STATE ASSISTANCE CONTRACT
STATE ASSISTANCE GRANT
CONTRACT NO.: C303569

This Contract is hereby made between the State of New York Department of Environmental Conservation (hereinafter referred to as the "Department") with offices at 625 Broadway, Albany, New York, 12233-1080 and The Nature Conservancy - Adirondack Chapter (herein referred to as the "Recipient") with offices at PO Box 65, 8 Nature Way, Keene Valley, New York 12943.

WITNESSETH:

WHEREAS, the Department has jurisdiction over and is responsible for the protection of the environmental resources of the State of New York; and

WHEREAS, pursuant to the Environmental Conservation Law, Section 11-0303(1), the Department has jurisdiction over and is responsible for the management of fish and wildlife resources in the State of New York. The Department is authorized to enter into reciprocal arrangements with the government of the United States, with other departments and agencies, political subdivisions and public corporations of this state, and with owners and lessees of privately owned lands and waters for the protection and management of fish and wildlife resources; and

WHEREAS, the Department of Interior has provided the Department with appropriations from Federal Fiscal Year 2005 for a State Wildlife Grants Program; and

WHEREAS, the Department is authorized by H.R. 2361-7 to provide state assistance to the Recipient and to enter into this Contract; and

NOW, THEREFORE, in consideration of the promises, mutual covenants and conditions contained herein, the Department and the Recipient agree as follows:

ARTICLE 1. CONTRACT AMOUNT:

The Department agrees to make available to the Recipient a sum not to exceed $99,107.00 for payment of eligible Project costs in strict accordance with "Schedule A - Program Narrative" (herein referred to as the "Project") which is attached to and made a part of this Contract.

ARTICLE 2. CONTRACT BUDGET:

a. The Recipient agrees that the Project amount as shown in "Schedule B - Program Budget" which is attached to and made a part of this Contract is an estimate. If the actual eligible costs of the Project incurred by the Recipient are less than the eligible costs set forth in Schedule B, the Department shall reimburse the Recipient for either the not to exceed amount set forth in Article 1, or the actual approved eligible costs, whichever is lower. No amendment to this Contract shall be necessary to effectuate this modification.
b. The Recipient shall spend funds paid to it under this Contract in strict accordance with Schedule B, and agrees to expend these funds in total accordance with all applicable State, federal and local laws, rules and regulations.

ARTICLE 3. CONTRACT TERM:

The term of this Contract shall commence on February 04, 2008 to February 03, 2010, and shall become effective upon approval of the Office of the State Comptroller (herein referred to as "Comptroller"). This Contract may be amended and or extended for three additional one year periods by mutual written consent of both parties and upon approval by the Comptroller.

ARTICLE 4. GENERAL CONDITIONS:

a. The Recipient represents that it has the legal status necessary to enter into this Contract, and has filed with the Department a certified copy of a duly adopted resolution of its own governing body which authorizes an individual to enter into and execute this Contract with the Department on behalf of the Recipient, for the purpose of receiving state assistance.

b. The Recipient is ready, willing and able to enter into such a Contract and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform, or have performed the activities required pursuant to the terms of this Contract.

c. This Contract consists of the following documents, in the following order of precedence:

   Appendix A - Standard State clauses
   Appendix B - Standard Department clauses
   The Contract
   Schedule A - Program Narrative
   Schedule B - Program Budget
   Schedule C - Expenditure Report and Match Requirements

d. The Recipient acknowledges that the Project associated with this Contract must occur within the boundaries of the State of New York or the Recipient must utilize data collected within the State of New York.

e. The Recipient shall perform under this Contract to the satisfaction of the Department. The Recipient shall provide services, complete activities and meet Project objectives summarized in Schedule A, and in accordance with the provisions of this Contract.

f. The Recipient agrees to obtain all required permits, including but not limited to, local, state and federal permits prior to the commencement of the applicable stages(s) of the Project as defined in Schedule A.

g. The Recipient agrees that all work performed in relation to the Project by the Recipient or its agents, representatives, contractors or subcontractors will comply with all relevant federal, state and local laws, rules, regulations and standards, zoning and building codes, ordinances, operating certificates for facilities, or licenses for an activity.
h. A recipient that is a municipality also agrees to expend these funds in total accordance with the provisions and rules and regulations of the General Municipal Law, and any and all other applicable laws, rules and regulations.

i. If the Recipient enters into subcontracts for the performance of work pursuant to this Contract, the Recipient remains liable for compliance with all the terms of this Contract. For subcontracts which are not competitively bid, documentation must be submitted as to the reasonableness of all payments made under the subcontract.

j. Services performed pursuant to this 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.

k. Funds provided pursuant to this Contract shall not be used for any partisan political activity or for activities that may influence legislation or the election, or defeat of any candidate for public office.

l. The Recipient is nonsectarian and shall not at any time, sell or convey any real property or facility developed pursuant to this Contract, nor shall the Recipient convert such real property or facility to any other use other than the public nonsectarian use, as specified in the Schedule A, without the express written authority of the Department.

m. Facilities developed or equipment purchased pursuant to this Contract, upon request, shall be made available at any reasonable time for inspection by the Department.

n. The Recipient agrees that it will not receive reimbursement from other sources for any expenditures funded under this Contract except in accordance with the provisions of this Contract.

o. Any equipment, furniture, supplies or other property purchased with funds provided hereunder cannot be sold, transferred or used for purposes other than stated in this Contract, without the written approval of the Department. In addition, all equipment, furniture, supplies or other property purchased with funds provided for under this contract that have a purchase price of $1,000 or greater or a useful life of more than two (2) years will remain the property of the Department unless otherwise negotiated.

ARTICLE 5. PAYMENT AND REPORTING

a. The maximum amount payable under this Contract is $99,107.00. Eligible expenditures for the Project are those expenditures which are identified in Schedule B - Program Budget and which are in accordance with the applicable appropriation or re-appropriation authority.

b. The Recipient agrees to fully-fund the Project and then seek quarterly reimbursement from the Department for eligible project costs. The Recipient shall forward complete State Assistance Requests once every quarter for the time periods ending March 31, June 30, September 30 and December 31. Such requests are due no later than fifteen (15) days following the end of each quarter. All State Assistance Requests shall be provided by the Recipient to the Department in accordance with the direction and requirements of the Department.
c. Project cost overruns will not be paid by the Department and the Department is not committed to seeking additional appropriations or re-allocation of funds and will not be responsible for the maintenance and operation of any facility which may be developed.

d. The Department will retain ten (10%) percent of each payment made to the recipient. The total accumulated retainage shall be paid to the Recipient as part of a final payment.

e. The Recipient shall be responsible for coordinating and maintaining financial tracking records for the total cost of the approved project. The Recipient shall submit to the Department properly documented claims for reimbursement accompanied by such receipts and documents verifying expenditures incurred within the project term of this Contract, and as may be required by the Department and by the Comptroller.

