
DIRECTOR

September 15, 2020

FN 20 20-331

Mr. Anthony J. Picente, Jr.
Oneida County Executive
Oneida County Office Building
800 Park Avenue
Utica, New York 13501

PUBLIC SAFETY

WAYS & MEANS

Re: JAG Grant


Dear Mr. Picente:

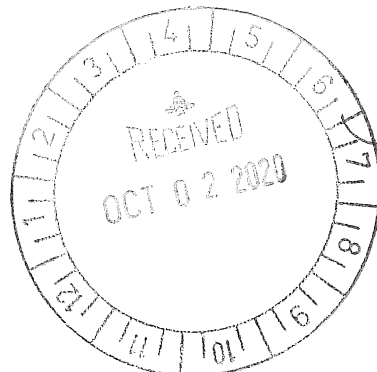
Attached is an Agreement proposed by the City of Utica to provide the Probation Department with a portion of the Utica Police Department's yearly Federal JAG Grant. This Agreement includes reimbursement for salaries and fringe benefits for our probation officers working overtime in participation in the Utica Police Department/Probation Juvenile Ride-Along Program.

For several years we have collaboratively participated in the Ride-Along Program supported by funds from this grant. Under this Program, Utica Police Department officers and Probation officers visit youth sentenced to Domicile Restriction as an alternative to costly and disruptive detention. By conducting home visits in the evening, we are able to meet with parents and significant others. This Program is an integral strategy of our Juvenile Alternative to Detention and Juvenile Delinquency Prevention Plan. Proposed dates of operation are from July 1, 2021 through June 30, 2022.

Funds in the amount of \$5,775.00 are spread throughout the year of the agreement. We strongly recommend your approval of this cost effective agreement. If you approve, please forward to the Board of Legislators for their consideration.

Very truly yours,


PATRICK CADY
PROBATION DIRECTOR



Reviewed and Approved for submittal to the
Oneida County Board of Legislators by


Anthony J. Picente, Jr.
County Executive

Date 10-1-20

Oneida Co. Department: Probation

Competing Proposal _____
Only Respondent _____
Sole Source RFP _____
Other X

**ONEIDA COUNTY BOARD OF LEGISLATORS
CONTRACT SUMMARY**

Name and Address of Vendor: City of Utica
1 Kennedy Plaza
Utica, New York 13501

Title of Activity or Service: Utica Police Ride-Along Project

Proposed Dates of Operation: July 1, 2021 – June 30, 2022

Client Population/Number to be Served: 250 Juvenile and Adult Offenders

Summary Statements

- 1) **Narrative Description of Proposed Services:** Utica Police Department Officers and County Probation Officers ride together to visit and monitor juveniles enrolled in the Domicile Restriction Program as an alternative to detention.
- 2) **Program/Service Objectives and Outcomes:** To ensure compliance with court orders and promote public safety.
- 3) **Program Design and Staffing:** Domicile staff performing overtime function.

Total Funding Requested: \$5,775.00

Account # A2379 (Revenue)

Oneida County Dept. Funding Recommendation: \$5,775.00

Proposed Funding Sources (Federal \$/ State \$/County \$): NYS JAG Grant Funds awarded to the City of Utica and shared with the Probation Department.

Cost Per Client Served: NA

Past Performance Data: 95% completion of the program by juveniles placed on Domicile Restriction.

O.C. Department Staff Comments: This is a highly successful and cost effective way to keep juveniles in their homes as opposed to detention. We strongly support this agreement.



Department of Justice (DOJ)
Office of Justice Programs
Bureau of Justice Assistance

Grant

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1. RECIPIENT NAME AND ADDRESS (Including Zip Code) City of Utica 413 Oriskany Street West Utica, NY 13502-3515		4. AWARD NUMBER: 2020-DJ-BX-0377	
2a. GRANTEE IRS/VENDOR NO. 156000419		5. PROJECT PERIOD: FROM 10/01/2019 TO 09/30/2023 BUDGET PERIOD: FROM 10/01/2019 TO 09/30/2023	
2b. GRANTEE DUNS NO. 181533746		6. AWARD DATE 09/19/2020	7. ACTION Initial
3. PROJECT TITLE Juvenile and Adult Supervision, and Community Safety Programs		8. SUPPLEMENT NUMBER 00	9. PREVIOUS AWARD AMOUNT \$ 0
		10. AMOUNT OF THIS AWARD \$ 27,420	11. TOTAL AWARD \$ 27,420
12. SPECIAL CONDITIONS THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS ARE SET FORTH ON THE ATTACHED PAGE(S).			
13. STATUTORY AUTHORITY FOR GRANT This project is supported under FY20(BJA - JAG State and JAG Local) Title I of Pub. L. No. 90-351 (generally codified at 34 U.S.C. 10101-10726), including subpart 1 of part B (codified at 34 U.S.C. 10151 - 10158); see also 28 U.S.C. 530C(a)			
14. CATALOG OF DOMESTIC FEDERAL ASSISTANCE (CFDA Number) 16.738 - Edward Byrne Memorial Justice Assistance Grant Program			
15. METHOD OF PAYMENT GPRS			
AGENCY APPROVAL		GRANTEE ACCEPTANCE	
16. TYPED NAME AND TITLE OF APPROVING OFFICIAL Katharine T. Sullivan Principal Deputy Assistant Attorney General		18. TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL Robert Palmieri Mayor	
17. SIGNATURE OF APPROVING OFFICIAL 		19. SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL 	19A. DATE 9/22/2020
AGENCY USE ONLY			
20. ACCOUNTING CLASSIFICATION CODES FISCAL FUND BUD. DIV. YEAR CODE ACT. OFC. REG. SUB. POMS AMOUNT X B DJ 80 00 00 27420		21. VDJUST3147	

OJP FORM 4000/2 (REV. 5-87) PREVIOUS EDITIONS ARE OBSOLETE.

OJP FORM 4000/2 (REV. 4-88)



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SPECIAL CONDITIONS

I. Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Limited Exceptions. In certain special circumstances, the U.S. Department of Justice ("DOJ") may determine that it will not enforce, or enforce only in part, one or more requirements otherwise applicable to the award. Any such exceptions regarding enforcement, including any such exceptions made during the period of performance, are (or will be during the period of performance) set out through the Office of Justice Programs ("OJP") webpage entitled "Legal Notices: Special circumstances as to particular award conditions" (ojp.gov/funding/Explore/LegalNotices-AwardReqs.htm), and incorporated by reference into the award.

By signing and accepting this award on behalf of the recipient, the authorized recipient official accepts all material requirements of the award, and specifically adopts, as if personally executed by the authorized recipient official, all assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance.

Failure to comply with one or more award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or an assurance or certification related to conduct during the award period -- may result in OJP taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award. DOJ, including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or unenforceable, such provision shall be deemed severable from this award.



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2. Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2020 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2020 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2020 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at <https://ojp.gov/funding/Part200UniformRequirements.htm>.

Record retention and access: Records pertinent to the award that the recipient (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the recipient (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.333.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

3. Compliance with DOJ Grants Financial Guide

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance. The recipient agrees to comply with the DOJ Grants Financial Guide.

4. Reclassification of various statutory provisions to a new Title 34 of the United States Code

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified (that is, moved and renumbered) to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.



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5. Required training for Point of Contact and all Financial Points of Contact

Both the Point of Contact (POC) and all Financial Points of Contact (FPOCs) for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after January 1, 2018, will satisfy this condition.

In the event that either the POC or an FPOC for this award changes during the period of performance, the new POC or FPOC must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after -- (1) the date of OJP's approval of the "Change Grantee Contact" GAN (in the case of a new POC), or (2) the date the POC enters information on the new FPOC in GMS (in the case of a new FPOC). Successful completion of such a training on or after January 1, 2018, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for purposes of this condition is available at <https://www.ojp.gov/training/fmts.htm>. All trainings that satisfy this condition include a session on grant fraud prevention and detection.

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP to impose additional appropriate conditions on this award.

6. Requirements related to "de minimis" indirect cost rate

A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

7. Requirement to report potentially duplicative funding

If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by the DOJ awarding agency, must seek a budget-modification or change-of-project-scope grant adjustment notice (GAN) to eliminate any inappropriate duplication of funding.



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8. Requirements related to System for Award Management and Universal Identifier Requirements

The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov/>. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <https://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).



