NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS
REST AREA WASTEWATER TREATMENT PLANT OPERATIONS AND MAINTENANCE SERVICES FOR NYSDOT
Contract #C037710

Initial Information for Submittal

A. Please note the following dates and deadlines:

June 15, 2018: RFP Release

June 25, 2018: Mandatory Facility Inspection at 11:00AM (Eastern Time)

June 29, 2018: Optional Pre-proposal webinar – 9:00-11:00AM (Eastern Time)

July 9, 2018: Deadline for questions about the RFP at 12:00 PM (Eastern Time)

August 1, 2018: Deadline for the submission of proposals at 12:00 PM (Eastern Time)

B. Mandatory Facility Inspection (Site Visit) of the facilities will be held on June 25, 2018 at 11:00AM (Eastern Time). Proposers who intend on submitting a proposal must be present and sign-in at each facility. An announcement regarding the schedule and details will be sent to all firms who submit a Letter of Interest (LOI) for this project.

C. To assist firms in preparing proposals in response to this solicitation, an optional pre-proposal webinar will be held on June 29, 2018 from 9:00-11:00AM (Eastern Time). A general review of the solicitation will occur and specific questions regarding the solicitation may be answered.

If you plan to attend, please provide the names of attendees to Micheleen Gregware, NYSDOT Contract Management, via e-mail at Micheleen.Gregware@dot.ny.gov by noon on June 27, 2018. An opportunity will be afforded for questions and answers during the conference. To better assist NYSDOT in preparing for the meeting, please submit any questions you may have, in writing, by the close of business on June 25, 2018.

D. Complete proposals are to be submitted to the Designated Contact stipulated in Section 1.4.
RFP RESPONSE FORM

RFP RESPONSE FORM: C037710 - REST AREA WASTEWATER TREATMENT PLANT OPERATIONS AND MAINTENANCE SERVICES FOR NYSDOT

Please review this RFP, complete the following information, and e-mail to the NYSDOT address shown below, by the earliest practical date. This RFP Response form must be submitted along with the two required Procurement Lobbying Law forms (see Section 5.8) before questions or other communications with the Department regarding this solicitation can be initiated.

___________  WE DO INTEND TO SUBMIT A PROPOSAL

___________  WE DO NOT INTEND TO SUBMIT A PROPOSAL FOR THE FOLLOWING REASONS:

________________________________________________________________________

________________________________________________________________________

Name and Address of Organization (Include Zip Code):
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Date: _________________

Typed Name and Title: ______________________________________________________

Telephone: ____________________ Fax: __________________________

E-Mail Address: ________________________

Please e-mail to: Micheleen.Gregware@dot.ny.gov
### CONSULTANT PROPOSAL SUBMISSION CHECKLIST

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION**

**REQUEST FOR PROPOSALS**

**REST AREA WASTEWATER TREATMENT PLANT OPERATIONS**

**AND MAINTENANCE SERVICES FOR NYSDOT**

Contract #C037710

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**Part I - Technical and Management Submittal**

- One (1) originally signed copy and six (6) printed and bound hard copies of Part I plus one copy of Part I on CD/Thumb drive in Adobe PDF compatible format.
- Securely sealed and clearly labeled with the consultant’s name, address, and telephone number and the title “Rest Area Wastewater Treatment Plant Operations and Maintenance Services RFP Part I — Technical and Management Proposal (C037710)”
- Signed Cover Letter on official business letterhead (1-page max.)
- Table of Contents identifying each major section and page numbers
- Narrative Description
- Scope of Services and Schedule
- Organization and Staffing
- Experience
- Complete and submit Attachment #9: Key Personnel Resume and References

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**Part II - Price and Contract Submittal**

- One (1) originally signed and two (2) printed and bound hard copies plus one (1) complete electronic copy of Part II on CD or thumb drive in Adobe PDF compatible format, plus Attachment #11 in MS Excel 2013 compatible format.
- Securely sealed and clearly labeled with the title “Rest Area Wastewater Treatment Plant Operations and Maintenance Services RFP, Part II — Cost and Contract Proposal (C037710)”
- Complete and submit Attachment #11, Cost Proposal Workbook
- Complete and submit online certification or hard copy of Vendor Responsibility Questionnaire
- Complete and submit Attachment #2: Consultant Information and Certifications (sign both Sections II and III)
- Complete and submit the Attachment #3: Procurement Lobbying Law Compliance Forms
- Complete and Submit Attachment #6: New York Business Reporting
- Complete and submit Attachment #7: Form AOR Acknowledgement of Receipt
- Complete and submit Attachment #8: Non-Collusive Bidding Certification
- Complete and submit Attachment 10: Vendor Assurance of No Conflict of Interest or Detrimental Effect
REQUEST FOR PROPOSALS
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS
REST AREA WASTEWATER TREATMENT PLANT OPERATIONS AND MAINTENANCE SERVICES FOR NYSDOT
Contract #C037710

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REQUEST FOR PROPOSALS

NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REST AREA WASTEWATER TREATMENT PLANT OPERATIONS
AND MAINTENANCE SERVICES FOR NYSDOT
Contract #C037710

1 INTRODUCTION

1.1 Purpose
The New York State Department of Transportation (“NYSDOT” or the “Department”) seeks to retain the services of one (1) qualified, responsive, responsible and experienced Operations Management Consultant for the provision of managing, operating, and maintaining the Department’s two (2) Wastewater Treatment Plants (WWTP) and four (4) Water Treatment Systems (WTS) located in various locations in NYSDOT’s Region 8 (Hudson Valley area) in a manner that is compliant with all applicable permits and regulations (See Attachment 15 for Map of Rest Areas/Locations).

1.2 Background
New York State Department of Transportation (DOT) operates one Wastewater Treatment Plant (WWTP) and one Water Treatment System (WTS) at the I-684 Brewster Rest Area (northbound) in the Town of Southeast, Putnam County, New York; one WWTP and one WTS at the I-84 Stormville Rest Area (westbound) in the Town of East Fishkill, Dutchess County, New York (which also services the State Police building on the property and wastewater from East Fishkill Rest Area); one WTS at the I-84 East Fishkill Rest Area (eastbound) in the Town of East Fishkill, Dutchess County, New York and one WTS at the Bedford Rest Area in the Town of Bedford Hills, Westchester County, New York.

The Brewster WWTP discharges to a tributary within the New York City (NYC) watershed, therefore, must comply with all applicable NYC Department of Environmental Protection (NYC DEP) requirements.

The Brewster WWTP is rated for 12,000 gallons per day and has the following treatment components:

- Septic tanks for primary treatment
- Flow equalization
- Rotating Biological Contactor and clarifier for secondary treatment
- Sand filtration and micro-filtration for tertiary treatment
- Liquid chlorine and de-chlorination for disinfection

The Stormville WWTP discharges to a tributary of the Fishkill Creek and is not within the NYC watershed. The Stormville WWTP is rated for 24,000 gallons per day and has the following treatment components:
The Stormville Rest Area, East Fishkill Rest Area, Brewster Rest Area and Bedford Rest Area WTS has the following system components:

- Septic tanks for primary treatment
- Rotating Biological Contactor and clarifier for secondary treatment
- Liquid chlorine for disinfection

1.2.1 Facilities Diagram
See Attachment 12 for a diagram of the Stormville WWTP.

1.2.2 Operation and Maintenance Manual
See Attachment 13 for the Operation and Maintenance Manual for the Brewster WWTP.

1.2.3 SPDES Permits
See Attachment 14 for SPDES Permits for Brewster and Stormville WWTPs.

1.3 Minimum RFP Responsiveness
Any Firm that does not provide all documentation listed below, by the RFP deadline, will be determined to be non-responsive and will be removed from further consideration (prior to the technical evaluation of proposals):

1. Part I of the Proposal – Technical and Management submission
2. Part II of the Proposal – Cost and Contract submission
3. Completion of all applicable attachments:
   - Attachment 11 COST SUBMISSION (Lump Sum)
   - Attachment 2 Consultant Information and Certification Form
   - Attachment 3 Procurement Lobbying Law Forms
   - Attachment 6 New York Business Reporting
   - Attachment 7 Form AOR
   - Attachment 8 Non-Collusive Bidding Certification
   - Attachment 9 Key Personnel Resumes and References
   - Attachment 10 Vendor Assurance of No Conflict of Interest or Detrimental Effect
4. Hard copies of the following certificates included in a separate, labeled and tabbed section of Part I of the Technical Proposal:
   - The Chief Operator of Brewster WWTP/WTS: minimum NYSDEC Grade 3 Certification.
   - The Chief Operator(s) of Stormville WWTP/WTS, East Fishkill WTS, and Bedford WTS: minimum NYSDEC Grade 2 and NYSDOH Class C Certifications.
1.4 Designated Contact

Potential responders are advised that under New York State Finance Law Section 139-j, communication on procurements can be made only to designated contact persons. The Department’s Designated Contact for this procurement is:

Primary Contact:
   Ms. Micheleen Gregware
   New York State Department of Transportation
   Contract Management Bureau
   50 Wolf Road, 6th Floor
   Albany, NY 12232, USA
   E-mail: Micheleen.Gregware@dot.ny.gov

The above-named person, as the Department’s Designated Contact for this procurement, shall be the Department’s only points of contact and source of information for this procurement.

1.5 RFP Modifications

If necessary, NYSDOT will issue Modifications to modify conditions or requirements of this RFP. Proposers are advised to visit the NYSDOT web site (https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-opportunities/) regularly to check for Modifications. The final Modification will be posted on NYSDOT’s web site not later than seven calendar days prior to the Proposal due date. If an additional Modification is required within seven days of the Proposal due date, the Proposal due date shall be revised such that there will be seven days from the final Modification to the Proposal due date.
2 CIVIL RIGHTS REQUIREMENTS

2.1 Disadvantaged Business Enterprise Participation - Not Applicable

2.2 Minority and Women-owned Business Enterprise Participation – Not Applicable

2.3 Service-Disabled Veteran-Owned Business Program (SDVOB) – Not Applicable

2.4 Diversity Practices – Not applicable

2.5 Title VI Assurance

The New York State Department of Transportation (NYSDOT), in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation and Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes, as amended, issued pursuant to such Act, hereby notifies all who respond to a written NYSDOT solicitation, request for proposal or invitation for bid that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and income status in consideration for an award.

2.6 Equal Employment Opportunity – Pay Equity

In Accordance with New York State Executive Order 162, issued on January 9, 2017, the Operator shall provide workforce utilization reports in accordance with RFP Section 8.1 Draft Contract.”
3 PROJECT AND CONTRACT OBJECTIVES

3.1 Project Objectives
The project objective is to contract with a qualified, responsive, responsible and experienced Operations Management Consultant to operate and maintain two (2) WWTP’s, owned by NYSDOT located at the I-684 Brewster Rest Area (northbound) in the Town of Southeast, Putnam County, New York, and at the I-84 Stormville Rest Area (westbound) in the Town of East Fishkill, Dutchess County, New York, as well as operate, manage and maintain four (4) WTS’s located at the I-684 Brewster Rest Area, the I-684 Bedford Rest Area (southbound) in the Town of Bedford, Westchester County, New York, the I-84 Stormville Rest Area, and the I-84 East Fishkill (eastbound) in the Town of East Fishkill, Dutchess County, New York. The selected firm shall operate the facilities in a manner that meets accepted New York State operators practices as specified under applicable operator certification programs. The facilities shall be operated in a manner that achieves compliance with all applicable permits and regulations.

3.2 Contract Objectives
The contract objective is to obtain the services of a qualified, responsive, responsible and experienced Operations Management Consultant via a fair and equitable Best Value RFP. A single contract award will be made with one (1) Prime Consultant for Contract #C037710.

To get the resulting contract under way on or before January 1, 2019.

3.2.1 Consulting Arrangements
One contract award shall be made. The contract shall be between NYSDOT and the selected Consultant. NYSDOT will accept a team of consultants wherein the contract will be with the Prime Consultant. Subconsulting and teaming arrangements are encouraged. Joint Ventures (JV’s) are NOT allowed.

3.2.2 Draft Contract Terms and Conditions
All offerors are required to accept the RFP Draft Contract Terms and Conditions (Attachment 1) as is. The RFP presents an opportunity for all entities to review the RFP’s draft contract and submit questions before the question submission deadline. NYSDOT will only entertain changes to the RFP’s draft contract if doing so is in the state’s best interest. Submission of proposals contingent on changes to the draft contract are not allowed.

3.2.3 Fair and Equitable Treatment
Fair and equitable treatment of all firms participating in the competitive selection process.

3.3 Level of Complexity
The level of complexity for this project is moderately complex. Specific knowledge, certifications and experiences are required.

3.4 Definitions and Acronyms

| ELAP | Environmental Laboratory Approval Program |
3.5 Contract Terms and Rate Adjustments

The Department estimates that the work for the successful consultant will commence on January 1, 2019. The base term or duration for the contract is three (3) years. The contract may be extended for up to two (2) additional one-year periods upon written agreement of both parties and approval by the Office of the State Comptroller.

If the contract is extended for the optional years, the Producer Price Index (PPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics, or 1.5%, whichever is lower, will be used as a basis for adjusting the hourly rates/lump sum deliverable amounts. The rate adjustment will be effective on January 1 and calculated using the previous September Index, using Series ID PCU5413--5413--(Architectural, engineering, and related services: http://data.bls.gov/timeseries/PCU5413--5413--?data_tool=XGtable ). If at any time the above Index Series ID is discontinued or becomes unavailable, the State reserves the right to implement a comparable Index.

An example of the rate adjustment calculation is as follows (all numbers and titles used are for illustrative purposes only):

<table>
<thead>
<tr>
<th>Description</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>QAT-2 Auditor 1/1/12 - 12/31/12 Billing Rate</td>
<td>$9.00/Hour</td>
</tr>
<tr>
<td>October 2012 PPI Index (PCU5413--5413--)</td>
<td>132.1</td>
</tr>
<tr>
<td>October 2011 PPI Index (PCU5413--5413--)</td>
<td>130.0</td>
</tr>
<tr>
<td>Index Point Change</td>
<td>2.1</td>
</tr>
<tr>
<td>Divided by previous Index</td>
<td>130.0</td>
</tr>
<tr>
<td>Percent change, rounded to nearest tenth</td>
<td>1.6%</td>
</tr>
<tr>
<td>QAT-2 Auditor 1/1/13 – 12/31/13 Billing Rate ($9 x 1.016)</td>
<td>$9.14/Hour</td>
</tr>
</tbody>
</table>

If the actual start of the contract is substantially different than the above estimated date, then the effective date for the rate adjustment will be similarly changed.

The State reserves the right to negotiate a lower rate adjustment than stated above for the two additional one-year extensions.
4 SCOPE OF SERVICES

4.1 Project Overview
NYSDOT is seeking to retain the services of one (1) qualified, responsive, responsible and experienced Operations Management Consultant for the operation and maintenance of two (2) Wastewater Treatment Plants (WWTP) and four (4) Water Treatment Systems (WTS) per applicable regulations and including, but not limited to, all task work presented below.

4.2 Categorization of Work
Project work is generally divided into the following Sections:

- Plant Operations which includes:
  - Plant Maintenance
    - Routine Maintenance
    - Preventative Maintenance
    - Emergency Maintenance/Coverage
  - Sample Collection, Analysis & Reporting of Results
    - Laboratory Requirements
  - Reports/Record Keeping
    - Monthly
    - Quarterly
    - Annual

4.3 Tasks

4.3.1 Task 1: Plant Operations
The selected Consultant shall provide all personnel services for operation of the two (2) WWTP’s and four (4) WTS’s. The staff provided shall be qualified in accordance with all NYSDEC, NYSDOH and NYSDEP certification requirements and standards, and be sufficient to operate and maintain each facility throughout the contract duration (See http://www.dec.ny.gov/chemical/8707.html).

All process monitoring and control work shall be attended to, by the operator, in person, at the facilities daily, including weekends and holidays.

The process by which the Consultant shall purchase parts, commodities, equipment rental and third party services, for all plant operations, shall be compliant with standard New York state procurement requirements, and is as follows: Annually, the Consultant shall refer to the OGS contracts to verify if the item is listed or if an item with similar form function and utility is listed/available under an OGS contract. If listed, the Consultant shall contact at least three of the contractors to obtain quotes. If the item is not listed on an OGS contract, the Consultant shall obtain three price quotes to be submitted with the bill to the NYSDOT Project Manager. (To
obtain information regarding acceptable pricing, Consultants should review OGS contracts for the same/similar services/products.) The Consultant is expected to select the lowest price item, unless there are extenuating circumstances in which a higher priced item should be purchased.

Additional non-designated subconsultants can only be brought under contract with the expressed written consent of NYSDOT (subject to a determination of acceptable skills, experiences and knowledge. Fully-loaded Specific Hourly Rates for new, non-designated subconsultants cannot exceed any offered and acceptable fully-loaded specific hourly rates. NYSDOT must justify reasonableness of rates for any non-designated subconsultant.

The selected Consultant shall provide its’ approach to secure anticipated third party services (e.g., purchases for laboratory analysis, security systems, generator maintenance contract, etc.).

If costs escalate significantly, NYSDOT may review requests for adjustments.

The selected Consultant shall supply/provide the following specialized services or identify qualified subcontractors who will provide these services:

a. Specialized maintenance services (e.g., security systems, computers, electrical, plumbing/mechanical, generator maintenance).

b. Membrane filtration maintenance services (BREWSTER ONLY).

c. Technical support and troubleshooting for instrumentation and control systems and Support and Supervisory Control and Data Acquisition (SCADA) Systems.

**Deliverable:** Provide an operating plan for each facility that describes how the Proposer will provide operation and maintenance, sample collection, analysis & reporting of results and reports/record keeping, as defined in this section.

### 4.3.2 Task 2: Plant Maintenance

#### 4.3.2.1 Routine Maintenance

The selected Consultant shall perform all routine operation maintenance and usual repairs, inclusive of all such procedures specified with the respective equipment O&M manual, including but not limited to:

a. Change or clean filters at manufacturers recommended interval or when inspection indicates service is required, whichever is sooner.

b. Lubricate components at manufacturers recommended intervals or when inspections indicate lubrication is needed, whichever is sooner.

c. Change oil at manufacturers recommended intervals or when inspections indicates an oil change is needed, whichever is sooner.

d. Flush out chemical feed lines and replacing lines when needed.

e. Safe handling, labelling, transfer and storage of chemicals.

f. Maintain all chemical inventories for treatment, maintenance and on-site analysis.
g. Maintain Material Safety Data Sheets (MSDS) for all chemicals used or stored at the facilities.

h. When needed, provide operators that are trained and certified in confined space entry procedures and only perform confined space entry work with the prior authorization of NYSDOT.

i. Develop and implement a daily, weekly, and monthly preventive maintenance service plan (hard copy and electronic) that is consistent with equipment manufacturers requirements and acceptable operations practice. The preventative maintenance service plans will not be proprietary information and will be the property of NYSDOT.

j. Check and document operation of essential valves and other essential mechanical components.

k. Hose down float switches and wet wells on a regular basis.

l. Bump test float switches and level alarms monthly and document these tests.

m. Maintain WWTP and WTS facilities in a safe condition that complies with applicable Occupational Safety and Health (OSHA) requirements.

n. Exercise and maintain generator as required by applicable regulations and accepted operations practice.

o. Properly dispose of all treatment residuals and other related waste materials.

4.3.2.2 Preventative Maintenance

The selected Consultant shall perform standard preventative maintenance at the six (6) facilities, including, but not limited to:

1. Developing an inventory list of essential equipment and systems for successful operation of the WWTP and WTS facilities. The list shall include, as applicable, make, model, serial number, manuals, exterior labels, etc.

2. Maintaining an inventory of spare parts for these essential systems. The spare parts inventory shall be per manufacturer’s standards and sound industry practices.

3. Identifying anticipated lead time for order essential equipment such as pumps, compressors, controls and computer components.

4. Furnishing all equipment, materials and supplies necessary to operate and maintain the two (2) WWTP and four (4) WTS facilities, including, but not limited to:

   a. Filters;
   b. Oil and grease;
   c. Chlorination and de-chlorination chemicals;
   d. Polymer;
   e. Alum;
   f. Microfiltration clean-in-place chemicals;
   g. Laboratory supplies;
   h. Any necessary office and stationary supplies; and
   i. Cleaning supplies
4.3.2.3 Emergency Maintenance/Coverage

a. The selected Consultant shall provide emergency on-call coverage 24 hours a day, 7 days per week to respond to emergency calls, alarms, sewer blockages and other critical matters; availability of emergency parts. Emergency response time (i.e., physical response to the applicable facility) must be less than one (1) hour upon notification of the emergency. The Consultant shall provide a 24-hour telephone line for emergency services and post this emergency number prominently at each facility. The Consultant must provide NYSDOT with an Emergency Notification Plan that includes all emergency contact telephone numbers.

b. The selected Consultant shall notify the NYCDEP of any force majeure event (BREWSTER ONLY) and notify NYSDOT of any such event at all other locations under this Agreement.

c. Cooperate with any NYSDOT-initiated or other official investigation or audit inquiry.

d. Notify NYSDOT of all regulatory inspections as soon as notice is given of the inspection. The Consultant shall also attend all inspections and provide NYSDOT with a memorandum summarizing each inspection within 48 hours of completion of the inspection. The memorandum must include names and affiliation of all attendees, matters discussed and actions to be taken, if necessary.

e. Provide testing and chlorination for drinking water in the rest area.

4.3.2.4 Unanticipated Contract Direct Non-Salary Costs.

For the purposes of soliciting for proposals, only the total cost of the proposed monthly fee shall be evaluated. Since there may be additional costs that are unknown at this time (such as emergency repairs, system failures, major component failures, etc.) NYSDOT will add a 10% allowance to the final contract to cover such unknown additional O & M expenses. This contingency amount will be added to the maximum amount payable under the resulting contract, however, NYSDOT makes no guarantee these funds will be utilized. Use of this contingency amount may only occur via supplemental agreement.

4.3.3 Task 3: Sample Collection, Analysis & Reporting of Results

4.3.3.1 Laboratory Requirements

The Consultant shall provide all sample collection, analysis and reporting of results including, but not limited to the following:

a. ELAP (Environmental Laboratory Accreditation Program) analyses and any additional or other contract laboratory analyses required by NYSDEC, NYCDEP, and/or NYSDOH;

b. Collecting all necessary samples for on-site and contract laboratory analysis for SPDES permit required testing and process control testing;

c. Completing chain of custody forms and packaging samples for shipment to the contract laboratory;

d. Shipment/delivery of samples to the contract laboratory;

e. Adherence to all EPA sample holding times and sample preservations requirements;
f. Performance of on-site analyses for SPDES and operations control utilizing equipment provided at the WWTP, including:
   i. Brewster WWTP: (5) five daily tests (Temperature, Ph, Chlorine Residual, Settable Solids, Dissolved Oxygen.
   ii. Stormville WWTP: (2) Two daily tests (Chlorine Residual, Ph) and Weekly test (Settable Solids).

g. Maintain each facility laboratory and equipment in a condition that produces reliable and defensible results.

h. SPDES DMR reporting and other operations data and information including:
   i. Collecting and delivering all Discharge Monitoring Report (DMR) data, forms and supporting documents and certify and submit this data to the New York State Department of Environmental Conservation (NYSDEC) and the New York City Department of Environmental Protection (NYCDEP) with approval of NYSDOT. The DMRs shall be submitted in a format acceptable to NYSDEC.
   ii. Performing all tests and inspections in strict accordance with U.S. Environmental Protection Agency (USEPA), NYSDEC, NYCDEP, and Putnam, Dutchess and Westchester County regulations.
   iii. Maintaining, on file, original laboratory analysis reports.

4.3.4 Task 4: Reports/Record Keeping
The selected Consultant shall provide and maintain well-documented records of operations, routine, preventative and emergency maintenance, laboratory results, personnel, training, safety, process control, daily inspections (logs shall include operator name and log in/out time for each facility to establish actual occupied time at the system), materials, response to customer complaints or inquiries, alarms and any other significant events.

The selected Consultant shall provide the NYSDOT Program Manager with reports on a regular basis (written, via e-mail, with an initial draft and final copy after NYSDOT review/acceptance). At minimum, the reports shall be delivered on the following schedule and include:

4.3.4.1 Monthly Reports
The Consultant shall prepare and submit a monthly report to NYSDOT summarizing all monthly expenditures, system alarms or other failures, preventative maintenance carried out for that period, chemical usage, flow records and spare parts used and replenished. This report shall be a summary of the operators log and shall supplement the monthly DMR report for NYSDOT Records. This report must also identify any anticipated repair needs and capital improvements along with the costs projected for those repairs and improvements.

The Consultant shall prepare the following reports and submit to the entities listed below on a monthly basis:
<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Contact Information</th>
<th>Report Type</th>
<th>Delivery Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bedford Rest Area (Bedford WTS)</td>
<td>Bedford Rest Area, Westchester County Health Department, Bureau of Environmental Quality, 145 Huguenot Street, 7th Floor, New Rochelle, NY 10801  [<a href="mailto:Fqkl@westchestergov.com">Fqkl@westchestergov.com</a>]</td>
<td>DOH 360 Report</td>
<td>One (1) electronic copy (emailed)</td>
</tr>
<tr>
<td>Brewster Rest Area (Brewster WTS)</td>
<td>Brewster Rest Area, Putnam County Health Department, 1 Geneva Road, Brewster, NY 10509 <a href="mailto:Laura.Chapman@putnamcountyny.gov">Laura.Chapman@putnamcountyny.gov</a></td>
<td>DOH 360 Report</td>
<td>One (1) electronic copy (emailed)</td>
</tr>
<tr>
<td>Fishkill/Stormville WTS</td>
<td>Fishkill/Stormville WTS, Dutchess County Health Department, Water &amp; Wastewater Authority, 27 High Street, Poughkeepsie, NY 12601 [<a href="mailto:dcwwa@dutchessny.gov">dcwwa@dutchessny.gov</a>]</td>
<td>DOH 360 Report</td>
<td>One (1) electronic copy (emailed)</td>
</tr>
<tr>
<td>Brewster Rest Area (Brewster WWTP)</td>
<td>Brewster Rest Area, NYCDEP BWS, 465 Columbus Avenue, Valhalla, NY 10595</td>
<td>Wastewater Facility Operations Report BWCP-6 (8/2007) Version 1.2</td>
<td>One (1) electronic copy submitted through the Net DMR system.</td>
</tr>
<tr>
<td></td>
<td>Brewster Rest Area, NYSDOT, Highway Maintenance, Region 8, 4 Burnett Blvd., Poughkeepsie, NY 12603 [<a href="mailto:Bill.lane@dot.ny.gov">Bill.lane@dot.ny.gov</a>]</td>
<td>Wastewater Facility Operations Report BWCP-6 (8/2007) Version 1.2</td>
<td>One (1) electronic copy submitted through the Net DMR system.</td>
</tr>
<tr>
<td>Stormville WWTP</td>
<td>Stormville WWTP, NYSDEC Division of Water, Region 3, 100 Hillsdale Avenue, Suite 1W, White Plains, NY 10603-2860</td>
<td>Wastewater Facility Operations Report BWCP-6 (8/2007) Version 1.2</td>
<td>One (1) electronic copy (emailed)</td>
</tr>
</tbody>
</table>
A copy of all monthly reports shall also be submitted to the NYSDOT Project Manager.

4.3.4.2 Quarterly Reports

The Consultant shall prepare and submit a quarterly report for the Brewster WWTP documenting all O&M (Owner and Plant Operator, supplies, materials and any other contracted services) costs and such report shall be forwarded to NYSDOT Office of Transportation Maintenance Rest Area Program Manager, 50 Wolf Rd., Albany, NY 12232. This documented information is required on a quarterly basis for the purposes of applying annually to New York City Department of Environmental Protection (NYCDEP) through New York State Environmental Facilities Corporation (NYSEFC) for O&M reimbursement. The documentation of these costs must be of sufficient detail and in a format that is acceptable to NYCDEP AND NYSEFC as described in the 1997 New York City Watershed Memorandum of Agreement found at: https://www.dos.ny.gov/watershed/nycmoa.html. This form must also include invoices and other documents to substantiate the reimbursement being sought.

4.3.4.3 Annual Reports

The Consultant shall prepare and submit an annual report, for each facility, to NYSDOT on a calendar year basis, by January 15th of each year. The annual report shall summarize expenses by category for each facility and system to include:

- Any unanticipated O&M problems arising during the proceeding year and measures taken to address such problems;
- Any violations of the SPDES permit during the proceeding year and measures taken to address such violations;
- Any recommended changes to the O&M Manual and reasons therefore;
- Any foreseeable unusual and large operation and maintenance expenses in the report;
- Any other matters the NYSDEC, NYSDEP or NYSDOH requires to be addressed in the report.
- A detailed summary of all purchases to date by task, category, supplier and whether this cost was included in the monthly cost fee or was billed to NYSDOT.

4.3.4.4 Record Keeping

The Consultant shall:

- Track changes to NYCDEP, State and Federal Regulations regarding the WWTP and WTS operations and compliance and bringing new or changing operations and performance requirements to the attention of NYSDOT.
- Ensure all subcontracts contain the mandatory provisions in accordance with the ATTACHMENT 16, NYCDEP O&M Agreement including the provisions which require any subcontractor to perform all work in accordance with the O&M Manual and in accordance with all applicable laws (BREWSTER ONLY).
d. The Consultant shall be responsible for a one-time conversion of hard copy manuals into editable electronic versions.

e. Report all SPDES violations to NYSDOT immediately upon knowledge of such violations and make similar notifications to the appropriate regulatory authorities as required by applicable regulations. Also, responsible for tracking and reporting fines, penalties and all other enforcement actions.

f. Maintain and make available, all project-related documentation, including purchase orders, paid bills, cancelled checks, certified payroll and machinery records as requested by NYSDOT.

g. Maintain files such that all non-privileged materials and documents prepared pursuant to the Agreement can be forwarded to NYSDOT upon request. Records must include the dates of all maintenance activities required by the O&M Manual and the SPDES permit, financial records, receipts and management disbursement of funds. Records must be maintained for a period of seven (7) years.

h. Maintain a daily operators log identifying all personnel attending to or visiting the facilities, time of operator attendance, documentation of plant and operations conditions and daily data recordings; all maintenance and repair activities, equipment and consumables deliveries and other relevant operations and maintenance information. The original operators log will remain at the facility and a copy (hardcopy or electronic) shall be maintained by the Consultant at all times.

i. Maintain all files, forms and other paperwork as required by applicable regulations and the O&M Manual. The original documents will remain at the facility and a copy (hardcopy or electronic) shall be maintained by the Consultant.

j. Report any drinking water Maximum Contaminant Level (MCL) exceedance to NYSDOT immediately.