f. A signed and dated Standard Voucher and an Expenditure Reporting Form (Schedule C) are required with all payment requests. In addition, the attached documentation form, Personal Services Summary, is required for all payment claims, and must be signed by an authorized representative of the Recipient and must be submitted on a quarterly basis to document in-kind match. The records must include the employees' names and/or title, hourly rate, relation of tasks performed to the Contract, including the dates and numbers of hours worked each day and total costs claimed for each individual (hourly rate times the number of hours worked). Schedule C is attached hereto and made a part of the Contract.

g. The Recipient must identify source of funds used for in-kind match and certify that these funds are not federal dollars.

h. The Department shall review the Recipient's financial documentation and a payment shall be made in accordance with requirements established by the Department and upon audit and approval of the Comptroller of vouchers executed by an authorized officer of the Recipient.

i. The Department shall not be liable for expenses and obligations arising from the Project after the contract termination date.

j. The Recipient shall issue a certificate of completion of the Project and submit a final voucher to the Department within 30 days of the completion of said Project or within 30 days of the expiration of this Contract. The Department will conduct a final review of the Project, which may include an on-site inspection, at a time satisfactory to the Department. If the Project is not complete by the term end date of the Contract, the Department may request a complete accounting of expenditures on the Project.

k. The Recipient will be required to make a refund to the Department of any portion of amounts paid under this Contract which are not used or needed to accomplish the Project, based on the Department's determination. If the Recipient fails to submit a final report within ninety (90) days after the expiration of this Contract, further reimbursements may be withheld by the Department, and upon a determination by the Department that the Contract has been abandoned, all funds previously paid under this Contract may be due and owing.

l. A final payment will be made to the Recipient only upon the satisfactory determination by the Department of the final eligible amount of the Project. Determination of the final eligible amount of the Project will be based upon the Department's review of the Recipient's final voucher submission.
ARTICLE 6. PROJECT COMPLETION AND TERMINATION

a. The Recipient shall complete the Project as set forth in this Contract, and failure to render satisfactory progress or to complete the Project to the satisfaction of the Department may be deemed an abandonment of the Project and cause for the suspension or termination of any obligation to the Department. In the event the Recipient should be deemed to have abandoned the Project for any reason or cause other than a national emergency or an Act of God, all monies paid to the Recipient by the Department shall be repaid to the Department within one year or 365 days after such demand. If such monies are not repaid within one year or 365 days after such demand, the Department may request the Comptroller to cause an amount equal to the monies defined herein and paid to the Recipient to be withheld from any state assistance to which the Recipient would otherwise be entitled.

b. Notwithstanding the foregoing, and provided the public will receive a benefit from the Project, as completed, the Department, at its option, may require repayment of only those funds not expended in accordance with the terms of this Contract.

c. The Recipient agrees to indemnify, save and hold harmless the State of New York and the Department in accordance with Clause II of Appendix B, referred to in this Contract.

d. The Department may terminate the Contract immediately upon 30 days written notice if the Recipient fails to comply with the material terms and conditions of this Contract and/or with any laws, rules, regulations, policies or procedures affecting this Contract.

e. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice.

f. Upon receipt of notice of termination, the Recipient 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 of the Department.

ARTICLE 7. USEFUL LIFE OF THE PROJECT

For Management and Restoration Projects, the Recipient agrees to maintain and operate this Project for a period of not less five years. In addition, the Recipient agrees to allow public access to any facilities developed with monies defined herein on the same basis to all residents of New York State. Failure to comply with the provisions of this Article shall be considered a breach of this Contract.

ARTICLE 8. CREDITS

In recognition of a portion of Department funds made available for the Project, the Recipient agrees that any identifying signs will note that portions of this Project were funded by New York State Department of Environmental Conservation.
ARTICLE 9. COPYRIGHT MATERIALS

The Department shall have title to and the right to determine the disposition of any copyrights, or copyrightable materials, first produced or created in the performance of the work relative to this Contract, provided that the Department shall grant to the Recipient a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the Department the subject copyright throughout the world, where the Department is able to do so.

ARTICLE 10. INTELLECTUAL PROPERTY

For Inventory and Research Projects, the Recipient agrees that all information and data collected, and all reports generated by funds provided for under this Contract are the property of the Department.

Any invention or discovery made or conceived in the performance of this Contract shall be the property of the Department. The Recipient shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the Department the subject invention throughout the world, where the Department is able to do so.

ARTICLE 11. SITE VISITS

The Department shall have the right to conduct an on-site review of the Project and/or books and records of the Recipient prior to, and for a reasonable time following issuance of the final payment.

ARTICLE 12. NOTICES

Wherever it is provided in this Contract that notice shall be given or other written communications sent to the Department or the Recipient, such notices or communications shall be delivered or sent to:

Department:

Technical
Ms. Jenny Landry,
State Wildlife Grants Biologist
Region 8 Bureau of Wildlife
New York State Department of Environmental Conservation
6274 East Avon-Lima Road
Avon, NY 14414-9519
Phone: (585) 226-5491
Fax: (585) 226-3009
jalandry@gw.dec.state.ny.us
Administrative
Terri F. Adriance, Environmental Program Specialist
Bureau of Fish & Wildlife Services
Division of Fish, Wildlife & Marine Resources
625 Broadway, 5th Floor
Albany, New York 12233-4751
Phone: (518) 402-8988
Fax: (518) 402-8925
tfadrian@gw.dec.state.ny.us

Notices to the Recipient shall be sent to the following address:

Mr. Dirk Bryant,
Director of Conservation Programs
The Nature Conservancy - Adirondack Chapter
195 New Karner Road
Albany, NY 12205
Phone: (518) 576-2082
dbryant@tnc.org
SIGNATURE PAGE  
CONTRACT NO.: C303569

IN WITNESS WHEREOF, this contract has been duly executed by the parties hereto on the day and year appearing following their respective signatures.

By the signature hereunder, the Recipient represents that it has the legal status necessary to enter into this Contract and that the person signing is authorized to do so as evidenced by the resolution attached hereto.

Authorized Representative:

______________________________  (print name)

Dated: _______________________

______________________________  (signature)

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.

NYS Department of Environmental Conservation
Approved:  _______________________

______________________________  (print name)

Dated: _______________________

______________________________  (signature)

Attorney General
Approved:  _______________________

______________________________  (print name)

Dated: _______________________

______________________________  (signature)

State Comptroller
Approved:  Thomas P. DiNapoli  

______________________________  (print name)

Dated: _______________________

______________________________  (signature)
ACKNOWLEDGMENT FORM

Contractor: Please select and complete the appropriate acknowledgment type for your organization. The signature page must be accompanied by at least one original copy of the acknowledgment. Thank you.

(PERSONAL ACKNOWLEDGMENT)

State of ____________________
County of ____________________

On the ___ day of _______, in the year _______, before me personally came ____________________________ to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and (s)he duly acknowledged to me that (s)he executed the same.

Notary Seal

__________________________________
Notary Public

(CO-PARTNERSHIP ACKNOWLEDGMENT)

State of ____________________
County of ____________________

On the ___ day of _______, in the year _______, before me personally came ____________________________ to me known, and known to be a member of ____________________________, the firm described in which executed the foregoing instrument, and (s)he acknowledged to me that (s)he subscribed the name of said firm thereto on behalf of said firm for the purpose therein mentioned.