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9. Employment eligibility verification for hiring under the award

1. The recipient (and any subrecipient at any tier) must--

A. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the recipient (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1) and (2).

B. Notify all persons associated with the recipient (or any subrecipient) who are or will be involved in activities under this award of both--

(1) this award requirement for verification of employment eligibility, and

(2) the associated provisions in 8 U.S.C. 1324a(a)(1) and (2) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.

C. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1) and (2).

D. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. Staff involved in the hiring process

For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all recipient (or any subrecipient) officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

B. Employment eligibility confirmation with E-Verify

For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the recipient (or any subrecipient) may choose to participate in, and use, E-Verify (www.e-verify.gov), provided an appropriate person authorized to act on behalf of the recipient (or subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.

C. "United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

D. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or



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any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any recipient, any subrecipient at any tier, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1) and (2).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (<https://www.e-verify.gov/>) or email E-Verify at E-Verify@dhs.gov. E-Verify employer agents can email E-Verify at E-VerifyEmployerAgent@dhs.gov.

Questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

10. Requirement to report actual or imminent breach of personally identifiable information (PII)

The recipient (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient) -- (1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "personally identifiable information (PII)" (2 CFR 200.79) within the scope of an OJP grant-funded program or activity, or (2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

11. All subawards ("subgrants") must have specific federal authorization

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at <https://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

12. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed \$250,000

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$250,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at <https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$250,000)), and are incorporated by reference here.



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13. Unreasonable restrictions on competition under the award; association with federal government

SCOPE. This condition applies with respect to any procurement of property or services that is funded (in whole or in part) by this award, whether by the recipient or by any subrecipient at any tier, and regardless of the dollar amount of the purchase or acquisition, the method of procurement, or the nature of any legal instrument used. The provisions of this condition must be among those included in any subaward (at any tier).

1. No discrimination, in procurement transactions, against associates of the federal government

Consistent with the (DOJ) Part 200 Uniform Requirements -- including as set out at 2 C.F.R. 200.300 (requiring awards to be "manage[d] and administer[ed] in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements") and 200.319(a) (generally requiring "[a]ll procurement transactions [to] be conducted in a manner providing full and open competition" and forbidding practices "restrictive of competition," such as "[p]lacing unreasonable requirements on firms in order for them to qualify to do business" and taking "[a]ny arbitrary action in the procurement process") -- no recipient (or subrecipient, at any tier) may (in any procurement transaction) discriminate against any person or entity on the basis of such person or entity's status as an "associate of the federal government" (or on the basis of such person or entity's status as a parent, affiliate, or subsidiary of such an associate), except as expressly set out in 2 C.F.R. 200.319(a) or as specifically authorized by USDOJ.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. The term "associate of the federal government" means any person or entity engaged or employed (in the past or at present) by or on behalf of the federal government -- as an employee, contractor or subcontractor (at any tier), grant recipient or subrecipient (at any tier), agent, or otherwise -- in undertaking any work, project, or activity for or on behalf of (or in providing goods or services to or on behalf of) the federal government, and includes any applicant for such employment or engagement, and any person or entity committed by legal instrument to undertake any such work, project, or activity (or to provide such goods or services) in future.

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.



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14. Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

15. Determination of suitability to interact with participating minors

SCOPE. This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ) or in the application for any subaward, at any tier, the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by the recipient, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The recipient, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

16. Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

17. Requirement for data on performance and effectiveness under the award

The recipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

18. OJP Training Guiding Principles

Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <https://ojp.gov/funding/Implement/TrainingPrinciplesForGrantees-Subgrantees.htm>.



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19. Effect of failure to address audit issues

The recipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

20. Potential imposition of additional requirements

The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.

21. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

22. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

23. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38 (as may be applicable from time to time), specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Currently, among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38, currently, also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

The text of 28 C.F.R. Part 38 is available via the Electronic Code of Federal Regulations (currently accessible at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.



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24. Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a recipient (or subrecipient) would or might fall within the scope of these prohibitions, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

25. Compliance with general appropriations-law restrictions on the use of federal funds (FY 2020) The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions that may be set out in applicable appropriations acts are indicated at <https://ojp.gov/funding/Explore/FY20AppropriationsRestrictions.htm>, and are incorporated by reference here. Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

26. Reporting potential fraud, waste, and abuse, and similar misconduct

The recipient, and any subrecipients ("subgrantees") at any tier, must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award-- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by--(1) online submission accessible via the OIG webpage at <https://oig.justice.gov/hotline/contact-grants.htm> (select "Submit Report Online"); (2) mail directed to: U.S. Department of Justice, Office of the Inspector General, Investigations Division, ATTN: Grantee Reporting, 950 Pennsylvania Ave., NW, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Investigations Division (Attn: Grantee Reporting) at (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <https://oig.justice.gov/hotline>.



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27. Restrictions and certifications regarding non-disclosure agreements and related matters

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the recipient--

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.



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28. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The recipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The recipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

29. Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

30. Requirement to disclose whether recipient is designated "high risk" by a federal grant-making agency outside of DOJ

If the recipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to OJP by email at OJP.ComplianceReporting@ojp.usdoj.gov. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.



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31. Authority to obligate award funds contingent on noninterference (within the funded "program or activity") with federal law enforcement: information-communication restrictions; unallowable costs; notification

1. If the recipient is a "State," a local government, or a "public" institution of higher education:

A. The recipient may not obligate award funds if, at the time of the obligation, the "program or activity" of the recipient (or of any subrecipient at any tier that is a State, a local government, or a public institution of higher education) that is funded wholly or partly with award funds is subject to any "information-communication restriction."

B. Also, with respect to any project costs it incurs "at risk," the recipient may not obligate award funds to reimburse itself if -- at the time it incurs such costs -- the program or activity of the recipient (or of any subrecipient, at any tier, described in par. 1.A of this condition) that would be reimbursed wholly or partly with award funds was subject to any information-communication restriction.

C. Any drawdown of award funds by the recipient shall be considered, for all purposes, to be a material representation by the recipient to OJP that, as of the date the recipient requests the drawdown, the recipient and each subrecipient (regardless of tier) described in par. 1.A of this condition, is in compliance with the award condition entitled "Noninterference (within the funded 'program or activity') with federal law enforcement: information-communication restrictions; ongoing compliance."

D. The recipient must promptly notify OJP (in writing) if the recipient, from its requisite monitoring of compliance with award conditions or otherwise, has credible evidence that indicates that the funded program or activity of the recipient, or of any subrecipient (at any tier) described in par. 1.A of this condition, may be subject to any information-communication restriction. Also, any subaward (at any tier) to a subrecipient described in paragraph 1.A of this condition must require prompt notification to the entity that made the subaward, should the subrecipient have such credible evidence regarding an information-communication restriction.

2. Any subaward (at any tier) to a subrecipient described in par. 1.A of this condition must provide that the subrecipient may not obligate award funds if, at the time of the obligation, the program or activity of the subrecipient (or of any further such subrecipient at any tier) that is funded in whole or in part with award funds is subject to any information-communication restriction.

3. Absent an express written determination by DOJ to the contrary, based upon a finding by DOJ of compelling circumstances (e.g., a small amount of award funds obligated by the recipient at the time of a subrecipient's minor and transitory non-compliance, which was unknown to the recipient despite diligent monitoring), any obligations of award funds that, under this condition, may not be made shall be unallowable costs for purposes of this award. In making any such determination, DOJ will give great weight to evidence submitted by the recipient that demonstrates diligent monitoring of subrecipient compliance with the requirements set out in the "Noninterference ... information-communication restrictions; ongoing compliance" award condition.

4. Rules of Construction

A. For purposes of this condition "information-communication restriction" has the meaning set out in the "Noninterference ... information-communication restrictions; ongoing compliance" condition.

B. Both the "Rules of Construction" and the "Important Note" set out in the "Noninterference ... information-communication restrictions; ongoing compliance" condition are incorporated by reference as though set forth here in full.



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SPECIAL CONDITIONS

32. Authority to obligate award funds contingent on no use of funds to interfere with federal law enforcement: information-communication restrictions; unallowable costs; notification

1. IF the recipient is a "State," a local government, or a "public" institution of higher education:

A. The recipient may not obligate award funds if, at the time of the obligation, the "program or activity" of the recipient (or of any subrecipient at any tier that is a State, a local government, or a public institution of higher education) that is funded in whole or in part with award funds is subject to any "information-communication restriction."