All records/reports must be in Word, Excel, PDF or another format acceptable to NYSDOT. Documents must be available when requested by NYSDOT or automatically shared with NYSDOT in electronic format via e-mail or managed file transfer (for larger sized documents). Should NYSDOT want to review records pertaining to this contract at the selected Consultant’s offices, NYSDOT shall be given access to those files upon reasonable notice.

The Consultant must maintain all records at a location accessible by NYSDOT staff and in an electronic format acceptable to NYSDOT. Per the contract, all records produced under this contract are property of NYSDOT. Should the work between NYSDOT and the selected Consultant be terminated, all records shall be turned over to NYSDOT or its designated recipient.

Failure of the Consultant to provide the above reports complete and within the time frames specified will result, at NYSDOT’s discretion, in a penalty of 10% of the invoice amount for that specific report. All penalties will be billed as an offset against the relevant invoice.

4.4 Owner’s (NYSDOT) Responsibilities

NYSDOT will be responsible for the following:

1. All permit applications and renewals;
2. Buildings and Ground Maintenance including:
   a. Lawn Care,
   b. Snow plowing and snow removal,
   c. Structural improvements to buildings;
3. All Utilities;
4. Sludge disposal and hauling costs;
5. Plant insurance;
6. Capital improvements;
7. All excavation work, and
8. Maintenance and repair of HVAC system.

4.5 Contract Transition

This task shall only be required if the Consultant is not designated for award of a contract to replace this contract. To ensure a seamless transition between the Consultant and a future designated Consultant, NYSDOT will establish a transition period during which the Consultant will work with the future designated Consultant to provide the necessary coordination and services without interruption during the transition.

The selected consultant shall construct a 90-day Transition Plan, ready to execute prior to completion of the contract period (or extension(s), if any). The Plan shall ensure a transfer of the Wastewater Treatment Plant Operations without interruption of service if the Consultant is not designated for award of a replacement contract. The Plan shall be submitted to the NYSDOT Project Manager for approval. The plan will feature a Scope of Services component, under Schedule A, and a Compensation Schedule component, under Schedule B.

At the discretion of the NYSDOT Project Manager, the Consultant will participate in meetings with partner agencies and the future designated Consultant to address any concerns prior to transition.

The Plan shall identify the operational requirements during the transition and provide technical support for any systems malfunctions. It shall detail a schedule of staffing necessary to transition the program, and include an interim status report.

The Plan shall include the process to transfer all physical and intellectual assets. The Consultant shall return to the NYSDOT Project Manager all NYSDOT property including any data. At the end of the contract, the Consultant shall remove such data from any electronic equipment owned by the Consultant.

4.6 Organization and Staffing

The qualifications and prior experience of the proposer are of great importance to NYSDOT. The Consultant shall create an organization chart that describes reporting relationships of all key personnel identified in this section.

Provide a detailed staffing plan indicating the type and quantity of the various positions the Proposer feels is necessary to provide operations and maintenance, sample collection, analysis & reporting of results and reports/record keeping, as defined in this section.
Provide a listing of the specific individuals that will be assigned to the operations and maintenance of each facility. Provide an organizational chart for the operations and maintenance team.

Provide a resume for each individual proposed to be assigned to the facility, including current licenses and certifications, years of experience and related experience within the last five (5) years, demonstrating the individual’s ability to perform the services as described in this RFP.

The Consultant will be responsible for providing, at a minimum, the following key personnel:

The Chief Operator of Brewster WWTP & WTS facilities shall have a minimum NYSDEC Grade 3 certification.

The Chief Operator(s) of the Stormville WWTP and WTS facilities, the East Fishkill WTS facility and the Bedford WTS facility shall have a minimum NYSDEC Grade 2 certification and NYSDOH Class C certification.

**NOTE:** These certificates must be current at the time of proposal submission and remain current throughout the entire duration of the contract, including any renewal periods and any transition period.

Consultant shall add any other key positions as necessary for the performance of the contract.
5 PROPOSAL FORMAT AND CONTENTS

For the purposes of evaluation, each proposal must be submitted in two parts, bound separately. Part I shall consist of the Technical and Management submittal. Part II is the Cost and Administrative submittal. Each part of the proposal must be complete in itself in order that the evaluation of both parts can be accomplished independently and concurrently, and the Technical and Management submittal can be evaluated strictly on the basis of its merits. Cost information is not to be included in the Part I submittal. Your proposal should follow the format listed below.

Web links, photographs, and illustrations (except for the organizational chart) are not to be included unless specifically required in this section.

NOTE: NYSDOT will protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law ("FOIL"), Article 6 of the Public Officers Law. If an offerer believes information included in their proposal is confidential and proprietary, they should identify those page(s) of their proposal which contain such information as “confidential and proprietary”. Additionally, offerers need to explain the reason(s) why this information should be considered exempt from public disclosure under FOIL. This information is to be provided in the Cover Letter.

Note: Cost information is not to be included in the Part I submittal, and Technical and Management information is not to be included in Part II submittal.

5.1 Part I: Technical and Management Submittal

Part I shall include the following sections:

<table>
<thead>
<tr>
<th>Part I - Technical and Management Submittal</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ One (1) originally signed copy and six (6) printed and bound hard copies of Part I plus one complete electronic copy of Part I on CD/Thumb drive in Adobe PDF compatible format.</td>
</tr>
<tr>
<td>□ Securely sealed and clearly labeled with the consultant’s name, address, and telephone number and the title “Rest Area Wastewater Treatment Plant Operations and Maintenance Services RFP Part I — Technical and Management Proposal (C037710)”</td>
</tr>
<tr>
<td>□ Signed Cover Letter on official business letterhead (1-page max.)</td>
</tr>
<tr>
<td>□ Table of Contents identifying each major section and page numbers</td>
</tr>
<tr>
<td>□ Narrative Description</td>
</tr>
<tr>
<td>□ Scope of Services and Schedule</td>
</tr>
<tr>
<td>□ Organization and Staffing</td>
</tr>
<tr>
<td>□ Experience</td>
</tr>
<tr>
<td>□ Complete and submit Attachment #9: Key Personnel Resume and References</td>
</tr>
</tbody>
</table>

5.1.1. Cover Letter, and Title page, indicating:

Name, address and phone number of the proposer, and the name, title, address, email, and telephone number of person(s) with authority to negotiate and who may be contacted during the procurement process. Provide a brief description of the proposed approach, work effort and resulting product.
Confidential and proprietary information should also be identified and addressed in this section. Not to exceed a single page.

5.1.2. A Table of Contents.
The Table of Contents shall identify the page numbers of all sections. Each section shall be divided or separated by labeled tabs.

5.1.3. Narrative Description
Consultant shall provide a discussion on the important issues involved in the operation and maintenance of these types of facilities. Include enough substantive discussion to demonstrate an understanding of NYSDOT’s project objectives and familiarity with applicable laws, rules, etc.

5.1.4. Approach, Scope of Services and Schedule
The scope of services is outlined under Section 4. Consultant shall describe the approach for performing the work and accomplishing project objectives as described in this section. This includes a detailed description of the scope of services, itemized by subsection task as indicated in section 4. Your scope of services may be based on these tasks; however, alternative tasks may be suggested which could improve the ability of the project to meet its objectives, as well as more effectively and efficiently operate and maintain these six facilities. NYSDOT wants to allow maximum flexibility for the inclusion and consideration of ideas, initiative and creativity of the proposer. Alternative tasks and suggestions are encouraged and will be reviewed with interest within the framework of the stated objectives and scope of services for the project. Fully explain and justify your approach; however, if it significantly departs from the general scope of services or if the general scope of services, NYSDOT may require clarification or re-working. Also, include a schedule for completion of the project showing the duration of each task and all major milestones, and include a list of technical assumptions.

5.1.5. Organization and Staffing
Provide an organizational chart for the project showing the names of the Consultant’s Project Manager, the name(s) of the Chief Operator of each facility and the name(s) of any other key personnel proposed. Include an estimate of total effort hours contributed by each of the key personnel to each task and an estimate of total effort hours for each task. Discuss management plan to ensure effective and efficient delivery of services while meeting the project objectives.

If subconsultants are to be used, explain the specific need for the expertise and describe the arrangements. Discuss your plan for phasing project personnel into the effort. The Consultant’s Project Manager shall serve as the primary contact with the NYSDOT Project Manager. The Consultant’s Project Manager is responsible for the performance of all key personnel, production staff and support staff assigned to this Agreement by the Consultant, as well as contractual matters on the Consultant’s side. Describe the level and type of interaction with NYSDOT.

If other services are to be procured, under the resulting contract during the term of the agreement, explain your approach and your expertise using NYS Procurement Council Guidelines for providing such services. The Consultant shall be responsible for the procurement of all supplies and services as directed by the resulting contract, following the OGS Procurement Council Guidelines.
5.1.6. Experience
The qualifications and prior experience of the proposer are of great importance to NYSDOT. Direct, prior experience in the operation, and maintenance of wastewater treatment plants is a fundamental requirement for Consultant selection. Provide a list of at least two (2) or more comparable projects (with at least one (1) being within the NYCDEP Watershed) currently in progress and those projects successfully completed within the last three (3) years which are relevant to this effort. Indicate proposed key personnel who have worked on such projects and who will be assigned to this project. Include names, addresses and phone numbers of contact points with the listed clients. It is the proposer’s responsibility to ensure all contact information is current. NYSDOT reserves the right to request information from any source so named, as well as request additional reachable references.

The Key Personnel (as identified in Attachment 9) proposed by the designated Consultant are an important factor in the evaluation of its proposal. Thus, the Department expects that the personnel proposed will be available at the start of the contract term. As a result, any personnel proposed by the designated Consultant that does not perform the required work under the contract for the initial 30 calendar days after the effective date of the Notice to Proceed will, at NYSDOT’s discretion, result in a $10,000 charge per personnel title as Liquidated Damages.

In addition, if at any time during the term of the contract a member of the Consultant’s Key Personnel needs to be replaced, the Consultant shall have 30 calendar days to submit a qualified Candidate (same level of experience and expertise) to NYSDOT for approval. In the event the Consultant is unable to provide a qualified Candidate within 30 calendar days, and NYSDOT must use in-house NYSDOT staffing, or NYSDOT must hire a separate consultant to provide the personnel, NYSDOT will, at its discretion:

- Charge and bill the Consultant $100/hour for the use of in-house NYSDOT personnel, or
- Charge and bill the Consultant a 10% administrative fee on top of and in addition to whatever NYSDOT is billed by an out-of-house consultant. If, for example, NYSDOT must hire a separate consultant to provide a service at $100/hour, NYSDOT will charge and bill the Consultant $110.

The determination that a Candidate is “qualified” is the sole decision of NYSDOT. All amounts specified above will be billed as an off-set against future Consultant invoices.

5.2 Part II: Cost and Administrative Submittal
Part II of the proposal consists of two general sections:

- A Cost Proposal, which shall set forth the lump sum amount for performing the work in the scope of services; and
- The Administration Section, which shall specify the proposer’s acceptance of the terms and conditions contained in the draft Contract enclosed as Attachment 1 to this solicitation, as well as host several other administrative items.

The above general section shall include the following:
Part II – Cost and Administrative Submittal

☐ One (1) originally signed and two (2) printed and bound hard copies plus one (1) complete electronic copy of Part II on CD or thumb drive in Adobe PDF compatible format, plus Attachment #11 in MS Excel 2013 compatible format.

☐ Securely sealed and clearly labeled with the title “Rest Area Wastewater Treatment Plant Operations and Maintenance Services RFP, Part II — Cost and Contract Proposal (C037710)”

☐ Complete and submit Attachment #11, Cost Proposal Workbook

☐ Complete and submit online certification or hard copy of Vendor Responsibility Questionnaire

☐ Complete and submit Attachment #2: Consultant Information and Certifications (sign both Sections II and III)

☐ Complete and submit the Attachment #3: Procurement Lobbying Law Compliance Forms

☐ Complete and submit Attachment #7: Form AOR Acknowledgement of Receipt

☐ Complete and submit Attachment #8: Non-Collusive Bidding Certification

☐ Complete and submit Attachment #10: Vendor Assurance of No Conflict of Interest or Detrimental Effect

5.2.1 Cost Proposal
NYSDOT requires that all cost information be presented using the RFP-provided Microsoft Excel spreadsheets (see Attachment 11, ‘Cost Proposal Workbook’) in both a hardcopy Part II response and an electronic copy on CD or thumb drive, securely presented in the Part II response. The accuracy of calculations and formulas in the spreadsheet are the sole responsibility of the offeror.

When completing the Excel cost worksheets included in Attachment 11, offerors shall follow these instructions:

1. The one-time and recurring costs the proposer provides within the Cost Proposal must include ANY AND ALL one-time and recurring fees, charges, or costs for the duration of the contract, including but not limited to:
   a. All direct and indirect costs, all overhead, fees, profit,
   b. Labor, parts, shipping, material and equipment cost;
   c. Software licensing;
   d. Emergency work;
   e. Maintenance services as specified herein;
   f. Repairs and replacement of major or minor parts as necessary;
   g. Administrative, reporting or other requirements;
   h. Travel costs, parking fees, and any other ancillary fees including permits; licenses, insurance, etc., and
   i. Services not explicitly stated in these specifications, but necessarily attendant thereto as applicable to the associated item for which the rate/fee is being quoted.

2. Terminology used in the cost spreadsheets for products and services must be consistent with the terminology used in the technical portion of the response.

3. All worksheets included in Attachment 11 must be completed for the response to be considered complete.

4. Proposers should not make entries in colored cells in the Excel spreadsheets in Attachment 11. Changes should not be made to the spreadsheet format or formulas. Proposers shall not attach any additional or qualifying information.
Cost Proposal Instructions
Use Attachment 11 Cost Proposal Workbook to complete the Cost Proposal response form. This attachment contains instructions to guide completion of this form. Should any questions arise pertaining to this form and its instructions, please submit them to the designated NYSDOT contact person before the Question & Answer deadline.

5.2.2 Administration Section
All signatures on each copy must be an original.

1. Acceptance of Agreement Terms and Conditions
Offerors shall complete and submit the “Consultant Information and Certifications Form,” included as Attachment 2 to this RFP, to indicate their acceptance of all terms and conditions contained in the draft Agreement (Attachment 1). Attachment 2 also requires the signature of an official authorized to bind the offeror to all provisions, a statement certifying that the proposal shall remain valid for at least 365 days, a statement that the firm accepts the RFP’s Scope of Services ‘as-is’, and a statement that, if awarded the contract, the offeror will comply with all the requirements of the RFP, including all attachments. Altering this form without the prior expressed written approval of the New York State Department of Transportation is prohibited and may lead to the proposal being deemed non-responsive and subsequently dismissed. No exceptions to any of the draft contract’s terms and conditions will be entertained by NYSDOT. Conditional bids will be deemed non-responsive.

2. New York Business Reporting
The Proposer shall also include completed Attachment 6: New York Business Reporting.

3. RFP and RFP Modification Acknowledgement Forms
The Proposer shall include a completed Attachment 7: Form AOR, acknowledging receipt of the RFP and any RFP Modifications issued by the Department.

4. Non-Collusion Bidding Certification
All Proposers shall submit a completed Attachment 8: Non-Collusive Bidding Certificate.

4. Procurement Lobbying Law

Filing the two required forms is mandatory for all consultants to be considered for contract award. These Forms are:

Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offers_affirmation_and_agreement_form.pdf
Failure to submit the required PLL forms with your proposal will result in elimination from consideration for contract award.

Use Contract #C037710 wherever requested in the forms. Please call or e-mail the individual identified as the Designated Contacts in section 1.4 of this RFP if you have any questions regarding how to complete this required form.

Per the Procurement/Lobbying Law of 2005, any person who wishes to contact NYSDOT regarding this project during the restricted period (i.e. from advertisement through designation), may only contact the persons noted in Section 1.4 to this solicitation.

For additional information, refer to Attachment 3, Procurement Lobbying Law Compliance.
6 CRITERIA FOR EVALUATION OF PROPOSALS

6.1 General
Proposals shall be pre-screened to determine if they meet the minimum RFP responsiveness (reference Section 1.3). Those which do not shall be deemed non-responsive and shall be removed from further consideration.

Proposals shall then be evaluated by the Department using a Best Value Method evaluation process based on the technical and cost criteria described below. Technical considerations are of greater importance than pricing considerations; however, price is a significant factor in the Department’s evaluation of proposals. Technical proposals will be scored based on the information provided under Section 5.1 in accordance with the pre-established criteria listed in Section 6.3. The cost portion of Section 5.2 will be point scored in accordance with the pre-established criteria listed in Section 6.4.

Technical and Management Proposal evaluation will be accomplished by a representative committee comprised, as appropriate, of technical, program and management personnel. Committee members will score each proposal individually and then meet as a group to discuss the proposals. Evaluators will be allowed to revise scores on the basis of the committee discussions.

Proposers responding to this RFP may be requested to clarify issues or to provide additional insights into their proposal through written clarifications. If written clarifications are required to complete the technical evaluation of proposals, evaluators will be allowed to revise their technical scores based on this additional information. Furthermore, the Department reserves the right to ask clarifying questions regarding each cost proposal (Part II).

The Department reserves the right to request best and final offers from firms that are determined to be susceptible for contract award.

An award shall be made to the offeror whose proposal receives the highest total score after considering all technical and cost/price evaluation factors. Should NYSDOT opt to request best and final offers, it reserves the right to re-score technical and cost proposals. Further, NYSDOT reserves the right to re-score technical and cost proposals should a firm withdraw from this solicitation or be deemed non-responsive after initial evaluation and scoring.

Note: In the event two or more proposals are found to be “substantially equivalent”, the Department reserves the right to award the contract under the terms of State Finance Law §163 (10)(a).

At the conclusion of the evaluation process, an announcement of the Department’s designation(s) will be posted on the NYSDOT web site. All non-designated firms shall be notified in writing regarding the results from the solicitation, and will be offered an opportunity to hold a debriefing. Debriefing requests should be made to the Department’s Designated Contact within five (5) calendar days of the designation notice. Further, it is expressly understood that this Request for Proposals does not commit the Department to award a contract, pay any costs incurred in the preparation of a proposal to this request, or to procure or contract services or supplies. Further, the Department shall have no obligation or liability whatsoever to the vendor selected as a result of this solicitation unless and until a contract satisfactory to the Department is approved and executed by the vendor and all necessary State officials.
6.2 Pre-Screening of Proposals
NYSDOT will conduct a pre-screening of each proposal to ensure all contents have been submitted in accordance with the minimum proposal responsiveness requirements as specified in the RFP. RFP specifications include that it is NYSDOT’s sole discretionary determination as to whether a proposal is complete (reference “Minimum RFP Responsiveness” Section 1.3). Proposals which do not meet the mandatory specifications in the Minimum RFP Responsiveness section will be deemed non-responsive by NYSDOT and will not be considered further.

6.3 Technical and Management (Up to 70 Points)
The Technical proposal will be scored and will represent 70% of the total score for a proposal. The major evaluation criteria are listed in descending order of importance. Sub-criteria within major evaluation factors are also in descending order of importance.

1. Experience of Firm and Key Personnel (Up to 32 Points)
   a. Overall quality, extent and relevance of experience, education and training of key personnel related to the operation and maintenance of WWTP’s and WTS’s. (Up to 20 Points)
   b. Overall quality, extent and relevance of current and prior experience of the proposing firm during the last three (3) years related to the operation and maintenance of WWTP’s and WTS’s. (Up to 12 Points)

2. Approach and Scope of Services (Up to 23 Points)
   a. Degree to which the proposing firm’s proposed approach for operating and maintaining the WWTP’s and WTS’s reflects an understanding of the project’s scope of services. (Up to 10 Points)
   b. Degree to which the proposing firm’s ability to coordinate routine and non-routine activities and reasonableness of plan to provide shift assignments to ensure adequate systems’ coverage and the quality and reasonableness of the plan to provide coverage during vacations, illnesses, absences, personnel turnover and all emergency situations. (Up to 10 Points)
   c. Degree to which proposal reflects understanding and comprehension of project scope and objectives. (Up to 3 Points)

3. Organization and Staffing (Up to 15 Points)
   a. Quality of project organization; reasonableness of staff/task allocations for each task and total effort. (Up to 7 Points)
   b. Quality of plan for phasing key personnel into project. (Up to 4 Points)
   c. Extent and quality of interaction with key participants. (Up to 4 Points)
6.4 Cost (Up to 30 Points)

The cost portion of the Cost and Administrative proposal will be point scored and will represent 30% of the total score for a Proposal. The calculation of a cost score will be determined by the following method:

1. The lowest cost Proposal will be perfected to receive the full amount of points.
2. Proposals with higher cost Proposal will receive proportionally lower cost Proposal scores.
3. This point total will be calculated by dividing the lowest proposed price by the total price of each Proposal, multiplied by the maximum weight for the cost Proposal (30%).
4. Cost scoring results shall be used to determine which Proposals are to be shortlisted/which firms are susceptible to contract award (best value determination). A final cost score shall be calculated once all cost Proposal evaluation has been completed.
7 ADMINISTRATIVE SPECIFICATIONS

7.1 Proposal Submission
The proposal shall be signed by an official authorized to bind the offeror.

Proposers shall submit one (1) originally signed copy and six (6) printed and bound copies of Part I and one (1) originally signed and two (2) printed and bound copies of Part II.

Your proposal must be received by NYSDOT by noon on August 1, 2018. The proposal must be addressed to:

Ms. Micheleen Gregware
NYS Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232
Attention: #C037710 - Rest Area Wastewater Treatment Plant Operations and Maintenance Services For NYSDOT

7.2 State’s Rights
All proposals, upon submission to NYSDOT, shall become its property for use as deemed appropriate. By submitting a proposal, the consultant covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. NYSDOT asserts the following prerogatives regarding the proposals submitted:

a. To accept or reject any or all proposals;
b. To correct any arithmetic errors in any or all proposals;
c. To change the proposal’s due date upon appropriate notification to interested firms;
d. To eliminate any mandatory RFP requirement or specification unmet by all offerors in the evaluation of received proposals;
e. To adopt any and/or all of a successful offeror’s proposal;
f. To negotiate modifications to the scope, milestone payment schedule and total cost, and contract terms and conditions with the selected offeror prior to contract award only if it is in the best interest of the state to do so;
g. To disqualify an offeror from receiving the award if such offeror, or anyone in the offeror’s employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;
h. To revise/amend any provision of this RFP by written notification to offerors, prior to proposal submission;
i. To eliminate any requirement that is found to be unmet by all offerors;
j. To make inquiries, by means it may choose, into the offeror’s background or statements made in the proposal to determine the truth and accuracy of all statements made therein;
k. To select and award the contract to the offeror whose proposal represents the best value to NYSDOT;

l. Should NYSDOT determine that the negotiations with the selected offeror will not result in a contract, to begin contract negotiations with the next-best-value offeror(s) responsive to this RFP — without again requesting proposals;

m. Any contract entered into pursuant to an award of this solicitation shall contain a provision which grants the option to extend the terms and conditions of such contract to any other New York state agency. However, any response to this solicitation shall be based solely on the purpose of this solicitation and shall not factor in the possibility that this contract may, in the future, be applicable to other state agencies. Please be advised that any award made pursuant to this solicitation shall be based on the specific requirements of this solicitation only.

7.3 Consultant Responsibility when Proposing Former NYSDOT Employees

It is the consultant’s responsibility to ensure they propose staff that is eligible to work on the proposed project. It is an individual’s responsibility to comply with the Public Officer’s Law.

The following procedure applies if either of the following criteria is met.

- It is two years or less between the date that the individual is proposed and the individual’s date of separation from the State.

- The individual proposed has worked on the project while employed by NYSDOT regardless of how long ago they left NYSDOT.

**Procedure**

- Before the consultant proposes an individual, the individual must obtain an opinion from the New York State Joint Commission on Public Ethics ([http://www.jcope.ny.gov/](http://www.jcope.ny.gov/)) that approves their participation in the project as they are proposed.

- A copy of this opinion must be on file in the consultant’s office and available for review by NYSDOT if requested.

- Failure to obtain New York State Joint Commission on Public Ethics approval for an individual’s participation in a project may jeopardize the firm’s designation for that project.

7.4 Method of Payment

Payment for services provided under the Agreement resulting from this RFP shall be an all-inclusive fixed-cost monthly payment schedule. The proposed monthly fee shall include all anticipated labor and labor-related costs and expenses. The proposed monthly fee shall also cover all anticipated costs for the services being provided to operate, manage and maintain all facilities covered by this RFP. Proposer shall include estimates of all one-time start up fees, if any. The monthly fee shall not include estimates of expenses which are unknown at the time of proposal submission (e.g., emergency repairs or non-normal, unanticipated operation and maintenance). The monthly fee shall be fixed for the 36-month base term of the contract.
There is no reimbursement for travel. If additional travel is directly requested by NYSDOT, reimbursements for this directed travel, meals and lodging shall be limited to the prevailing maximum rates established by the NYS Office of the State Comptroller. The latest state and nationwide rates are available at: [http://www.gsa.gov](http://www.gsa.gov).

The Consultant will designate a Billing Representative who will be responsible for resolving any invoicing issues during the term of the Contract.

Requests for progress and final payments shall be made by the designated consultant on standard payment request forms (FIN 421). Use proper procedure for billing each deliverable: Submit a draft billing to NYSDOT’s assigned Project Manager via the following sample electronic billing: [https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions](https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions). The sample spreadsheet contains all the proper, required billing forms, as well as a sample billing. The Project Manager will respond via e-mail either with comments/corrections or with an approval to submit the final billing via signed hardcopy. The last and final payment will become due and payable within thirty (30) days after delivery of the final deliverable(s) and a standard NYS FIN 421 payment request forms.

### 7.5 Information for the Selected Consultant

#### Vendor Responsibility

In accordance with the NYS Finance Law, NYSDOT will only make contract award to vendors that are determined to be responsive and responsible. All selected offerors of contracts valued at $100,000 or more will be required to submit a Vendor Responsibility Questionnaire through the Office of the State Comptroller website via [http://www.osc.state.ny.us/vendrep/index.htm](http://www.osc.state.ny.us/vendrep/index.htm) before negotiation of a contract. Offerors must certify the accuracy of the information they provide in the questionnaire. In addition, any subconsultant providing services valued at $100,000 or more is required to submit Vendor Responsibility Questionnaire through the Office of the State Comptroller website.

#### Registration with NYSDOT

Consultant firms entering into contracts with the New York State Department of Transportation (NYSDOT) as prime consultants, joint venture partners or subconsultants, are required to electronically register their firm using the Consultant Selection System web application (CSSWeb). All consultant firms entering into Non-Architectural/Non-Engineering agreements are required to create and register an account to: 1) Create and assign Consultant Identification Numbers (CINs) for each office registered by the firm; and 2) Provide general firm information including, but not limited to: legal firm name; Federal Identification Number (FEIN); ownership type; DBE, MBE and/or WBE status; firm principals; and office(s) address information. All consultant firms participating in a potential agreement (negotiations) must be registered electronically with NYSDOT prior to that agreement being forwarded to the Office of the State Comptroller for approval. Registered firms are responsible for verifying and updating their registration information for the duration of the agreement.


Questions regarding the CSSWeb application and firm registration should be directed to the CSSWeb Administrator by email at css@dot.state.ny.us or by telephone at 518-457-2600.
Registration with Statewide Financial System (SFS)
Should this solicitation lead to a designation, the Prime consultants will be required to electronically register with the Statewide Financial System (SFS) - if not already registered. NYSDOT will initiate the registration process in the SFS application and then contact the Prime consultant to provide them with further direction for completion of the registration process. The result of this process is an established SFS vendor number assigned to the Prime consultant. If a firm has already registered in SFS, with regards to another procurement effort, it will likely not need to re-register for this opportunity. However, a SFS vendor number is firm name specific. Since many firms have different variations of their business identities, firms will be required to register in the name of the business entity that NYSDOT is doing business with.

Consultant Employment Disclosure Requirements of this Project
Go to Office of the State Comptroller’s Web site (http://www.osc.state.ny.us/procurement/consultantdisclosure.doc ) to become familiar with Consultant Employment Disclosure requirements, which went into effect June 19, 2006. The Consultant selected for this solicitation shall be required to complete ‘State Consultant Services – Contractor’s Planned Employment” (Form A, Attachment 4) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, Attachment 4) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect.

Insurance Requirements for this Project
Please carefully read the terms and conditions of the draft Contract appended as Attachment 1 of this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in Article 12 of the draft Contract. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived.

Contractor Tax Certification
Per Section 5-a of the NYS Tax Law, all vendors selected for contracts in excess of $100,000 for the sale of goods or services must complete and submit Forms ST-220-TD and ST-220-CA (Contractor Certifications) prior to negotiation of a contract with State agencies. You should make yourself familiar with these forms by visiting the following websites: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA) and http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD).

Inquiries and Information
All questions concerning this solicitation must be directed only to the individual specified in Section 1.4 of this RFP. The last date to submit questions for this solicitation is stated in Section 7.8 below.

Responses to all questions of a substantive nature, as well as copies of the questions, will be posted to the NYSDOT web site.