Notary Seal

__________________________________
Notary Public

(CORPORATE ACKNOWLEDGMENT WITH SEAL)

State of ____________________
County of ____________________

On the ___ day of _______, in the year _______, before me personally came ____________________________ to me known, who duly being sworn, did depose and say that (s)he resides in ____________________________ (if the place of residence is in a city, include the street and street number, if any thereof); that (s)he is the ____________________________ (president or other officer or director or attorney in fact duly appointed) of the ____________________________, the corporation described in and which executed the above instrument; that (s)he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that (s)he signed his (her) name thereto by like order.

Notary Seal

__________________________________
Notary Public

(CORPORATE ACKNOWLEDGMENT WITHOUT SEAL)

State of ____________________
County of ____________________

On the ___ day of _______, in the year _______, before me personally came ____________________________ to me known, who duly being sworn, did depose and say that (s)he resides in ____________________________ (if the place of residence is in a city, include the street and street number, if any thereof); that (s)he is the ____________________________ (president or other officer or director or attorney in fact duly appointed) of the ____________________________, the corporation described in and which executed the above instrument; that (s)he signed their name thereto by authority of the Board of Directors of said corporation, with the authority to bind said corporation.

Notary Seal

__________________________________
Notary Public
SCHEDULE A
Scope of Services
C303569 - The Nature Conservancy, Adirondack Chapter
Incorporating Aquatic Species of Greatest Conservation Need (SGCN)
Requirements and Conservation Objectives into State Transportation Planning

Project Time Frame:

February 04, 2008 - February 03, 2010

Need:

The impact of transportation infrastructure on species and ecosystems is well documented (Forman et al 2003). Within aquatic systems, roads can significantly alter habitat structure, hydrology, chemical inputs, connectivity for species movement and ecosystem processes like flooding, and the transport of materials such as sediments, soil, large wood, and nutrients (Forman et al. 2003, Jones et al. 2000, Spellerberg 1998, Trombulak and Frissell 2000). Culverts and bridges are the primary structures that occur where roads and streams meet and their effects on stream ecology include altered flow regimes and scoured sediments, which may result in increased sedimentation, barriers to fish and wildlife movement, and reduced habitat for fish and other biota (Forman et al 2003, Jones et al. 2000).

Within New York, roads, dams, and culverts are identified as threats to biodiversity in upwards of 15 conservation action plans, including: Hudson River Estuary, Adirondack Mountains, Montauk Peninsula, Delaware Basin, Tug Hill, Allegheny Forests, and Lake Champlain (ConPro 2007). However, few of these plans have spatially identified the location of the most critical road crossings or dams that are for species and habitat restoration.

An unprecedented opportunity to influence transportation policy statewide is before us. At the request of the New York State Department of Transportation (DOT), we propose to develop spatial tools that will help that agency integrate aquatic conservation objectives into road planning and maintenance work. Specifically, we will identify the most important habitats for species of greatest conservation need (SGCN) and the most critical barriers for restoration. In partnership with DOT, this information will be utilized in transportation planning across NY and is of interest to conservation practitioners like the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP), to answer questions such as: Where are the most important stream reaches in NY for SGCN and other biodiversity? Where are the most unfragmented stream networks? Which culverts and dams, if restored and passable, would contribute the most to improving habitat for SGCN? Where do planned road work and priority culvert and dam locations intersect?
Relevance to New York State Comprehensive Wildlife Conservation Strategy
Recommendations and Threats Addressed:

The CWCS identifies significant statewide threats stemming from transportation infrastructure and associated residential and commercial development, including: direct mortality to aquatic and terrestrial species through vehicle collision; loss of habitat quantity and quality through fragmentation; loss of connectivity; increased sedimentation and erosion; altered hydrology from dams, culverts, bridges, and floodplain alteration; degraded water quality from runoff; and creating barriers to species movement (CWCS p. 57, 59, 61, 65, Appendix C). Furthermore, habitat loss and fragmentation (including fragmenting effects of transportation infrastructure) is listed as a threat to multiple groups of SGCN, ranging from mammals, herpetofauna, birds and fish to insects (CWCS p. 32, 35, 37, 43, 49). All 11 watershed plans identify roads and/or culverts as threats to SGCN (Allegheny Basin (CWCS p. 94-95), Atlantic Ocean Basin (Table 7), Delaware Basin(CWCS p. 155), Lake Champlain Basin (CWCS p. 185, 187), Lake Erie Basin (CWCS p. 248), Lower Hudson-Long Island Bays Basin (CWCS p. 293), N.E. Lake Ontario-St. Lawrence Basin (CWCS p. 340), Southeast Lake Ontario Basin (CWCS p. 405), Southwest lake Ontario (CWCS p. 457), Susquehanna Basin (CWCS p. 474), Upper Hudson Basin (CWCS p. 514).

For these reasons the CWCS calls for statewide strategies/actions to "improve mapping and understanding of habitat distribution and condition in NYS" through "identifying and mapping large blocks of unfragmented habitat cover types including free-flowing streams and riparian areas" (CWCS p. 75-76). This proposal outlines a vital component to building such strategies and abating threats to SGCN.

Objectives:
- Prioritize streams across NYS using models for SGCN and their habitats as criteria.
- Identify the most important culverts, dams, and bridges for improving and restoring SGCN habitat and ecosystem functions.
- Prioritize the previous results based on the existing DOT five-year transportation plan and maintenance program.

Expected Results or Benefits:

This project will break new ground by building a strategic partnership around conservation and transportation in NYS. It provides the first step in spatially assessing statewide transportation impacts to aquatic biodiversity. Done in partnership with the NYS Interagency Culvert Work Group (made up of seven agencies), the benefits of this work to the restoration of aquatic habitats for numerous SGCN species are exponential. In concert with identifying priority streams and barriers, the Work Group will also identify best management practices to improve the permeability of culvert designs to restore and enhance fish and wildlife movement. It's important
to note that these efforts can benefit from scientific data, spatial modeling, and management examples from neighboring states also seeking to diminish road impacts on fish and wildlife. For instance, the Army Corps New England district recently adopted road crossing standards for new construction developed in Massachusetts (MA River Continuity Partnership 2006).

This project has immediate and future relevance. The current five-year DOT plan illustrates existing road projects and our analysis can help to prioritize the most important places among them for habitat and ecosystem function restoration. Once established, the geographic information system (GIS) layers will be useful beyond the life of this project as they can be updated as needed. The results of this effort are extremely important to DOT corridor planning and management. By incorporating measures to address priority streams and barriers, DOT, OPRHP and others can address resource concerns proactively, which may also decrease the likelihood of project permitting delays.

In addition to influencing state road planning and maintenance activities, the maps resulting from this analysis can guide similar decision-making by town and county departments of public works. The project outcomes and resulting tools will be useful to OPRHP for prioritizing areas on state park lands that could benefit from restoring connectivity and enhancing habitat for SGCN and associated wildlife. As noted below, proposed activities include an outreach component to begin educating local constituencies on the applicability of modeling results in guiding local transportation planning.