B. In addition, with respect to any project costs it incurs "at risk," the recipient may not obligate award funds to reimburse itself if -- at the time it incurs such costs -- the program or activity of the recipient (or of any subrecipient, at any tier, described in paragraph 1.A. of this condition) that would be reimbursed in whole or in part with award funds was subject to any information-communication restriction.

C. Any drawdown of award funds by the recipient shall be considered, for all purposes, to be a material representation by the recipient to OJP that, as of the date the recipient requests the drawdown, the recipient and each subrecipient (regardless of tier) described in paragraph 1.A. of this condition, is in compliance with the award condition entitled "No use of funds to interfere with federal law enforcement: information-communication restrictions; ongoing compliance."

D. The recipient must promptly notify OJP (in writing) if the recipient, from its requisite monitoring of compliance with award conditions or otherwise, has credible evidence that indicates that the funded program or activity of the recipient, or of any subrecipient (at any tier) described in paragraph 1.A. of this condition, may be subject to any information-communication restriction. In addition, any subaward (at any tier) to a subrecipient described in paragraph 1.A. of this condition must require prompt notification to the entity that made the subaward, should the subrecipient have such credible evidence regarding an information-communication restriction.

2. Any subaward (at any tier) to a subrecipient described in paragraph 1.A. of this condition must provide that the subrecipient may not obligate award funds if, at the time of the obligation, the program or activity of the subrecipient (or of any further such subrecipient at any tier) that is funded in whole or in part with award funds is subject to any information-communication restriction.

3. Absent an express written determination by DOJ to the contrary, based upon a finding by DOJ of compelling circumstances (e.g., a small amount of award funds obligated by the recipient at the time of a subrecipient's minor and transitory non-compliance, which was unknown to the recipient despite diligent monitoring), any obligations of award funds that, under this condition, may not be made shall be unallowable costs for purposes of this award. In making any such determination, DOJ will give great weight to evidence submitted by the recipient that demonstrates diligent monitoring of subrecipient compliance with the requirements set out in the "No use of funds to interfere ... information-communication restrictions; ongoing compliance" award condition.

4. Rules of Construction

A. For purposes of this condition "information-communication restriction" has the meaning set out in the "No use of funds to interfere ... information-communication restrictions; ongoing compliance" condition.

B. Both the "Rules of Construction" and the "Important Note" set out in the "No use of funds to interfere ... information-communication restrictions; ongoing compliance" condition are incorporated by reference as though set forth here in full.



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SPECIAL CONDITIONS

33. Noninterference (within the funded "program or activity") with federal law enforcement; information-communication restrictions; ongoing compliance

1. With respect to the "program or activity" funded in whole or part under this award (including any such program or activity of any subrecipient at any tier), throughout the period of performance, no State or local government entity, -agency, or -official may prohibit or in any way restrict-- (1) any government entity or -official from sending or receiving information regarding citizenship or immigration status to/from DHS; or (2) a government entity or -agency from sending, requesting or receiving, or exchanging information regarding immigration status to/from/with DHS, or from maintaining such information. Any prohibition (or restriction) that violates this condition is an "information-communication restriction" under this award.

2. The recipient's monitoring responsibilities include monitoring of subrecipient compliance with the requirements of this condition.

3. Allowable costs. Compliance with these requirements is an authorized and priority purpose of this award. To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) that the recipient, or any subrecipient at any tier that is a State, a local government, or a public institution of higher education, incurs to implement this condition.

4. Rules of Construction

A. For purposes of this condition:

(1) "State" and "local government" include any agency or other entity thereof (including any public institution of higher education), but not any Indian tribe.

(2) A "public" institution of higher education is defined as one that is owned, controlled, or directly funded (in whole or in substantial part) by a State or local government. (Such a public institution is considered to be a "government entity," and its officials to be "government officials.")

(3) "Program or activity" means what it means under title VI of the Civil Rights Act of 1964 (sec 42 U.S.C. 2000d-4a).

(4) "Immigration status" means what it means under 8 U.S.C. 1373 and 8 U.S.C. 1644; and terms that are defined in 8 U.S.C. 1101 mean what they mean under that section 1101, except that "State" also includes American Samoa.

(5) "DHS" means the U.S. Department of Homeland Security.

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, any public institution of higher education, or any other entity (or individual) to violate any federal law, including any applicable civil rights or nondiscrimination law.

IMPORTANT NOTE: Any questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.



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SPECIAL CONDITIONS

34. No use of funds to interfere with federal law enforcement: information-communication restrictions; ongoing compliance

1. Throughout the period of performance, no State or local government entity, -agency, or -official may use funds under this award (including under any subaward, at any tier) to prohibit or in any way restrict-- (1) any government entity or -official from sending or receiving information regarding citizenship or immigration status to/from DHS; or (2) a government entity or -agency from sending, requesting or receiving, or exchanging information regarding immigration status to/from/with DHS, or from maintaining such information. Any prohibition (or restriction) that violates this condition is an "information-communication restriction" under this award.

2. The recipient's monitoring responsibilities include monitoring of subrecipient compliance with the requirements of this condition.

3. Allowable costs. Compliance with these requirements is an authorized and priority purpose of this award. To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) that the recipient, or any subrecipient at any tier that is a State, a local government, or a public institution of higher education, incurs to implement this condition.

4. Rules of Construction.

A. For purposes of this condition:

(1) "State" and "local government" include any agency or other entity thereof (including any public institution of higher education), but not any Indian tribe.

(2) A "public" institution of higher education is defined as one that is owned, controlled, or directly funded (in whole or in substantial part) by a State or local government. (Such a public institution is considered to be a "government entity," and its officials to be "government officials.")

(3) "Program or activity" means what it means under title VI of the Civil Rights Act of 1964 (see 42 U.S.C. 2000d-4a).

(4) "Immigration status" means what it means under 8 U.S.C. 1373 and 8 U.S.C. 1644; and terms that are defined in 8 U.S.C. 1101 mean what they mean under that section 1101, except that "State" also includes American Samoa.

(5) "DHS" means the U.S. Department of Homeland Security.

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, any public institution of higher education, or any other entity (or individual) to violate any federal law, including any applicable civil rights or nondiscrimination law.

IMPORTANT NOTE: Any questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.



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SPECIAL CONDITIONS

35. Noninterference (within the funded "program or activity") with federal law enforcement: No public disclosure of certain law-enforcement-sensitive information

SCOPE. This condition applies with respect to the "program or activity" that is funded (in whole or in part) by the award, as of the date the recipient accepts this award, and throughout the remainder of the period of performance. Its provisions must be among those included in any subaward (at any tier).

1. Noninterference: No public disclosure of federal law-enforcement information in order to conceal, harbor, or shield

Consistent with the purposes and objectives of federal law enforcement statutes and federal criminal law (including 8 U.S.C. 1324 and 18 U.S.C. chs. 1, 49, 227), no public disclosure may be made of any federal law-enforcement information in a direct or indirect attempt to conceal, harbor, or shield from detection any fugitive from justice under 18 U.S.C. ch. 49, or any alien who has come to, entered, or remains in the United States in violation of 8 U.S.C. ch. 12 -- without regard to whether such disclosure would constitute (or could form a predicate for) a violation of 18 U.S.C. 1071 or 1072 or of 8 U.S.C. 1324(a).

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions (e.g., training) designed to ensure compliance with this condition.

4. Rules of construction

- A. For purposes of this condition--

(1) the term "alien" means what it means under section 101 of the Immigration and Nationality Act (see 8 U.S.C. 1101(a)(3));

(2) the term "federal law-enforcement information" means law-enforcement-sensitive information communicated or made available, by the federal government, to a State or local government entity, -agency, or -official, through any means, including, without limitation-- (1) through any database, (2) in connection with any law enforcement partnership or -task-force, (3) in connection with any request for law enforcement assistance or -cooperation, or (4) through any deconfliction (or courtesy) notice of planned, imminent, commencing, continuing, or impending federal law enforcement activity;

(3) the term "law-enforcement-sensitive information" means records or information compiled for any law-enforcement purpose; and

(4) the term "public disclosure" means any communication or release other than one-- (a) within the recipient, or (b) to any subrecipient (at any tier) that is a government entity.