Protest Procedure
The New York State Department of Transportation (NYSDOT) has established a protest procedure to be utilized when an interested party challenges a Non-Engineering consultant designation by NYSDOT. The complete procedure can be accessed via: https://www.dot.ny.gov/main/business-center/consultants/general-info
Tentative Schedule of Key Events
NYSDOT will attempt to adhere to the following tentative schedule with regards to progressing this solicitation:

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<td>Question Submittal Deadline</td>
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<td>Responses to Questions</td>
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<td>MAP OF REST AREAS/LOCATIONS</td>
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<td>16</td>
<td>NYCDEP O&amp;M AGREEMENT</td>
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<td>AGREEMENT BETWEEN THE NYS ENVIRONMENTAL FACILITIES CORPORATION AND THE NYS DEPARTMENT OF TRANSPORTATION FOR THE UPGRADING OF A WASTEWATER TREATMENT PLANT (1-684 REST AREA #45)</td>
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ATTACHMENT 1: DRAFT CONTRACT

ATTACHMENT 1

Draft Contract

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

F. A. NO.: _____________  P.I.N.: _____________

COMPTROLLER'S CONTRACT NO. C037710

PROJECT: REST AREA WASTEWATER TREATMENT PLANT OPERATIONS AND MAINTENANCE SERVICES FOR NYSDOT

This Agreement made this _______ day of _________________, 2018 pursuant to Section 14 of the Transportation Law, by and between THE PEOPLE OF THE STATE OF NEW YORK (hereinafter referred to as the "STATE") acting by and through the Department of Transportation (hereinafter referred to as "STATE") whose office is at 50 Wolf Road, in the County of Albany, State of New York 12232, and

CONSULTANT FIRM NAME
CONSULTANT FIRM ADDRESS
(hereinafter referred to as "CONSULTANT")

WITNESSETH:

WHEREAS, the STATE desires the CONSULTANT because of its ability and reputation, to perform the services hereinafter mentioned upon the PROJECT which is fully described in SCHEDULE A and the CONSULTANT agrees to provide these services.

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:

ARTICLE 1. PERFORMANCE OF WORK.
The CONSULTANT shall perform all of the work described in SCHEDULE A and cause such work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this AGREEMENT. The CONSULTANT shall perform the work in accordance with professional standards and with the diligence and skill expected of a company with extensive experience in the performance of work of the type described in SCHEDULE A. The CONSULTANT shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the work in accordance with this AGREEMENT. It is understood and agreed that _________________ shall serve as the CONSULTANT's Project Manager and as such shall have the responsibility for the overall supervision and conduct of the work on behalf of the CONSULTANT and that the persons described in SCHEDULE A shall serve in the capacities described therein. Any change of key project personnel by the CONSULTANT shall be subject to
the prior written approval of the STATE. The STATE reserves the option to extend the terms and conditions of this AGREEMENT to any other state agency in New York subject to the approval of all necessary state officials.

The CONSULTANT will commence work no later than ten (10) days after receiving notice to proceed from the STATE.

ARTICLE 2. DOCUMENTS FORMING THE AGREEMENT.
The contract documents shall be deemed to include this AGREEMENT (including EXHIBITS), the provisions required by state and federal law to be inserted in the AGREEMENT as set forth in APPENDIX A, APPENDIX A-1, APPENDIX C and APPENDIX D, SCHEDULE A (including EXHIBITS), SCHEDULE B (including EXHIBITS), the STATE’s Request for Proposals (RFP; dated ___) incorporated by reference, and the CONSULTANT’s Proposal (dated ___) incorporated by reference.

ARTICLE 3. INSPECTION.
The duly authorized representatives of the STATE, and on Federally aided projects, representatives of the Federal Highway Administration, shall have the right at all times to inspect the work of the CONSULTANT.

ARTICLE 4. TERM OF THE AGREEMENT.
The CONSULTANT agrees to complete all the work of this AGREEMENT as required by this AGREEMENT within a 36-month base term for this AGREEMENT, which shall commence on January 1, 2019 and end on December 31, 2021. The AGREEMENT may be extended for up to two (2) additional one-year periods as may be agreed upon by the parties to the AGREEMENT and as approved by the Office of the State Comptroller.

ARTICLE 5. MAXIMUM AMOUNT
Item I. The maximum aggregate amount payable by the State to the CONSULTANT hereunder for the performance and completion of the work is $__________ unless increased by a supplemental agreement. It is understood and agreed that the STATE will only reimburse the CONSULTANT for approved costs incurred in the performance of authorized project tasks.

Item II. The CONSULTANT specifically agrees that the AGREEMENT shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the STATE beyond the monies available for the purpose.

ARTICLE 6. PROVISION FOR PAYMENT.
Item I. The STATE shall pay to the CONSULTANT and the CONSULTANT agrees to accept as full compensation for its services under this Agreement, a price of __________ unless revised by a Supplemental Agreement.

Item II. The CONSULTANT specifically agrees that the AGREEMENT shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the STATE beyond the monies available for the purpose. In no event, however, will monies be deleted from this Agreement except pursuant to ARTICLE 16 hereof, entitled Termination.

Item III. If the AGREEMENT is extended beyond 36 months then any and all salary rates shown in SCHEDULE B, EXHIBIT ___ may be adjusted annually by the lower of either the percent...
change for the Producer Price Index – Architectural, Engineering and Related Services (Series ID: PCU5413-5413--) for the most recent 12 month period as calculated by the U.S. Department of Labor – Bureau of Labor Statistics, or 1.5 percent, all depending upon current market conditions. If at any time the above Index Series ID is discontinued or becomes unavailable, the STATE reserves the right to implement a comparable Index.

Item IV. The number of months of training provided under Special Provision 11 in Appendix C is _______.

ARTICLE 7. PARTIAL PAYMENTS.
The CONSULTANT shall be paid in progress payments based on allowable costs incurred during the period in accordance with Article 6 of this Agreement established by the Project Manager and the CONSULTANT, as follows:

(To be Negotiated) as per Schedule B

The STATE will make payments to the CONSULTANT in accordance with Section 179(f) of the State Finance Law. Payments are subject to the approval of the STATE’s Project Manager, ___________ or their successor as identified by the STATE. Payments shall not be withheld unreasonably.

The CONSULTANT shall maintain and update once each month, if changes have taken place or are anticipated, the Project Schedule contained in SCHEDULE A hereto.

The CONSULTANT will not include any provisions in their subcontracts that would circumvent the intent of 49 CFR 26.29 to require the CONSULTANT to make partial payments to subcontractors and subconsultants within ten (10) days after receipt of payment from the STATE.

ARTICLE 8. CONTRACT PAYMENT.
The CONSULTANT shall provide complete and accurate billing invoices to the STATE in order to receive payment. Billing invoices submitted to the STATE must contain all information and supporting documentation required by the Contract, the STATE and the State Comptroller. Payment for invoices submitted by the CONSULTANT shall only be rendered electronically unless payment by paper check is expressly authorized by the New York State Department of Transportation Commissioner (hereinafter referred to as “COMMISSIONER”), in the COMMISSIONER’S sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONSULTANT shall comply with the State Comptroller’s procedures to authorize electronic payments. Authorization forms are available at the State Comptroller’s website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us, or by telephone at 518-474-4032. CONSULTANT acknowledges that it will not receive payment on any invoices submitted under this contract if it does not comply with the State Comptroller’s electronic payment procedures, except where the COMMISSIONER has expressly authorized payment by paper check as set forth above.

ARTICLE 9. FINAL PAYMENT.
a) Section 179 of the State Finance Law requires the STATE to make final payment within thirty (30) calendar days after receipt of an invoice which is properly prepared and submitted. The STATE in accordance with the provisions of the State Finance Law has determined that the STATE
will require a 60 calendar day audit period for final payments at which time the 30 calendar day interest-free period will commence. The CONSULTANT is required to make final payment to all Sub Contractors and Sub Consultants within ten (10) calendar days of receipt of final payment from the STATE.

The CONSULTANT is required, if it is a "foreign" (Out of State) corporation or entity, to obtain and submit the required "Tax Clearance" certificate to the STATE at the time of contract signing and again before processing the final payment. It should be noted that any time taken to satisfy or furnish this Tax Clearance certificate shall extend the required payment date by an equal period of time. The Tax Clearance certificate can be obtained by mailing a request to:

New York State Department of Taxation and Finance  
Tax Status Unit  
Building 8, Room 938  
State Office Building Campus  
Albany, NY 12227

Alternatively, it may be obtained by phoning the Corporation Tax Information Center at 1-888-698-2908 and making the request there. The certificate content is public information and the certificate is free of charge.

The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the STATE from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this Agreement or for any part thereof except as otherwise provided in ARTICLE 8 (b).

b) The CONSULTANT shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and make such materials available at its office at all reasonable times during the period of this Agreement and for the period of time specified in Clause No. 10, "Records" of APPENDIX A, for inspection by the STATE, Federal Highway Administration, or any authorized representatives of the Federal Government and copies thereof shall be furnished if requested.

ARTICLE 10. EXTRA WORK.
a) If the CONSULTANT believes that any work is or may be beyond the scope of the Agreement (extra work), or that additional work is necessary, the CONSULTANT shall notify the STATE, in writing, of this fact prior to beginning any of the work. The notification shall include all information required by the Department. The STATE shall be the sole judge as to whether or not such work is in fact beyond the scope of this Agreement and constitutes extra work. No extra or additional work shall be started prior to written authorization from the STATE. The STATE shall be under no obligation to reimburse the CONSULTANT for any extra or additional work performed without the prescribed notification and authorization. The STATE will not allow fixed fee for any extra work undertaken without prescribed notification and authorization. In the event that the STATE determines that such work does constitute extra work, the STATE shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the STATE to the CONSULTANT for execution after approvals have been obtained from the NYS
Attorney General and the NYS Office of the State Comptroller and, if required, from the Federal Highway Administration.

b) In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render to the STATE all assistance required by the STATE. Work which the CONSULTANT is obligated to perform in accordance with Article 9 hereof shall be performed without cost to the STATE. Compensation for other work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this AGREEMENT for the additional services above described, the STATE’s directions shall be exercised by the issuance of a separate Agreement, if necessary.

**ARTICLE 11. CONSULTANT LIABILITY.**

To the fullest extent permitted by law, the Consultant shall indemnify and save harmless the State, and/or any municipality, public benefit corporation, railroad, and/or public utility whose property or facilities are affected by the work, from suits, claims, actions, damages and costs, of every name and description arising from the work under its contract during its prosecution and until the final acceptance thereof. The Consultant and any assigns, heirs, or successors in interest shall also indemnify and save harmless, to the fullest extent permitted by law, the inspecting engineer or inspector working for the State relative to the project from suits, claims, actions, damages and costs involving personal injury and property damage arising from the Consultant’s work under the contract during its prosecution and until the final acceptance thereof. The State may retain such monies from the amount due the Consultant as may be necessary to satisfy any claim for damages recovered against the State, any municipality and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the work or consultant inspecting engineers or inspectors working for the State relative to the project. The Consultant’s obligation under this paragraph shall not be deemed waived by the failure of the State to retain the whole or any part of such monies due the Consultant, nor where such suit, action, damages and/or costs have not been resolved or determined prior to release of any monies to the Consultant under the contract, nor shall such obligation be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the Consultant, Subconsultant or the State, any municipality and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the work, or for any consultants working for the State. It is understood by the State and the Consultant that the Consultant’s Professional Liability/Errors and Omissions policy required in the Article of this Contract entitle “Insurance” shall be utilized for claims involving the Consultant’s professional negligence.

The Consultant has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the parties specified in this Section. This obligation shall include the cost of attorneys’ fees, disbursements, costs and other expenses incurred in connection with such action or proceeding. Such obligation to indemnify in the foregoing paragraph does not extend to those suits, actions, damages and costs of every name that arise out of the sole negligence of the State, or the negligence of any municipality and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the contract work, or the negligence of any consultants working for the State, their agents or employees, relative to the construction, alteration, repair or maintenance of a building, highway or structure or appurtenances and appliances thereof including moving, demolition and excavating connected therewith. Notwithstanding the foregoing, the parties being defended by the Consultant may elect to join any action or tender their own defense, at their sole expense and discretion.
ARTICLE 12. INSURANCE.
The Consultant shall procure, at its own sole cost and expense, and shall maintain in force at all times during the term of this contract including any extensions or renewals until satisfactory completion of all work under the contract, the policies of insurance covering all operations under the contract whether performed by it or its subconsultants as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York and that have an A.M. Best Company rating of (A-) or better or approved by the Department. The Department may, at its sole discretion, permit the placement of policies with a non-authorized carrier or carriers upon request by the Consultant accompanied by the documentation required by 11 NYCRR §27.0 et seq.; provided that nothing herein shall be construed to require the Department to accept insurance placed with a non-authorized carrier under any circumstances. The Consultant shall deliver to the Department evidence of such policies as the Department deems necessary to verify that the required insurance is in effect. If policies are changed or canceled, the CONSULTANT shall inform the STATE immediately. The STATE will determine whether to issue an order to the CONSULTANT to stop work.

A. Conditions Applicable to Insurance. All policies of insurance required by this agreement must meet the following requirements:

1. Coverage Types and Policy Limits. The types of coverage and policy limits required from the Consultant are specified in Paragraph B, Insurance Requirements, below. General liability insurance shall apply separately on a per-job or per-project basis.

2. Policy Forms. Except as may be otherwise specifically provided herein or agreed in writing by the Department, policies must be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting period of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy. Insurance policies that remove or restrict blanket contractual liability located in the “insured contract” definition (as stated in Section V, Number 9, Item f in the ISO CGL policy) or that remove or modify the “insured contract” exception to the employers liability exclusion so as to limit coverage for claims that arise out of contract work, or that do not cover the additional insured for claims involving injury to employees of the named insured or subcontractors, are not acceptable. Policy forms must be provided to the Department upon request.

3. Certificates of Insurance/Notices. Consultant shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commissioner, before commencing any work under this contract. Certificates or transmittal correspondence shall reference the NYSDOT Contract Number. Consultant is strongly encouraged to transmit certificates and other materials concerning insurance coverage, referencing the Contract Number and the name of the Consultant in the Subject Line, by email to: Insur.consult.contr@dot.ny.gov

Certificates may be mailed to:
New York State Department of Transportation
Contract Management Bureau
50 Wolf Road, Sixth Floor
Albany, NY 12232

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Unless otherwise agreed, policies shall be written so as to require that the policy will not be
(i) canceled, (ii) materially changed or (iii) permitted to expire or lapse for any reason
except upon ten (10) days’ prior written notice to the Department by Certified Mail, Return
Receipt Requested at the address stated above. In addition, if required by the Department,
the Consultant shall deliver to the Department within ten (10) work days of such request a
copy of any or all policies of insurance not previously provided, certified by the insurance
carrier as true and complete. Certificates of Insurance shall:

a. Be in a form satisfactory to the Department. The ACORD 25 Certificate must be
accompanied by an ACORD 855 “New York Construction Addendum” completed to
indicate information about the liability insurance.
b. Be signed and dated by an authorized representative of the insurance carrier or
producer.
c. Disclose any deductible, self-insured retention, aggregate limit.
d. Refer to this Contract by number on the face of the certificate.

If at any time during the term of this contract, it shall come to the attention of the
Department that required insurance is not in effect or that adequate proof of insurance has
not been provided, the Department may, at its option:

a. Direct the Consultant to suspend work and not re-enter the premises with no
additional payment or extension of time due on account thereof, or
b. May withhold further contract payments in accordance with Partial Payments,
Section §109-04 of the Standard Specifications, or
c. Treat such failure as a breach or default of the contract.

4. Additional Insureds. All insurance policies required by these specifications, except
workers’ compensation and professional liability shall be endorsed to provide coverage to
“The State of New York/New York State Department of Transportation, any
municipality in which the work is being performed, any public benefit corporation,
railroad, or public utility whose property or facilities are affected by the work, and
their agents or employees” with respect to any claim arising from the Consultant’s Work
under this contract or as a result of the Consultant’s activities. The endorsement shall be
effected by endorsement of the applicable policy using ISO form CG 20 10 11 85, CG 20 37
07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01
or a form(s) that provides equivalent coverage.

5. Primary Coverage. The liability and protective liability insurance policies shall
provide primary and non-contributory coverage to the Department for any claim arising
from the Consultant’s Work under this contract, or as a result of the Consultant’s activities.

6. Waiver of Subrogation. As to every type and form of insurance coverage required
from the Consultant, there shall be no right of subrogation against the State of New
York/New York State Department of Transportation, its agents or employees. To the
extent that any of Consultant’s policies of insurance prohibit such a waiver of subrogation,
Consultant shall secure the necessary permission to make this waiver.
7. Policy Renewal/Expiration. At least ten (10) calendar days prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Department than the expiring policies shall be delivered to the Department in the manner required for service of notice in Paragraph A.3. Certificates of Insurance/Notices above.

8. Self-Insured Retention/Deductibles. Consultants utilizing self-insurance programs are required to provide a description of the program for Department approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the Contract Documents of a particular project, the Consultant or third-party-administered insurance deductible shall be limited to the amount of the bid deposit or $100,000, whichever is less. Security is not required if it is otherwise provided to an administrator for an approved risk management program. The Department will not accept a self-insured retention program without security being posted to assure payment of both the self-insured retention limit and the cost of adjusting claims. The Consultant shall be solely responsible for all claim expense and loss payments within any permitted deductible or self-insured retention. If the Consultant’s deductible in a self-administered program exceeds the amount of the bid deposit, the Consultant shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by Department must be issued by a guarantor or surety with an AM Best Company rating of (A-) or better. If, at any time during the term of this agreement, the Department, in its sole discretion, determines that the Consultant is not paying its deductible, it may require the Consultant to collateralize all or any part of the deductible or self-insured retention on any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due the Consultant.

9. Waiver of Indemnities. The Consultant waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss that is covered by a policy of insurance that is required by this contract. The Consultant waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss, whether or not such loss is insured.

10. Subconsultant’s Liability Insurance. In the event that any portion of the work described in this contract is performed by an approved subconsultant, the insurance requirements of this Article shall be incorporated into the subcontract agreement. Subconsultant insurance requirements shall include the requirements for Workers’ Compensation, Commercial General Liability, and, if applicable, Commercial Auto and/or Professional Liability. Excess or umbrella insurance is not required for subconsultants. Consultant shall require that Certificates of Insurance, meeting the requirements of the Department are provided to the Department documenting the insurance coverage for each and every subconsultant employed by them to do work under this contract.

B. Insurance Requirements. The types of insurance and minimum policy limits shall be as follows:

1. Workers’ Compensation and Disability Insurance. As required by State Finance Law §142, the Consultant shall maintain in force workers’ compensation insurance upon
forms required by or acceptable to the Workers Compensation Board for all of Consultant’s employees. Consultant shall also maintain disability insurance as required by the Disability Benefits Law of the State of New York.

2. **Commercial General Liability Insurance.** The Consultant shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of Consultant. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage) in an amount of not less than $1,000,000.00 per occurrence and not less than $2,000,000.00 aggregate. Unless otherwise provided, the policy or policies of insurance providing the liability coverage shall include:

   a. Coverage for contractual liability assumed by the Consultant insured under an insured contract (including the tort liability of another assumed in a business contract).
   
   b. All insurance policies required by these specifications except workers’ compensation and professional liability shall be endorsed to provide coverage to **“the State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, or any consultant inspecting engineer or inspector working for or on the project, and their agents or employees”** using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a policy form or forms providing equivalent coverage.
   
   c. Products-Completed Operations Coverage, as provided in the General Liability Policy, or in certain instances through ISO form CG 26 11 09 99 or suitable equivalent.
   
   d. Where contract work will be performed by unregistered off-road equipment, Consultant shall provide documentation of a blanket Pollution Liability policy, or an endorsement to cover short-term pollution events, ISO form CG 04 33 10 01 or equivalent.
   
   e. Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.
   
   f. Explosion, Collapse and Underground Hazards coverage (“XCU”) (for contracts that call for the performance of excavating, underground work, and/or the use of blasting equipment).

3. **Special Protective and Highway Liability Policy.** *(applicable to any project where Consultant is required to conduct field work where Consultant controls the field location for the work).* The Consultant shall maintain, separate and apart from its umbrella policy, a policy issued to and covering the liability of the People of the State of New York, The State of New York, the Commissioner of Transportation, all employees of the Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, against damages that the insureds may be held legally liable to pay for
property damage, personal injuries, or death that is caused by any occurrence that takes place within any location where work is to be or is being performed by Consultant, including at the location of any of the work. This should be ISO form CG 00 14 12 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than $1,000,000 per occurrence and at least $2,000,000 for each aggregate limit.

4. **Commercial Automobile Insurance including liability and required coverage for New York.** (applicable to any project where automobiles or other vehicles will be employed to complete the work). In the event that automobiles are used in connection with Consultant’s business or operations with the Department, the Consultant shall maintain a commercial or other automobile policy or policies insuring against liability for bodily injury, death, or damage to property and other mandatory coverages, relating to the use, operation, loading or unloading of any of Consultant’s automobiles (including owned, hired and non-owned vehicles) on and around the project. This may be ISO form CA 00 01 10 01, CA 00 01 01 87 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than $1,000,000 each accident.

5. **Umbrella or Excess Liability Insurance.** The Consultant shall maintain an occurrence form umbrella liability policy or policies insuring against liability arising from premises (including loss of use thereof), operations, independent Consultants, products-completed operations, personal injury and advertising injury, and liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of Consultant or arising from automobile liability as described above. Such coverage shall be written on an ISO occurrence form CU 00 01 12 07 or a policy form providing equivalent coverage. In the event that umbrella coverage is unavailable, equivalent excess coverage may be substituted. The minimum required limits for the umbrella/excess coverage shall be sufficient to provide a total of not less than $5,000,000 per occurrence/aggregate.

6. **Consultant’s Risks.** (applicable to all contracts). The Consultant shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (a) business interruption, such as gross earnings, extra expense, or similar coverage, (b) personal property, and/or (c) automobile physical damage and/or theft. In no event, shall the Department be liable for any damage to, or loss of, personal property, or damage to, or loss of, an automobile that is covered by a policy of insurance that is required by this agreement, even if such loss is caused by the negligence of the Department.

7. **Professional Liability/ Errors and Omissions.** (applicable to professional services requiring the signature, stamp or certification of a licensed professional, including, without limitation, erection plans, demolition plans, containment plans, coffer dams, and temporary sheeting.) The Consultant shall maintain at its own expense or shall require to be maintained, such insurance as is customary to compensate the Department for any claims or losses that occur because of Consultant’s errors, omissions malpractice or breach of professional obligations. Such policy or policies may be written on a claims-made form so long as coverage is maintained to be in effect to cover claims arising from the performance of services under this contract. Said coverage may be subject to a deductible or self-insured retention level of no more than $250,000, subject to approval by the Department, such approval not to be unreasonably withheld, except that it is also agreed that the Department
may withhold payment for services rendered under this contract in the event, and to the extent of any deductible in the event that a claim is asserted. Such coverage shall be written on a claims-made basis (or a policy form providing equivalent coverage) in an amount of no less than $1,000,000 per claim and $1,000,000 in the aggregate.

8. Railroad Protective Liability Insurance. (applicable to any consulting work where the consultant is entering railroad right-of-way independent of a construction contract described in §105-09). The Consultant shall maintain at its own expense railroad protective liability policy of insurance in the name of the affected railroad and with limits of coverage as specified in the Special Notes on Railroad Insurance, or if no limits of coverage are specified, the limits shall be not less than $5,000,000 combined Bodily Injury Liability and/or Property Damage for each occurrence with a $10,000,000 aggregate Limit applying separately to each annual period. Said policy shall be subject to the approval of the railroad and comply with 23 CFR 646 Subpart A.

9. Marine Protection & Indemnity. (applicable to any consulting work that necessitates the consultant’s use of barges or other watercraft independent of a construction contract). Anytime the activity involves work on navigable water or the work is connected to water related activities, Marine Protection & Indemnity and Hull and Machinery coverage is required. Hull and Machinery coverage shall be provided for the total value of the watercraft or equipment. The Consultant shall obtain Protective and Indemnity Liability insurance for all marine operations under the Agreement, with a minimum ($1,000,000) limit. The policy shall be endorsed to add the Department as an Additional Insured.

ARTICLE 13. INTERCHANGE OF DATA.
All technical data with regards to the PROJECT existing in the office of the STATE or existing in the offices of the CONSULTANT shall be made available to the other party to this Agreement without expense to such other party.

ARTICLE 14. DISPOSITION OF DATA.
At the time of completion of the work, the CONSULTANT shall make available to the STATE all documents and data pertaining to the work or to the PROJECT which materials at all times shall be the property of the STATE. It is agreed that the CONSULTANT may maintain copies of all documents and data. In the event that this Agreement is terminated for any reason, then, within ten (10) days after such termination, the CONSULTANT shall make available to the STATE the aforementioned data and material.

ARTICLE 15. DAMAGES AND DELAYS.
The CONSULTANT agrees that no charges or claim for damages shall be made by them for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this AGREEMENT. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the STATE may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the STATE of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising its rights under ARTICLE 8 of this AGREEMENT.

ARTICLE 16. NOTICE OF BANKRUPTCY, VENUE, AUDITS.
If, prior to final audit, CONSULTANT files for relief pursuant to Title 11 of the United States Code under the Bankruptcy Laws or a successor statute, this AGREEMENT shall be treated as an executory contract under 11 USC S365 of the Bankruptcy Laws or successor statute, and be subject to assumption or rejection by the debtor within the time permitted by law.

The CONSULTANT must immediately send written notice to Contract Management of the New York State Department of Transportation at its main office in Albany and send all relevant pleading of the voluntary or involuntary filing of a Bankruptcy proceeding by the CONSULTANT, its subsidiary, its principals and officers or a related entity whether or not the CONSULTANT believes that any debt is owed to the State by final audit or otherwise.

The determination of any rights under this AGREEMENT shall be adjudicated in a State or Federal Court with jurisdiction over the matter, and venue for the determination of such rights shall be in Albany, New York.

The CONSULTANT agrees that the automatic stay under 11 USC S362 or a successor statute shall be deemed inapplicable or that this agreement shall constitute consent to the lifting of the stay with respect to the State's performance of or completion of any audit pursuant to the terms of this AGREEMENT.

ARTICLE 17. TERMINATION.
The STATE shall have the absolute right to terminate this Agreement, and such action shall in no event be deemed a breach of contract:

(a) If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be made based on the percentage of work satisfactorily completed by the CONSULTANT, as determined by the STATE, times the Lump Sum amount.

(b) If the termination is brought about as a result of unsatisfactory performance on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the STATE.

(c) The STATE reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONSULTANT in accordance with the requirements contained in State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONSULTANT in accordance with the written notification terms of the AGREEMENT.

ARTICLE 18. DEATH OR DISABILITY OF THE CONSULTANT.
In case of the death or disability of one or more but not all the persons herein referred to as CONSULTANT, the rights and duties of the CONSULTANT shall devolve upon the survivors of them, who shall be obligated to perform the services required under this AGREEMENT, and the STATE shall make all payments due to them.

In case of the death or disability of all the persons herein referred to as CONSULTANT, all data and records pertaining to the PROJECT shall be delivered within (60) days to the STATE or its duly authorized representative. In case of the failure of the CONSULTANT'S successors or personal representatives to make such delivery on demand, then in that event the representatives of
the CONSULTANT shall be liable to the STATE for any damages it may sustain by reason thereof. Upon the delivery of all such data to the STATE, the STATE will pay to the representatives of the CONSULTANT all amounts due the CONSULTANT, including retained percentages to the date of the death of the last survivor.

ARTICLE 19. INDEPENDENT CONTRACTOR.
The CONSULTANT, in accordance with their status as an independent contractor, covenants and agrees that they will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the STATE by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE, including but not limited to Worker's Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement membership or credit.

ARTICLE 20. COVENANT AGAINST CONTINGENT FEES.
The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this AGREEMENT, and that they have not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. For breach or violation of this warranty, the STATE shall have the right to annul this AGREEMENT without liability, or, in its discretion, to deduct from the AGREEMENT price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 21. TRANSFER OF AGREEMENT.
The CONSULTANT specifically agrees, as required by the State Finance Law, Section 138, that they are prohibited by law from assigning, transferring, conveying, subletting or otherwise disposing of the AGREEMENT or of their right, title or interest therein, or their power to execute such AGREEMENT, to any other person, company or corporation, without the previous consent in writing of the STATE.

If this provision of the law be violated, the STATE shall revoke and annul the Agreement and the STATE shall be relieved from any and all liability and obligations thereunder to the person, company or corporation to whom the CONSULTANT shall assign, transfer, convey, sublet or otherwise dispose of the Agreement, and such transferee shall forfeit and lose all moneys therefore assigned under said Agreement, except so much as may be required to pay his employees.

ARTICLE 22. PROPRIETARY RIGHTS.
The Consultant agrees that if copyrights, patentable discoveries or inventions or rights in data should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. However, the CONSULTANT agrees to and does hereby grant to the United States Government and the State of New York an irrevocable, nonexclusive, nontransferable, paid-up license to reproduce, publish, make, use, and sell each subject invention throughout the world by and on behalf of the Government of the United States and States and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27, and other applicable Federal laws, rules and regulations.

ARTICLE 23. SUBCONTRACTORS/SUBCONSULTANTS.
All subcontractors and subconsultants performing work on this project shall be bound by the same required contract provisions as the prime CONSULTANT. All agreements between the prime CONSULTANT and a subcontractor or subconsultant shall include all standard required contract provisions, and such agreements shall be subject to review by the State.

ARTICLE 24. ORDER OF PRECEDENCE.
In the event of any inconsistency between or among the provisions and contents of this AGREEMENT, it is agreed that such inconsistency shall be resolved in the following descending order of precedence:

1. APPENDIX A,
2. The provisions required by state and federal law to be inserted in the AGREEMENT as set forth in APPENDIX A-1, and APPENDIX C;
3. This AGREEMENT, including Signature Page, Notary Page and Exhibits;
4. SCHEDULE A (including Exhibits);
5. SCHEDULE B (including Exhibits);
6. The STATE’s Request for Proposals; and
7. The CONSULTANT’s Proposal.

ARTICLE 25. CERTIFICATION REQUIRED BY 49CFR, PART 29.
The signatory to this Agreement, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership):

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

EXCEPTIONS: -

ARTICLE 26. CERTIFICATION FOR FEDERAL-AID CONTRACTS.
The prospective participant certifies, by signing this Agreement to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
(2) If any funds other than Federal appropriate funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

ARTICLE 27. RESPONSIBILITY OF THE CONSULTANT.

(a) The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by the CONSULTANT under this AGREEMENT. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its services. However, the STATE may in certain circumstances, provide compensation for such work.

(b) Neither the STATE’s review, approval or acceptance or, nor payment for, the services required under this AGREEMENT shall be construed to operate as a waiver of any rights under this AGREEMENT or of any cause action arising out of the performance of this AGREEMENT, and the CONSULTANT shall be and remain liable to the STATE in accordance with applicable law for all damages to the STATE caused by the CONSULTANT’s negligent performance or breach of contract of any of the services furnished under this AGREEMENT.