A number of GIS coverages useful for other CWCS-related conservation work at the watershed and statewide scale will result. This includes production of a statewide stream prioritization map (currently no stream classification exists for stream <30 square miles drainage area), an updated dams layer, a culverts layer, and, of critical importance, maps predicting key habitat needs of aquatic SGCN species. Simply put, these GIS layers will fill existing gaps in statewide mapping of critical habitat for these species. Additionally, this project will inform future efforts to field-assess and inventory the resultant model. Since the scope of the stream crossing threat is so widespread across the state, our results will provide a critical prioritization tool to make an inventory effort cost effective and efficient.

Approach:

Proven and innovative methods from both ecological and transportation disciplines will be used to accomplish the objectives. The ecosystem approach for infrastructure planning recently published by the USDOT will help to guide our efforts (Brown 2006). The Nature Conservancy (TNC) has successfully partnered with DOT in states such as Massachusetts, California, Mississippi, and Colorado, on projects ranging from prioritization of conservation resources to restoration and mitigation. The approach outlined below couples coarse-scale aquatic habitat priorities with fine-scale SGCN dynamic buffer models to produce products useful to DOT, OPRHP, and other conservation practitioners.

1. Develop Dynamic Buffer Models for SGCN and Their Habitat: The NY Natural
Heritage Program has developed a GIS method to dynamically model species and natural communities based on local ecological factors. These models delineate areas beyond community or species edge to maintain the ecological integrity of each occurrence. Factors like soil erosion, slope percentage, aspect, and land use/land cover are considered in the models (Howard 2006, Jaycox 2005). We aim to apply this methodology to 100 SGCN within 16 habitat categories (based on the aggregation of species within taxa groups by common habitats) across NY (Table 1).

<table>
<thead>
<tr>
<th>Table 1. Proposed Dynamic Buffer Models for SGCN and Their Habitats</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Species of Greatest Conservation Need (SGCN)</strong></td>
</tr>
<tr>
<td><strong>Amphibians:</strong></td>
</tr>
<tr>
<td>hellbender, longtail salamander</td>
</tr>
<tr>
<td><strong>Beetles:</strong></td>
</tr>
<tr>
<td>cobblestone tiger beetle, Appalachian tiger beetle</td>
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<tr>
<td><strong>Birds:</strong></td>
</tr>
<tr>
<td>pied-billed grebe, least bittern, great blue heron, great egret,</td>
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<tr>
<td>cattle egret, bald eagle, king rail, Caspian tern, common tern,</td>
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<tr>
<td>black tern</td>
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<tr>
<td><strong>Crustacean:</strong></td>
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<tr>
<td>devil crawfish</td>
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<tr>
<td><strong>Damselflies and Dragonflies:</strong></td>
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<tr>
<td>tiger spiketail, arrowhead spiketail, gray petaltail, common sand-</td>
</tr>
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<td>dragon, mocha emerald, blue-tipped dancer, midland clubtail, rapid</td>
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<td>clubtail, septima’s clubtail, extra-striped snaketail, brook</td>
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<td>snaketail, pygmy snaketail, lake emerald, ocellated emerald, mottled</td>
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<tr>
<td>meadowhawk, ebony boghaunter, forcipate emerald</td>
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<td><strong>Fishes:</strong></td>
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<td>round whitefish, freshwater drum, quillback, river redhorse,</td>
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<td>channel darter, Iowa darter, lake sturgeon, mooney, greater red-</td>
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<td>horse, pirate perch, silverjaw minnow, streamline chub, gravel</td>
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<td>chub, bluebreast darter, spotted darter, eastern sand darter,</td>
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<tr>
<td>shiner, black redhorse, bigeye chub, pugnose shiner, ironcolor</td>
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<tr>
<td>shiner, blackchin shiner, silver shiner, longhead darter</td>
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<tr>
<td><strong>Mayfly:</strong></td>
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<tr>
<td>tomaty mayfly</td>
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<tr>
<td><strong>Mollusks:</strong></td>
</tr>
<tr>
<td>mucket, dwarf wedgemussel, brook floater, sloppershell mussel,</td>
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<td>threeering, alewife floater, Wabash pigtoe, yellow lumpmussel,</td>
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<td>wavy-rayed lumpmussel, pocketbook, green floater, fragile paper-</td>
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<td>shell, eastern pondmussel, black sandshell, eastern pearlshell,</td>
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<td>hickorynut, round hickorynut, clubshell, round pigtoe, pink</td>
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<td>heelsplitter, kidneyshell, deer toe, royed bean, rainbow, Chittena-</td>
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<td>ngo ovate amber snail</td>
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<td><strong>Moths:</strong></td>
</tr>
<tr>
<td>bogbean buckmoth, pitcher plant borer moth</td>
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<tr>
<td><strong>Reptiles:</strong></td>
</tr>
<tr>
<td>bog turtle, Blanding’s turtle, eastern massasauga, spiny softshell,</td>
</tr>
<tr>
<td>queen snake</td>
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</tbody>
</table>
2. Create Prioritization Model for Streams: The dynamic buffer models for SGCN will be used as one of multiple criteria to prioritize streams across NY (Table 2). We will convene a group of experts to identify a full suite of factors that should be considered in the prioritization model building on existing work. In partnership with the Northeast Habitat Classification and Mapping Project, we propose to create an aquatic classification for small streams (<30 square miles drainage area) in NY, which currently does not exist. This is critical for providing guidance on culvert restoration since culverts that block fish and wildlife movement usually occur on small streams (Bowden 2006). The proposed classification methodology was developed by Higgins et al. 2005 and Sowa et al. (2004) and is being adapted for the Northeast by The Nature Conservancy’s Eastern Regional Science Office (Olivero and Anderson 2003). As part of this assessment, a stream reach habitat dataset will be created and include attributes for stream size, flow, connectivity, sinuosity, gradient, pH, and a TNC regional bedrock geology classification.

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Source</th>
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<tbody>
<tr>
<td>SGCN dynamic buffer models (Table 1)</td>
<td>NY Natural Heritage</td>
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<tr>
<td>Ecoregional portfolio</td>
<td>The Nature Conservancy</td>
</tr>
<tr>
<td>Aquatic wildlife classification system</td>
<td>NatureServe, The Nature Conservancy</td>
</tr>
<tr>
<td>Herpetile &quot;connectivity zones&quot;</td>
<td>Dr. James Gibbs, SUNY ESF</td>
</tr>
</tbody>
</table>

3. Prioritize Barriers for Restoration: Concurrently, we will create a road/stream crossing dataset and compile existing dams data into one complete layer for NY. DOT’s spatial bridge dataset will also be utilized. The streams crossing dataset will identify culverts by using the intersection of roads and streams minus the crossings we know are bridges (Olivero and Jospe 2006). Once datasets are compiled and cleaned we will conduct a series of fragmentation analyses to identify: largest unfragmented stream networks, lengths of connected networks between culverts, dams, and bridges, improvements in continuity (gains in relative and absolute unfragmented habitat) between potentially fragmenting features. We will consult with a group of users to augment these analyses with other potentially useful factors. The results from step 2 will be a main factor in prioritizing barriers for restoration. Other factors may include impact to increasing ecosystem continuity, and stream size. Previous results in the Westfield River demonstrated that 73% of stream and road crossings in headwaters were barriers and 100% of severe barriers were on size 1 streams (Bowden 2006). The final outcome will be a prioritization of the most important culverts, dams, and bridges for restoration to enhance fish and wildlife passage and ecosystem processes in NY.