B. Both the "Rules of Construction" and the "Important Note" set out in the "Noninterference (within the funded "program or activity") with federal law enforcement: information-communication restrictions; ongoing compliance" award condition are incorporated by reference as though set forth here in full.



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SPECIAL CONDITIONS

36. No use of funds to interfere with federal law enforcement: No public disclosure of certain law-enforcement-sensitive information

SCOPE. This condition applies as of the date the recipient accepts this award, and throughout the remainder of the period of performance. Its provisions must be among those included in any subaward (at any tier).

1. No use of funds to interfere: No public disclosure of federal law-enforcement information in order to conceal, harbor, or shield

Consistent with the purposes and objectives of federal law enforcement statutes and federal criminal law (including 8 U.S.C. 1324 and 18 U.S.C. chs. 1, 49, 227), no funds under this award may be used to make any public disclosure of any federal law-enforcement information in a direct or indirect attempt to conceal, harbor, or shield from detection any fugitive from justice under 18 U.S.C. ch. 49, or any alien who has come to, entered, or remains in the United States in violation of 8 U.S.C. ch. 12 -- without regard to whether such disclosure would constitute (or could form a predicate for) a violation of 18 U.S.C. 1071 or 1072 or of 8 U.S.C. 1324(a).

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions (e.g., training) designed to ensure compliance with this condition.

4. Rules of construction

- A. For purposes of this condition--

(1) the term "alien" means what it means under section 101 of the Immigration and Nationality Act (see 8 U.S.C. 1101(a)(3));

(2) the term "federal law-enforcement information" means law-enforcement-sensitive information communicated or made available, by the federal government, to a State or local government entity, -agency, or -official, through any means, including, without limitation-- (1) through any database, (2) in connection with any law enforcement partnership or -task-force, (3) in connection with any request for law enforcement assistance or -cooperation, or (4) through any deconfliction (or courtesy) notice of planned, imminent, commencing, continuing, or impending federal law enforcement activity;

(3) the term "law-enforcement-sensitive information" means records or information compiled for any law-enforcement purpose; and

(4) the term "public disclosure" means any communication or release other than one-- (a) within the recipient, or (b) to any subrecipient (at any tier) that is a government entity.

B. Both the "Rules of Construction" and the "Important Note" set out in the "No use of funds to interfere with federal law enforcement: information-communication restrictions; ongoing compliance" award condition are incorporated by reference as though set forth here in full.



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SPECIAL CONDITIONS

37. Noninterference (within the funded "program or activity") with federal law enforcement: Notice of scheduled release

SCOPE. This condition applies with respect to the "program or activity" that is funded (in whole or in part) by the award, as of the date the recipient accepts the award, and throughout the remainder of the period of performance. Its provisions must be among those included in any subaward at any tier.

1. Noninterference with "removal" process: Notice of scheduled release date and time

Consonant with federal law enforcement statutes -- including 8 U.S.C. 1231 (for an alien incarcerated by a State or local government, a 90-day "removal period" during which the federal government "shall" detain and then "shall" remove an alien from the U.S. "begins" no later than "the date the alien is released from ... confinement"; also, the federal government is expressly authorized to make payments to a "State or a political subdivision of the State ... with respect to the incarceration of [an] undocumented criminal alien"); 8 U.S.C. 1226 (the federal government "shall take into custody" certain criminal aliens "when the alien is released"); and 8 U.S.C. 1366 (requiring an annual report to Congress on "the number of illegal alien[felons] in Federal and State prisons" and programs underway "to ensure the prompt removal" from the U.S. of removable "criminal aliens") -- within the funded program or activity, no State or local government entity, -agency, or -official (including a government-contracted correctional facility) may interfere with the "removal" process by failing to provide -- as early as practicable (see para. 4.C. below) -- advance notice to DHS of the scheduled release date and time for a particular alien, if a State or local government (or government-contracted) correctional facility receives from DHS a formal written request pursuant to the INA that seeks such advance notice.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions (e.g., training) designed to ensure compliance with this condition.

4. Rules of construction

A. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, or any other entity or individual to maintain (or detain) any individual in custody beyond the date and time the individual otherwise would have been released.

B. Applicability

(1) Current DHS practice is ordinarily to request advance notice of scheduled release "as early as practicable (at least 48 hours, if possible)." (See DHS Form I-247A (3/17)). If (e.g., in light of the date DHS made such request) the scheduled release date and time for an alien are such as not to allow for the advance notice that DHS has requested, it shall NOT be a violation of this condition to provide only as much advance notice as practicable.

(2) Current DHS practice is to use the same form for a second, distinct purpose -- to request that an individual be detained for up to 48 hours AFTER the scheduled release. This condition does NOT encompass such DHS requests for detention.

C. Both the "Rules of Construction" and the "Important Note" set out in the "Noninterference (within the funded "program or activity") with federal law enforcement: Interrogation of certain aliens" award condition are incorporated by reference as though set forth here in full.



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38. No use of funds to interfere with federal law enforcement: Notice of scheduled release

SCOPE. This condition applies as of the date the recipient accepts the award, and throughout the remainder of the period of performance. Its provisions must be among those included in any subaward at any tier.

1. No use of funds to interfere with "removal" process: Notice of scheduled release date and time

Consonant with federal law enforcement statutes -- including 8 U.S.C. 1231 (for an alien incarcerated by a State or local government, a 90-day "removal period" during which the federal government "shall" detain and then "shall" remove an alien from the U.S. "begins" no later than "the date the alien is released from ... confinement"; also, the federal government is expressly authorized to make payments to a "State or a political subdivision of the State ... with respect to the incarceration of [an] undocumented criminal alien"); 8 U.S.C. 1226 (the federal government "shall take into custody" certain criminal aliens "when the alien is released"); and 8 U.S.C. 1366 (requiring an annual report to Congress on "the number of illegal alien[felons] in Federal and State prisons" and programs underway "to ensure the prompt removal" from the U.S. of removable "criminal aliens") -- no State or local government entity, -agency, or -official (including a government-contracted correctional facility) may use funds under this award to interfere with the "removal" process by failing to provide -- as early as practicable (see para. 4.C. below) -- advance notice to DHS of the scheduled release date and time for a particular alien, if a State or local government (or government-contracted) correctional facility receives from DHS a formal written request pursuant to the INA that seeks such advance notice.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions (e.g., training) designed to ensure compliance with this condition.

4. Rules of construction

A. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, or any other entity or individual to maintain (or detain) any individual in custody beyond the date and time the individual otherwise would have been released.

B. Applicability

(1) Current DHS practice is ordinarily to request advance notice of scheduled release "as early as practicable (at least 48 hours, if possible)." (See DHS Form I-247A (3/17)). If (e.g., in light of the date DHS made such request) the scheduled release date and time for an alien are such as not to allow for the advance notice that DHS has requested, it shall NOT be a violation of this condition to provide only as much advance notice as practicable.

(2) Current DHS practice is to use the same form for a second, distinct purpose -- to request that an individual be detained for up to 48 hours AFTER the scheduled release. This condition does NOT encompass such DHS requests for detention.

C. Both the "Rules of Construction" and the "Important Note" set out in the "No use of funds to interfere with federal law enforcement: Interrogation of certain aliens" award condition are incorporated by reference as though set forth here in full.



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39. Noninterference (within the funded "program or activity") with federal law enforcement: Interrogation of certain aliens
SCOPE. This condition applies with respect to the "program or activity" funded (wholly or partly) by this award, as of the date the recipient accepts the award, and throughout the rest of the award period of performance. Its provisions must be among those included in any subaward (at any tier).

1. Noninterference with statutory law enforcement access to correctional facilities

Consonant with federal law enforcement statutes and regulations--including 8 USC 1357(a), under which certain federal officers and employees "have power without warrant ... to interrogate any alien or person believed to be an alien as to his right to be or to remain" in the U.S., and 8 CFR 287.5(a), under which that power may be exercised "anywhere in or outside" the U.S.--within the funded program or activity, no State or local government entity, -agency, or -official may interfere with the exercise of that power to interrogate "without warrant" (by agents of the United States acting under color of federal law) by impeding access to any State or local government (or government-contracted) correctional facility by such agents for the purpose of "interrogat[ing] any alien or person believed to be an alien as to his [or her] right to be or to remain in the United States."

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions (e.g., training) designed to ensure compliance with this condition.