(c) The rights and remedies of the STATE provided for under this AGREEMENT are in addition to any other rights and remedies provided by law.

(d) If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint venturers associated for the purposes of undertaking this agreement, each such entity acknowledges and hereby affirmatively represents and agrees that each has the power to bind the CONSULTANT and each of the others hereunder; and as such, each acts both as principal and agent of the CONSULTANT and of each of the others hereunder. Each further acknowledges and agrees that all such entities, partners or joint venturers associated for the purposes of undertaking this agreement shall be jointly and severally liable to third parties, including but not limited to the STATE, for the acts or omissions of the CONSULTANT or any other entity, partner or joint venturer hereunder.

(e) If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint venturers associated for the purposes of undertaking this agreement, each such entity acknowledges and hereby affirmatively represents and agrees that the respective rights,
duties and liabilities of each hereunder shall be governed by the laws of the State of New York, including but not limited to the New York Partnership Law.

ARTICLE 28. SECURITY AND CONFIDENTIALITY OF INFORMATION.
Information received as part of this AGREEMENT shall be considered Confidential Information. The CONSULTANT warrants that it will take the appropriate steps as to its personnel, agents, officers and any SUBCONTRACTOR/SUBCONSULTANTS regarding the obligations arising under this clause to insure such confidentiality. The CONSULTANT shall have written policies and/or business procedures in place which will protect Confidential Information from unauthorized disclosure, use, access, loss, alteration or destruction. The CONSULTANT may disclose to other parties, as authorized by the NYSDOT Project Manager, or as described in the scope of services, only the information necessary to perform services under this AGREEMENT. However, the CONSULTANT shall in no circumstance, communicate with the public or news media without prior authorization from the States designee. Neither shall the CONSULTANT disclose information deemed confidential by the State nor shall the CONSULTANT disclose any other information obtained or developed in the performance of services under this agreement without the written authorization of the State. This warranty shall survive termination of this AGREEMENT.

The CONSULTANT shall comply with the provisions of the New York State Information Security Breach and Notification Act, including General Business Law Section §889-aa and State Technology Law §208 as enacted by such Act or subsequently amended. In the event of an information security breach resulting in the unauthorized disclosure of personal information, CONSULTANT shall be liable for the costs associated with such breach if caused by CONSULTANT’s negligent or willful acts or omissions, or the negligent or willful acts or omissions of the CONSULTANT’s agents, officers, employees or SUBCONSULTANTS.

ARTICLE 29. VENDOR RESPONSIBILITY.
The Department of Transportation has undertaken an affirmative review of the proposed consultant’s responsibility in accordance with the applicable standards outlined in Comptroller’s ‘Guide to Financial Operations’, and based upon such review, reasonable assurance that the proposed contractor is responsible has been determined.

a). General Responsibility. The Consultant shall, at all times during the Agreement, remain responsible. The Consultant agrees, if requested by the Commissioner of NYSDOT or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

b). Suspension of Work (for Non-Responsibility). The Commissioner of NYSDOT (or his or her designee), in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement at any time when he or she discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant shall comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of NYSDOT (or his or her designee) issues a written notice authorizing the resumption of performance under the Agreement.
c). Termination (for Non-Responsibility). Upon written notice to the Consultant, and a reasonable opportunity to be heard with appropriate NYSDOT or staff, the Agreement may be terminated by Commissioner of NYSDOT (or his or her designee) at the Consultant’s expense where the Consultant is determined by the Commissioner of NYSDOT (or his or her designee) to be non-responsible. In such event, the Commissioner of NYSDOT (or his or her designee) may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

ARTICLE 30. CONSULTANT DISCLOSURE LEGISLATION.
In accordance with Chapter 10 of the Laws of 2006, the CONSULTANT shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, Exhibit A) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect. The CONSULTANT shall provide information regarding all employees providing service under this contract, whether employed by the CONSULTANT or any subconsultant or subcontractor. Form B will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1st to March 31st). Annual employment reports should be submitted to the following three agencies. It is recommended, however, that consultants check the agency websites annually to confirm the addresses.

By mail:
NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, N. Y. 12236
Attn: Consultant Reporting

NYS Department of Civil Service
Alfred E. Smith Building
Albany, N. Y. 12239
Attn: Chapter 10 Counsel’s Office

NYS Department of Transportation:

Reports that are submitted to the NYS Department of Transportation must be submitted electronically, preferably as a Word, Excel or pdf file via email to: consultantdisclosure@dot.ny.gov.

ARTICLE 31. NOTICES.
Item 1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:

(a) via certified or registered United States mail, return receipt requested;
(b) by facsimile transmission;
(c) by personal delivery;
(d) by expedited delivery service; or
(e) by e-mail.
Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

**New York State Department of Transportation:**  
Contact Person’s Name: William A. Howe, Contract #C037710  
Title: Director  
Address: NYSDOT Contract Management Bur., 6th Fl., 50 Wolf Road, Albany, NY 12232  
Telephone Number: 518-457-2600  
Facsimile Number: 518-457-2874  
E-Mail Address: Bill.Howe@dot.ny.gov

**Consultant’s Name:**  
Contact Person’s Name:  
Title:  
Address:  
Telephone Number:  
Facsimile Number:  
E-Mail Address: 

Item 2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

Item 3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

**ARTICLE 32. TITLE VI ASSURANCE.**

During the performance of this contract, the consultant or contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter “FHWA”) Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the
Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.

(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT’s Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
(b.) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 33. ENSURING PAY EQUITY BY STATE CONSULTANTS / CONTRACTORS.
In accordance with Executive Order 162, issued on January 9, 2017, the consultant shall provide detailed workforce utilization reports of the CONSULTANT and each subconsultant – or subcontractor – that include, in addition to equal employment opportunity information, the job title and salary of each employee directly performing work on a STATE contract.

If the CONSULTANT cannot identify the individuals working directly on a State contract, then the CONSULTANT and each subconsultant shall provide such information of each employee in the CONSULTANT’S entire workforce. Such information shall be reported to the Department at quarterly intervals.
The reporting period shall be on a quarterly basis (January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31). The reporting requirement shall begin on the effective date of the contract and continue for the duration of the contract term. Reports shall be submitted within 15 calendar days from the end of each reporting period. This provision is in effect for the quarterly reporting period ending December 31, 2017, or the quarterly reporting period that is immediately subsequent to the effective date of the contract, whichever date is later.

Detailed workforce utilization reports, as required above, shall be submitted in such form and in such manner as required by the Department and in accordance with Consultant Instruction 17-02 which can be accessed at: https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions.

The consultant shall include this provision in every subcontract so that such provisions shall be binding upon each subconsultant, if the subcontract is in excess of $25,000.

ARTICLE 34. CONFLICTS OF INTEREST.
The CONSULTANT has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONSULTANT’s performance of the services does not and will not create a conflict of interest with, nor position the CONSULTANT to breach any other contract currently in force with the State of New York, that the CONSULTANT will not act in any manner that is detrimental to any STATE project on which the CONSULTANT is rendering services. The CONSULTANT hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the CONSULTANT's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this AGREEMENT. The CONTRACTOR shall have a duty to notify the STATE immediately of any actual or potential conflicts of interest.

In conjunction with any subcontract under this AGREEMENT, the CONSULTANT shall obtain and deliver to the STATE, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subconsultant/subcontractor. The CONSULTANT shall also require in any subcontracting agreement that the subconsultant/subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the STATE a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subconsultants/subcontractors prior to entering into a subcontract.

The STATE and the CONSULTANT recognize that conflicts may occur in the future because the CONSULTANT may have existing, or establish new, relationships. The STATE will review the nature of any relationships and reserves the right to terminate this AGREEMENT for any reason, or for cause, if, in the judgment of the STATE, a real or potential conflict of interest cannot be cured.

ARTICLE 35. ETHICS REQUIREMENTS.
The Consultant and its Subconsultants/Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the “Ethics Requirements’). The Consultant certifies that all of its employees and those of its Subconsultants/Subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Consultant or its Subconsultants/Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements, may share in any net revenues of the Consultant or its Subconsultants/Subcontractors derived from this Contract. The Consultant shall identify and provide the State with notice of those employees of the Consultant and its Subconsultants/Subcontractors who are former employees of the State that will be assigned to perform services under this Contract and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Consultant provide it with whatever information the State deems appropriate about each such person’s engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics and if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subconsultant/Subcontractor if utilizing such Subconsultant/Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

ARTICLE 36. SUBCONTRACTING.

The CONSULTANT agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the STATE. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The CONSULTANT may arrange for a portion(s) of its responsibilities under this AGREEMENT to be subcontracted to qualified, responsible subconsultants/subcontractors, subject to approval of the STATE. If the CONSULTANT determines to subcontract a portion of the services, the subconsultants/subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this AGREEMENT must be fully explained by the CONSULTANT to the STATE. As part of this explanation, the subconsultant/subcontractor must submit to the STATE a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the CONSULTANT prior to execution of this AGREEMENT.

The CONSULTANT retains ultimate responsibility for all services performed under the AGREEMENT.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this AGREEMENT including, but not limited to, the body of this AGREEMENT, Appendix A – Standard Clauses for New York State Contracts and the advertisement for proposals. Unless waived in writing by the STATE, all subcontracts between the CONSULTANT and subconsultants/subcontractors shall expressly name the STATE, through the Department of Transportation, as the sole intended third party
beneficiary of such subcontract. The STATE reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the STATE a party to any subcontract or create any right, claim, or interest in the subconsultant/subcontractor or proposed subconsultant/subcontractor against the STATE.

The STATE reserves the right, at any time during the term of the AGREEMENT, to verify that the written subcontract between the CONSULTANT and subconsultants/subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in this AGREEMENT.

The CONSULTANT shall give the STATE immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subconsultant/subcontractor or which may affect the performance of the CONSULTANT’s duties under the AGREEMENT. Any subcontract shall not relieve the CONSULTANT in any way of any responsibility, duty and/or obligation of the AGREEMENT.

If at any time during performance under this AGREEMENT total compensation to a subconsultant/subcontractor exceeds or is expected to exceed $100,000, that subconsultant/subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.
IN WITNESS WHEREOF, this Contract #C037710 has been executed by the STATE, acting by and through the Commissioner of Transportation, and the CONSULTANT, by signature below, has duly executed this Agreement effective the day and year first above written.

In addition to the acceptance of this Agreement, the Department also certifies that original copies of this signature page will be attached to all other exact copies of this Agreement.

RECOMMENDED BY FOR THE PEOPLE OF THE STATE OF NEW YORK
_________________ ________________________________
CONTRACT MANAGEMENT BUREAU DEPARTMENT OF TRANSPORTATION

Consultant Certifications: I certify that all the information with respect to the Vendor Responsibility Questionnaire submitted by (Consultant Firm Name) on the ____ day of ________________, 201___ pursuant to the requirements set forth in OSC’s ‘Guide to Financial Operations’ is complete, true and accurate. I additionally certify nothing has occurred since the date of that submission that would result in requiring a change or alteration to any of the answers provided on the Vendor Responsibility Questionnaire submitted that date.

I certify that all information provided to the STATE with respect to the requirements contained in State Finance Law Sections 139j & 139k is complete, true and accurate.

By ________________________________ Date: ________________________________
FIRM

_________________ ________________________________
ATTORNEY GENERAL THOMAS P. DI Napoli
STATE COMPTROLLER

By: ________________________________ By: ________________________________
Date: ________________________________ Date: ________________________________
Acknowledgement for Contract #C037710

For contracts signed in New York State

State of New York  
County of   )ss:

On the__________ day of ______________ in the year 201___, before me, the undersigned, personally appeared ______________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

__________________________________
NOTARY PUBLIC

My Commission Expires:

For contracts signed outside New York State

State of   
County of  )ss.:

On the _________ day of ________________ in the year 201__ before me, the undersigned, personally appeared ______________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in ____________________________________ (insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

__________________________________
NOTARY PUBLIC

_____________________________
(Signature and office of individual taking acknowledgement.)

My Commission Expires:
APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE 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 State’s previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless 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 $50,000 (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 when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized 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, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim 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. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. 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, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLABORATIVE 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 bid was arrived at indepen-
dently 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 220-f of the Labor Law and Section 139-h 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 substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 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 so 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 option 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, its 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) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, 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 persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (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 the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, 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 the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor’s equal employment opportunity policy that:
(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts 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. 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 Department of Economic Development’s Division of Minority and Women's Business Development pertaining hereto.

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 or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

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 award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the 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 Section 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
  - Albany, New York 12245
  - Telephone: 518-292-5100
  - Fax: 518-292-5884
  - email: opa@esd.ny.gov

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
  - 633 Third Avenue
  - New York, NY 10017
  - 212-803-2414
  - email: mwbecertification@esd.ny.gov
  - [https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp](https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp)

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. **COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. **COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. **PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.
25. **CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.** To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. **IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law Section 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: [http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf](http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf)

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law Section 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

Updated January 2014
During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter “FHWA”) Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.

(4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT’s Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
   (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
   (b.) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
APPENDIX C

SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

Specific Equal Employment Opportunity Responsibilities

1. GENERAL  (a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Federal Executive Order 11246, Federal Executive Order 11375, and NYS Executive Law Article 15, are set forth in required Contract Provisions (Form PR-1273 or 1316, as appropriate) and those Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. Non-discrimination and affirmative action are also required by the State Labor Law, Section 220-e, as amended, by Executive Order 162, issued on January 9, 2017 and the Regulations of the NYS Department of Transportation relative to federally-assisted programs (Title 49, Code of Federal Regulations, Part 21 and Section 21.5), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for projects activities under this contract.

(b) The CONSULTANT will work with the STATE and the Federal Government in carrying out equal employment opportunity obligations and in their review of their activities under this contract.

(c) The CONSULTANT and all their sub-consultants and/or sub-contractors holding sub-contracts of $10,000 or more will comply with the following minimum specific requirements of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to contractors and sub-contractors.) The CONSULTANT will include these requirements in every sub-contract with such modification of language as is necessary to make them binding on the sub-contractor.

(d) The CONSULTANT and all their sub-consultants and/or subcontractors shall comply with Executive Order 162, issued on January 9, 2017, requiring quarterly workforce utilization reports, detailing reports of the Consultant and all of their subconsultants, which includes in addition to equal opportunity information, the job and salary of each employee directly performing work on a State contract.

2. EQUAL EMPLOYMENT OPPORTUNITY POLICY

A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the contract.

B. In performing the contract, the Consultant shall:

1. Ensure that each Consultant and subconsultant – or subcontractor – performing work on the contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Consultant shall submit an EEO policy statement to the New York State Department of Transportation (NYSDOT) after the date of the notice by the NYSDOT to award the contract to the Consultant as determined by the Department.

3. If the Consultant or any of its subconsultants, does not have an existing EEO policy statement, the NYSDOT may require the Consultant or subconsultant to adopt a model statement consistent with item B.4.a through d of this section.

4. The Consultant’s EEO policy statement shall include the following language:

a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce.

b. The Consultant shall state in all solicitations or advertisements for employees that in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, natural origin, sex, age, disability or marital status.

c. The Consultant 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 the implementation of the Consultant’s obligation herein.
d. The Consultant will include provisions of Subdivisions (a) through (c) of this subsection 4 and the paragraph appearing immediately below which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subconsultant as to work in connection with the contract.

The Consultant shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Consultant and its subconsultants shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction or prior arrest.

3. EQUAL EMPLOYMENT OPPORTUNITY OFFICER The Consultant will designate and make known to the New York State Department of Transportation contracting officers an Equal Employment Opportunity Officer and a Minority Business Enterprise officer (hereinafter referred to as the EEO Officer and M.B.E. Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active equal employment opportunity program and who must be assigned adequate authority and responsibility to do so.

4. DISSEMINATION OF POLICY (a) All members of the CONSULTANT's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONSULTANT's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To insure that the above agreement will be met, the following actions will be taken as a minimum:

(1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six months, at which time the CONSULTANT's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory (first level of supervision and above) or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the CONSULTANT's equal employment opportunity obligations within thirty days following their reporting for duty with the CONSULTANT.

(3) All personnel who are engaged in direct recruitment for the project will be instructed in the CONSULTANT's procedures for locating and hiring minority group employees by the EEO Officer or appropriate company official. (Minority group referred to herein shall mean Black, Hispanic, Asian/Pacific Islander, American Indian/Alaskan.)

(b) In order to make the CONSULTANT's equal employment opportunity policy known to all employees, prospective employees and potential sources or employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the CONSULTANT will take the following actions:

(1) Notices and posters setting forth the CONSULTANT's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The CONSULTANT's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

(c) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a sub-contract, including procurements of materials or equipment, each potential sub-contractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this agreement and the Regulations relative to non-discrimination.

5. RECRUITMENT (a) When advertising for employees, the CONSULTANT will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived. These advertisements shall state that all qualified applicants will be afforded equal employment opportunity without regard to race, religion, sex, color, national origin, age, disability or marital status.

(b) The CONSULTANT will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the CONSULTANT's EEO Officer will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the CONSULTANT for employment consideration. In the event the CONSULTANT has a valid bargaining agreement providing for exclusive hiring hall referrals, the CONSULTANT is expected to observe the provisions of that agreement to the extent that the system permits the CONSULTANT's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the CONSULTANT to do the same, such implementation violates Executive Order 11246.)
(c) The CONSULTANT will encourage present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

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

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

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

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

(d) The CONSULTANT will promptly investigate all complaints of alleged discrimination made in connection with obligations under this agreement, will attempt to resolve such complaints, and will take appropriate corrective action within 15 days. All subsequent corrective actions or decisions will also be documented and forwarded to the NYS Department of Transportation Compliance Officer within 7 days after such action has taken place. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONSULTANT will inform every complainant of the results and all of their avenues of appeal should the complaint be denied.

7. TRAINING AND PROMOTION (a) The CONSULTANT will assist in locating, qualifying and increasing the skills of minority group and women employees, and for employment.

(b) Consistent with the CONSULTANT's work force requirements and as permissible under the Federal and State regulations, the CONSULTANT shall make full use of training programs; i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. In the event the Training Special Provision is provided under this contract, this subparagraph is superseded thereby.

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

d) The CONSULTANT will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. UNIONS If the CONSULTANT relies in whole or in part upon unions as a source of employees, the CONSULTANT will use their best effort to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and, to effect referrals by such unions of minority and female employees. The CONSULTANT will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice to be provided by the State Division of Human Rights, advising such labor union or representative of the CONSULTANT's compliance and with the non-discrimination clauses. Actions by the CONSULTANT, either directly or through a CONSULTANT's association acting as agent, will include the procedures set forth below:

(a) The CONSULTANT will use their best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

(b) The CONSULTANT will use their best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age, disability or marital status.

(c) The CONSULTANT is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union, and such labor union refuses to furnish such information to the CONSULTANT. The CONSULTANT shall so certify to the STATE and shall set forth what efforts have been made to obtain such information. Further, if the CONSULTANT was directed to do so by the contracting agency as part of the bid or negotiations of this contract, the CONSULTANT shall request such labor union or representative to furnish him with a written statement that such labor union or representative accepts the non-discrimination clauses and will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or
refuses to comply with such a request that it furnish such a statement, the CONSULTANT shall promptly notify the State Division of Human Rights and set forth what efforts have been made to obtain such information.

(d) In the event the union is unable to provide the CONSULTANT with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the CONSULTANT will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age, disability or marital status, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the CONSULTANT has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the CONSULTANT from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such CONSULTANT shall immediately notify the New York State Department of Transportation.

9. AFFIRMATIVE ACTION IN SUBCONTRACTING  (a) The CONSULTANT will not discriminate on the grounds of race, religion, sex, color, national origin, age, disability or marital status in the selection of subcontractors, including procurements and leases of equipment.

(b) If the CONSULTANT determines to use a subcontractor as part of this agreement, affirmative action shall be taken to increase the participation of minority business firms in that work. As part of that affirmative action, the CONSULTANT will identify and contact minority business firms and solicit proposals for the work to be subcontracted. The STATE will provide a list of names of minority business firms to the CONSULTANT. Another source that should be contacted for a list of minority business firms is the Governor's Office of Minority & Women's Business Development (GOMWBD).

(c) The CONSULTANT will document the affirmative action steps taken to comply with paragraph 9b. Such documentation will be provided at the time or submittal of a formal proposal to the State's Contracts Bureau.

(d) By execution of this agreement, the CONSULTANT certifies that the affirmative action steps in 9a, 9b & 9c above were taken when soliciting proposals for the work in this agreement indicated to be subcontracted and that these steps will be taken should any work be subcontracted in the future.

(e) The CONSULTANT will insure binding subcontractor and vendor compliance with their EEO obligations. The CONSULTANT will take such actions in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a subcontractor or a vendor as a result of such direction by the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting him to intervene and protect the interest of the State of New York.

10. RECORDS AND REPORTS  (a) The CONSULTANT will keep such records as are necessary to determine compliance with the CONSULTANT's equal employment opportunity obligations. The records kept by the CONSULTANT will be designed to indicate:

(1) The number of minority and non-minority group members and women employed in each work classification on the project, where required by the NYS D.O.T Compliance Officer.
(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).
(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
(4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
(5) Compliance with all other requirements in these provisions such as meetings, instructions, employment efforts, etc.

(b) The CONSULTANT will comply with Sections 291-299 of the Executive Law and Civil Rights Law and will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by State or Federal officials to be pertinent to ascertain compliance with such Regulations, orders and instructions. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State and the Federal Highway Administration.

(c) Failure to comply with these Special EEO Provisions may be considered unsatisfactory performance and may subject the agreement to termination under the termination article of this agreement. Non-compliance may result in the CONSULTANT's being declared ineligible for future agreements made by or on behalf of the STATE or a public authority or agency of the STATE, until he satisfies the State Commissioner of Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the State Division of Human Rights, notice thereof has been given to the CONSULTANT and an opportunity has been afforded them to be heard publicly before the State Commissioner of Human Rights or
official designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided for by law. These may include, but are not limited to:

(1) withholding of payments to the CONSULTANT under the agreement until the CONSULTANT complies, and/or
(2) cancellation, termination or suspensions of the agreement in whole or in part.

11. TRAINING SPECIAL PROVISIONS This Training Special Provision supersedes paragraph 7.b above and is in implementation of 23 CFR Subpart A, Section 230.111 & Executive Order 11246.

As part of the CONSULTANT's equal employment opportunity affirmative action program training shall be provided as follows:

The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved.

The number of months of training to be provided under these special provisions is previously stated in Article II.

In the event that the CONSULTANT subcontracts a portion of the contract work, it shall be determined how many, if any, of the trainees are to be trained by the subcontractor, provided however, that the CONSULTANT shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The CONSULTANT shall also insure that this training special provision is made applicable to such subcontract.

The number of trainees shall be distributed among the work classifications on the basis of the CONSULTANT's needs. Along with their proposal, the CONSULTANT shall submit to the New York State Department of Transportation for approval the proposed number of trainees to be trained in each selected classification, their estimated salaries and a training schedule. The salaries to be paid trainees shall not be less that 75 percent of the average hourly rate approved in the agreement for the classification to be trained. During the period from the beginning of the project to its completion, the trainee shall receive reasonable salary increases commensurate to the abilities and effort exerted by the trainee. The training schedule required should indicate the start of work and appropriate incremental salary steps in accord with the above.

Training and upgrading the proficiency of minorities and women is a primary objective of this Training Special Provision. Accordingly, the CONSULTANT shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The CONSULTANT will be responsible for demonstrating the steps that have been taken in pursuance thereof, prior to a determination as to whether the CONSULTANT is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training program or in a classification in which they have been employed. The CONSULTANT should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the CONSULTANT's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training schedule developed by the CONSULTANT and approved by the State and Federal Highway Administration. The State and the Federal Highway Administration shall approve a program if it reasonably calculated to meet the equal employment opportunity obligations of the CONSULTANT and to assist in qualifying the average trainee toward proficiency in the classification concerned by the end of the training period. Approval of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. Training is permissible in lower level management positions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

The CONSULTANT shall be reimbursed for the cost of any and all training under the payment terms of this agreement. This can include offsite training cost as discussed above. All offsite training must be defined in the training schedule. All costs claimed or calculated for training must be directly related to the work defined in the scope of this agreement and/or added by supplemental agreement.

The CONSULTANT must demonstrate their best efforts and evidence good faith in hiring trainees for positions in the classification in which they have completed training.

The CONSULTANT shall furnish the trainee a copy of the program they will follow in the training. The CONSULTANT shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The CONSULTANT will provide for the maintenance of records and furnish periodic reports documenting their performance under this Training Special Provision.

Updated July 2017
ATTACHMENT 2: CONSULTANT INFORMATION AND CERTIFICATIONS
(Please submit this with your Part II: Cost Proposal)

CONTRACT NUMBER: C037710
PROJECT TITLE: REST AREA WASTEWATER TREATMENT PLANT OPERATION
AND MAINTENANCE SERVICES FOR NYS DOT

I. CONSULTANT INFORMATION

FIRM NAME: ____________________________________________________________
ADDRESS: ____________________________________________________________
CITY: ___________________________ STATE: __________
ZIP CODE: __ __ __ __ - __ __ __ __
TELEPHONE: (____) _____ - __________ FAX: (____) _____ - __________
E-MAIL ADDRESS: ______________________________________________________
CONTACT PERSON: ______________________________________________________

Consultant’s Federal Identification Number (FIN): __________________________
Consultant’s NYS DOT Consultant Identification Number (CIN): ____________

• Please indicate below the name, title, address, and telephone/fax numbers of the
  person who prepared this proposal, as well as any other individual(s) with authority to
  negotiate and contractually bind the offerer and also who may be contacted during the
  period of proposal evaluation:

Preparer’s Name/Title: ________________________________________________
Address: __________________________________________________________________
Telephone: (____) _____ - __________ FAX: (____) _____ - __________

Other Authorized Individual(s):
Name/Title: __________________________________________________________________
Address: ___________________________________________________________________
Telephone: (____) _____ - __________ FAX: (____) _____ - __________
II. PROPOSER CERTIFICATIONS

By signing below, I, _____________________________, authorized individual
(Name)
of _____________________________ make the following
(Firm)
certifications regarding the subject proposal:

- 180-Day Offer: This proposal is a firm offer for a 180-day period from the date of
  submission.
- The firm has read and will follow the procedure outlined in Section 7.3 of the RFP if it
  proposes the services of a former NYSDOT employee(s).
- Vendor Responsibility: If selected for contract award, the firm will complete and submit
  the required Vendor Responsibility Questionnaire via the OSC VendRep portal within 10
  days of notification of designation.
    (http://www.osc.state.ny.us/vendrep/forms_vendor.htm )
- ST-220: If selected for contract award greater than $100,000, the firm will complete and
  submit the required Forms ST-220-TD and 220-CA (Contractor Certifications) prior to
  negotiation with NYSDOT. You should make yourself familiar with these forms by
  visiting the following Web sites:
    http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA)
    http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)

Signature:  __________________________________

III. ACCEPTANCE OF CONTRACT

By signing below, I, _____________________________, authorized individual
(Name)
of _____________________________ hereby certify that I have read and
(Firm) accept all terms and conditions contained in the draft Contract, including
Appendix A, which is included as Attachment 1 to this Request for Proposals.

Signature:  __________________________________
(Name of Acceptor)
ATTACHMENT 3: PROCUREMENT LOBBYING LAW COMPLIANCE

1. Required Forms: The consultant shall sign and e-mail/fax the following forms. These forms are part of and due with the consultant’s proposal.

   - Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)
   - Offerer Disclosure of Prior Non-Responsibility Determinations

2. NYSDOT Guidelines and Procedures
   Under the requirements of the State Procurement Act all communications regarding advertised projects are to be channeled through Contract Management (*Designated Contacts). Until a designation is made, communication with any other NYSDOT employee concerning this project that is determined to be an attempt to influence the procurement may result in disqualification.


3. Summary of the policy and prohibitions regarding permissible contacts
   a) Contacts prior to designation:
   Any communications involving an attempt to influence the procurement are only permitted with the following Designated Contact Persons:
      - The Contract Management Designation Contract Analyst
      - The Contract Management Designation Analyst Supervisor
      - The Contract Management Civil Rights Unit Supervisor
      - The Contract Management Assistant Directors
      - The Contract Management Director

   These are some communications exempted from this restriction:
      - Participation in a pre-proposal conference.
      - Protests, complaints of improper conduct or misrepresentation

   If any other NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee. If the Department determines an impermissible contact was made, that offerer cannot be awarded the contract. A second violation would lead to a four year bar on the award of public contracts to the offerer.

   b) Contacts after designation
   NYSDOT identifies its primary negotiation contacts. The designated contacts include:
      - The Contract Management Designation Contract Analyst
      - The Contract Management Designation Analyst Supervisor
      - The Contract Management Civil Rights Unit Supervisor
The Contract Management Assistant Directors
The Contract Management Director
The Consultant Management Bureau consultant job manager
The Consultant Management Bureau consultant job manager’s immediate supervisor

The law does not limit who may be contacted during the negotiation process. However, if any NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee.

c) Information Required from Offerers that contact NYSDOT staff, prior to contract approval by the Office of the State Comptroller:
The individuals contacting NYSDOT should refer and shall be prepared to provide the following information, either by e-mail or fax as directed by NYSDOT:

Person’s name, firm person works for, address of employer, telephone number, occupation, firm they are representing, and whether owner, employee, retained by or designated by the firm to appear before or contact the NYSDOT.

d) Applicability to an executed contract:
Restrictions similar to those described above apply to approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the offerer. The staff noted above as well as the project manager and consultant manager are considered designated contact persons. The Department may identify other contact persons for each of these processes.