4. Identify Restoration Opportunities within Current DOT Transportation Plan: We will overlay the existing DOT 5-year transportation plan and maintenance program on the resultant map and refine our barrier priorities to reflect planned work. This, plus the results from the NYS Interagency Culvert Work Group, will provide DOT with the tools to start assessing the severity of the barriers in the field and improving infrastructure to make it passable to fish and wildlife in the most important places.
5. Use Results to Influence State and Local Transportation Planning: TNC staff will disseminate the map(s) and final report to state agencies and local departments of public works in order to influence agency, town and county transportation planning and maintenance efforts. We propose to host a series of briefing sessions within each of the 11 CWCS watersheds, to present the results and explain their applicability in guiding road planning and maintenance work.

Future Impacts:

This project will enable future efforts to focus inventory of barrier severity in the field. Since it is not feasible to inventory every road crossing across NY, our analysis will identify the most important places for SGCN and aquatic ecosystem continuity and function. In partnership with the NYS Interagency Culvert Work Group we hope to launch an inventory effort following this project.

Location:

The geographic scope of the project is NYS including all 11 CWCS watersheds.

Schedule:

<table>
<thead>
<tr>
<th>Estimated Date</th>
<th>Task</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 2008 - April 2009</td>
<td>Create dynamic buffer models for SGCN</td>
</tr>
<tr>
<td>November 2008</td>
<td>Convene expert group to identify factors including SGCN buffers for aquatic prioritization model</td>
</tr>
<tr>
<td>July 2008 - July 2009</td>
<td>Develop aquatic prioritization model</td>
</tr>
<tr>
<td>July 2008 - December 2008</td>
<td>Create barrier datasets: culverts, dams, and bridges</td>
</tr>
<tr>
<td>November 2008</td>
<td>Convene expert group to identify useful outputs of fragmentation analyses</td>
</tr>
<tr>
<td>January 2009 - May 2009</td>
<td>Perform fragmentation analyses</td>
</tr>
<tr>
<td>August 2009 - October 2009</td>
<td>Overlay results with DOT 5-year plan</td>
</tr>
<tr>
<td>October 2009 - January 2010</td>
<td>Prepare deliverables: report, GIS layers, maps</td>
</tr>
<tr>
<td>January 2010 - April 2010</td>
<td>Host stakeholder/public outreach briefing sessions within each CWCS watershed</td>
</tr>
</tbody>
</table>
Deliverables:

Interim:

Annual reports by January 31 of each of the project. Reports shall include an update and explanation of any changes in the expected project timeline.

Final:

1. GIS layers for use in current and future NYS DOT, state agencies, and local planning efforts: SGCN models for 100 species within 16 habitat categories, priority streams for biodiversity including SGCN in NYS, priority culverts and dams for restoring habitat for SGCN and their habitats, updated dams layer, and a culverts layer (currently does not exist).

2. Report detailing methods, results, and recommendations for priority culvert restoration.

3. Seamless, statewide coverage illustrating road projects prioritized with respect to their potential impact to improving aquatic permeability in important biodiversity areas and a series of maps depicting results for each of the 11 CWCS watersheds.

Key Personnel:

- Michelle Brown, Conservation Scientist, Adirondack Nature Conservancy
- Dirk Bryant, Director of Conservation Programs, Adirondack Nature Conservancy
- Craig Cheeseman, GIS Specialist, Adirondack Nature Conservancy
- DJ Evans, Director, NY Natural Heritage Program
- Timothy Howard, Ph.D., Program Scientist, New York Natural Heritage Program
- Arlene Olivero, Aquatic Ecologist/GIS Manager, Eastern Regional Office, TNC

Literature Cited:


## SCHEDULE B

**Budget - C303569**

February 04, 2008 - February 03, 2010

Incorporation Aquatic Species of Greatest Conservation Need Requirements and Conservation Objectives into State Transportation Planning

<table>
<thead>
<tr>
<th>Category</th>
<th>Year 1 02/04/2008-02/03/2009</th>
<th>Year 2 02/04/2009-02/03/2010</th>
<th>Total Years 1 &amp; 2 02/04/2008 - 02/03/2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$8,513.00</td>
<td>$22,770.00</td>
<td>$10,909.00</td>
</tr>
<tr>
<td>Fringe Benefit</td>
<td>$3,405.00</td>
<td>$9,108.00</td>
<td>$4,364.00</td>
</tr>
<tr>
<td>Sub-Total</td>
<td>$11,918.00</td>
<td>$31,878.00</td>
<td>$15,273.00</td>
</tr>
<tr>
<td>Supplies/Materials</td>
<td>- $500.00</td>
<td>- $1,335.00</td>
<td>- $1,950.00</td>
</tr>
<tr>
<td>Travel</td>
<td>- $1,335.00</td>
<td>- $375.00</td>
<td>- $375.00</td>
</tr>
<tr>
<td>Contractual</td>
<td>- $5,600.00</td>
<td>- $-</td>
<td>- $-</td>
</tr>
<tr>
<td>Meetings</td>
<td>$929.00</td>
<td>$1,000.00</td>
<td>$1,287.00</td>
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<tr>
<td>Sub-Total</td>
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<td>$40,242.00</td>
<td>$16,273.00</td>
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<tr>
<td>Indirect</td>
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<td>$10,061.00</td>
<td>$4,068.00</td>
</tr>
<tr>
<td>Total</td>
<td>$14,898.00</td>
<td>$50,303.00</td>
<td>$20,341.00</td>
</tr>
</tbody>
</table>
SCHEDULE C

EXPENDITURE REPORTING FORM
Fish, Wildlife & Marine Resources

MOU/Contract No.: ________________________________
MOU/Contract Project Name: ________________________________
Reporting Period for Costs Claimed On This Voucher: ________________________________

A. List Total Eligible Cost Summary For This Reporting Period Only:

<table>
<thead>
<tr>
<th>Personal Service Cost</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries and/or Wages</td>
<td>$</td>
</tr>
<tr>
<td>Fringe Benefits</td>
<td>$</td>
</tr>
<tr>
<td>Indirect Cost Rate %</td>
<td>$</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-personal Service Cost</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Travel</td>
<td>$</td>
</tr>
<tr>
<td>Equipment</td>
<td>$</td>
</tr>
<tr>
<td>Supplies &amp; Materials</td>
<td>$</td>
</tr>
<tr>
<td>Contractual Services</td>
<td>$</td>
</tr>
</tbody>
</table>

Total Expenses For This Reporting Period Only: $__________________________

B. List Cumulative Total Eligible Costs Claimed From The Beginning of Contract Up To And Including Those Listed Above:

Total Life-to-Date Expenses: $__________________________
Less Previous Payments Processed: $__________________________

Total Amount Due Contractor Now: $__________________________

Personal Services Summary
Contractor and 3rd Party Match

<table>
<thead>
<tr>
<th>Name, Affiliation</th>
<th>Hourly Rate</th>
<th>Related Contract Task</th>
<th>Number of Hours Claimed</th>
<th>Total Cost Claimed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date(s) and/or Title</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**NOTE:** If daily time and activity records for each individual employee, signed by the appropriate supervisor(s), which document the above summarized personal services performed in relation to the project are not attached, the following certification must be signed prior to reimbursement of those costs.