4. Rules of construction

A. For purposes of this condition:

(1) The term "alien" means what it means under sec. 101 of the Immigration and Nationality Act (INA) (8 USC 1101(a)(3)), except that, with respect to a juvenile offender, it means "criminal alien."

(2) The term "juvenile offender" means what it means under 28 CFR 31.304(f) (as in effect on Jan. 1, 2020).

(3) The term "criminal alien" means, with respect to a juvenile offender, an alien who is deportable on the basis of-

(a) conviction described in 8 USC 1227(a)(2), or

(b) conduct described in 8 USC 1227(a)(4).

(4) The term "conviction" means what it means under 8 USC 1101(a)(48). (Adjudication of a juvenile as having committed an offense does not constitute "conviction" for purposes of this condition.)

(5) The term "correctional facility" means what it means under 34 USC 10251(a)(7)) as of January 1, 2020.

(6) The term "impede" includes taking or continuing any action, or implementing or maintaining any law, policy, rule, or practice, that-

(a) is designed to prevent or to significantly delay or complicate, or

(b) has the effect of preventing or of significantly delaying or complicating.



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SPECIAL CONDITIONS

(7) "State" and "local government" include any agency or other entity thereof (including any public institution of higher education), but not any Indian tribe.

(8) A "public" institution of higher education is one that is owned, controlled, or directly funded (in whole or in substantial part) by a State or local government. (Such a public institution is considered to be a "government entity," and its officials to be "government officials.")

(9) "Program or activity" means what it means under 42 USC 2000d-4a.

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, any public institution of higher education, or any other entity (or individual) to violate any federal law, including any applicable civil rights or nondiscrimination law.

IMPORTANT NOTE: Any questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.



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SPECIAL CONDITIONS

40. No use of funds to interfere with federal law enforcement: Interrogation of certain aliens

SCOPE. This condition applies as of the date the recipient accepts this award, and throughout the remainder of the period of performance for the award. Its provisions must be among those included in any subaward (at any tier).

1. No use of funds to interfere with statutory law enforcement access to correctional facilities

Consonant with federal law enforcement statutes and regulations -- including 8 USC 1357(a), under which certain federal officers and employees "have power without warrant ... to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States," and 8 CFR 287.5(a), under which that power may be exercised "anywhere in or outside the United States" -- no State or local government entity, -agency, or -official may use funds under this award to interfere with the exercise of that power to interrogate "without warrant" (by agents of the United States acting under color of federal law) by impeding access to any State or local government (or government-contracted) correctional facility by such agents for the purpose of "interrogat[ing] any alien or person believed to be an alien as to his [or her] right to be or to remain in the United States."

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions (e.g., training) designed to ensure compliance with this condition.

4. Rules of construction

- A. For purposes of this condition:

(1) The term "alien" means what it means under section 101 of the Immigration and Nationality Act (INA) (8 USC 1101(a)(3)), except that, with respect to a juvenile offender, it means "criminal alien."

(2) The term "juvenile offender" means what it means under 28 CFR 31.304(f) (as in effect on Jan. 1, 2020).

(3) The term "criminal alien" means, with respect to a juvenile offender, an alien who is deportable on the basis of—

(a) conviction described in 8 USC 1227(a)(2), or

(b) conduct described in 8 USC 1227(a)(4).

(4) The term "conviction" means what it means under 8 USC 1101(a)(43). (Adjudication of a juvenile as having committed an offense does not constitute "conviction" for purposes of this condition.)

(5) The term "correctional facility" means what it means under the title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 USC 10251(a)(7)).

(6) The term "impede" includes taking or continuing any action, or implementing or maintaining any law, policy, rule, or practice, that—

(a) is designed to prevent or to significantly delay or complicate, or



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(b) has the effect of preventing or of significantly delaying or complicating.

(7) "State" and "local government" include any agency or other entity thereof (including any public institution of higher education), but not any Indian tribe.

(8) A "public" institution of higher education is defined as one that is owned, controlled, or directly funded (in whole or in substantial part) by a State or local government. (Such a public institution is considered to be a "government entity," and its officials to be "government officials.")

(9) "Program or activity" means what it means under 42 USC 2000d-4a.

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, any public institution of higher education, or any other entity (or individual) to violate any federal law, including any applicable civil rights or nondiscrimination law.

IMPORTANT NOTE: Any questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

41. Requirement to collect certain information from subrecipients

Except as provided in this condition, the recipient may not make a subaward to a State, a local government, or a "public" institution of higher education, unless it first obtains from the proposed subrecipient responses to the questions identified in the program solicitation as "Information regarding Communication with the Department of Homeland Security (DHS) and/or Immigration and Customs Enforcement (ICE)." All subrecipient responses must be collected and maintained by the recipient, consistent with document retention requirements, and must be made available to DOJ upon request. Responses to these questions are not required from subrecipients that are either a tribal government/organization, a nonprofit organization, or a private institution of higher education.

42. Cooperating with OJP Monitoring

The recipient agrees to cooperate with OJP monitoring of this award pursuant to OJP's guidelines, protocols, and procedures, and to cooperate with OJP (including the grant manager for this award and the Office of Chief Financial Officer (OCFO)) requests related to such monitoring, including requests related to desk reviews and/or site visits. The recipient agrees to provide to OJP all documentation necessary for OJP to complete its monitoring tasks, including documentation related to any subawards made under this award. Further, the recipient agrees to abide by reasonable deadlines set by OJP for providing the requested documents. Failure to cooperate with OJP's monitoring activities may result in actions that affect the recipient's DOJ awards, including, but not limited to: withholdings and/or other restrictions on the recipient's access to award funds; referral to the DOJ OIG for audit review; designation of the recipient as a DOJ High Risk grantee; or termination of an award(s).



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43. FFATA reporting: Subawards and executive compensation

The recipient must comply with applicable requirements to report first-tier subawards ("subgrants") of \$25,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients (first-tier "subgrantees") of award funds. The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the OJP web site at <https://ojp.gov/funding/Explore/FFATA.htm> (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here.

This condition, including its reporting requirement, does not apply to-- (1) an award of less than \$25,000, or (2) an award made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

44. Required monitoring of subawards

The recipient must monitor subawards under this award in accordance with all applicable statutes, regulations, award conditions, and the DOJ Grants Financial Guide, and must include the applicable conditions of this award in any subaward. Among other things, the recipient is responsible for oversight of subrecipient spending and monitoring of specific outcomes and benefits attributable to use of award funds by subrecipients. The recipient agrees to submit, upon request, documentation of its policies and procedures for monitoring of subawards under this award.

45. Use of program income

Program income (as defined in the Part 200 Uniform Requirements) must be used in accordance with the provisions of the Part 200 Uniform Requirements. Program income earnings and expenditures both must be reported on the quarterly Federal Financial Report, SF 425.

46. Justice Information Sharing

Information sharing projects funded under this award must comply with DOJ's Global Justice Information Sharing Initiative (Global) guidelines. The recipient (and any subrecipient at any tier) must conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: https://it.ojp.gov/gsp_grantcondition. The recipient (and any subrecipient at any tier) must document planned approaches to information sharing and describe compliance with the GSP and appropriate privacy policy that protects shared information, or provide detailed justification for why an alternative approach is recommended.

47. Avoidance of duplication of networks

To avoid duplicating existing networks or IT systems in any initiatives funded by BJA for law enforcement information sharing systems which involve interstate connectivity between jurisdictions, such systems shall employ, to the extent possible, existing networks as the communication backbone to achieve interstate connectivity, unless the recipient can demonstrate to the satisfaction of BJA that this requirement would not be cost effective or would impair the functionality of an existing or proposed IT system.

48. Compliance with 28 C.F.R. Part 23

With respect to any information technology system funded or supported by funds under this award, the recipient (and any subrecipient at any tier) must comply with 28 C.F.R. Part 23, Criminal Intelligence Systems Operating Policies, if OJP determines this regulation to be applicable. Should OJP determine 28 C.F.R. Part 23 to be applicable, OJP may, at its discretion, perform audits of the system, as per the regulation. Should any violation of 28 C.F.R. Part 23 occur, the recipient may be fined as per 34 U.S.C. 10231(c)-(d). The recipient may not satisfy such a fine with federal funds.



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49. Protection of human research subjects

The recipient (and any subrecipient at any tier) must comply with the requirements of 28 C.F.R. Part 46 and all OJP policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.