4. Rules and regulations and more information on this law, please visit:
http://ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html (Advisory Council FAQs)

For more information, go to NYSDOT’s Web Site at http://www.dot.ny.gov or contact:

Ms. Micheleen Gregware
NYSDOT Contract Management
50 Wolf Road, 6th Floor
Albany, New York 12232
E-mail: Micheleen.Gregware@dot.ny.gov
Tele: (518) 457-2600
### FORM A

State Consultant Services – Contractor’s Planned Employment
From Contract Start Date Through The End Of The Contract Term

<table>
<thead>
<tr>
<th>State Agency Name:</th>
<th>Transportation</th>
<th>Agency Code: DOT01</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor Name:</td>
<td></td>
<td>Contract Number: C037710</td>
</tr>
<tr>
<td>Contract Start Date:</td>
<td>/ /</td>
<td>Contract End Date: / /</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>O*Net Employment Category</th>
<th>Number of Employees</th>
<th>Number of hours to be worked</th>
<th>Amount Payable Under the Contract</th>
</tr>
</thead>
<tbody>
<tr>
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Total this page 0 0 $ 0.00

Name of person who prepared this report:

Title:  

Preparer’s Signature:  

Date Prepared: / /

(Use additional pages, if necessary)
State Consultant Services  
Contractor's Annual Employment Report  
Report Period: April 1, to March 31, 

Contracting State Agency Name: Transportation  
Agency Code: 17000  
Contract Number: C037710  
Contract Term: January 1, 2019 to December 31, 2022  
Contractor Name:  
Contractor Address:  
Description of Services Being Provided: Rest Area Wastewater Treatment Plant Operation and Maintenance Services for NYSDOT

Scope of Contract (Choose one that best fits):  
Analysis [ ]  Evaluation [ ]  Research [ ]  Training [ ]  
Data Processing [ ]  Computer Programming [ ]  Other IT consulting [ ]  
Engineering [ ]  Architect Services [ ]  Surveying [ ]  Environmental Services [ ]  
Health Services [ ]  Mental Health Services [ ]  
Accounting [ ]  Auditing [ ]  Paralegal [ ]  Legal [ ]  Other Consulting [X]  

<table>
<thead>
<tr>
<th>O<em>NET Employment Category Number and O</em>NET Job Title</th>
<th>Number of Employees</th>
<th>Number of Hours Worked</th>
<th>Amount Payable Under the Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

Total this page 0 0 $ 0.00  
Grand Total

Name of person who prepared this report:  
Preparer's Signature: ____________________________________________________________  
Title:  
Phone #:  
Date Prepared: / /  

Use additional pages if necessary)
ATTACHMENT 5: DIVERSITY PRACTICES QUESTIONNAIRE – Not Applicable

I, ___________________, as __________________ (title) of _______________ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No
   
   If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company’s gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company’s clients or customers?

3. What percentage of your company’s overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company’s clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?!

4. Does your company provide technical training\(^2\) to minority- and women-owned business enterprises? Yes or No
   
   If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?
   
   If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company’s commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No
   
   If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No
   
   If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No
   
   If Yes, complete the attached Utilization Plan (Attachment 7).

---

\(^1\) Do not include onsite project overhead.

\(^2\) Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.
All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of Owner/Official

Printed Name of Signatory

Title

Name of Business

Address

City, State, Zip

STATE OF ___________________________  
COUNTY OF                             ) ss:

On the ______ day of __________, 201_, before me, the undersigned, a Notary Public in and for the State of ________, personally appeared ______________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

________________________
Notary Public
Encouraging Use of New York State Businesses in Contract Performance

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York’s infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor’s optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below and if answered in the affirmative, completing and submitting the following table for all firms (prime consultant and all subconsultants) participating in your proposal. The definition of ‘NYS Business’ is: ‘Any firm with a business address which lies within the borders of New York State from which location the proposed services from this firm shall be provided under this contract’. Indicate whether each proposed firm is classified as a NYS Business, the total dollar amount attributable to each firm, the total proposed contract cost, and the NYS business address of each firm.
Will New York State Businesses be used in the performance of this contract?

Yes _____
No _____

<table>
<thead>
<tr>
<th>Firm Legal Name</th>
<th>NYS Business? (Y or N)</th>
<th>% of Total Proposed Contract Cost</th>
<th>NYS Business Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Prime Consultant</td>
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<tr>
<td>B. Sub-Consultants</td>
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</tbody>
</table>

Total Proposed Contract Cost: $
ATTACHMENT 7: FORM AOR

ACKNOWLEDGMENT OF RECEIPT OF RFP, MODIFICATIONS AND RESPONSES TO QUESTIONS

<table>
<thead>
<tr>
<th>NAME OF PROPOSER</th>
</tr>
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<tbody>
<tr>
<td></td>
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</tbody>
</table>

We hereby acknowledge receipt of the Rest Area Wastewater Treatment Plant Operations and Maintenance Services for NYSDOT (Contract #C037710) Request for Proposals, dated [Month Date, Year] and subsequent responses to questions and Modifications issued by the Department, as listed below:

Add additional lines in tables below, if needed.

<table>
<thead>
<tr>
<th>Modification number:</th>
<th>Date issued by Department:</th>
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<tbody>
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<table>
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<tr>
<th>SIGNED</th>
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<tbody>
<tr>
<td>DATE</td>
</tr>
<tr>
<td>NAME</td>
</tr>
<tr>
<td>(printed or typed)</td>
</tr>
<tr>
<td>TITLE</td>
</tr>
</tbody>
</table>
ATTACHMENT 8: NON-COLLUSIVE BIDDING CERTIFICATION

NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW

SECTION 139-D, Statement of Non-Collusion in bids to the State:

BY SUBMISSION OF THIS BID, BIDDER AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF JOINT BID, EACH PARTY THEREETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:

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

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this _______ day of ____________, 20____ as the act and deed of said corporation of partnership.
NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY
SECTION 139-D OF THE STATE FINANCE LAW

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

<table>
<thead>
<tr>
<th>NAMES OF PARTNERS OR PRINCIPALS</th>
<th>LEGAL RESIDENCE</th>
</tr>
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</tbody>
</table>

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

<table>
<thead>
<tr>
<th>NAME</th>
<th>LEGAL RESIDENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>President:</td>
<td></td>
</tr>
<tr>
<td>Secretary:</td>
<td></td>
</tr>
<tr>
<td>Treasurer:</td>
<td></td>
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<tr>
<td>President:</td>
<td></td>
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<tr>
<td>Secretary:</td>
<td></td>
</tr>
<tr>
<td>Treasurer:</td>
<td></td>
</tr>
</tbody>
</table>
NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY
SECTION 139-D OF THE STATE FINANCE LAW

Identifying Data

Potential Contractor: __________________________________________________

Address:  ____________________________________________________________

                      Street

                      City, Town, etc.

Telephone:__________________________ Title__________________________

If applicable, Responsible Corporate Officer

Name:______________________________ Title______________________________

Signature: _______________________________________________________________

Joint or combined bids by companies or firms must be certified on behalf of each participant.

____________________________________  _______________________________

Legal name of person, firm or corporation

Legal name of person, firm or corporation

By  ________________________________  ________________________________

Name                                  Name

                                   Title                                  Title

Address:  ________________________________  Address:  ________________________________

                      Street                                  Street

                      City State                                       City State
ATTACHMENT 9: KEY PERSONNEL RESUME AND REFERENCES

Instructions:
- Complete Attachment 9 for each Key Personnel title identified in the RFP.
- Attachment 9 shall not exceed three pages in length
- Proposer’s may expand the boxes as necessary
- The term “Client” below refers to the past project owner. “Client” is NOT a Prime Contractor where the proposing firm acted in the capacity as a Subcontractor.

<table>
<thead>
<tr>
<th>1. Personnel Name and Title:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Title assigned to this project:</td>
</tr>
<tr>
<td>3. Firm working for on this project:</td>
</tr>
</tbody>
</table>
| 4. Current employment status: | [ ] Employed by Firm identified in #3 above
| [ ] Employed by a different Firm
| ___________________________ (Enter Current Employer)
| [ ] Unemployed |
| 5. Years relevant experience: |
| 6. Description of relevant experience: |
| 7. Certifications/Licenses: |
| 8. Education: |

Past Project Experience

| Project description (include contract number where appropriate): |
| Client name: |
| Client contact information (including contact name, phone number, email address): |
| Description of person’s role and responsibilities during the project: |

| Project description (include contract number where appropriate): |
| Client name: |
| Client contact information (including contact name, phone number, email address): |
| Description of person’s role and responsibilities during the project: |

<p>| Project description (include contract number where appropriate): |
| Client name: |
| Client contact information (including contact name, phone number, email address): |
| Description of person’s role and responsibilities during the project: |</p>
<table>
<thead>
<tr>
<th>Project description (include contract number where appropriate):</th>
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</thead>
<tbody>
<tr>
<td>Client name:</td>
<td></td>
</tr>
<tr>
<td>Client contact information (including contact name, phone number, email address):</td>
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<tr>
<td>Description of person’s role and responsibilities during the project:</td>
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</table>

<table>
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<tr>
<th>Project description (include contract number where appropriate):</th>
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<tbody>
<tr>
<td>Client name:</td>
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</tr>
<tr>
<td>Client contact information (including contact name, phone number, email address):</td>
<td></td>
</tr>
<tr>
<td>Description of person’s role and responsibilities during the project:</td>
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</table>
ATTACHMENT 10: VENDOR ASSURANCE OF NO CONFLICT OF INTEREST OR DETRIMENTAL EFFECT

Vendor Assurance of No Conflict of Interest or Detrimental Effect

The Firm offering to provide services pursuant to this RFP/Contract #C037710, as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this [RFP/Contract] does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;

2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;

3. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm’s ability to carry out its obligations under any existing contracts between the Firm and the State;

4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;

5. During the negotiation and execution of any contract resulting from this RFP, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;

6. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;

7. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and

8. The Firm has not and shall not offer to any employee, member or director of the State any gift,
whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Firms responding to this RFP (Contract #C037710) should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name, Title:

Signature: Date:

This form must be signed by an authorized executive or legal representative.
ATTACHMENT 11: COST PROPOSAL WORKBOOK

Attachment 11, which contains the RFP’s cost Proposal workbook and instructions, is be downloaded from the NYSDOT project web site, located at https://www.dot.ny.gov/business. Click on “Consulting Services”, then click on “Opportunities”, and then click on the date to the left of ‘C037710…”.”
ATTACHMENT 12: STORMVILLE WASTEWATER TREATMENT PLANT DIAGRAM
### GENERAL STRUCTURAL NOTES

1. **Concrete**
   - All concrete shall be air-entrained concrete with a minimum compressive strength of 4,500 psi, complying with ASTM C 39, or its equivalent.
2. **Reinforcing Bars**
   - All reinforcing bars shall be deformed bars, conforming to ASTM A 615, Grade 60, deformed and to ASTM Grade 60.
3. **Welded Wire Fabric**
   - Welded wire fabric shall conform to ASTM designation A 586.
4. **Sheet Material**
   - Sheet material for structural and architectural purposes shall conform to ASTM designation A 446, or its equivalent.

#### REINFORCING STEEL LAP SPUCIES AND EMBEDMENTS

<table>
<thead>
<tr>
<th>BAR SIZE</th>
<th>LAP SPICE LENGTH (INCHES)</th>
<th>EMBEDDED LENGTH (INCHES)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>15</td>
<td>12</td>
</tr>
<tr>
<td>6</td>
<td>20</td>
<td>15</td>
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<tr>
<td>8</td>
<td>25</td>
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<tr>
<td>10</td>
<td>27</td>
<td>25</td>
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<tr>
<td>12</td>
<td>30</td>
<td>30</td>
</tr>
<tr>
<td>14</td>
<td>32</td>
<td>32</td>
</tr>
<tr>
<td>16</td>
<td>36</td>
<td>36</td>
</tr>
</tbody>
</table>

**Note:** Bars 12 and 14 shall be used on all columns and beams. Bar 16 shall be used on all columns. Bar 18 shall be used on all beams. Bar 20 shall be used on all columns greater than 60 inches in length. Bar 22 shall be considered a top bar.

### ABBREVIATIONS

- **FSL:** Field Survey
- **FLS:** Field Laboratory
- **SD:** Standard Dimension
- **C:** Concrete
- **R:** Reinforcing Steel
- **FL:** Field Labor
- **M:** Masonry
- **E:** Electrical
- **P:** Plumbing
- **HVAC:** Heating, Ventilation, and Air Conditioning
- **CFT:** Cubic Feet
- **T:** Tons
- **G:** Gallons
- **PSI:** Pounds per Square Inch

**Scale Reduction:**

These reduced plans may not be exact in detail, and should be compared to the original plans. The scale ratio is approximately 1:50.
# Nailing Schedule

## Roof Framing

<table>
<thead>
<tr>
<th>Description of Building Elements</th>
<th>Number of Common Nails</th>
<th>Nail Spacings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plate to Top Plate (Top-Nailed)</td>
<td>2-80</td>
<td>Per Nailed</td>
</tr>
<tr>
<td>Ceiling Joist to Top Plate (Top-Nailed)</td>
<td>3-80</td>
<td>Per Nailed</td>
</tr>
<tr>
<td>Ceiling Joist to Parapet (Side-Nailed)</td>
<td>8-75</td>
<td>Edge Up</td>
</tr>
<tr>
<td>Ceiling Joist to Parapet (Top-Nailed)</td>
<td>9-75</td>
<td>Edge Up</td>
</tr>
<tr>
<td>Ceiling Joist to Parapet (Side-Nailed)</td>
<td>2-75</td>
<td>Per TD</td>
</tr>
<tr>
<td>Blocking to Parapet (Top-Nailed)</td>
<td>2-80</td>
<td>Per Nailed</td>
</tr>
<tr>
<td>R/W Board to Parapet (Top-Nailed)</td>
<td>3-80</td>
<td>Each Side</td>
</tr>
</tbody>
</table>

## Wall Framing

<table>
<thead>
<tr>
<th>Description of Building Elements</th>
<th>Number of Common Nails</th>
<th>Nail Spacings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Top Plate to Top Plate (Side-Nailed)</td>
<td>2-165</td>
<td>Per Foot</td>
</tr>
<tr>
<td>Top Plates at Intersections (Side-Nailed)</td>
<td>4-165</td>
<td>3/8 x 3 in.</td>
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<tr>
<td>Stud to Stud (Side-Nailed)</td>
<td>2-165</td>
<td>3/8 x 3 in.</td>
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<tr>
<td>Header to Header (Side-Nailed)</td>
<td>2-165</td>
<td>3/8 x 3 in.</td>
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<tr>
<td>Top Plate or Bottom Plate to Stud (Side-Nailed)</td>
<td>2-165</td>
<td>3/8 x 3 Stud</td>
</tr>
<tr>
<td>Bottom Plate to Floor Joist, Bumpout, Eave or Blocking (Side-Nailed)</td>
<td>2-165, 3-165</td>
<td>Per Foot</td>
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## Roof Sheathing

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<thead>
<tr>
<th>Description of Building Elements</th>
<th>Number of Common Nails</th>
<th>Nail Spacings</th>
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</thead>
<tbody>
<tr>
<td>Structural Panels</td>
<td>8-6 divide / 10 field</td>
<td></td>
</tr>
<tr>
<td>Dimensional Board Sheathing</td>
<td>2-80</td>
<td>Per Support</td>
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<tr>
<td>1/2&quot; x 6 wood</td>
<td>2-80</td>
<td>Per Support</td>
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## Wall Sheathing

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<tr>
<th>Description of Building Elements</th>
<th>Number of Common Nails</th>
<th>Nail Spacings</th>
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<td>Structural Panels</td>
<td>8-6 divide / 10 field</td>
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<tr>
<td>Sheathing</td>
<td>2-80</td>
<td>Per Support</td>
</tr>
<tr>
<td>1/2&quot; x 6 wood</td>
<td>2-80</td>
<td>Per Support</td>
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### Additional Notes

1. Nailing requirements are based on wall sheathing nailed 6 inches on-center at the panel edge of wall sheathing is nailed 6 inches on-center at the panel edge. Underwriters' Laboratory, Inc. test criteria should be met when nailing. Alternate connections such as nail block or clip shall be tested by certified laboratories. Poor anchor requirements shall be tested by certified laboratories. Nailing requirements shall be tested by certified laboratories. Nailing requirements shall be tested by certified laboratories. Nailing requirements shall be tested by certified laboratories.

2. When wall sheathing is continuous over connected members, the number of nailing shall be permitted to be reduced to 1-164 nails per foot.
1 INTRODUCTION

This manual provides general installation and operating instructions for the Memcor 3M10V Microfiltration System. This manual should be read in conjunction with any additional documentation provided for the specific filtration application.

Adherence to specified operating parameters is important to successful operation of the Memcor filtration system. Misapplication or improper operation can damage the equipment and void warranties.

The success you have with the Memcor system is directly related to the manner in which it is operated.

Figure 1-1 Memcor 3M10V Self-Cleaning Continuous Microfiltration Unit
1.1 General System Description

Continuous Microfiltration (CMF)
Microfiltration is a fine filtration process which uses a membrane filter to remove particles greater than approximately 0.2 microns from a feed stream. The Memcor Continuous Microfiltration (CMF) process utilizes hollow fiber membrane to provide a self-cleaning system which can maintain high flow rates by means of the unique gas backwash.

Filtration takes place from the outer surface of the fiber to the hollow inner core. Feed liquid passes through the porous wall of the fibers and suspended matter remains on the shell side. This filtration process removes solids larger than approximately 0.2 microns. As a guide, bacteria are typically larger than about 1 micron.

As deposits build up on the fibers, filtration flow resistance increases and the membrane has to be backwashed to restore flow performance. During backwash, filtration is stopped and compressed air is used to remove deposits from the outer surface of the fibers. Feed liquid is used to transport the deposits to the backwash drain lines.

The Memcor CMF process has many benefits:
- The filtration membrane is a barrier filtration system that provides positive mechanical retention of suspended solids and micro-organisms.
- Filtrate quality is consistent despite wide variations in feedstream conditions.
- Filtrate quality is independent of operator interaction.
- The need for chemical cleaning and associated waste streams is minimized due to the recovery of flow via the unique backwash process.
- Operator input is minimal, making remote, unattended operation possible.
- Coagulant use is not required in normal system operation.
- Primary disinfection is achieved by mechanical retention of fecal bacteria, protozoa, cysts, and other organisms that cause public health problems.
- Secondary disinfection requirements are minimized.
- Each CMF unit has a built-in integrity monitoring function that allows operators to verify membrane integrity at any time.
- CMF systems consist of the following equipment:

1.1.1 CMF Units

1.1.1.1 Frame

The CMF frame is a welded construction of square and rectangular rolled hollow sections with plates providing mounts for bolted attachments. The module array, valves, pipework, controls, and...
instrumentation components are supported by the frame assembly. Bolting through plates removes the need to drill into sealed sections, thereby reducing the risk of corrosion of the frame.

Four legs bolt to the underside of the frame and have provision for bolting to ground level mountings. The legs provide clearance for pipework and access to the underside of the module array.

1.1.1.2 The Module Array

The main component of the Memcor CMF unit is the M10V module. Each module contains thousands of hollow fiber filtration membranes surrounded by a protective plastic screen and sealed at both ends. This membrane sub-module forms a replaceable filter element which can be removed from the module for repair or replacement.

The 3M10V CMF unit include three modules (assembled in one row). The end plates are fitted to the upper and lower ends of the row and provide feed or filtrate connections.

The module assembly design provides for isolation of filtrate flow from any individual module in the unit. This is done by means of two filtrate isolation valves in the upper and lower heads of each module. Filtrate isolation valves are operated by means of a special tool available from Memcor.

Individual sub modules may be removed from the unit for repair or replacement without dismantling the entire assembly by means of a special tools available from Memcor.

1.1.1.3 Pipework

CMF pipework is fabricated from various materials, including ABS and stainless steel, which are selected for their process chemical compatibility, strength, and ease of fabrication. Gasket material is typically EPDM (ethylene propylene dimonomer).
1.2 Systems Specifications

1.2.1 Air System

Compressed air is required for both CMF control functions and various process cycles. Air is supplied by air compressors located at the site. Additional air system components include liquid coalescing air filter, regulators and an air receiver. The air receiver stores the required air for use by the CMF unit.

1.2.2 Backwash System

Filtrate flux is periodically rejuvenated by the patented Memcor Gas Backwash. The backwash cycle is initiated by either a timer or a rise in TMP. The CMF has been set to backwash on an unacceptable rise in TMP. Compressed air at 90 psi is forced into the filtrate side of the membrane, expanding the fibers and forcing trapped solids away from the surface of the membrane. These re-suspended solids are carried from the modules by a feed water sweep. The backwash liquid is then sent to waste.

1.2.3 CIP (Clean-in-Place) System

When the filtrate flow-rate declines and cannot be restored by backwashing, chemical cleaning of the CMF is necessary. The CMF unit incorporates internal Clean-In-Place (CIP) system, allowing the cleaning process to take place without the need to dismantle components. A CIP is needed when there is a rise in the filtration Trans-Membrane Pressure (TMP) above a pre-determined set-point, typically 15 psi.

1.3 CMF Data Summary

Model No: 3M10V
Filtration Modules:
Type M10V
Number 3 per unit
Pore Size 0.2 um Nominal
Membrane Area 15 square meters each

1.3.1 Materials of Construction

Filtration Modules: PVDF
Membrane Material Polyurethane
Potting Material Nylon
Housing Material

USFilter
Wetted Parts:
- Pipework: ABS
- Valves: PVC/PVDF/EPDM & SS/EPDM
- Break Tank: HDPE
- Gauge Guards: PVC/Viton
- B’wash NR Valves: PVC/Buna-N
- Switches: 316SS
- Sample Port: 316SS
- Pump: 304SS

Other:
- Frame: 304/316 SS
- Control Box: Electrophoresis dip coated steel
- Pneumatic Tube Nylon
- Pneumatic Fittings:
  - Body: Acetyl Copolymer
  - Seal: Nitrile Rubber
  - Collet: Acetyl Copolymer/Stainless Steel
- B’wash Solenoid: Brass/Buna-N
- Pilot Solenoid: Aluminum

1.3.2 Electrical Data

- Power Supply: 1 or 3 Ph, 230/480 V, 60 Hz
- Feed Pump Motor Rating: 2 Hp
- Thermal Overload Setting: 8.2 amps / 230 VAC
  4.1 amps / 480 VAC

Control System:
- Programmable Logic Controller: Allen Bradley SLC500

Control Settings:
- Air Pressure Switch: 60psi (400 kPa)
- Level Switch 1: 14 gal (53 L)
- Level Switch 2: 22 gal (83 L)
- Level Switch 3: 58 gal (220 L)

1.3.3 Pneumatic System

- Medium: Compressed air
- Instantaneous Supply
- Required for each unit:
  - 35 lps FAD@700 kPa
  - (75 CFM @ 100 psi)

**NOTE: Usage is intermittent.**

- Filtration: 25 micron coalescer
- Regulator Settings: 90 psi backwash (620 kPa)
15 psi membrane test (100 kPa)
90 psi control (620 kPa)

1.3.4 CIP Solution Concentration

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<tr>
<td>Citric Acid</td>
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<tr>
<td>Sodium Hypochlorite</td>
<td>400 ppm</td>
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ATTACHMENT 14: SPDES PERMITS FOR BREWSTER AND STORMVILLE

BREWSTER SPDES PERMIT – GP-0-15-001 can be found at the following website: http://www.dec.ny.gov/permits/101152.html

May 4, 2015

NYS ELECTRIC & GAS CORPORATION
18 LINK DR
PO BOX 5224
BINGHAMTON, NY 13902

GENERAL PERMIT REAUTHORIZATION
Permittee Name: NYS ELECTRIC & GAS CORPORATION
Facility Name: BREWSTER SERVICE CENTER
DEC Permit ID: 3-3730-00140/00001
SPDES ID: NYG001589

Dear SPDES General Permit Holder:

You are being sent this letter to advise you that your prior authorization to discharge sanitary wastewater to groundwater under General Permit GP-0-05-001 is now reauthorized under GP-0-15-001, and it is effective from May 11, 2015 to May 10, 2025. Keep a copy of this letter for your records.

Some changes have been made to the new General Permit for new or modified treatment systems. However, these permit changes do not apply to you if you are not changing your discharge quantity or treatment system. Prior to any system changes, you should contact the DEC Regional Permit Administrator (see the attached contact information).

As a reminder, each year DEC will send you a Regulatory Fee Bill. As the permittee, you are responsible for this payment. Failure to pay this fee may result in penalties and fines. Therefore, if you cease discharges of wastewaters, you must notify the DEC Regional Permit Administrator to discontinue your permit.

If you sell or transfer your property, you must submit an Application for Permit Transfer (available from the Regional Permit Administrator, and on DEC’s website at www.dec.ny.gov/permits/6222.html). Until your permit is discontinued or transferred, you remain responsible for discharges under this permit and for any fees.
General Permit GP-0-15-001 is available on the DEC website at: www.dec.ny.gov/permits/101152.html.

If you have any questions about the new General Permit, you may contact Mr. Thomas Boekeloo at (518) 402-8243, or email at thomas.boekeloo@dec.ny.gov.

Sincerely,

Stuart M. Fox
Deputy Chief Permit Administrator

Attached: Regional Permit Administrator contact information

cc: RPA, DEC Region 3
    RWE, DEC Region 3
    C. Jamison, DOW, Albany
    file
Dear SPDES Permittee:

This letter grants reissuance of the State Pollutant Discharge Elimination System (SPDES) permit described above. This new SPDES permit becomes effective January 1, 2002 and will expire on January 1, 2007. This letter, together with the previously extended SPDES permit, constitutes authorization to discharge wastewater in accordance with all terms, conditions and limitations specified in your previous permit, including any modifications and any special or general conditions attached thereto. The effluent limitations, monitoring requirements, record keeping and reporting schedule (if any) contained in your previous permit remain applicable during the new permit term. The Department maintains the authority to initiate a modification of the permit on grounds specified in 6NYCRR §621.14, 6NYCRR §754.4 or 6NYCRR §757.1, for causes existing at the time of this approval or which arise thereafter.

As a reminder, SPDES permits are renewed at a central location in Albany at the address above. All other concerns with your permit, such as applications for permit modifications, permit transfers to a new owner, name changes and other questions, should be directed to the Regional Permit Administrator at the following address:

Margaret Duke
NYSDEC
21 South Putt Corners Road
New Paltz, NY 12561-1696
Tel. (914) 256-3059

If you have any questions regarding this permit or need to obtain a copy of your previous permit, you may contact the Division of Environmental Permits at the address above. Please refer to the DEC and SPDES numbers when you are corresponding with any DEC office or when you are applying to renew or modify this permit. If you have already filed an application for modification of your permit, it will be processed separately through the appropriate regional office.

Sincerely,

William R. Adriance
Chief Permit Administrator

cc: RPA
RWE
BWP
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
APPLICATION FORM "D"
for a State Pollutant Discharge Elimination System (SPDES) Permit
(A SPDES Application When Signed by a Permit Issuing Official Becomes a SPDES Permit)

PLEASE PRINT OR TYPE

APPLICATION TYPE
[ ] New [ ] Renewal [ ] Modification

OWNER'S NAME (Corporate, Partnership, Individual)
NYS Thruway Authority

TYPE OF OWNERSHIP
[ ] Corporate [ ] Individual [ ] Partnership [ ] Public

OWNERS MAILING ADDRESS (Street, City, State, Zip Code)
PO Box 169 Albany, NY 12201

TELEPHONE NUMBER
(518) 436-3173

FACILITY NAME
Storrsolis/East Fishkill Rest Area

FACILITY LOCATION (Street or Road)
Milepost 1-84

COUNTY
Dutchess
MP 1-84

NATURE OF BUSINESS OR FACILITY
Rest Area

POPULATION SERVED (See Instructions)

PREDOMINANTLY DISCHARGE

TYPE OF DISCHARGE
(Use additional forms, if necessary)

OUTFALL NO. [ ] Proposed [ ] Replacement [ ] Existing [ ] Expansion

TYPE OF WASTE
Sanitary

TYPE OF TREATMENT
Bentonite Tank/Sand Filter 24,000 Gal/Day

DESIGN FLOW

SURFACE DISCHARGE

Waters Index Number

SUBSURFACE DISCHARGE

Distance

SOIL TYPE

Depth of Water Table

SUBSURFACE DISCHARGE

Distance

SOIL TYPE

Depth of Water Table

I hereby affirm under penalty of perjury that the information provided on this form and any attached supplementary forms is true to the best of my knowledge and belief.

APPLICANT'S SIGNATURE (Affirmation)

DATE
11/20/00

PRINTER'S NAME
Gary A. Johnston

TITLE
Environmental Engineer II

PERMIT VALIDATION SECTION
(Deoartment of Environmental Conservation Use Only)

This SPDES permit is issued in compliance with Title 6 of Article 17 of the Environmental Conservation Law of the State of New York and in compliance with the provisions of the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500, October 18, 1972 (33 U.S.C. §1251 et seq.) (hereinafter referred to as "the Act"), and subject to the attached conditions.

APPLICATION NUMBER
NY --

EFFECTIVE DATE

EXPIRATION DATE

ATTACHMENTS:

Signature of Permit Issuing Agent

Date

CARD No. 1

Type Pollutant

SC CODE

No.

Type Car

Pollutant

County

Mass. State

Sub.

Land

Site

Lon

Lat

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## QUESTIONNAIRE
for SPDES Private, Commercial & Institutional (PCI) Renewal Applications

Please answer the following questions about your discharge and return this form with your SPDES Application form. Use additional sheets as necessary.

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<tr>
<th>Question</th>
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<th>Date of Initial Issue: 1/1/78</th>
<th>Initial Issue Date: 1/1/78</th>
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<td>Have any changes been made to your disposal system? If yes, please describe:</td>
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<tr>
<td>Has there been an increase in wastewater discharge quantities to or from your disposal system above what was listed (see design flow) on your permit? If yes, explain:</td>
<td>☐</td>
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<td>Have there been a physical expansion or other modifications to your facility? If yes, please describe:</td>
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<td>Has there been a change in the type, size or nature of the activity or business being conducted at your facility? If yes, please describe:</td>
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</table>
New York State Department of Environmental Conservation

FACT SHEET

The Department's electronic records show the following information concerning your permit. You can make corrections by entering the correct information on your application form, and by correcting other information directly on the sheet below and returning it with your application.