I hereby certify that daily time and activity records for each individual detailing the specific hours devoted solely to this project which are distinguishable from work done on other projects during the same time frame, maintained in accordance with all applicable federal, state and general municipal accounting practices and procedures are available in our files for inspection.

__________________________
Chief Fiscal Officer

__________________________
Authorized Representative
STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance 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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $10,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money, then the value of such consideration shall not be considered part of the contract, and shall be considered in determining the total cost of the contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance 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.

5. 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, 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, 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. 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 moneys due hereunder for a second or subsequent violation.

6. 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, then Contractor's employees, all other individuals engaged by the Contractor in the performance of this contract, and all subcontractors shall be paid at least the prevailing wage rate and pay or provide the prevailing supplements. The prevailing wage rate and supplements and the terms for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bids was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 221-f of the Labor Law and Section 139-e of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantial owner or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (30 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. 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 options to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract. Any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the 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 set-off pursuant to an audit, the finalization of such audit by the State agency's representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). 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 State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor.
within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate 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 the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. (1) 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 principal 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 individuals 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.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 100 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting 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 agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting 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:

(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 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, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, 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; and

(c) the Contractor shall state, in all solicitations 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, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency 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 contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining herein.

13. 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 Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment 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.

16. NO ARBITRATION. Disputes involving this contract, including the breach of 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.

17. 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. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.
18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (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 responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether 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 §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. **MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. **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.

Information on the availability of New York State subcontractors and suppliers is available from:

- NYS Department of Economic Development
  - Division for Small Business
  - 30 South Pearl St -- 7th Floor
  - Albany, New York 12245
  - Telephone: 518-292-5220
  - Fax: 518-292-5884
  - http://www.empire.state.ny.us

A directory of certified minority and women-owned business enterprises is available from:

- NYS Department of Economic Development
  - Division of Minority and Women’s Business Development
  - 30 South Pearl St -- 2nd Floor
  - Albany, New York 12245
  - Telephone: 518-292-5250
  - Fax: 518-292-5803
  - http://www.empire.state.ny.us

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York 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 New York 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 this contract and agrees to cooperate with the State in these efforts.

21. **RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their 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 they offer will 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 they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. **PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.
APPENDIX B
Standard Clauses for All New York State Department of Environmental Conservation Contracts

The parties to the attached contract, license, lease, grant, amendment or other agreement of any kind (hereinafter "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract. The word "Contractor" herein refers to any party to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. Postponement, suspension, abandonment or termination by the Department: The Department shall have the right to postpone, suspend, abandon or terminate this contract, and such actions shall in no event be deemed a breach of contract. In the event of any termination, postponement, delay, suspension or abandonment, the Contractor shall immediately stop work, take steps to incur no additional obligations, and to limit further expenditures. Within 15 days of receipt of notice, the Contractor shall deliver to the Department all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to source codes and specifications, guarantees, warranties, as-built plans and shop drawings. In any of these events, the Department shall make settlement with the Contractor upon an equitable basis as determined by the Department which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions applicable to postponement, suspension or termination of the contract.

II. Indemnification and Hold harmless: The Contractor agrees that it will indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it by reason of any omission or tortious act of the Contractor, its agents, employees, suppliers or subcontractors in the performance of this contract. The Department and the State of New York may retain such monies from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like, which is asserted against the Department and/or the State of New York.

III. Conflict of Interest: (a) Organizational Conflict of Interest. To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the Department.

(1) An organizational conflict of interest exists when the nature of the work to be performed under this contract may, without some restriction on future activities, impair or appear to impair the Contractor's objectivity in performing the work for the Department.

(2) The Contractor agrees that if an actual, or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to the Department. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Department, to avoid, mitigate, or minimize the actual or potential conflict.

(3) To the extent that the work under this contract requires access to personal, proprietary or confidential business or financial data of persons or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(b) Personal Conflict of Interest: The following provisions with regard to management or professional level employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

(1) A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Contractor agrees to notify the Department immediately of any actual, or potential personal conflict of interest with regard to any such person working on or having access to information regarding this contract, as soon as Contractor becomes aware of such conflict. The Department will notify the Contractor of the appropriate action to be taken.

(2) The Contractor agrees to advise all management or professional level employees involved in the work of this contract, that they must report any personal conflicts of interest to the Contractor. The Contractor must then advise the Department which will advise the Contractor of the appropriate action to be taken.

(3) Unless waived by the Department, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, as defined herein, have been reported to the Department. Such certification must be signed by
a senior executive of the Contractor and submitted in accordance with instructions provided by the Department. Along with the annual certification, the Contractor shall also submit an update of any changes in any conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.

(4) In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York State Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) Remedies - The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make requested disclosures or misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be permitted by the terms of Clause I of this Appendix or other applicable provisions of this contract regarding termination.

(d) The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has developed the statement of work or the solicitation package.

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Department.

If this is a contract for work related to action at an inactive hazardous waste site, the following paragraph shall apply to those Contractors whose work requires the application of professional judgment: It does not apply to construction contracts.

(f) Due to the scope and nature of this contract, the Contractor shall observe the following restrictions on future hazardous waste site contracting for the duration of the contract.

(1) The Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party with respect to any work relating to remedial activities or work pertaining to a site where the Contractor previously performed work for the Department under this contract without the prior written approval of the Department.

(2) The Contractor agrees in advance that if any bids/proposals are submitted for any work for a third party that would require written approval of the Department prior to entering into a contract because of the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Department to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

IV. Requests for Payment All requests for payment by the Contractor must be submitted on forms supplied and approved by the Department. Each payment request must contain such items of information and supporting documentation as are required by the Department, and shall be all-inclusive for the period of time covered by the payment request.

V. Compliance with Federal requirements To the extent that federal funds are provided to the Contractor or used in paying the Contractor under this contract, the Contractor agrees that it will comply with all applicable federal laws and regulations, including but not limited to those laws and regulations under which the Federal funds were authorized. The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform substantially to the language of this clause.