50. Confidentiality of data

The recipient (and any subrecipient at any tier) must comply with all confidentiality requirements of 34 U.S.C. 10231 and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. The recipient further agrees, as a condition of award approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, 28 C.F.R. 22.23.

51. Verification and updating of recipient contact information

The recipient must verify its Point of Contact (POC), Financial Point of Contact (FPOC), and Authorized Representative contact information in GMS, including telephone number and e-mail address. If any information is incorrect or has changed, a Grant Adjustment Notice (GAN) must be submitted via the Grants Management System (GMS) to document changes.

52. Law enforcement task forces - required training

Within 120 days of award acceptance, each current member of a law enforcement task force funded with award funds who is a task force commander, agency executive, task force officer, or other task force member of equivalent rank, must complete required online (internet-based) task force training. Additionally, all future task force members must complete this training once during the period of performance for this award, or once every four years if multiple OJP awards include this requirement.

The required training is available free of charge online through the BJA-funded Center for Task Force Integrity and Leadership (www.ctfli.org). The training addresses task force effectiveness, as well as other key issues including privacy and civil liberties/rights, task force performance measurement, personnel selection, and task force oversight and accountability. If award funds are used to support a task force, the recipient must compile and maintain a task force personnel roster, along with course completion certificates.

Additional information regarding the training is available through BJA's web site and the Center for Task Force Integrity and Leadership (www.ctfli.org).

53. Justification of consultant rate

Approval of this award does not indicate approval of any consultant rate in excess of \$650 per day. A detailed justification must be submitted to and approved by the OJP program office prior to obligation or expenditure of such funds.



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54. Submission of eligible records relevant to the National Instant Background Check System

Consonant with federal statutes that pertain to firearms and background checks -- including 18 U.S.C. 922 and 34 U.S.C. ch. 409 -- if the recipient (or any subrecipient at any tier) uses this award to fund (in whole or in part) a specific project or program (such as a law enforcement, prosecution, or court program) that results in any court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the National Instant Background Check System (NICS), or that has as one of its purposes the establishment or improvement of records systems that contain any court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the NICS, the recipient (or subrecipient, if applicable) must ensure that all such court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the NICS are promptly made available to the NICS or to the "State" repository/database that is electronically available to (and accessed by) the NICS, and -- when appropriate -- promptly must update, correct, modify, or remove such NICS-relevant "eligible records".

In the event of minor and transitory non-compliance, the recipient may submit evidence to demonstrate diligent monitoring of compliance with this condition (including subrecipient compliance). DOJ will give great weight to any such evidence in any express written determination regarding this condition.



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55. Compliance with National Environmental Policy Act and related statutes

Upon request, the recipient (and any subrecipient at any tier) must assist BJA in complying with the National Environmental Policy Act (NEPA), the National Historic Preservation Act, and other related federal environmental impact analyses requirements in the use of these award funds, either directly by the recipient or by a subrecipient. Accordingly, the recipient agrees to first determine if any of the following activities will be funded by the grant, prior to obligating funds for any of these purposes. If it is determined that any of the following activities will be funded by the award, the recipient agrees to contact BJA.

The recipient understands that this condition applies to new activities as set out below, whether or not they are being specifically funded with these award funds. That is, as long as the activity is being conducted by the recipient, a subrecipient, or any third party, and the activity needs to be undertaken in order to use these award funds, this condition must first be met. The activities covered by this condition are:

- a. New construction;
- b. Minor renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;
- c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;
- d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and
- e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

The recipient understands and agrees that complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. The recipient further understands and agrees to the requirements for implementation of a Mitigation Plan, as detailed at <https://bja.gov/Funding/nepa.html>, for programs relating to methamphetamine laboratory operations.

Application of This Condition to Recipient's Existing Programs or Activities: For any of the recipient's or its subrecipients' existing programs or activities that will be funded by these award funds, the recipient, upon specific request from BJA, agrees to cooperate with BJA in any preparation by BJA of a national or program environmental assessment of that funded program or activity.

56. Establishment of trust fund

If award funds are being drawn down in advance, the recipient (or a subrecipient, with respect to a subaward) is required to establish a trust fund account. Recipients (and subrecipients) must maintain advance payments of federal awards in interest-bearing accounts, unless regulatory exclusions apply (2 C.F.R. 200.305(b)(8)). The trust fund, including any interest, may not be used to pay debts or expenses incurred by other activities beyond the scope of the Edward Byrne Memorial Justice Assistance Grant Program (JAG). The recipient also agrees to obligate the award funds in the trust fund (including any interest earned) during the period of performance for the award and expend within 90 days thereafter. Any unobligated or unexpended funds, including interest earned, must be returned to OJP at the time of closeout.



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57. Prohibition on use of award funds for match under BVP program

JAG funds may not be used as the 50% match for purposes of the DOJ Bulletproof Vest Partnership (BVP) program.

58. Certification of body armor "mandatory wear" policies

If recipient uses funds under this award to purchase body armor, the recipient must submit a signed certification that law enforcement agencies receiving body armor purchased with funds from this award have a written "mandatory wear" policy in effect. The recipient must keep signed certifications on file for any subrecipients planning to utilize funds from this award for ballistic-resistant and stab-resistant body armor purchases. This policy must be in place for at least all uniformed officers before any funds from this award may be used by an agency for body armor. There are no requirements regarding the nature of the policy other than it be a mandatory wear policy for all uniformed officers while on duty.

59. Body armor - compliance with NIJ standards and other requirements

Ballistic-resistant and stab-resistant body armor purchased with JAG award funds may be purchased at any threat level, make or model, from any distributor or manufacturer, as long as the body armor has been tested and found to comply with applicable National Institute of Justice ballistic or stab standards and is listed on the NIJ Compliant Body Armor Model List (<https://nij.gov/topics/technology/body-armor/Pages/compliant-ballistic-armor.aspx>). In addition, ballistic-resistant and stab-resistant body armor purchased must be made in the United States and must be uniquely fitted, as set forth in 34 U.S.C. 10202(c)(1)(A). The latest NIJ standard information can be found here: <https://nij.gov/topics/technology/body-armor/pages/safety-initiative.aspx>.

60. Body armor - impact on eligibility for other program funds

The recipient understands that the use of funds under this award for purchase of body armor may impact eligibility for funding under the Bulletproof Vest Partnership (BVP) program, a separate program operated by BJA, pursuant to the BVP statute at 34 USC 10531(c)(5).

61. Reporting requirements

The recipient must submit quarterly Federal Financial Reports (SF-425) and semi-annual performance reports through OJP's GMS (<https://grants.ojp.usdoj.gov>). Consistent with the Department's responsibilities under the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, the recipient must provide data that measure the results of its work. The recipient must submit quarterly performance metrics reports through BJA's Performance Measurement Tool (PMT) website (<https://bjapmt.ojp.gov/>). For more detailed information on reporting and other JAG requirements, refer to the JAG reporting requirements webpage. Failure to submit required JAG reports by established deadlines may result in the freezing of grant funds and future High Risk designation.

62. Required data on law enforcement agency training

Any law enforcement agency receiving direct or sub-awarded funding from this JAG award must submit quarterly accountability metrics data related to training that officers have received on the use of force, racial and ethnic bias, de-escalation of conflict, and constructive engagement with the public.



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63. Expenditures prohibited without waiver

No funds under this award may be expended on the purchase of items prohibited by the JAG program statute, unless, as set forth at 34 U.S.C. 10152, the BJA Director certifies that extraordinary and exigent circumstances exist, making such expenditures essential to the maintenance of public safety and good order.

64. JAG FY 2020 - Authorization to obligate (federal) award funds to reimburse certain project costs incurred on or after October 1, 2019 [BJA]

Authorization to obligate (federal) award funds to reimburse certain project costs incurred on or after October 1, 2019

The recipient may obligate (federal) award funds only after the recipient makes a valid acceptance of the award. As of the first day of the period of performance for the award (October 1, 2019), however, the recipient may choose to incur project costs using non-federal funds, but any such project costs are incurred at the recipient's risk until, at a minimum-- (1) the recipient makes a valid acceptance of the award, and (2) all applicable withholding conditions are removed by OJP (via a Grant Adjustment Notice). (A withholding condition is a condition in the award document that precludes the recipient from obligating, expending, or drawing down all or a portion of the award funds until the condition is removed.)