<table>
<thead>
<tr>
<th>DEC Regional Office</th>
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<td>SPDES Number</td>
<td>NY 003 5939</td>
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<td>DEC ID Number</td>
<td>5-1328-00188/00001</td>
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<tr>
<td>Permittee Name</td>
<td>NYS THRUWAY AUTHORITY</td>
</tr>
<tr>
<td>Contact Person</td>
<td>FAC &amp; ENVIR MGT</td>
</tr>
<tr>
<td>Permittee Street</td>
<td>200 SOUTHERN BLVD.</td>
</tr>
<tr>
<td>Permittee City</td>
<td>ALBANY</td>
</tr>
<tr>
<td>Permittee State</td>
<td>NY</td>
</tr>
<tr>
<td>Permittee Zip Code</td>
<td>12209-</td>
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<tr>
<td>Facility Name</td>
<td>STORMVILLE/EAST FISHKILL REST AREAS</td>
</tr>
<tr>
<td>Location of Facility</td>
<td>EAST FISHKILL (T)</td>
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<tr>
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<td>DUTCHESS</td>
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<tr>
<td>Receiving Water Name</td>
<td>WICKOPEE CREEK TRIB</td>
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<tr>
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<tr>
<td>Flow - TOTAL (GPD)*</td>
<td>24,000</td>
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</table>

Please Note:
Your application should give the requested information for each outfall (discharge point) as: Outfall 001, 002, 003, etc. The information on this sheet is only a summary of information used for preparing Regulatory Fee bills and administratively renewing SPDES permits. The best source for the information required by the included application form is your previous application.

* GPD means Gallons Per Day

Note: If Total Flow=0 it usually means our electronic data does not contain flow information.

Miscellaneous Information:
In NYC Watershed? [ ]
Basin/Segment | 1304/7307.0 |
Latitude (Deg. Min. Sec.) | 41D 32M 48S |
Longitude (Deg. Min. Sec.) | 73D 43M 08S |
Industrial Code | 8999 |
Discharge Classification | 02 |

Thursday, September 21, 2000
Dear Permittee,

The State Pollutant Elimination System (SPDES) permit renewal for the facility referenced above is approved with the new effective and expiration dates. This letter together with the previous valid permit for this facility effective on 07/01/2009 and any subsequent modifications constitute authorization to discharge wastewater in accordance with all terms, conditions and limitations specified in the previously issued permit(s).

As a reminder, SPDES permits are renewed at a central location in Albany in order to make the process more efficient. All other concerns with your permit, including applications for permit modification or transfer to a new owner, a name change, and other questions, should be directed to:

Regional Permit Administrator
NYSDEC REGION 3 HEADQUARTERS
21 SOUTH PUTT CORNERS RD
NEW PALTZ, NY 12561-1620
(845) 256-3185

If you have already filed an application for modification of your permit, it will be processed separately by that office.

If you have questions concerning this permit renewal, please contact LINDY SUE CZUBERNAT at (518) 402-9167.

Sincerely,

[Signature]

Stuart M. Fox
Deputy Chief Permit Administrator

CC:
RPA
BWC

RWE
File

HAP
Dear Permitee,

The State Pollutant Elimination System (SPDES) permit renewal for the facility referenced above is approved with the new effective and expiration dates. This letter together with the previous valid permit for this facility effective on 01/01/2012 and any subsequent modifications constitute authorization to discharge wastewater in accordance with all terms, conditions and limitations specified in the previously issued permit(s).

As a reminder, SPDES permits are renewed at a central location in Albany in order to make the process more efficient. All other concerns with your permit, including applications for permit modification or transfer to a new owner, a name change, and other questions, should be directed to:
Regional Permit Administrator
NYSDEC Region 3 Headquarters
21 S Putt Corners Rd
New Paltz, NY 12561
(845) 856-3801

If you have already filed an application for modification of your permit, it will be processed separately by that office.

If you have questions concerning this permit renewal, please contact LINDY SUE CZUBERNAT at (518) 402-9167.

Sincerely,

Stuart M. Fox
Deputy Chief Permit Administrator

CC:
RFA
BWC

RWE
File
PERMIT
Under the Environmental Conservation Law (ECL)

GENERAL PERMIT GP-0-15-001
Groundwater Discharge of Treated Sanitary Sewage

Permittee and Facility Information

Permit Issued To:   Facility:

Applicable DEC Region(s):   2, 3, 4, 5, 6, 7, 8, 9

General Permit Authorized Activity: Discharge to groundwater of 1,000 gallons per day (gpd) or more, and less than 10,000 gpd per outfall of treated sanitary sewage without the admixture of industrial wastes from on-site wastewater treatment systems serving private, commercial and institutional facilities, and using the Standard or Alternative Technologies referenced in:

a. the Design Standards for Intermediate-sized Wastewater Treatment Systems (NYSDEC, 2014), or
b. for facilities in the Lake George Basin, the Design Standards for Wastewater Treatment Works in the Lake George Basin (NYSDEC, 2015).

A facility with multiple outfalls discharging from 1,000 gpd up to but less than 10,000 gpd each, having a combined design flow less than 30,000 gpd, and discharging to groundwater, is eligible for coverage under this General Permit.

Facilities serving, or intended to serve, more than one separately owned property can only be authorized to a government agency, municipality, or sewage disposal corporation formed and regulated pursuant to Article 10 of the Transportation Corporations Law.

Permit Coverage for Discharge: Authorized Under GP-0-05-001 As of the effective date of GP-0-15-001, a facility with prior coverage under GP-0-05-001 shall be authorized to discharge in accordance with GP-0-15-001 unless otherwise notified by the Department.

Exclusions From Coverage Under this Permit Facilities located in the following areas are NOT eligible for coverage under this General Permit, but may apply for an individual SPDES permit:

- Areas of special (100-year) flood hazard as defined in ECL Article 36;
- Freshwater and Tidal Wetlands and their adjacent areas as defined in ECL Articles 24 and 25, respectively;
- Coastal Erosion Hazard Areas as defined in ECL Article 34;
- Wild, Scenic, and Recreational River corridors as defined in ECL Article 15, Title 27;
- Kings, Nassau, Queens and Suffolk Counties.
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
General Permit Number GP-0-15-001

NYSDEC retains the right to exclude an activity from authorization under this General Permit and to require an applicant to obtain an individual SPDES permit.

Permit Authorizations

P/C/I SPDES- Groundwater Discharge - Under Article 17, Titles 7 & 8
Effective Date: 05/11/2015  Expiration Date: 05/10/2025

NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

General Permit Authorized by
Permit Administrator: STUART M. FOX, Deputy Chief Permit Administrator
Address: NYSDEC HEADQUARTERS
625 BROADWAY
ALBANY, NY 12233

Authorized Signature: ___________________________ Date: 04/29/2013

This permit is not effective without the signature below:

Validation under this General Permit
Authorized By:
________________________________________
________________________________________
________________________________________

Authorized Signature: ____________________ Date __/__/____

Permit Components

P/C/I SPDES- GROUNDWATER DISCHARGE PERMIT CONDITIONS

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS
P/C/I SPDES-Groundwater Discharge Permit Conditions

1. Request for General Permit Authorization Prior to the use of this General Permit for modification, construction and operation of the discharge point(s) at a facility, an applicant must submit the following information to the NYSDEC Regional Permit Administrator:


- Engineering design and site plan signed and stamped by a Professional Engineer licensed to practice in New York State. One printed copy and one electronic copy (PDF format) of the engineering design and site plan shall be submitted to the Department.

- A Design Certification of On-Site Treatment Works signed and stamped by the Professional Engineer certifying that the wastewater treatment system is designed in accordance with the Design Standards referenced in the “General Permit Authorized Activity” section of this permit.

2. Department-validated General Permit Authorization Upon review of the project, the Department will determine if the project can be authorized under this General Permit. No work may proceed prior to receipt of the Department-validated General Permit.

   The Department-validated General Permit will authorize the specific outfall (i.e., type of on-site treatment system and design flow) described in the Application, Design Certification of On-Site Treatment Works, and site plan.

   Following receipt of the Department-validated General Permit, the permittee may proceed with construction of the on-site treatment system.

3. Approval to Discharge Wastewater discharge from the system authorized by the Department-validated General Permit is approved when the following appropriate action is taken:

- At the completion of facility construction and prior to commencing a discharge, the permittee must submit a Post Construction Certification of On-site Treatment Works form, signed by a professional engineer certifying that the treatment system has been constructed in accordance with the originally approved engineering design and site plan, to the Department’s NYSDEC GP-0-15-001 Coordinator. The certification must include the date that the treatment system will be placed into service and become operational.

- If modifications were made to the originally approved engineering design and site plan, the permittee must submit electronic as-built site plan (PDF and CAD format) noting any deviation from the originally approved site plan to the Department’s NYSDEC GP-0-15-001 Coordinator.

For conversion of a facility that has been constructed and is operating in accordance with an individual SPDES permit to this General Permit, the Application for General Permit does not need the above-described certifications and as-built plans, unless requested by the Department.
4. Maximum Flow, Strength and Character: The treatment system must not receive, or be committed to receive, sanitary wastes without the admixture of industrial wastes that:

a. exceed the treatment system design flow, or

b. have a strength or characteristic beyond the design capability of the treatment system.

5. Inspect Septic Tanks: A septic tank installed as part of the treatment system shall be inspected by the permittee or his agent for scum and sludge accumulation at intervals not to exceed one year’s duration. The permittee shall remove scum and sludge accumulations before the depth of either exceeds one-fourth of the liquid depth so that no settleable solids or scum will leave in the septic tank effluent. Septage materials shall be removed, transported and disposed of in accordance with applicable law and regulation.

Such inspections may be performed by the permittee, an engineer licensed to practice in New York State, a National Association of Wastewater Transporters (NAWT)-certified inspector, or a New York Onsite Wastewater Treatment Training Network (OTN)-registered inspector. Records of annual septic tank inspection and pumping information shall be retained onsite and maintained for five years for review by the NYS Department of Environmental Conservation.

6. Maintain Facility: The permittee must maintain the treatment system in effective working condition.

7. No Violation of Water Quality Classifications and Standards: The discharge must not cause or contribute to a violation of water quality classifications and standards as contained in New York Codes, Rules, and Regulations (NYCRR) Title 6, Chapter X, Parts 700-703.

8. Maintain Records: The permittee shall maintain a copy of the engineer-certified treatment facility site plan and engineering design, as-built drawings, required health agency approvals, and other related documents for inspection by the NYS Department of Environmental Conservation.

9. Annual Regulatory Fee: Permittees are responsible for payment of the annual regulatory fee billed by the Department. Failure to pay can result in imposition of penalties or revocation or suspension of this permit. The permittee is responsible for payment of the fee until the discharge ceases and the permittee requests and receives Department concurrence for termination of coverage under the permit or the Department approves a transfer of the permit to a new permittee.

10. Permit Transfers: The permittee must submit a written application to the Department for transfer of this permit prior to actual transfer of ownership. Such application must include any forms or supplemental information the Department requires. Submission of the transfer of ownership application must be provided to the Department 30 days prior to the new permittee taking ownership of the facility. Failure to properly transfer the facility ownership is a violation of 6NYCRR Part 730-1.17(b) and subjects the permittee to a civil penalty of up to $37.500 per day for each day that the violation continues under ECL section 71-1929(1). The most current permittee in the Department’s database records is responsible for compliance with all the permit terms and conditions in this General Permit, the permit fee and all applicable state and federal laws and regulations.

Any transfer granted by the Department must be in writing.
11. Operating in Accordance with SPDES Rules The permittee is authorized to discharge in accordance with effluent limitations; monitoring and reporting requirements; other provisions and conditions set forth in this permit; and NYCCR Title 6, Chapter X, State Pollutant Discharge Elimination System (SPDES) Permits Part 750.

12. GP-0-15-001 Coordinator As referenced in this permit, the GP-0-15-001 Coordinator can be contacted at:

DEC GP-0-15-001 Coordinator
New York State Department of Environmental Conservation
Division of Water
625 Broadway
Albany, NY 12233-3505

**GENERAL CONDITIONS - Apply to ALL Authorized Permits:**

1. Facility Inspection by The Department The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-0501 and SAPA 401(3).

The permittee shall provide a person to accompany the Department’s representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications For Permit Renewals, Modifications or Transfers The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator

________________________________________

________________________________________

________________________________________
4. Submission of Renewal Application  The permittee must submit a renewal application at least 180 days before permit expiration for the following permit authorizations: P/C/T SPDES- Groundwater Discharge.

5. Permit Modifications, Suspensions and Revocations by the Department  The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:
   a. materially false or inaccurate statements in the permit application or supporting papers;
   b. failure by the permittee to comply with any terms or conditions of the permit;
   c. exceeding the scope of the project as described in the permit application;
   d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
   e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfer  Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification
The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit
The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Page 6 of 7
Item C: Permittee Responsible for Obtaining Other Required Permits
The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights
This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

Item E: Referenced Materials Forms and regulations referenced in this permit are available at the NYS Department of Environmental Conservation’s regional offices and on our website: www.dec.ny.gov.

Page 7 of 7
ATTACHMENT 15: MAP OF REST AREAS/LOCATIONS

Brewster Rest Area WWTS & WTS -  
I-684 NB between Exits 8 & 9

Stormville Rest Area WWTS & WTS -  
I-84 WB between Exits 17 & 16

East Fishkill Rest Area WTS -  
I-84 EB between Exits 17 & 16

Bedford Rest Area WTS -  
I-684 SB between Exits 5 & 4
APPENDIX - A

CITY OF NEW YORK

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BUREAU OF WATER SUPPLY, QUALITY and PROTECTION

WASTEWATER TREATMENT PLANT
UPGRADE PROGRAM

WWTP OWNER SCOPE OF WORK
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SECTION I - DESCRIPTION OF PROGRAM

1.01 Program Description

In an effort to ensure the high quality of the New York City drinking water supply system and the economic and social character of the Watershed communities, the City of New York (City) entered into the Watershed MOA with various entities on January 21, 1997. As set forth and attached to the Watershed MOA, the City has promulgated new Watershed Regulations to protect the Watershed from contamination and degradation. In accordance with the Watershed MOA, the City has agreed to assist the owners of existing WWTPs in the City’s Watershed by providing funding to pay for the costs of the upgrades necessary to comply with the Watershed Regulations at all such facilities, and by providing further funding to pay for certain other upgrades at certain WWTPs located in the Watershed to facilitate those WWTPs reliably meeting the requirements of their State Pollutant Discharge Elimination System (“SPDES”) permits. EFC has agreed to provide assistance to the City in administering this WWTP Upgrade Program, in accordance with an agreement entered into between EFC and the City dated as of January 21, 1997.

This Scope of Work (“Scope of Work”) describes the WWTP Owners’ obligations in agreeing to participate in this WWTP Upgrade Program. This section describes the basic parameters of the WWTP Upgrade Program, focusing primarily on the interactions between the City, the City’s Department of Environmental Protection (NYCDEP), EFC and the WWTP Owner, over the course of the program.

The WWTP Upgrade Program will commence with an initial outreach effort by the NYCDEP. NYCDEP will approach each of the owners of the WWTPs in the Watershed (“WWTP Owner”), in order to explain the Watershed Regulations. NYCDEP will explain that the Watershed Regulations require the WWTP Owner to upgrade the WWTP and that NYCDEP will pay for the costs of the Regulatory Upgrades needed at such WWTP. Where appropriate, NYCDEP will also discuss the applicability of the SPDES Upgrade Program to the WWTP Owner’s facility. With a WWTP owner’s agreement, NYCDEP shall forward a letter to EFC, with a copy to the WWTP Owner, indicating that the particular WWTP Owner has agreed to participate in the WWTP Upgrade Program (“Letter of Commitment”). Upon receipt of such a letter, EFC together with NYCDEP, will meet with the WWTP Owner for the purpose of reviewing the terms of the agreement to implement the terms of the WWTP Upgrade Program with the WWTP Owner (“Upgrade Contract”). This Upgrade Contract shall be executed by EFC and the WWTP Owner, with NYCDEP as third party beneficiary, and shall provide the WWTP Owner with financing to pay for the design, permitting, construction and installation of such Regulatory Upgrade and, where applicable, SPDES Upgrades. NYCDEP shall enter into an O&M Agreement with the WWTP Owner to provide for Startup and Performance Testing of the WWTP Upgrade and for funding for the continuing operation...
and maintenance costs of the Regulatory Upgrades consistent with the terms of the Watershed MOA.

Throughout the implementation of the WWTP Upgrade, EFC will provide assistance to the WWTP Owner, will serve as a liaison between the WWTP Owner and NYCDEP, and will work with NYCDEP to ensure that the development and implementation of a plan to upgrade the WWTP ("Proposed Upgrade Plan") is sufficient to meet the requirements set forth in the Watershed Regulations. The Proposed Upgrade Plan for the WWTP will be subject to NYCDEP approval. Upon NYCDEP approval, the Proposed Upgrade Plan will become the final upgrade plan ("Final Upgrade Plan"). When approved as part of the Final Upgrade Plan, the WWTP Owner will competitively bid a construction contract in accordance with the Upgrade Contract, and will upgrade its WWTP consistent with the Final Upgrade Plan. EFC shall review invoices and facilitate disbursement of funds to the WWTP Owner on a regular basis throughout the term of the Upgrade Contract. After the WWTP Owner's Engineer has issued a Functional Completion Certification and EFC has received written Close-Out Approval from NYCDEP at the completion of construction, EFC will issue NYCDEP authorized final payments for construction related costs to the WWTP Owner, and proceed to close the Upgrade Contract with the WWTP Owner.
SECTION II - SCOPE OF WORK

TASK 1 - PROCUREMENT OF ENGINEERING SERVICES

The WWTP Owner shall engage the services of an engineer/engineering firm, with assistance from EFC, and as approved by NYCDEP, to complete the planning and construction of its WWTP Upgrade as set forth below.

Subtask 1.1 - Select Engineer/Engineering Firm

A. The WWTP Owner shall select an engineer/engineering firm in accordance with state law, with assistance from EFC, to provide the WWTP Owner with services with respect to the design and oversight of the implementation of the design of the WWTP Upgrade.

B. The WWTP Owner may make a preliminary selection of engineers and may utilize the Pre-Qualified Engineer List. The selected firms shall be solicited with a proposal pursuant to Subtask 1.2.

Subtask 1.2 - Solicit Proposal from Engineer

A. The WWTP Owner shall utilize, at a minimum, the Engineer RFP as the basis for its solicitation of Engineer Proposals from the engineers preliminarily selected by the WWTP Owner pursuant to Subtask 1.1. The Engineer Proposal submitted by any engineer/engineering firm shall include the essential elements and be in the form as set forth in Attachment A to this Scope of Work.

B. The WWTP Owner shall submit the top three Engineering Proposal(s), along with the name of, and negotiated fee proposal for the highest qualified professional firm, to EFC for review. EFC shall review the Engineer Proposals and forward these proposals, along with its comments to NYCDEP for its review and approval.

Subtask 1.3 - Contract with Engineer

A. The WWTP Owner shall incorporate the Engineer RFP and the NYCDEP approved Engineer Proposal into the proposed contract with its Engineer. The WWTP Owner shall submit the proposed contract to EFC.

B. EFC shall review the proposed contract for conformance with the requirements of this Agreement, and shall forward the contract to NYCDEP for approval.

C. Upon receipt of written approval of the contract by NYCDEP, EFC shall authorize the WWTP Owner to execute a contract with the Engineer.
TASK 2 - PROJECT PLANNING & DESIGN

Subtask 2.1 - Conceptual Upgrade Plan

A. Upon execution of the contract between the WWTP Owner and the Engineer and approval of same by the New York State Attorney General and New York State Comptroller, the WWTP Owner and its Engineer shall conduct a site visit, attend a project planning meeting with EFC, and evaluate and propose project approaches to EFC in writing as set forth in the attached Scope of Engineering Services and Preliminary Engineering Scope. The purpose of the site visit and planning meeting is to assist the WWTP Owner and Engineer in clarifying specific provisions of the Watershed Regulations and other WWTP Upgrade Program requirements as they may pertain to the particular WWTP Upgrade. The WWTP Owner and Engineer shall present proposed project approaches to EFC for review and comment before commencing with the Conceptual Upgrade Plan (CUP).

B. The WWTP Owner and its Engineer shall develop a schedule setting forth a plan, in accordance with the Watershed Regulations - Section 18-36, for bringing the WWTP into compliance with the Watershed Regulations. Four copies of the schedule shall be forwarded to EFC for NYCDDEP review and comment.

C. The WWTP Owner and its Engineer shall develop a CUP in accordance with the attached Scope of Engineering Services and Preliminary Engineering Scope, which shall define the Engineer’s plan and schedule to design the WWTP Upgrade. The purpose of the CUP is to provide the WWTP Owner and its Engineer with an opportunity to present the suggested design parameters for the proposed WWTP Upgrade including any comments or alternative recommendations to the suggested upgrades set forth in the Scope of Engineering Services and Preliminary Engineer Scope, prior to commencing the Proposed Upgrade Plan (PUP). Additionally, the purpose of the CUP is to help ensure that the WWTP Owner and its Engineer understand the requirement and goals of the WWTP Upgrade Program so that the design of the WWTP Upgrade is in compliance with the Watershed Regulations. EFC will provide assistance to the WWTP Owner and its Engineer, through telephone communications and correspondence, as necessary.

D. The WWTP Owner shall be responsible for securing access to adjacent properties in order to conduct any required site investigations as prescribed in the Scope of Engineering Services.

E. The WWTP Owner and its Engineer shall submit four copies of its proposed CUP to EFC for review and comment. EFC shall review the CUP and forward it, along with its comments to the NYCDDEP for its review and comment. Upon receipt of the EFC and NYCDDEP comments, the WWTP Owner and its Engineer shall revise the CUP in
accordance with the comments. The WWTP Owner and its Engineer shall then submit a final Conceptual Upgrade Plan to EFC. EFC will review the proposed final CUP to ensure that all comments are addressed and shall submit the plan to NYCDEP for approval.

F. Upon NYCDEP approval of the CUP and authorization from EFC, the WWTP Owner and its Engineer shall proceed to develop the PUP in accordance with Subtask 2.2 below.

**Subtask 2.2 - Proposed Upgrade Plan**

A. Upon written authorization from EFC, the WWTP Owner and its Engineer shall prepare, based upon the approved CUP, a Proposed Upgrade Plan (PUP) in accordance with the attached Scope of Engineering Services and Preliminary Engineer Scope. The PUP shall include an facility plan and detailed design for implementing a Regulatory Upgrade, and, if applicable, a SPDES Upgrade. As set forth in the Scope of Engineering Services, the detailed design shall include without limitation: contract specifications prepared in accordance with CSI standards, detailed contract drawings, a construction cost estimate, a construction schedule, plan of operation, a start up plan and acceptance procedures, a preliminary schedule for proposed operations and maintenance measures and an estimate of the present worth of the annual incremental costs for the operations and maintenance of the newly installed upgrade components, the contract(s) for the construction of the upgrade, and any ancillary documents required for a complete bid document and sufficient and suitable for the efficient construction of the project.

B. The WWTP Owner and its Engineer shall submit four copies of the facility plan to EFC for review and comment in accordance with the Scope of Engineering Services and Preliminary Engineering Scope. The WWTP Owner and its Engineer shall address all comments on the facility plan and resubmit it to EFC for additional review and subsequent approval by NYCDEP.

C. Upon approval from NYCDEP and written authorization to proceed from EFC, the Owner and its Engineer shall proceed with the PUP.

D. The WWTP Owner and its Engineer shall submit a draft PUP in accordance with the Scope of Engineering Services and Preliminary Engineering Scope and attend a meeting with EFC when the PUP is approximately 65% complete ("Mid-Design Meeting"). The WWTP Owner shall submit the draft PUP to EFC for review fourteen days prior to the scheduled Mid-Design Meeting.

E. The development of the PUP may also be supplemented by additional meetings, telephone calls and/or correspondence, as necessary.
F. When the PUP is 100% complete, the WWTP Owner shall submit four copies of the PUP prepared by its Engineer to EFC for review and comment. EFC shall review the PUP for compliance with the Watershed Regulations, Scope of Engineering Services and Preliminary Engineer Scope, the Recommended Standards for Wastewater Facilities (Ten State Standards - 1990), the Department of Environmental Conservation Guidance Design Standards for Wastewater Treatment Works - Intermediate Sized Facilities, applicable federal and State Laws and Regulations, and the requirements set forth in Attachment A to this Scope of Work.

G. The WWTP Owner and its Engineer shall review and revise as necessary the schedule setting forth a plan, in accordance with the Watershed Regulations - section 18-36, for bringing the WWTP into compliance with the Watershed Regulations. Four copies of the schedule shall be forwarded to EFC for NYCDEP review and comment.

H. WWTP Owner and its Engineer shall revise the schedule to incorporate all of the NYCDEP’s comments.

I. The WWTP Owner shall receive comments from EFC, based upon its review of the PUP within 20 business days of receipt of the plan.

J. The WWTP Owner and Engineer shall respond in writing to EFC’s comments within 20 business days by acknowledging that the recommended revision(s) will be incorporated or that further discussion is necessary between EFC, the WWTP Owner and its Engineer in order to resolve the outstanding issue(s). Such discussions may be by telephone, exchange of written comments/ questions by facsimile or a meeting.

K. The WWTP Owner shall submit four copies of the PUP in final form, certified with the Engineer’s P.E. Seal to EFC. EFC shall review the documents for incorporation of the review comments previously provided to the WWTP Owner and its Engineer. If EFC identifies significant issues in the final PUP and determines that further revisions are necessary, EFC shall return the PUP to the Owner for further revision(s). Otherwise, EFC shall submit the PUP to NYCDEP for review and approval. In the case where further revisions are required, the WWTP Owner and its Engineer shall incorporate the comments, re-certify with the Engineer’s PE Seal and resubmit the PUP to EFC for review for compliance with the review comments. Upon review of the document, EFC shall submit the documents to NYCDEP for review and approval to release to regulatory agencies for review.

L. Upon NYCDEP approval and authorization to proceed from EFC, the WWTP Owner shall be responsible for forwarding the PUP to all regulatory agencies with jurisdiction over the WWTP Upgrade for review and comment. The WWTP Owner shall compile all review comments and revisions from the reviewing agencies and forward them to EFC. EFC will review the agencies proposed comments and transmit them to NYCDEP with its recommendation. The WWTP Owner shall
incorporate the changes required by such agencies, and any agency recommendations that NYCDEP deems to be appropriate, into the FUP and submit such revised, certified plan to the regulatory agencies for review and approval. The WWTP Owner may receive assistance from EFC on this matter by telephone, communication by facsimile and one meeting. EFC shall submit this revised document to NYCDEP for approval.

M. Upon approval of the FUP by NYCDEP, and regulatory agencies the plan shall be deemed to be the Final Upgrade Plan (FUP). NYCDEP shall communicate approval of the FUP in writing to EFC and the WWTP Owner. NYCDEP approval of the FUP shall specifically confirm approval of the cost and scope of the FUP by the City, and shall authorize the amendment of the Upgrade Contract and the Engineer Contract in accordance with the FUP.

Subtask 2.3 - Amendment of Upgrade Contract and Engineer Contract

A. Upon receipt of NYCDEP approval of the Final Upgrade Plan (FUP) and authorization to amend the Upgrade Contract and Engineer Contract, where necessary, the WWTP Owner shall work with EFC to modify and amend this Agreement, and its contract with the Engineer.

B. Any amendments to the Upgrade Contract shall be based upon the construction management activities and cost estimate approved by NYCDEP in accordance with the FUP. In the event that the overall cost identified in the FUP is below the contract value in the Upgrade Contract, the Upgrade Contract shall be amended to identify the difference as a “Upgrade Contract Contingency Allocation”. Pursuant to Subtask 3.4, the “Upgrade Contract Contingency Allocation” may be applicable to pay for approved change orders.

C. The WWTP Owner shall provide EFC with any proposed amendment of its contract with its Engineer. EFC shall obtain NYCDEP approval of the amendment of this Agreement and the Engineer Contract. Upon receipt of NYCDEP approval of any such amendments, the WWTP Owner shall amend this Agreement with EFC, and EFC shall authorize the WWTP Owner to execute a contract amendment with its Engineer.

D. Upon execution of the necessary amendments, EFC shall send the WWTP Owner a “Notice to Proceed With Bid Solicitation”, which shall authorize the WWTP Owner to proceed with the activities set forth in Task 3 below.
TASK 3 - BIDDING, AWARDING AND CONSTRUCTION ACTIVITIES

Subtask 3.1 - Bidding and Awarding of Construction Contracts

A. The WWTP Owner and its Engineer shall be fully responsible for the bidding of the construction contracts with respect to the WWTP Upgrade. WWTP Owners shall comply with the state public competitive bidding requirements in implementing the construction of the WWTP Upgrade.

B. The WWTP Owner and its Engineer shall hold a pre-bid meeting and site visit in accordance with the Scope of Engineering Services.

C. The WWTP Owner and its Engineer shall address all bidder’s questions as set forth in the Scope of Engineering Services.

D. The WWTP Owner and its Engineer shall attend the bid opening, prepare a bid tabulation, and upon review of bid proposals from contractors, shall compile and submit to EFC, to be forwarded to NYCDEP for review and approval, within 7 days of the bid opening, the recommended construction contract(s) for the lowest responsible bidder, along with certification and documentation that the bidding process has been undertaken in accordance with the Final Upgrade Plan (FUP) (construction contract documents), all applicable bidding and procurement laws, and the State’s Uniform Contracting Questionnaire.

E. Upon approval from NYCDEP, the WWTP Owner shall issue a notice of award to the apparent low bidder.

F. Subsequent to the WWTP Owner issuing the notice of award, the WWTP Owner and its Engineer, shall provide EFC with documentation that all bonds have been received and are in accordance with this Agreement and Contract Documents, that proof of all required insurance has been obtained, as well as confirmation that other contractor submittals are in order and in conformity with this Agreement and the Contract Documents. Additionally, the Engineer shall provide original copies of all bonds and insurance certificates to EFC to be forwarded to NYCDEP for its review and approval.

G. Upon review and approval of such documentation and receipt of NYCDEP’s written approval of bonds and insurance and the contractor, EFC shall issue the WWTP Owner a Notice to Proceed with Execution of Contracts and Construction.

Subtask 3.2 - Execution of Construction Contracts

A. Upon receipt of the Notice to Proceed with Execution of Contracts and Construction, the WWTP Owner shall execute the construction contract(s) with the successful...
bidder(s). The WWTP Owner and its Engineer shall submit, to EFC for filing, copies of bid documents, bonds, insurance certificates, a contract and a notice to proceed with respect to each contract awarded to a successful bidder.