VI. Independent Contractor The Contractor shall have the status of an independent contractor. Accordingly, the Contractor agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out as, nor claim to be, an officer or employee of the Department by reason of this contract. It further agrees that it will not make any claim, demand or application to the Department for any right or privilege applicable to an officer or employee of the Department, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.
VII. **Article 15-A Requirements** The terms contained in this clause shall have the definitions as given in, and shall be construed according to the intent of Article 15-A of the Executive Law, 5 NYCRR Part 140, et. seq., Article 52 of the Environmental Conservation Law and 6 NYCRR Part 615, et. seq., as applicable, and any goals established by this clause are subject to the intent of such laws and regulations.

(a) If the maximum contract price herein equals or exceeds $25,000, and this contract is for labor, services, supplies, equipment, or materials; or

(b) If the maximum contract price herein equals or exceeds $100,000 and this contract is for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; then

(c) The affirmative action provisions and equal employment opportunity provisions contained in this paragraph and paragraphs (d) and (e) of this clause shall be applicable within the limitations established by Executive Law §§312 and 313 and the applicable regulations.

(1) The Contractor is required to make good faith efforts to subcontract at least 8.8% of the dollar value of this contract to Minority Owned Business Enterprises (MBEs) and at least 8.8% of such value to Women Owned Business Enterprises (WBEs).

(2) The Contractor is required to make good faith efforts to employ or contractually require any Subcontractor with whom it contracts to make good faith efforts to employ minority group members for at least 10.0% of the workforce hours required to perform the work under this contract.

(3) The Contractor is required to make good faith efforts to solicit the meaningful participation by enterprises identified in the NYS Directory of Certified Businesses provided by:

Empire State Development Corp.
Div. Minority & Women's Business Development
30 South Pearl Street
Albany, New York 12245
Phone: (518) 292-5250
Fax: (518) 292-5803
Empire State Development Corp.
633 Third Avenue
New York, NY 10017
Phone: (212) 803-2414
Fax: (212) 803-3223
internet: www.empire.state.ny.us/esd.htm

(d) The Contractor agrees to include the provisions set forth in paragraphs (a), (b) and (c) above and paragraphs (a), (b), and (c) of clause 12 of Appendix A in every subcontract in such a manner that the provisions will be binding upon each Subcontractor as to work under such subcontract. For the purpose of this paragraph, a “subcontract” shall mean an agreement providing for a total expenditure in excess of $25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon in which a portion of the Contractor’s obligation under a State contract is undertaken or assumed.

(e) The Contractor is required to make good faith efforts to utilize the MBE/WBEs identified in the utilization plan to the extent indicated in such plan, and otherwise to implement it according to its terms. The Contractor is requested to report on such implementation periodically as provided by the contract, or annually, whichever is more frequent.

VIII. **Compliance with applicable laws**

(a) Prior to the commencement of any work under this contract, the Contractor is required to meet all legal requirements necessary in the performance of the contract. This includes but is not limited to compliance with all applicable federal, state and local laws and regulations promulgated thereunder. It is the Contractor’s responsibility to obtain any necessary permits, or other authorizations. By signing this contract, the Contractor affirmsively represents that it has complied with said laws, unless it advises the Department otherwise, in writing. The Department signs this contract in reliance upon this representation.

(b) During the term of this contract, and any extensions thereof, the Contractor must remain in compliance with said laws. A failure to notify the Department of noncompliance of which the Contractor was or should have been aware, may be considered a material breach of this contract.

IX. **Dispute Resolution** The parties agree to the following steps, or as many as are necessary to resolve disputes between the Department and the Contractor.

(a) The Contractor specifically agrees to submit, in the first instance, any dispute relating to this contract to the designated individual, who shall render a written decision and furnish a copy thereof to the Contractor.

(1) The Contractor must request such decision in writing no more than fifteen days after it knew or should have known of the facts which are the basis of the dispute.

(2) The decision of the designated individual shall be the final agency determination, unless the Contractor files a written appeal of that decision with the designated appeal individual (“DAI”) within twenty days of receipt of that decision.
(b) Upon receipt of the written appeal, the DAI, will review the record and decision. Following divisional procedures in effect at that time, the DAI will take one of the following actions, with written notice to the Contractor.

(1) Remand the matter to the program staff for further negotiation or information if it is determined that the matter is not ripe for review; or

(2) Determine that there is no need for further action, and that the determination of the designated individual is confirmed; or

(3) Make a determination on the record as it exists.

(c) The decision of the DAI shall be the final agency decision unless the Contractor files a written appeal of that decision with the Chair of the Contract Review Committee (“CRC”) within twenty days of receipt of that decision.

The designated individual to hear disputes is:

Ms. Lisa Holst, Biologist 2 (Aquatic)
NYS Department of Environmental Conservation
Bureau of Fisheries
Division of Fish, Wildlife & Marine Resources
625 Broadway, 5th Floor
Albany, New York 12233-4753
Telephone: (518) 402-8887

The designated appeal individual to review decisions is:

Mr. John Major, Chief - Bureau of Wildlife
NYS Department of Environmental Conservation
Division of Fish, Wildlife & Marine Resources
625 Broadway, 5th Floor
Albany, New York 12233-4754
Telephone: (518) 402-8889

The Chair of the Contract Review Committee is:

Nancy W. Lussier, Chair, Contract Review Comm.
NYS Department of Environmental Conservation
625 Broadway, 10th Floor
Albany, NY 12233-5010
Telephone: (518) 402-9228

(d) Upon receipt of the written appeal, the Chair of the CRC, in consultation with the members of the CRC and the Office of General Counsel, will take one of the following actions, or a combination thereof, with written notice to the Contractor.

(1) Remand the matter to program staff for additional fact finding, negotiation, or other appropriate action; or

(2) Adopt the decision of the DAI; or

(3) Consider the matter for review by the CRC in accordance with its procedures.

(e) Following a decision to proceed pursuant to (d) 3, above, the Chair of the CRC shall convene a proceeding in accordance with the CRC’s established contract dispute resolution guidelines. The proceeding will provide the Contractor with an opportunity to be heard.

(f) Following a decision pursuant to (d) 2 or (d) 3, the CRC shall make a written recommendation to the Assistant Commissioner for Administration who shall render the final agency determination.

(g) At any time during the dispute resolution process, and upon mutual agreement of the parties, the Office of Hearings and Mediation Services (OHMS) may be requested to provide mediation services or other appropriate means to assist in resolving the dispute. Any findings or recommendations made by the OHMS will not be binding on either party.

(h) Final agency determinations shall be subject to review only pursuant to Article 78 of the Civil Practice Law and Rules.

(i) Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the designated individual. Nothing in this Contract shall be construed as making final the decision of any administrative officer upon a question of law.

(j) (1) Notwithstanding the foregoing, at the option of the Contractor, the following shall be subject to review by the CRC: Disputes arising under Article 15-A of the Executive Law (Minority and Women Owned Business participation), the Department's determination with respect to the adequacy of the Contractor’s Utilization Plan, or the Contractor's showing of good faith efforts to comply therewith. A request for a review before the CRC should be made, in writing, within twenty days of receipt of the Department's determination.

(2) The CRC will promptly convene a review in accordance with Article 15-A of the Executive Law and the regulations promulgated thereunder.