Except to the extent (if any) that an award condition expressly precludes reimbursement of project costs incurred "at-risk," if and when the recipient makes a valid acceptance of this award and OJP removes each applicable withholding condition through a Grant Adjustment Notice, the recipient is authorized to obligate (federal) award funds to reimburse itself for project costs incurred "at-risk" earlier during the period of performance (such as project costs incurred prior to award acceptance or prior to removal of an applicable withholding condition), provided that those project costs otherwise are allowable costs under the award.

65. Use of funds for DNA testing; upload of DNA profiles

If award funds are used for DNA testing of evidentiary materials, any resulting eligible DNA profiles must be uploaded to the Combined DNA Index System ("CODIS," the DNA database operated by the FBI) by a government DNA laboratory with access to CODIS.

No profiles generated under this award may be entered or uploaded into any non-governmental DNA database without prior express written approval from BJA.

Award funds may not be used for the purchase of DNA equipment and supplies unless the resulting DNA profiles may be accepted for entry into CODIS.

66. Encouragement of submission of "success stories"

BJA strongly encourages the recipient to submit annual (or more frequent) JAG success stories. To submit a success story, sign in to a My BJA account at <https://www.bja.gov/Login.aspx> to access the Success Story Submission form. If the recipient does not yet have a My BJA account, please register at <https://www.bja.gov/profile.aspx>. Once registered, one of the available areas on the My BJA page will be "My Success Stories." Within this box, there is an option to add a Success Story. Once reviewed and approved by BJA, all success stories will appear on the BJA Success Story web page at <https://www.bja.gov/SuccessStoryList.aspx>.



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67. Withholding of funds: Memorandum of Understanding

The recipient may not obligate, expend, or draw down any award funds until OJP has reviewed and approved the Memorandum of Understanding (MOU), and a Grant Adjustment Notice (GAN) has been issued to remove this condition.

68. Withholding of funds: NIBRS set-aside

The recipient may not obligate, expend, or draw down any award funds until the recipient submits, and BJA reviews and accepts, a budget that clearly dedicates at least 3 percent of the total amount of the award to NIBRS compliance activities or documentation showing that the recipient has been certified as NIBRS compliant, and a Grant Adjustment Notice (GAN) has been issued to remove this condition.

CONTRACT NO. 2020-H8505-NY-DJ

Award #2020-DJ-BX-XXXX

INTERMUNICIPAL AGREEMENT

2020 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD

This Agreement is made and entered into this ____ day of _____, 2020, by and between the CITY OF UTICA (the "CITY"), located at 1 Kennedy Plaza, Utica, New York, 13502, through the UTICA POLICE DEPARTMENT, located at 413 Oriskany Street West, Utica, NY 13502, and the COUNTY OF ONEIDA (the "COUNTY"), located at 800 Park Avenue, Utica, NY 13501, through its PROBATION DEPARTMENT, located at 321 Main Street, Utica, NY 13501 (each individually referred to as a "Party" and collectively referred to as the "Parties").

WHEREAS, the CITY received an award for the BJA FY20 Edward Byrne Memorial Justice Assistance Grant ("JAG Funds") in the amount of \$27,420.00; and

WHEREAS, the Parties believe it to be in the best interests of both to reallocate a portion of the JAG Funds; and

WHEREAS, the CITY agrees to provide COUNTY five thousand seven hundred and seventy-five dollars (\$5,775.00) from the FY20 JAG Funds; and

WHEREAS, the Parties find that the performance of this Agreement is in the best interests of both Parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the COUNTY for its services under this Agreement;

NOW THEREFORE, the COUNTY and CITY agree as follows:

1. CITY agrees to provide COUNTY with a total of five thousand seven hundred and seventy-five dollars (\$5,775.00) of JAG Funds.
2. COUNTY agrees to use the JAG Funds from July 1, 2021 to June 30, 2022 to assist the COUNTY in their juvenile domicile restriction program, an alternative to detention. The PROBATION DEPARTMENT, in conjunction with the UTICA POLICE DEPARTMENT, shall visit juveniles on domicile restriction after hours. Home visits and drive-bys will be conducted in UTICA POLICE DEPARTMENT cars with both UTICA POLICE DEPARTMENT Officers and PROBATION DEPARTMENT Officers. The COUNTY will use the JAG Funds towards staff overtime expenses incurred by the COUNTY.
3. Nothing in the performance of this Agreement shall impose any liability for claims against COUNTY other than claims for which liability may be imposed by the Federal Tort Claims Act, (FTCA) 28 USC §1346(b).

4. Nothing in the performance of this Agreement shall impose any liability for claims against CITY other than claims for which liability may be imposed by the Federal Tort Claims Act, (FTCA) 28 USC §1346(b).

5. Each Party to this Agreement will be responsible for its own actions in providing services under this Agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other Party.

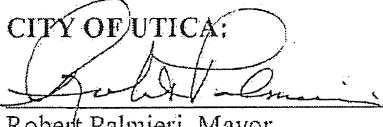
6. By entering into this Agreement, the Parties do not intend to create any obligations, express or implied, other than those set out herein. Further, this Agreement shall not create any rights in any party not a signatory hereto.

7. The CITY and the COUNTY are independent contractors, and the employees of each shall not be considered to be an employee of the other for any purposes including, but not limited to, claims for unemployment insurance, workers' compensation retirement, or health benefits. The Parties agree that in accordance with their status as, nor claim to be, officers or employees of the other and will not make any claim, demand, or application to or for any right or privilege applicable to such Party. Both Parties agree to comply with all Federal and State Laws as supplemented in the Department of Labor regulation and any other regulations of the Federal and State entities relating to such employment and Civil Rights requirements.


8. The terms of this Agreement constitute the entire understanding and agreement of the Parties and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. No waiver, alterations or modifications of and provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representative of the Parties sought to be bound.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representative as of the date first written above.

CITY OF UTICA:



Robert Palmieri, Mayor

9/25/2020


Mark W. Williams, Chief of Police

COUNTY OF ONEIDA:

Anthony J. Picente, Jr., County Executive


Patrick Cady, Probation Director

APPROVED:

Alison Stanulevich, Assistant County Attorney



ONEIDA COUNTY BOARD OF LEGISLATORS

ONEIDA COUNTY OFFICE BUILDING ♦ 800 PARK AVENUE ♦ UTICA, N.Y. 13501-2977

Gerald J. Fiorini
Chairman
(315) 798-5900

Mikale Billard
Clerk
(315) 798-5404

George Joseph
Majority Leader

Philip M. Sacco
Minority Leader

September 30, 2020

FN 20 20-332

Mikale Billard
Oneida County Board of Legislators
800 Park Avenue
Utica, NY 13501


READ & FILED

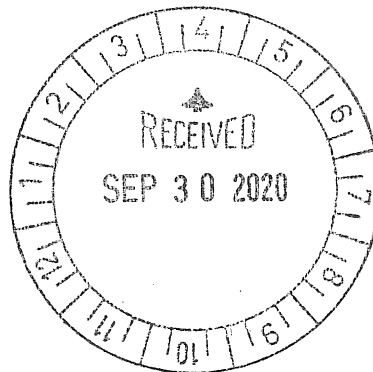
Mr. Billard:

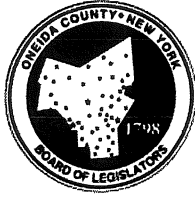
The New York State Department of Agriculture & Markets has certified the parcels submitted during the 2020 Open Enrollment Period in Oneida County that the Board of Legislators recommended for inclusion into agricultural districts by way of Resolution No. 251, dated August 12, 2020.

Please file the attached as a "Read and File" docket to read "RE: NYS certification of properties added to agricultural districts during Oneida County's designated Open Enrollment Period, January 2020.

Respectfully,


GERALD J. FIORINI, CHAIRMAN
ONEIDA COUNTY BOARD OF LEGISLATORS





**Memorializing Petition by
Board of Legislators,
Oneida County, New York**

F.N. 2020 -

FN 20 20-333

READ & FILED

A **MEMORIALIZING PETITION** urging the Governor and State Legislature to fully restore state Aid and Incentives for Municipalities (AIM) funding in the 2021-22 state budget, thereby taking a financial burden off of counties.