Subtask 3.3 - Construction Activities

A. The WWTP Owner and its Engineer shall hold pre-construction meetings in accordance with the Scope of Engineering Services.

B. The WWTP Owner and its Engineer shall cooperate with EFC during construction activities as set forth in the Scope of Engineering Services and Preliminary Engineering Scope. In general, EFC’s function will be to monitor progress of the project.

C. The WWTP Owner and its Engineer shall be responsible for the construction activities as set forth in the Scope of Engineering Services, including but not limited to, submitting timely monthly progress reports to EFC, notifying EFC of milestones defined in Final Upgrade Plan and scheduling site visits. EFC shall notify the WWTP Owner and Engineer of any readily apparent deficiencies during these visits.

D. In addition to communicating with the WWTP Owner and its Engineer by telephone and correspondence throughout construction of the Upgrade, EFC will at its election monitor the progress of construction activities with site visits.

Subtask 3.4 - Change Orders

A. The WWTP Owner and its Engineer shall submit all proposed Change Orders to EFC prior to implementation, except for Emergency Change Orders, as described in sub-Section D, below. All proposed Change Orders shall be in writing and shall be transmitted via facsimile or other same-day conveyance whenever practicable. Emergency Change Orders shall be provided to EFC no later than twenty-four hours of the emergency or condition giving rise to the emergency.

B. All proposed Change Orders must meet the requirements set forth in the Scope of Engineering Services, including particularly, being accompanied by any proposed revisions of plans or specifications, a written justification and cost estimate for the Change Order, and any costs that will accrue in the event of delay in authorizing the Change Order.

C. No proposed Change Order will be deemed to be final until the WWTP Owner and its Engineer have obtained approval of the Change Order in accordance with the provisions of sub-Sections D and E below.
D. The WWTP Owner, through EFC, must obtain NYCDEP approval of Change Orders meeting the following criteria:

1) where the proposed Change Order affects process design such as capacity, flow, operation of units, or point of discharge; or

2) where the cumulative total dollar value of Change Orders previously approved or actively under consideration exceeds the Upgrade Contract Contingency Allocation as described in Subtask 2.4 or no such allocation exists; or

3) where the proposed Change Order is in excess of the amount of the construction contract approved by NYCDEP; or

4) where changes have been made as a result of an emergency situation, after the Change Order has been implemented ("Emergency Change Order"). An emergency situation shall exist where it is necessary to immediately implement the change in order to preserve and protect the public health, safety and welfare, or to prevent injury to human, plant, and animal life or property, including any release of insufficiently treated wastewater; or

5) where an Upgrade Contract Contingency Allocation exists: (a) Change Orders where the value of the Change Order exceeds $10,000; (b) Change Orders where the cumulative total of all approved Change Orders to date exceeds either $50,000 or 5% of estimated total project cost as identified in the Final Upgrade Plan.

E. All other Change Orders shall be reviewed and may be approved or disapproved by EFC. EFC will use its best efforts to review and make a determination with respect to a Change Order within fifteen (15) business days of receiving a complete proposed Change Order. All Change Orders shall be deemed to be final when in the WWTP Owner has received written approval of the Change Order.

TASK 4 - PROJECT CLOSEOUT

Subtask 4.1 - Completion Documents

A. The WWTP Owner and its Engineer shall submit Contractor Completion Documents in accordance with the Scope of Engineering Services.

B. The WWTP Owner and its Engineer shall review and revise as necessary the schedule setting forth a plan, in accordance with the Watershed Regulations - Section 18-36, for bringing the WWTP into compliance with the Watershed Regulations. Four copies of the schedule shall be forwarded to EFC for NYCDEP review and comment.
C. WWTP Owner and its Engineer shall revise the schedule to incorporate all of NYCD EP's comments.

D. The Owner and its Engineer shall submit to EFC, revised Startup Plan and Acceptance Procedures, and Plan of Operation documents (originally submitted as part of the FUP) in accordance with the Scope of Engineering Services. EFC shall forward these documents to NYCD EP for review and approval. Approval by NYCD EP of these revised documents is a requirement (along with Final Inspection) that must be met before NYCD EP will issue a notice to proceed to Startup and Performance Testing.

**Subtask 4.2 - Functional Completion Certification**

A. The WWTP Owner and its Engineer shall submit a written certification to EFC indicating that the construction work of the WWTP Upgrade has been satisfactorily completed and the WWTP Upgrade is Functionally Complete ("Functional Completion Certification"). Four copies of such Functional Completion Certification shall be submitted to EFC only when the Engineer can attest that the construction of the WWTP Upgrade is sufficiently complete so that the WWTP is ready to commence Startup and Performance Testing in accordance with the Scope of Engineering Services. The WWTP Owner shall only submit the certificate to EFC when it is in agreement with the Engineer's Functional Completion Certification.

B. This Functional Completion Certification shall be in a form and format acceptable to EFC and NYCD EP, and shall contain the Engineer's P.E. seal certifying that the WWTP is functionally complete.

C. The WWTP Owner and its Engineer shall submit, concurrently with the Functional Completion Certification, if necessary, a preliminary punch list of outstanding issues which have not been addressed, but in the Engineer's and Owner's judgment will not affect commencing Startup and Performance testing of the WWTP Upgrade.

D. Upon review of the Functional Completion Certification and preliminary punch list EFC shall discuss with the WWTP Owner and its Engineer the readiness of the WWTP Upgrade for Final Inspection. Any questions or unresolved issues regarding the readiness of the WWTP to proceed to Startup and Performance Testing must be resolved by the WWTP Owner or its Engineer before the Final Inspection will be conducted.

E. Upon resolution of the issues related to the readiness of the WWTP, the Engineer shall arrange for the Final Inspection, at a mutually acceptable time and date for the WWTP Owner, the Engineer, EFC and NYCD EP. The time and date for the Final Inspection will be conveyed to participants via written documentation at least five (5) days in advance of the Final Inspection.
Subtask 4.3 - Final Inspection

A. The Final Inspection of the completed construction of the WWTP Upgrade will be conducted by the WWTP Owner, its Engineer, EFC and NYCDEP for the purpose of verifying the Engineer's determination that the WWTP Upgrade is Functionally Complete.

B. Final inspection of the WWTP Upgrade will result in one of the following next steps:

1. When, as a result of the Final Inspection, NYCDEP determines that construction of the WWTP Upgrade is acceptable and that there are no outstanding issues that need to be addressed prior to commencing Startup and Performance Testing, then NYCDEP shall provide the WWTP Owner and the Engineer with written authorization that the WWTP Upgrade may commence Startup and Performance Testing in accordance with the Scope of Engineering Services and the WWTP Owner is authorized to proceed with close-out of the Upgrade Construction Contract(s) in accordance with Subtask 4.4. This written authorization will be provided to the WWTP Owner within five (5) business days of the Final Inspection date.

2. When as a result of the Final Inspection, NYCDEP determines, in conjunction with the Engineer and EFC, that construction of the WWTP Upgrade is not completely acceptable, but the outstanding items will not affect commencing Startup of the WWTP Upgrade, NYCDEP shall provide the WWTP Owner and the Engineer with written authorization that the WWTP Upgrade may commence Startup and Performance Testing in accordance with the Scope of Engineering Services. The Engineer shall revise the preliminary punch list, to included outstanding issues identified during Final Inspection, which must be addressed prior to NYCDEP providing the WWTP Owner with authorization to proceed with close-out of the construction contract(s). The Engineer shall forward this punch list to the NYCDEP and EFC for review and comment. The NYCDEP and EFC shall provide punch list comments within ten (10) business days to the Engineer. The Engineer shall be responsible for transmitting the final punch list to the Contractor(s) and Owner. The WWTP Owner and the Engineer will respond and correct each issue raised in the punch list. The Engineer shall determine when the punch list items are completed and will request a subsequent final inspection, which shall be attended by the same parties as the Final Inspection. The WWTP Owner and the Engineer will cooperate with EFC and the NYCDEP during the second, and any successive inspections, until all issues are satisfactorily resolved and the NYCDEP can issue a written authorization that the WWTP Owner can proceed to close-out.
the Upgrade in accordance with Subtask 4.4.

3. When, as a result of the Final Inspection, NYCDEP determines, in conjunction with the Engineer and EFC that construction of the WWTP Upgrade is not completely acceptable and there are outstanding issues which would affect commencing Startup of the WWTP Upgrade, the Engineer shall provide the WWTP Owner and Contractor(s) with a revised punch-list including those issues identified as part of the Final Inspection which must be completed prior to NYCDEP providing the WWTP Owner with authorization to proceed with the Startup and Performance Testing. The Engineer shall forward the punch list to the NYCDEP and EFC for review and comment. NYCDEP and EFC shall provide comments within ten (10) business days. The Engineer shall be responsible for transmitting the final punch list to the Contractor(s) and the WWTP Owner. The WWTP Owner and the Engineer will respond and correct each punch list issue and once the Engineer has determined the punch list is completed will again request in writing a Final Inspection, which shall be attended by same parties. The WWTP Owner and the Engineer will cooperate with EFC and the NYCDEP during the second, and any successive inspections, until all issues identified as affecting the commencement of Startup and Performance Testing are satisfactorily resolved such that NYCDEP can issue a written authorization that the WWTP Upgrade can commence Startup and Performance Testing in accordance with the Scope of Engineering Services. The WWTP Owner and the Engineer will cooperate with EFC and the NYCDEP during any successive inspections until all issues are satisfactorily resolved and the NYCDEP can issue a written authorization that the WWTP Owner can proceed to close-out the Upgrade in accordance with Subtask 4.4.

C. Successful completion of Final Inspection shall entitle the WWTP Owner to seek reimbursement for construction work completed to date. Retainage being held by the WWTP Owner, however, shall only be released in accordance with Subtask 4.4 below.

**Subtask 4.4 - Close Out**

A. Upon receipt by the WWTP Owner of NYCDEP written authorization to commence Startup and Performance Testing and to proceed with project close-out, the WWTP Owner and its Engineer shall assemble Construction Close-Out Documents, containing the documents set forth in the Scope of Engineering Services and sub-Section B below. These close-out documents shall be submitted to EFC in complete final form within thirty (30) business days following the receipt of the aforementioned written authorization from NYCDEP.
B. The following close-out documents must be included in the Construction Close-Out Documents submitted to EFC.

1. The final Operation and Maintenance Plan ("O&M Plan"), as defined in Section 18-36(a)(10) of the Watershed Rules and Regulations and as set forth in the Scope of Engineering Services, and which shall include the following items a. through d.
   a) O&M Manual for the equipment installed as part of the Upgrade and addenda, complying with the requirements set forth in the Scope of Engineering Services (Section 2) and Operations and Maintenance Standards (Section 4) of Attachment A.
   b) Review and revise as necessary the schedule setting forth a plan, in accordance with the Watershed Regulations - Section 18-36, for bringing the WWTP into compliance with the Watershed Regulations.
   c) An estimate of the annual incremental costs for O&M related to the Regulatory Upgrades. The cost estimate shall be revised at the completion of construction to incorporate any changes so that it represents the plant as constructed.
   d) Original sealed mylar record drawings of the Upgrade Project, as built submitted directly to NYCDEP by the WWTP Owner and the Engineer, with a copy submitted to EFC.

2. Final complete Change Orders.

3. Final verified statement of potential claims.

C. Four copies of the draft O&M Plan shall be submitted to EFC for review and comment on completeness within ten (10) business days after the receipt by the WWTP Owner of NYCDEP written authorization that the WWTP Upgrade may commence Startup and Performance Testing. EFC will provide comments to the Engineer within ten (10) business days after the receipt of the O&M Plan. The WWTP Owner and the Engineer shall make the modifications based on the comments to the O&M Plan and resubmit, until acceptable, to EFC.

D. Following EFC's determination that the O&M Plan is complete, EFC will transmit all Construction Close-Out documents to NYCDEP, together with its recommendations with respect to NYCDEP granting the WWTP Owner Construction Close-Out Approval, which includes authorization to release construction retainage to contractors.

E. Within a reasonable time frame from receipt by EFC of Close-Out Approval from NYCDEP, EFC may release any final construction payment to be paid to the WWTP Owner and the WWTP Owner may release the construction retainage to the
F. The WWTP Owner shall work with NYCDEP to resolve any Contractor and Subcontractor claims, and to conduct training and Startup and Performance Testing as part of the O&M Agreement between the WWTP Owner and NYCDEP.

G. Upon submission of final disbursement requests from the WWTP Owner for its costs and for the costs of other consultants related to the construction phase, EFC shall close-out the Upgrade Contract with the WWTP Owner.
ATTACHMENT 17: AGREEMENT BETWEEN THE NYS ENVIRONMENTAL FACILITIES CORPORATION AND THE NYS DEPARTMENT OF TRANSPORTATION FOR THE UPGRADEING OF A WASTEWATER TREATMENT PLANT (I-684 REST AREA #45)

AGREEMENT BETWEEN THE

NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION

AND

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

FOR THE UPGRADEING OF A WASTEWATER

TREATMENT PLANT

(I-684 REST AREA #45)

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THIS AGREEMENT as of the 16th day of May, 1998 between THE NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION ("EFC"), a Public Benefit Corporation, organized and existing under the laws of the State of New York and having its principal office at 50 Wolf Road, Albany, New York 12205-2603, the NEW YORK STATE DEPARTMENT OF TRANSPORTATION (the "WWTP Owner"), acting by and through its Director of Contracts Management, and the NEW YORK STATE OFFICE OF GENERAL SERVICES (the "Owner's Representative"), acting by and through its Deputy Commissioner (EFC, the WWTP Owner and the Owner's Representative collectively referred to as the "Parties").

WHEREAS, EFC is a Public Benefit Corporation, established by Chapter 722 of the Laws of 1967, for the purpose of, inter alia, assisting state and local governments in the planning, financing, construction, maintenance and operation of sewerage treatment works, sewage collection systems and water management facilities; and

WHEREAS, the City of New York (the "City"), acting by and through the Commissioner of the New York City Department of Environmental Protection ("NYCDEP"), is charged with the duty of protecting the high quality of waters from which the City's water supply is drawn and preserving it from degradation for the purpose of protecting the health and general welfare of the consumers of this supply; and

WHEREAS, the City, in January 1997, executed a Memorandum of Agreement regarding the City's watershed protection program by and among the City, the State of New York, the United States Environmental Protection Agency, Catskill Watershed Corporation, the Coalition of Watershed Towns, Putnam County, Westchester County, certain watershed municipalities, and certain environmental groups (the "Watershed MOA"); and

WHEREAS, the City, as set forth in Paragraphs 89 and 90 of the Watershed MOA, has promulgated new Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and its Sources (the "Watershed Regulations"), pursuant to Article 11, § 1104 of the New York State Public Health Law and § 24-302 of the New York City Administrative Code; and

WHEREAS, the WWTP Owner is a state agency which owns and/or has all the requisite rights, power and authority to operate and/or modify a wastewater treatment plant ("WWTP") located within the watershed of the City of New York's drinking water supply system; and

WHEREAS, discharges from the WWTP flow into a tributary of Holly Stream, a tributary of the Muscoot Reservoir; and

WHEREAS, the City is concerned about the potential impact of the discharges from the WWTP on the drinking water supply of the City of New York; and

WHEREAS, the WWTP Owner, pursuant to New York State Executive Order 51 dated May 20, 1997 and the Letter of Commitment dated April 28, 1998, agrees to comply with the requirements of the Watershed Regulations and to participate in the WWTP Upgrades Program prescribed in this Agreement; and

WHEREAS, the New York State Office of General Services ("OGS") is a State Agency, established pursuant to Executive Law § 230 as an office within the Executive Department. OGS is authorized pursuant to Public Buildings Law § 6 to prepare drawings and specifications for and supervise the construction, reconstruction, addition to, alteration or improvement of buildings erected at the expense of the State; and

WHEREAS, the Dormitory Authority of the State of New York ("DASNY") is a body corporate and politic of the State of New York, constituting a public benefit corporation, created by the Dormitory Authority Act, as amended, being Title Four of Article Eight of the Public Authorities Law, successor to the Facilities Development Corporation and the Medical Care Facilities Finance Agency, pursuant to Title Four-B of Article Eight of Public Authorities Law, and authorized to undertake construction activities on behalf of the WWTP Owner; and

WHEREAS, as set forth in the Watershed MOA, the City has agreed to pay for the costs of upgrading existing WWTPs to comply with the requirements imposed solely by the Watershed Regulations ("Regulatory Upgrades", as that term is defined herein), in order to ensure that the work is performed expeditiously; and
WHEREAS, as set forth in the Watershed MOA, the City has also agreed to provide funding to help assist certain WWTP Owners in the communities located in the Watershed, west of the Hudson River, ("West of Hudson Watershed") to rehabilitate, replace and/or upgrade certain negotiated WWTP structures and equipment which are unreliable, failing, or nearing the end of their useful lives and which are necessary to the WWTP's treatment process and the WWTP's compliance with its State Pollutant Discharge Elimination System ("SPDES") permit ("SPDES Upgrades", as that term is defined herein); and

WHEREAS, as set forth in the Watershed MOA, the City has requested, and EFC has agreed to provide, assistance to the City in administering a program to design, permit, construct and install upgrades to existing WWTPs (the "WWTP Upgrade Program"); and negotiating agreements with WWTP owners which will provide for the disbursement of City funds to pay for the costs of designing, permitting, constructing and installing such upgrades; and

WHEREAS, the City and EFC have executed a contract providing for EFC to provide such assistance to the City (the "City-EFC Agreement").

NOW, THEREFORE, in consideration of the premises, the mutual representations and agreements hereinafter contained, together with such other and further consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I - GENERAL PROVISIONS

Section 1.01 Definitions

Certain words set forth in this Agreement shall have the following meanings. Other words defined throughout this Agreement shall have the meanings ascribed to them.

1. "Agreement" means this Agreement between EFC and the WWTP Owner, including all attachments and appendices hereto.

2. "Annual Budget" means the form set forth in this Agreement as set forth as Appendix G submitted to EFC on or before February 1st of each year and shall estimate the need for funding from July 1st to June 30th of each year during the Term of this Agreement.

3. "Change Order" or "Change Orders" means all proposed changes, modifications, and/or amendments to the Final Upgrade Plan, deemed final when approved by EFC or NYCDEP in accordance with this Agreement.

4. "City" means the City of New York, and any of its departments and agencies, including without limitation NYCDEP.

5. "City-EFC Agreement" means the Agreement, dated as of January 21, 1997, between the City and EFC with respect to the WWTP Upgrade Program.

6. "Close-Out Approval(s)" means NYCDEP approval of the Close-Out Package(s) and relevant parts of the Contractor Completion Documents relative to each construction contract submitted in accordance with the requirements set forth in Task 4 of the Scope of Work, and which authorizes the release of retainage(s) and final payment(s) to the WWTP Owner for the construction of the Upgrade.

7. "Close-Out Package(s)"); or "Construction Close-Out Documents" means the document package(s) relative to each construction contract submitted by the WWTP Owner to EFC upon the completion of construction of the Upgrade, in accordance with Task 4 of the Scope of Work.

8. "Close-Out Payment(s)" means EFC's final payment(s) relative to each construction contract to the WWTP Owner and any outstanding payment(s) for construction work not previously paid in connection with the Upgrade Project as authorized by NYCDEP. These final costs specifically exclude any costs related to Startup and Performance Testing.

9. "Commencement Date" means the date set forth in a Notice to Commence Work which authorizes the WWTP Owner to undertake and perform the tasks set forth in the Scope of Work.

10. "Conceptual Upgrade Plan" or "CUP" means the report prepared by the Engineer outlining the Engineer's plan and schedule to design
the WWTP Upgrade in accordance with the Scope of Work.

11. "Consultant" or "Contractor" or means any entity contracting with the WWTP Owner for the provision of goods or services related to this Agreement.

12. "Contractor Completion Documents" means the documents submitted by a construction contractor to the WWTP Owner and NYCDEP in accordance with the Scope of Engineering Services.


14. "Disbursement Request" means the written request made by the WWTP Owner to EFC for disbursement of Upgrade Funds for actual and reasonable expenses associated with the Upgrade work.

15. "EFC" means the New York State Environmental Facilities Corporation.

16. "Emergency Change Order" means a Change Order necessary to preserve and protect the public health, safety, or welfare, or to prevent injury to human, plant and animal life or property (including without limitation any release of insufficiently treated wastewater), following the procedures set forth in this Agreement.

17. "Engineer" means the professional engineer or engineering firm whose engineer(s) are licensed to do business in New York State, selected by the WWTP Owner to undertake the engineering work on the WWTP Upgrade, and approved by NYCDEP.

18. "Engineer Certification" means the AIA form, attached hereto in Appendix C, to accompany all construction costs submitted by the WWTP Owner.

19. "Engineer Contract" means the contract between the WWTP Owner and the Engineer which is in accordance with the terms of this Agreement and has been approved by NYCDEP.

20. "Engineer Proposal" means the proposal submitted to the WWTP Owner for the engineering services with respect to the WWTP Upgrade from the Engineer preliminarily selected by a WWTP Owner, and in compliance with the requirements set forth in Attachment A to the Scope of Work and this Upgrade Contract.

21. "Engineer Request for Proposal" or "Engineer RFP" means the documents attached to the Scope of Work as Attachment A, by which the WWTP Owner solicits a proposal from an Engineer to undertake the engineering work required to design and implement the design of the WWTP Upgrade in accordance with this Agreement.

22. "Final Acceptance" means NYCDEP final acceptance of the WWTP Upgrade following completion of Startup and Performance Testing requirements.

23. "Final Inspection" means an inspection at the completion of construction of the WWTP Upgrade which will be conducted by the WWTP Owner, its Engineer, EFC and NYCDEP for the purpose of verifying the Engineer's determination that the WWTP Upgrade is functionally complete, and that all construction related punch list items have been satisfactorily resolved.

24. "Final Upgrade Plan" or "FUP" means the Proposed Upgrade Plan consisting of engineering plans and costs for implementing a Regulatory Upgrade, and, if applicable, a SPDES Upgrade, or such other NYCDEP approved Upgrade to the WWTP, which has been prepared by the Engineer in accordance with Attachment A of the Scope of Work, and which has received NYCDEP approval.

25. "Functional Completion Certification" means the written certification from the Engineer containing the Engineer's P.E. Seal attesting that the WWTP Upgrade is functionally complete. Such certification will include but not be limited to certifying that the WWTP Upgrade was constructed in accordance with the approved Final Upgrade Plan; certifying that the equipment was installed as designed and specified; certifying that the system operates within the testing parameters set forth in the Final Upgrade Plan design report; and certifying that the WWTP Upgrade is ready to proceed to Startup and Performance Testing.
26. "Functionally Complete" means the determination by the Engineer that the WWTP Upgrade is ready for its Final Inspection, and that the construction of the Upgrade is sufficiently complete so as to enable the Engineer to issue a Functional Completion Certification.

27. "Letter of Commitment" means the letter sent by the State owned WWTP to NYCDEP indicating that a particular WWTP Owner has agreed to participate in the WWTP Upgrade Program.

28. "Litigation Expenses" means the fees and costs for judgments or settlements, associated with (a) the design and construction of the Upgrade, (b) SEQRA compliance, (c) challenges to permits and governmental approvals, and (d) claims by contractors or consultants, provided that EFC and NYCDEP agree with the position taken by the WWTP Owner. It does not include any fees and costs covered by insurance held by any party to such litigation. It does not include fees and costs for legal representation to defend or prosecute litigation associated with tort claims and actions.

29. "MidDesign Meeting" means the meeting between EFC and the Engineer at the point when the Proposed Upgrade Plan is 65% complete.

30. "Notice to Commence Work" means the notice that EFC provides to the WWTP Owner to authorize the WWTP Owner to begin performing the work described in this Agreement.

31. "Notice to Proceed with Award" means the notice that EFC provides to the WWTP Owner to authorize the WWTP to proceed with award of construction contracts.

32. "Notice to Proceed with Bid Solicitation" means the notice that EFC provides to the WWTP Owner to authorize the WWTP Owner to begin the process of soliciting bids for the construction contracts to be awarded.

33. "Notice to Proceed with Execution of Contracts and Construction" means the notice that EFC provides to the WWTP Owner to authorize the execution of the construction contract(s) between the WWTP Owner and the successful bidder(s) and to authorize the commencement of construction of the WWTP Upgrade.

34. "NYCDEP" means the New York City Department of Environmental Protection.

35. "NYSDEC" means the New York State Department of Environmental Conservation.


37. "Operation and Maintenance Agreement" or "O&M Agreement" means the agreement entered into between NYCDEP and the WWTP Owner providing for payment by the City of the annual cost of operating and maintaining the Regulatory Upgrade to be installed at such WWTP, and further providing, if applicable, in accordance with Sections 2.06 and 2.07, among other things, for the Startup and Performance Testing of the Upgrade, and Final Acceptance by the City of the Upgrade as being in compliance with the Watershed Regulations.

38. "Operations and Maintenance Manual" or "O&M Manual" means the required contents of such a manual, as those requirements are set forth in Attachment A to the Scope of Work and otherwise in accordance with good engineering practices.

39. "Operations and Maintenance Plan" or "O&M Plan" means a compliance plan and schedule developed in accordance with Section 18-36 (a)(10) of the Watershed Rules and Regulations that establishes the approach and time frame for compliance with the requirements of the Watershed Regulations.

40. "Owner's Representative" means either DASNY or OGS.

41. "Party" or "Parties" means EFC or the WWTP Owner or both of them as collectively referred to in this Agreement.

42. "P.E. Seal" means the recognized certification of a licensed professional engineer in New York State.

43. "Performance Testing" means the testing of the equipment and materials constructed and installed as part of the WWTP Upgrade to demonstrate compliance with the requirements of the Watershed Rules and Regulations, with the end
result being Final Acceptance of the WWTP Upgrade by NYCDEP.

44. "Preliminary Engineering Scope" or "Preliminary Engineer Scope of Work" means the engineer scope of work document, setting forth a preliminary description of the Upgrade Project, which shall be utilized by a WWTP Owner in soliciting an Engineer Proposal which is made a part of this Agreement in Attachment A to the Scope of Work.

45. "Pre-Qualified List" or "Pre-Qualified Engineers List" means the list (prepared by EFC) of pre-qualified engineers, approved by NYCDEP, that WWTP Owners may hire for the work associated with the WWTP Upgrade Program.

46. "Program Funds" means the NYCDEP approved costs for the completion of the WWTP Upgrade Program which are provided by the City to EFC for disbursement to WWTP Owners.

47. "Proposed Upgrade Plan" or "PUP" means an engineering plan in accordance with the requirements set forth in Attachment A to the Scope of Work, for implementing a Regulatory Upgrade, and, if applicable, a SPDES Upgrade, or such other NYCDEP approved Upgrade of the WWTP which enables it to comply with the Watershed Regulations, which has been prepared by the Engineer, but which has not yet received NYCDEP approval.

48. "Regulatory Upgrades" means the equipment and methods of operation which are required solely by the Watershed Regulations and not because of any provision of federal or State law, regulation or enforceable standard otherwise applicable to WWTPs. Without limiting the City’s obligation concerning the foregoing and consistent with the City-EFC Agreement, with respect to any eligible WWTP and for purposes of this Agreement only, Regulatory Upgrade shall be deemed to include machinery and equipment necessary to comply with the following requirements to the extent that such eligible WWTP does not have such machinery and equipment as of the effective date of the Watershed MOA:

1. Phosphorus removal;
2. Sand filtration;
3. Disinfection;
4. Microfiltration or a NYCDEP approved equivalent technology;
5. Standby power;
6. Power alarm;
7. Automatic start-up capability;
8. Disinfection back-up;
9. Disinfection back-up automatic start-up capability;
10. Back-up sand filtration
11. Recording flow meters; and

49. "Regulatory Upgrade Program" means the program by which the City has agreed, pursuant to paragraph 141 of the Watershed MOA and the Agreement, to pay for the costs of designing, permitting, constructing and installing of Regulatory Upgrades at WWTPs in the Watershed.


51. "Schedule of Work" means the required time frame for completion of the work set forth in the Scope of Work as Attachment B.

52. "Scope of Engineering Services" means the document which contains the work required of the Engineer hired by the WWTP Owner necessary to complete the Upgrade Project as set forth in the Request for Proposal in Attachment A of this Agreement.

53. "Scope of Work" means the Scope of Work attached and made a part of this Agreement as Appendix A.

54. "SPDES" means the State Pollutant Discharge Elimination System.

55. "SPDES Upgrade" means the rehabilitation, replacement or upgrade of equipment that is unreliable, failing or nearing the end of its useful life and is necessary to the treatment process, as agreed upon by NYCDEP and a WWTP Owner, where such measures are not required solely by the
Watershed Regulations, and where such upgrades will facilitate certain West of Hudson WWTPs to reliably meet the conditions of their respective SPDES permits.

56. "SPDES Upgrade Funds" means the money provided by the City to pay for the costs of the SPDES Upgrade Program.

57. "SPDES Upgrade Program" means the program by which the City has agreed, pursuant to paragraph 121 of the Watershed MOA and the Agreement, to pay for the costs of designing, permitting, constructing and installing of SPDES Upgrades for WOH WWTPs, as agreed upon by NYCDMP and a WWTP Owner.

58. "Standard Engineer Clauses" or "Standard Engineer Contract Clauses" means the standard clauses prepared by NYCDMP, and made a part of this Agreement in Attachment A to the Scope of Work, which must be incorporated into the contract between the WWTP Owner and the Engineer.

59. "Standard Technical Specifications" means the standard technical specifications prepared by NYCDMP to be utilized by the Engineer hired by the WWTP Owner for the design of the WWTP Upgrade and made part of this Agreement in Attachment A to the Scope of Work.

60. "Startup" or "Startup Services" means those services performed by the Engineer and any construction contractors or manufacturers representatives to place the WWTP Upgrade online, meaning to use and operate the WWTP Upgrade with wastewater as constructed, so that the WWTP Upgrade meets the discharge limitations, as defined in the Watershed Regulations. Startup requires that the operation of the WWTP meet the Watershed Regulations with respect to effluent limits.