X. Labor Law Provisions

(a) When applicable, the Contractor shall post, in a location designated by the Department, a copy of the New York State Department of Labor schedules of prevailing wages and supplements for this project, a copy of all re-determinations of such schedules for the project, the Workers’ Compensation Law Section 51 notice, all other notices required by law to be posted at the site, the Department of Labor notice that this project is a public work project on which each worker is entitled to receive the prevailing wages and supplements for
their occupation, and all other notices which the Department directs the Contractor to post. The Contractor shall provide a surface for such notices which is satisfactory to the Department. The Contractor shall maintain such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. Contractor shall post such notices before commencing any work on the site and shall maintain such notices until all work on the site is complete.

(b) When appropriate, contractor shall distribute to each worker for this Contract a notice, in a form provided by the Department, that this project is a public work project on which each worker is entitled to receive the prevailing wage and supplements for the occupation at which he or she is working. Worker includes employees of Contractor and all Subcontractors and all employees of suppliers entering the site. Such notice shall be distributed to each worker before they start performing any work of this contract. At the time of distribution, Contractor shall have each worker sign a statement, in a form provided by the Department, certifying that the worker has received the notice required by this section, which signed statement shall be maintained with the payroll records required by the following paragraph (c).

(c) Contractor shall maintain on the site the original certified payrolls or certified transcripts thereof which Contractor and all of its Subcontractors are required to maintain pursuant to the New York Labor Law Section 220. Contractor shall maintain with the payrolls or transcripts thereof, the statements signed by each worker pursuant to paragraph (b).

(d) Within thirty days of issuance of the first payroll, and every thirty days thereafter, the Contractor and every subcontractor must submit a transcript of the original payroll to the Department, which transcript must be subscribed and affirmed as true under penalty of perjury.

XI. Offset In accordance with State Law, the Department has the authority to administratively offset any monies due it from the Contractor, from payments due to the Contractor under this contract. The Department may also (a) assess interest or late payment charges, and collection fees, if applicable; (b) charge a fee for any dishonored check; (c) refuse to renew certain licenses and permits.

XII. Tax Exemption Pursuant to Tax Law Section 1116, the State is exempt from sales and use taxes. A standard state voucher is sufficient evidence thereof. For federal excise taxes, New York’s registration Number 14740026K covers tax-free transactions under the Internal Revenue Code.

XIII. Litigation Support In the event that the Department becomes involved in litigation related to the subject matter of this contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Compensation will be negotiated and based on rates established in the contract, or as may otherwise be provided in the contract.

XIV. Equipment Any equipment purchased with funds provided under this contract, shall remain the property of the Department, unless otherwise provided in the contract. The Contractor shall be liable for all costs for maintaining the property in good, usable condition. It shall be returned to the Department upon completion of the contract, in such condition, unless the Department elects to sell the equipment to the Contractor, upon mutually agreeable terms.

XV. Inventions or Discoveries Any invention or discovery first made in performance of this Contract shall be the property of the Department, unless otherwise provided in the contract. The Contractor agrees to provide the Department with any and all materials related to this property. At the Department’s option, the Contractor may be granted a non-exclusive license.

XVI. Patent and Copyright Protection If any patented or copyrighted material is involved in or results from the performance of this Contract, this Article shall apply.

(a) The Contractor shall, at its expense, defend any suit instituted against the Department and indemnify the Department against any award of damages and costs made against the Department by a final judgment of a court of last resort based on the claim that any of the products, services or consumable supplies furnished by the Contractor under this Contract infringes any patent, copyright or other proprietary right; provided the Department gives the Contractor:

(I) prompt written notice of any action, claim or threat of infringement suit, or other suit, and

(2) the opportunity to take over, settle or defend such action at the Contractor’s sole expense, and

(3) all available information, assistance and authority necessary to the action, at the Contractor’s sole expense.

The Contractor shall control the defense of any such suit, including appeals, and all negotiations to effect settlement, but shall keep the Department fully informed concerning the progress of the litigation.

(b) If the use of any item(s) or parts thereof is held to infringe a patent or copyright and its use is enjoined, or Contractor believes it will be enjoined, the Contractor shall have the right, at its election and expense to take action in the following order of precedence:

(I) procure for the Department the right to continue using the same item or parts thereof;
(2) modify the same so that it becomes non-infringing and of at least the same quality and performance;

(3) replace the item(s) or parts thereof with noninfringing items of at least the same quality and performance;

(4) if none of the above remedies are available, discontinue its use and eliminate any future charges or royalties pertaining thereto. The Contractor will buy back the infringing product(s) at the State’s book value, or in the event of a lease, the parties shall terminate the lease. If discontinuation or elimination results in the Contractor not being able to perform the Contract, the Contract shall be terminated.

(c) In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department’s use of any item or material pursuant to or resulting from this Contract infringes any patent, copyright or proprietary right, and such action is forwarded by the Department to the Contractor for defense and indemnification pursuant to this Article, the Department shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence and a copy of this Contract to the Office of the Attorney General of the State of New York. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth in this Article, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York in writing and shall specify to what extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of this Contract. The Contractor shall in such event protect the interests of the Department and State of New York and secure a continuance to permit the State of New York to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses which the Department and State shall have.

(d) The Contractor shall, however, have no liability to the Department under this Article if any infringement is based upon or arises out of: (1) compliance with designs, plans, or specifications furnished by or on behalf of the Department as to the items; (2) alterations of the items by the Department; (3) failure of the Department to use updated items provided by the Contractor for avoiding infringement; (4) use of items in combination with apparatus or devices not delivered by the Contractor; (5) use of items in a manner for which the same were neither designed nor contemplated; or (6) a patent or copyright in which the Department or any affiliate or subsidiary of the Department has any direct or indirect interest by license or otherwise.

(e) The foregoing states the Contractor’s entire liability for, or resulting from, patent or copyright infringement or claim thereof.

XVII. Force Majeure The term Force Majeure shall include acts of God, work stoppages due to labor disputes or strikes, fires, explosions, epidemics, riots, war rebellion, sabotage or the like. If a failure of or delay in performance by either party results from the occurrence of a Force Majeure event, the delay shall be excused and the time for performance extended by a period equivalent to the time lost because of the Force majeure event, if and to the extent that:

(a) The delay or failure was beyond the control of the party affected and not due to its fault or negligence; and

(b) The delay or failure was not extended because of the affected party’s failure to use all reasonable diligence to overcome the obstacle or to resume performance immediately after such obstacle was overcome; and

(c) The affected party provides notice within (5) days of the onset of the event, that its invoking the protection of this provision.

XVIII. Freedom of Information Requests The Contractor agrees to provide the Department with any records which must be released in order to comply with a request pursuant to the Freedom of Information Law. The Department will provide the contractor with an opportunity to identify material which may be protected from release and to support its position.

XIX. Precedence In the event of a conflict between the terms of this Appendix B and the terms of the Contract (including any and all attachments thereto and amendments thereof, but not including Appendix A), the terms of this Appendix B shall control. In the event of a conflict between the terms of this Appendix B, and the terms of Appendix A, the terms of Appendix A shall control.