SPONSORS: Messrs. Flisnik, Fiorini, Koenig

WHEREAS, on Feb. 15, 2019, Governor Cuomo announced a 30-Day Amendment to the 2020 Executive Budget making impacted Towns and Villages whole from changes to Aid and Incentives for Municipalities (AIM) funding by utilizing revenue from county sales tax; and

WHEREAS, instead of restoring AIM with State funding and signifying a desire by the State to act as partners with local governments, this budget amendment requires Counties to make up for lost AIM funding with sales tax revenue, imposing a new mandate on Counties; and

WHEREAS, already-existing unfunded State mandates are the cause of high local taxes in New York State; and

WHEREAS, Counties were granted the authority to levy a local sales tax in the late 1960s to help pay for Medicaid, indigent legal defense services, and other state mandates on counties; and

WHEREAS, requiring Counties to make up for the State's cut in AIM funding to Towns and Villages sets an unsustainable precedent and unnecessarily shifts the State's burden to local taxpayers; and

WHEREAS, currently nine state mandated programs placed on counties equals more than 90 percent of the typical County property tax levy, and these mandated costs continue to grow; and

WHEREAS, cutting AIM funding in the first place is a tax-shift from broad-based State income taxes to local property taxes; and

WHEREAS, replacing what had been State AIM assistance with funding from County revenues is simply a tax-shift that will ultimately result in higher property taxes, or reduced county programs and services; and

WHEREAS, the lingering effects of coronavirus precautions and travel restrictions are adversely impacting County finances in 2020 and will continue disrupt the budget in 2021; and

NOW THEREFORE, BE IT RESOLVED, that the Oneida County Legislature opposes the continued utilization of County sales tax to make Towns and Villages whole for cuts to AIM funding; and

NOW THEREFORE BE IT HEREBY FURTHER RESOLVED, that this Legislature supports the full restoration of AIM funding in the 2021-22 state budget; and

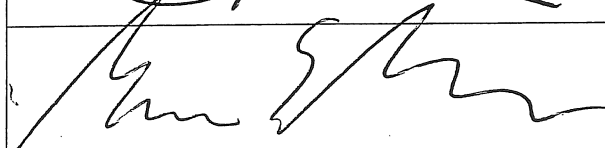
NOW THEREFORE BE IT HEREBY FURTHER RESOLVED, that a copy of this Petition shall be forwarded by mail or email to the following: Governor Andrew M. Cuomo, State Senator Joseph A. Griffo, State Senator Rachel May, State Assembly Representative Marianne Buttenschon, State Assembly Representative Brian D. Miller, State Assembly Representative Kenneth D. Blankenbush, State Assembly Representative Robert Smullen, State Assembly Representative John Salka, NYS Senate Majority Leader Andrea Stewart-Cousins, NYS Assembly Speaker Carl Heastie, and others deemed necessary and proper.

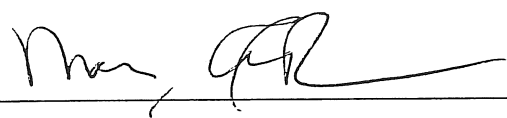
Legislators Supporting Petition

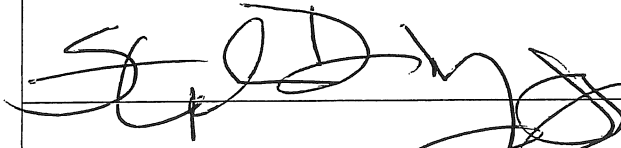
Legislators Opposing Petition

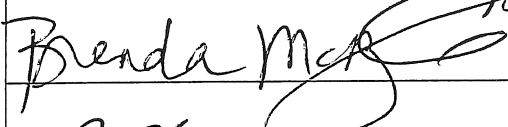


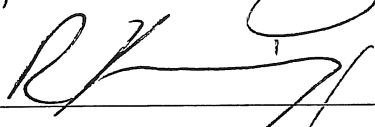


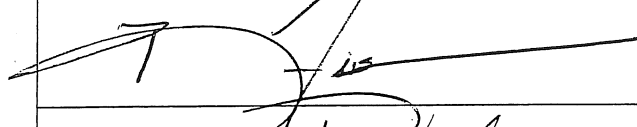


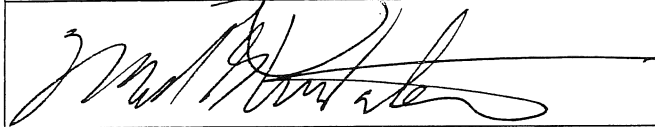






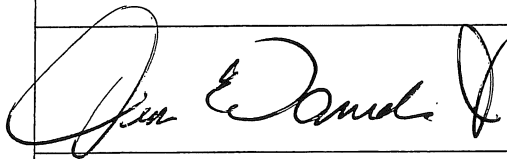




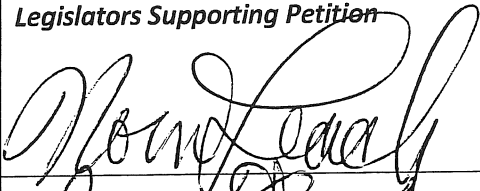
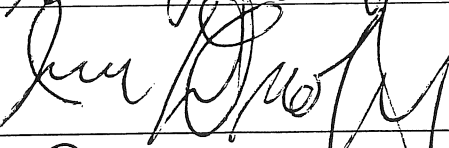
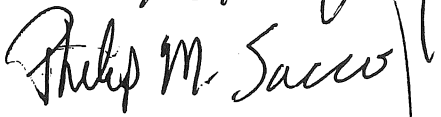
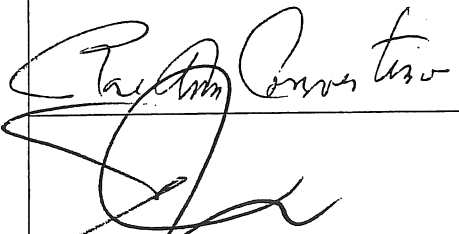


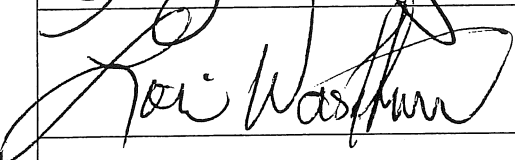

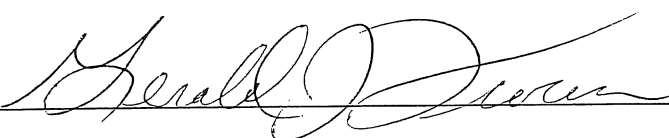










Legislators Supporting Petition	Legislators Opposing Petition
	
	
	
	
	
	
	
	
	

The enclosed petition represents the opinion of those members of the Oneida County Board of Legislators signing the same regarding the contents or subject matter of the petition. Under the Rules of the Board, a Legislator may sign said petition or may, in the alternative, elect not to sign the petition. There are 23 members of the Oneida County Board of Legislators.

STATE OF NEW YORK
STATE BOARD OF ELECTIONS

FN 20 20-334

ELECTION COMMISSIONER CERTIFICATION GOVERNMENT OPERATIONS
WAYS & MEANS

To the Clerk of the County(Board)(Legislature), County of Oneida.

I certify that:

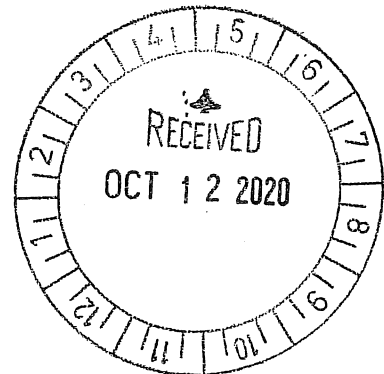
At a meeting of the Republican County Committee of the County
of Oneida, held on the 5th day of October, 2020 at
Hart's Hill Inn, Whitesboro New York, under the provisions of the Election Law and rules
of the County Committee, a quorum being present, Rose M. Grimaldi
residing at 54 Westmoreland St Apt 2, Whitesboro NY
New York, 13492, was recommended by majority of said committee as a suitable and
(zip code)
qualified person for appointment to the office of Commissioner of Elections,

for the term beginning January 1, 2021

to fill an existing vacancy in said office for the remainder of the current term

and that said designee is a registered voter of the County of Oneida and
a duly enrolled member of the Republican Party.

Dated at Oneida County, New York
October 7th, 2020
(date)



[Signature]
(Chairman or Secretary)