62. "Stop Work Order" means a direction issued by NYCDMP through EFC to the WWTP Owner to cease any or all work with respect to this Agreement for the time period set forth therein.


64. "Term" means the earlier of the following (i) completion of the work described in the Scope of Work, (including, if applicable in accordance with Section 2.07 of this Agreement, any work related to Startup or Performance Testing) or (ii) five years after the Commencement Date

65. "Total Contract Amount" means the current estimated approved amount payable pursuant to this Agreement for Regulatory Upgrades and/or SPDES Upgrades and the NYCDMP approved amount for SPDES Reimbursements.

66. "Uniform Contracting Questionnaire" means the New York State questionnaire completed by the lowest bidder contractor upon which the WWTP will make a determination of reliability and responsibility to complete the WWTP Upgrade.

67. "Upgrade Contract" means this Agreement entered into between EFC and a WWTP Owner for the purpose of implementing the WWTP Upgrade Program.

68. "Upgrade Contract Contingency Allocation" means the allocated amount of money in the Upgrade Contract which is not specifically designated to pay for the estimated costs set forth in the Final Upgrade Plan or other NYCDMP approved costs, and which may be utilized for approved Change Orders or other NYCDMP approved costs, in accordance with this Agreement.

69. "Watershed" or "New York City Watershed" means the area of land that drains surface water into a reservoir or controlled lake or into the tributaries of a reservoir or controlled lake of the Catskill and Delaware System the Ashokan, Cannonsville, Kensico, Neversink, Pepacton, Rondout, Schoharie, and West Branch/Royal's Corner Reservoirs and the tunnels, dams and aqueducts which are part of and connect the above listed reservoirs) and the Croton System (the Amawalk, Bog Brook, Cross River, Croton Falls, Diverting, East Branch, Middle Branch, Muscoot, New Croton, and Ticus Reservoirs, Kirk Lake, Lake Glenda and Lake Gilead, and the tunnels,
dams and aqueducts which are part of and connect the above listed reservoirs and controlled lakes).

70. "Watershed MOA" or "Memorandum of Agreement" means the New York City Watershed Memorandum of Agreement executed on January 21, 1997 by the City, State, Federal Government, watershed communities, and certain environmental groups.


72. "Watershed Regulations Effective Date" means May 1, 1997, the date the Watershed Regulations became effective.

73. "West of Hudson" or "WOH" means the drainage basins of the specific reservoirs of the New York City Watershed located west of the Hudson River in the New York counties of Greene, Delaware, Ulster, Schoharie, and Sullivan.

74. "WWTP" or "WWTPs" means one or more of the public and private wastewater treatment plants located within the Watershed.

75. "WWTP Owner" means the owner and/or entity having all the requisite rights, powers and authority to operate and/or modify the WWTP that is the subject of this Agreement.

76. "WWTP Upgrade" or "Upgrade(s)" or "WWTP Upgrade Project" or "Upgrade Project" means the Regulatory Upgrade and/or SPDES Upgrade to be undertaken consistent with this Agreement at a particular WWTP or such other upgrade of the WWTP as approved by NYCDEN and funded by NYCDEN and the City pursuant to the WWTP Upgrade Program.

77. "WWTP Upgrade Program" or "Program" means the program by which the City will provide financial assistance to WWTP Owners, in accordance with Paragraph 121 and paragraph 141 of the Watershed MOA, and EFC will provide program management assistance to NYCDEN in order to carry out the Regulatory Upgrade Program and the SPDES Upgrade Program.

Section 1.02 Authority of the City of New York

The WWTP Owner acknowledges and agrees that the City shall be a third-party beneficiary to this Agreement. EFC is not obligated to institute legal proceedings to enforce the terms of this Agreement. Accordingly, the City, as a third-party beneficiary, shall have a direct cause of action against the WWTP Owner to enforce this Agreement, in law or in equity, in its own name or in the name of EFC. If the City commences an action in EFC's name, EFC shall be given notice immediately or as soon as practicable. The City's rights under this Agreement shall include, but not be limited to, renewal and approval of any modifications to this Agreement and to the Scope of Work attached as Appendix A, as specified in Articles 2 and 4 of this Agreement.

Section 1.03 Duration of this Agreement

A. This Agreement shall be effective upon execution by the Parties and approval by the New York State Attorney General and Office of New York State Comptroller. The WWTP Owner shall begin the work to be performed under this Agreement on the date set forth in a Notice to Commence Work ("Commencement Date").

B. This Agreement shall expire, unless sooner terminated pursuant to the terms of this Agreement, upon all payments then due being made and the earlier of the following: (i) completion of the work described in the Scope of Work in accordance with the Schedule of Work, including, if applicable, in accordance with Section 2.07 of this Agreement, any work related to Startup or Performance Testing or (ii) five years after the Commencement Date (the "Term").

C. NYCDEN may issue through EFC a Stop Work Order to the WWTP Owner in accordance with the following terms and conditions:

1. After the Conceptual Upgrade Plan is approved and before construction contracts are let NYCDEN may issue through EFC a Stop Work Order to the WWTP Owner, with a copy to EFC, directing the WWTP Owner to cease any or all work with respect to the Agreement either while plans for the connection of the WWTP to a wastewater treatment plant, or while plans, studies or projects to eliminate the surface discharge of treated wastewater from this facility within the Watershed are prepared and reviewed.
2. During any Stop Work Order pursuant to this sub-section, EFC shall, with NYCDEP approval, continue to make disbursements for administration, legal and engineering fees and expenses attributable to the WWTP Owner's participation in (i) the study phase of a plan for the connection of the WWTP to a wastewater treatment plant, or (ii) other projects which eliminate the surface discharge of treated wastewater from this facility within the Watershed. NYCDEP approval pursuant to this section shall be timely and shall not be unreasonably withheld.

3. The Stop Work Order shall terminate upon the earlier of the following: (i) NYCDEP order to recommence work or (ii) three (3) years from issuance of the Stop Work Order, unless the county or municipality submits written notification to NYCDEP of the results of the plans or studies indicating that either the WWTP will be connected to a new or existing wastewater treatment plant or the WWTP will participate in a project that eliminates the surface discharge of the WWTP from the Watershed; provided however, that NYCDEP will terminate the Stop Work Order upon later written notification from such municipality or county that such connection or project shall not occur.

D. In the event all work hereunder is not to be completed prior to the expiration of the Term, the Agreement, with the written approval of NYCDEP, shall be extended where the WWTP Owner has been justifiably delayed and will not be able to complete the work within the Term of this Agreement or as otherwise approved by NYCDEP. In order to request an extension of the Term of the Agreement, the WWTP Owner shall submit to NYCDEP and EFC written notice documenting the causes of the delay. NYCDEP may grant an extension of time to complete the work, and EFC shall notify the WWTP Owner of the extension and incorporate the extension into the Schedule of Work set forth in Attachment B of the Scope of Work.
5. Enforcing the City’s agreement pursuant to and as set forth in Section 1.03 of the City-EFC Agreement.

6. Enforcing the requirement of Section 11.02 of the City-EFC Agreement.

7. Enforcing the requirement that this Agreement be consistent with the Model Upgrade Contract pursuant to Section 2.03 of the City-EFC Agreement.

8. Enforcing the provisions of Section 2.03D of the City-EFC Agreement.

9. Enforcing the provisions of Section 2.03E of the City-EFC Agreement.

3. Other than the third party interest granted to the WWTP Owner pursuant to paragraph A above, the WWTP Owner shall have no third party interest in the City-EFC Agreement, and the City-EFC Agreement is not intended to create any benefit or interest in any other third party.

Section 1.05 WWTP Owner Authorized Representative

The WWTP Owner represents that the person executing this Agreement has the legal authorization to execute this Agreement on behalf of the WWTP Owner. The WWTP Owner has designated authorized representatives who shall be either officers, agents or employees of the WWTP Owner. The designees are set forth in Appendix C. Such designation may be amended from time to time without amending this Agreement provided that the WWTP Owner notifies EFC and NYCDEP in writing in accordance with the provisions of Appendix C.

ARTICLE 2 - DESCRIPTION OF WORK

Section 2.01 Project

The WWTP Owner hereby agrees to comply with the terms, conditions and obligations set forth in the Scope of Work, and as described in Article 2 of this Agreement in the completion of the modification to its WWTP necessary to allow the WWTP to be in compliance with the Watershed Regulations. With respect to the WWTP Owner, the parties agree that the Owner’s Representative, its agents, employees and consultant will act for the WWTP Owner and perform all design, construction, inspection, letting and award and administrative services as set forth in this Agreement (exclusive of the requirement to perform described in Section 2.06) on behalf of the WWTP Owner. The Owner’s Representative will complete all necessary paperwork required in this Agreement to obtain reimbursement from EFC. The WWTP Owner represents that the Owner’s Representative is duly authorized to act on behalf of the WWTP Owner in taking actions and performing duties that the WWTP Owner would otherwise be required and/or authorized to undertake in order to implement this Agreement including, but not limited to, the Scope of Work. The WWTP Upgrade Project may consist of the Regulatory and/or SPDES Upgrade, as described in the Preliminary Engineering Scope attached to this Agreement or as otherwise modified, as that Upgrade is approved by NYCDEP in accordance with NYCDEP approval of the Final Upgrade Plan. Alternatively, the WWTP Upgrade Project which is authorized by this Agreement may be the connection of the WWTP to an existing wastewater treatment plant, or other project which eliminates the surface discharge of treated wastewater from this facility within the Watershed, or any other process which complies with the Watershed Regulations, as NYCDEP, in its sole discretion approves. To the extent that NYCDEP has the authority to select among alternatives proposed by the WWTP Owner in the CUP, the FUP or the FUP, which alternatives in all respects conform to the requirements of the Watershed Regulations§ 18-36, NYCDEP, as the case may be, will take into account the reasonable and legitimate business objectives of the WWTP Owner as well as other relevant factors such as cost and reliability.

Section 2.02 Summary of Process for Completing the Upgrade

A. The WWTP Owner shall, upon the Commencement Date, begin the work specified in the Scope of Work, subject to the right of NYCDEP to issue a Stop Work Order in accordance with Section 1.03 C. In accordance with the terms of the Scope of Work, the WWTP Owner, working with its Engineer, with assistance from EFC, shall submit a
Section 2.04 Modifications to Final Upgrade Plan

A. Non-Emergency Modification
Except in case of an emergency as described below, the WWTP Owner or its Engineer, shall submit proposed changes, modifications and/or amendments to the Final Upgrade Plan (such a “Change Order” and collectively “Change Orders”) to EFC in accordance with the Scope of Work, for review, comment and approval prior to the proposed commencement of any construction work potentially affected by the requested modification. The WWTP Owner or its Engineer, shall submit to EFC, any proposed Change Order, bearing the P.E. Seal of its Engineer, in the form and containing such information as required by the Scope of Work. The WWTP Owner shall commence work under the Change Order only after receipt of EFC or NYCEDE approval of the Change Order and any necessary changes to the construction schedule. Under those circumstances where NYCEDE approval of a Change Order is not required, as set forth in the Scope of Work, EFC agrees to use its best efforts to expeditiously review and make a determination with respect to a Change Order within fifteen (15) business days of receiving a complete Change Order request.

B. Modifications due to an Emergency. Where a Change Order is necessary to preserve and protect the public health, safety, or welfare, or to prevent injury to human, plant and animal life or property (including any release of insufficiently treated wastewater), the WWTP Owner, may, without prior approval, remediate the emergency or occurrence giving rise to the emergency provided, that the WWTP Owner shall promptly notify EFC in writing, within no more than twenty-four hours, or within a shorter time, when practicable, of the emergency or condition giving rise to the emergency. The Parties agree to enter into a Change Order, following NYCEDE approval, reflecting such remediation as soon as reasonably possible.

C. The WWTP Owner shall keep an updated listing of all Change Orders during construction, and shall submit copies of the final complete Change Orders to NYCEDE and to EFC, in addition to providing such final Change Orders as part of the Close-Out Package submitted to EFC upon completion of the work, in accordance with the Scope of Work.

Section 2.03 Method of Performance of Work

The WWTP Owner shall ensure that all work performed by it or on its behalf shall be performed in accordance with all applicable licenses and permits, and all applicable provisions of federal, State and local law, including the provisions of SEQRA, to the extent applicable, and the Watershed Regulations, as well as the terms of this Agreement.
Section 2.05 EFC’s Description of Work

A. EFC shall administer and disburse the Program Funds, as more fully set forth in Article 3 below, which are provided by the City to pay for the costs of the Upgrade Project.

B. EFC shall take the actions described in this Agreement which are necessary to facilitate payment of Program Funds provided by the City to the WWTP Owner under this Agreement.

C. In carrying out its work under this Agreement, EFC’s obligation to disburse Program Funds to the WWTP Owner shall be limited as follows:

1. In accordance and consistent with the provisions of Article 3 hereof, where the City has failed to provide adequate Program Funds, EFC shall have no liability for the failure to make any payment, except where the City’s failure to provide adequate Program Funds was due solely to EFC’s acts or omissions. In addition, EFC shall have no liability for any failure to make a payment to a WWTP Owner within 45 calendar days after a Disbursement Request is submitted, unless such failure is due solely to EFC’s gross negligence or willful misconduct.

2. The WWTP Owner agrees to notify EFC in writing of any failure of EFC to properly disburse Program Funds in accordance with the terms of Article 3 hereof. Any such notice shall be provided to EFC within 5 business days of the WWTP Owner’s discovery of the failure, but in no event later than 90 days from the date of the relevant Disbursement Request. The limitation of liability set forth in this Section 2.05 C shall not apply where the failure to disburse Program Funds extends beyond 60 days of the date of the notice set forth in this subparagraph, except as otherwise provided in this Agreement.

3. The WWTP Owner agrees that any contract between the WWTP Owner and a Contractor to perform any work to be paid with Program Funds hereunder shall include, without limitation, a provision advising the Contractor of the provisions of this Section 2.05C.

D. Except for the services described in sub-Sections A and B above, EFC is not providing any services, professional or otherwise, to the WWTP Owner, the Engineer or any of its agents or representatives. The work undertaken by EFC as described in this Agreement is provided to the City in accordance with the City-EFC Agreement. As such, the provisions set forth in this Agreement are not intended to modify or amend the provisions set forth in the City-EFC Agreement.

Section 2.06 Operation and Maintenance Agreement between the City and the WWTP Owner

A. The WWTP Owner shall enter into an Agreement with the City after the Final Upgrade Plan has been approved by NYCDEP and prior to commencement of Startup and Performance Testing of the Upgrade, in which the City agrees to pay for the continuing operation and maintenance costs of the Regulatory Upgrades consistent with the terms of the Watershed MOA. If EFC, in its sole discretion, does not choose to exercise the Option in accordance with Section 2.07 of this Agreement, the O&M Agreement shall also provide for the payment to the WWTP Owner of the costs associated with Startup and Performance Testing of the Upgrade and Final Acceptance by the City of the Upgrade as being in compliance with the Watershed Regulations.

B. EFC has no responsibility for the negotiation and execution of such O&M Agreements, nor for the payment of O&M costs to the WWTP Owner.

Section 2.07 Option Concerning Payment of Startup and Performance Testing Costs

A. Notwithstanding any other provision set forth in this Agreement, and subject to an amendment of the City-EFC Agreement, EFC may, at its option (Option), at any time prior to the commencement of Startup and Performance Testing and upon written notice to the WWTP Owner, elect to act as the disbursing agent for and on behalf of the NYCDEP in connection with the payment of costs associated with such Startup and Performance Testing of the WWTP Upgrade. In the event of the exercise of the Option, EFC, as disbursing agent, shall disburse costs to the WWTP Owner for such Startup and Performance Testing solely in accordance with the terms of this Section 2.07 and except as provided in this Section 1.07, EFC shall have no further obligation as disbursing agent under the Option.
B. In its role as disbursing agent for Startup and Performance Testing, EFC will have no responsibility to the City and NYCDEP, other than to disburse sums then in its possession for the Startup and Performance Testing costs as directed by NYCDEP. Accordingly, none of the advisory, technical, management or other services that EFC has provided to the City/NYCDEP pursuant to the City-EFC Agreement will be provided for Startup and Performance Testing.

C. The WWTP Owner hereby acknowledges and agrees that in the event EFC acts as disbursing agent for Startup and Performance Testing, EFC shall have no liability to the WWTP Owner except to deliver the funds which have been delivered to EFC by NYCDEP for the Startup and Performance Testing costs of the Upgrade Project and which NYCDEP has instructed to be disbursed. The WWTP Owner acknowledges and agrees that EFC is acting as a stakeholder only in connection with the funds associated with the costs of Startup and Performance Testing. Accordingly, in the event of any dispute between the WWTP Owner and NYCDEP in connection with the costs of Startup and Performance Testing, the WWTP Owner hereby acknowledges and agrees that EFC may commence an interpleader action in the court of competent jurisdiction in which the WWTP Owner is located for deposit into court of the costs associated with the Startup and Performance Testing then in EFC’s possession. Upon such deposit, the WWTP Owner acknowledges that EFC shall have no further obligation to the WWTP Owner under this section.

D. If EFC is not acting as disbursing agent, all actual and reasonable costs for Startup and Performance Testing and Final Acceptance will be paid to the WWTP Owner by NYCDEP through the O&M Agreement.

E. All invoices and requests for payments in connection with the Startup and Performance Testing of the Upgrade shall be forwarded by the WWTP Owner directly to NYCDEP.

F. Not more than once every thirty (30) calendar days during Startup and Performance Testing, and subject to the availability of Program Funds from NYCDEP, EFC shall pay the amount to the WWTP Owner which was authorized by NYCDEP, within ten (10) business days of receipt of such instruction from NYCDEP.

G. In order to be eligible to receive payment of Program Funds for Startup and Performance Testing, the WWTP Owner shall provide NYCDEP with fully executed copies of agreements entered into with any Party related to Startup and Performance Testing.

H. The WWTP Owner shall provide NYCDEP with eligible cost invoices and proof of payment of such invoices within forty-five (45) calendar days of disbursement of funds to the WWTP Owner. Proof of payment submitted by the WWTP Owner shall be sufficient to allow NYCDEP to document that billings and invoices were paid, such copies of the payment application, invoices, purchase orders, canceled checks, payroll and machinery records certified by the WWTP Owner, and other forms of cost documentation as may be requested by NYCDEP.

I. On a quarterly basis, or more often if NYCDP determines it is necessary, NYCDEP shall complete a full review of all requests against invoices, and supporting documentation, as well as the contract documents and specifications, in order to confirm payment of eligible costs.

J. Where NYCDEP determines that the WWTP Owner has provided inadequate documentation or has disbursed funds for ineligible costs, NYCDEP shall direct EFC to make adjustments in the payment to the WWTP Owner in subsequent disbursement(s). Nothing in this paragraph is intended to reduce any claims the WWTP Owner may have against NYCDEP or the City to be reimbursed for all eligible costs, including the right to commence an action in the court of competent jurisdiction for reimbursement for the full amount of eligible costs.

K. The City and NYCDEP reserve their right to audit the documentation submitted by the WWTP Owner to NYCDEP and to reject such documentation as insufficient, disallowing costs where adequate documentation is not subsequently provided by the WWTP Owner to NYCDEP.

L. The WWTP Owner agrees to make its financial records related to the Startup and Performance Testing available to NYCDEP and the City as they may respectively deem necessary.
ARTICLE 3 - PAYMENT GENERALLY

Section 3.01 Total Contract Amount

The aggregate total of all expenses paid for under this Agreement is $470,423.00, the Total Contract Amount. Such expenses are for SPDES and/or Regulatory Upgrades as set forth in Section 3.02 D and for SPDES Reimbursements as set forth in Section 3.04 A.

Section 3.02 Payment

A. Subject to the procedures set forth in Section 3.03 of this Agreement, EFC shall pay the WWTP Owner, for its actual and reasonable expenses, in implementing the Scope of Work, commencing with the execution of this Agreement. Payments to the WWTP Owner shall be limited by Section 3.02 B, C and D below.

B. The "actual and reasonable expenses" shall be used solely for the purpose of implementing the Scope of Work as approved by NYCDEP in accordance with the Agreement including, if applicable in accordance with Section 2.07 of this Agreement, any costs associated with Startup and Performance Testing, and shall cover:

1. Direct salary and overhead (calculated at no more than 40% multiplied times the direct salary costs incurred) for the actual hours spent by the WWTP Owner or its employees performing any of the following tasks ("Force Account Work" in accordance with Appendix B), or an hourly rate basis at current labor contract rates and/or prevailing wage rates for the following work:

   a. Engineering or project management, including the planning, preparation of bidding documents, plans and specifications, site permit applications, layout and quality control supervision;

   b. Field management by a project management superintendent where appropriate;

   c. Construction work;

   d. Administrative costs directly attributable to the work; and

   e. Litigation Expenses as defined herein. NYCDEP approval for Litigation Expenses shall not be unreasonably withheld; provided proper justification is provided for the need for such Litigation Expenses;

2. The costs of the WWTP Owner's Representative to perform work under this Agreement in accordance with the attached Appendix D;

3. If the WWTP Owner or Owner's Representative retains or engages a consultant or consultants to perform any of the tasks set forth in (1) above, the cost of such work;

4. The cost of all subcontracted construction work, approved by NYCDEP as part of the Final Upgrade Plan and bidding approval process, and performed by the subcontractor;

5. The cost of all work resulting from approved and emergency Change Orders, modifications and/or amendments to the Final Upgrade Plan (i.e., Change Order work) processed in accordance with this Agreement and the Scope of Work, determined on a time and material basis or based on a negotiated cost agreed to by NYCDEP or EFC;

6. The cost of acquiring any interest in real property necessary to effectuate the Upgrade, including related transaction costs;

7. Other necessary material required for the work and the cost of the rental and operation of necessary equipment (excluding small tools); and

8. Premiums for required insurance or bonds or new endorsements, in accordance with Sections 5.01 and 8.

C. The WWTP Owner acknowledges and agrees that EFC's obligation for payment of the above-mentioned items is contingent upon (i) receipt of Program Funds by EFC from NYCDEP, (ii) NYCDEP approval of such costs, as required, in accordance with this Agreement, (iii) the WWTP
Owner's compliance with the procedures set forth in this Agreement including performing work in accordance with the Final Upgrade Plan and (iv) EFC's subsequent review of adequate documentation of costs completed in accordance with Section 3.03. In the event any of the foregoing contingencies fail to occur, EFC shall have no liability to the WWTP Owner for the payment of Program Funds.

D. The aggregate total of all such expenses payable pursuant to this Section shall not exceed $470,423.00. Such amount does not represent a cap on the actual and reasonable expenses ultimately owed to the WWTP Owner for the Upgrade of the WWTP, but rather a non-final evaluation of the estimated amounts that will be necessary to accomplish the Upgrade. Of the said amount, $470,423.00 is the current estimated approved amount payable for Regulatory Upgrades and $0.00 is the maximum approved amount payable for SPDES Upgrades. The amount for Regulatory Upgrades shall be increased, as necessary, to reflect any increase in the total cost of the project, as approved by NYCDP, as reflected in the Final Upgrade Plan, as well as any approved Change Orders not within this amount. Any such increase shall require a written amendment to this Agreement. The amount for SPDES Upgrades may be increased, as necessary and where SPDES Upgrades Funds are available, to reflect any increase in the total cost of the project, as approved by NYCDP, as reflected in the Final Upgrade Plan, as well as any approved Change Orders not within this amount. Any such increase shall require a written amendment to this Agreement.

E. Any Program Funds disbursed to the WWTP Owner hereunder shall be used exclusively for the cost of the work performed pursuant to this Agreement.

F. In the event of any material breach of the terms of this Agreement by the WWTP Owner, and in the event that the WWTP Owner does not cure the breach within thirty (30) calendar days of written notice of such breach provided to the WWTP Owner by EFC or the City, EFC or the City shall be entitled, in addition to any other rights or remedies available to it at law or in equity, to withhold payments to the WWTP Owner, in an amount proportionate to the breach. If a material breach of the Agreement cannot be cured within thirty (30) calendar days, and if the breaching Party commences appropriate actions to cure the breach prior to the end of the thirty days and diligently prosecutes the actions necessary to cure the breach, payments pursuant to this section shall not be unreasonably withheld.

Section 3.03 Payment Procedures

A. Not more than once every ninety (90) calendar days during the Term of this Agreement, and subject to the availability of Program Funds from NYCDP, EFC shall pay fully executed Disbursement Request(s) received from the WWTP Owner, or its authorized representative, by EFC, at the proper place and in the proper form as described in Appendix C to this Agreement, within forty-five (45) calendar days of receipt, except for the Close-Out Payment which shall be paid in accordance with Task 4 of the Scope of Work.

B. The WWTP Owner shall provide EFC with eligible cost invoices and proof of payment of such invoices with the disbursement requests. Proof of payment submitted by the WWTP Owner shall be sufficient to allow EFC to document that billings and invoices were paid, such as payment applications, copies of invoices, purchase orders, canceled checks, payroll and machinery use records certified by the WWTP Owner, and other forms of cost documentation as may be reasonably requested by EFC. Additionally, all construction costs shall be accompanied by the "Engineer Certification" in the form attached hereto in Appendix C.

C. In order to be eligible to receive payment of Program Funds for Upgrade costs, the WWTP Owner shall have provided EFC with fully executed copies of the applicable agreements for the Upgrade, including without limitation, land acquisition, construction, and goods in excess of Ten Thousand Dollars ($10,000.00), and professional services related to the Upgrade Project. EFC shall not be obligated to disburse Program Funds for Upgrade costs until EFC has received copies of the applicable fully executed NYCDP approved agreements for such land acquisition, construction, goods and services as described above. All project costs not covered by the agreements described above shall be disbursed subject to NYCDP approval of such Upgrade costs, which approval shall not be unreasonably withheld.

D. On a quarterly basis, EFC shall complete a full review of all requests against the invoices, and supporting documentation, as well as the contract documents and specifications, in order to
confirm payment of eligible costs. EFC and/or NYCDERP shall furnish its request for additional documentation or its disapproval of a proof of payment within forty-five calendar days of the disbursement of funds, times being of the essence.

E. Where EFC and/or NYCDERP determine that the WWTP Owner has provided inadequate documentation or has utilized funds for ineligible costs, upon written notification by NYCDERP, EFC shall make adjustments by deducting an appropriate amount from subsequent payments to the WWTP Owner in subsequent disbursement(s). WWTP Owners may contest this determination made by EFC and/or NYCDERP through a dispute resolution process to be established by EFC. EFC shall make any appropriate adjustments in payments to the WWTP Owner consistent with the settlement of issues through the dispute resolution process. Nothing in this paragraph is intended to reduce any claims the WWTP Owner may have against EFC, NYCDERP or the City to be reimbursed for all eligible costs, including the right to commence an action in the court of competent jurisdiction for reimbursement for the full amount of eligible costs.

F. The City and NYCDERP reserve its right to audit the documentation submitted by the WWTP Owner to EFC, and to reject such documentation as insufficient, disallowing costs where adequate documentation is not subsequently provided by the WWTP Owner to NYCDERP.

G. The WWTP Owner agrees to make its financial records related to the Upgrade Project available to EFC and the City as they may respectively deem necessary. The WWTP Owner shall provide duplicate copies of all such records upon request.

Section 3.04 SPDES Reimbursement

A. Notwithstanding any other provision of this Agreement and subject to Section 3.01 of this Agreement, EFC will act as disbursing agent to disburse to the WWTP Owner reimbursements for NYCDERP certain approved SPDES work which was completed prior to the Commencement Date of this Agreement in accordance with Paragraph 121(b) of the Watershed MOA ("Reimbursement"). The total for reimbursable SPDES work shall not exceed $0.00. EFC, as disbursing agent, shall disburse costs to the WWTP Owner for Reimbursements solely in accordance with Section 3.04 B of this Agreement. The WWTP Owner hereby acknowledges and agrees that EFC while acting as disbursing agent for the Reimbursements or has instructed EFC to disburse. The WWTP Owner acknowledges and agrees that EFC is acting as a stakeholder only in connection with the funds associated with the Reimbursements. Accordingly, in the event of any dispute between the WWTP Owner and NYCDERP in connection with the costs of the Reimbursements, the WWTP Owner hereby acknowledges and agrees that EFC may commences an interpleader action in the court of competent jurisdiction in which the WWTP Owner is located for deposit into court of the costs associated with the Reimbursements then in EFC's possession. Upon such deposit, the WWTP Owner acknowledges that EFC shall have no further obligation to the WWTP Owner. EFC may amend the total for reimbursable SPDES work upon the WWTP Owner providing the appropriate cost documentation to NYCDERP as hereinafter set forth and upon subsequent written authorization of such amendment by NYCDERP, which amendment is subject to SPDES Upgrade Funds being available.

B. Notwithstanding any other provision of this Agreement and subject to Section 3.01 of this Agreement, in order to be eligible to receive Reimbursements, the WWTP Owner shall have provided NYCDERP with all cost documentation related to the Reimbursements, including where available, fully executed copies of all agreements entered into with any party. All invoices for Reimbursements shall be forwarded by the WWTP Owner directly to NYCDERP. The WWTP Owner shall provide NYCDERP with eligible cost invoices and proof of payment of such invoices and NYCDERP will use its best efforts to review the same within forty-five (45) calendar days of their receipt. Proof of payment submitted by the WWTP Owner shall be sufficient to allow NYCDERP to document that billings and invoices were paid, such as orders of payment applications, invoices, purchase orders, canceled checks, payroll and machinery use records certified by the WWTP Owner, and other forms of cost documentation as may be requested by NYCDERP. EFC shall pay the Reimbursement amount to the WWTP Owner which was authorized by NYCDERP, within ten (10)
business days of receipt of such written authorization from NYCDEP. The WWTP Owner acknowledges and agrees that EFC's obligation to disburse Reimbursements is subject to the availability of funds from NYCDEP. The City and NYCDEP reserve their right to audit the documentation submitted by the WWTP Owner to NYCDEP and to reject such documentation as insufficient, disallowing costs where adequate documentation is not subsequently provided by the WWTP Owner to NYCDEP. The WWTP Owner agrees to make its financial records related to the Reimbursements available to NYCDEP and the City as they may respectively deem necessary. The WWTP Owner shall provide duplicate copies of all such records upon request.

C. In its role as disbursing agent for SPDES Reimbursement, EFC will have no responsibility to the City, NYCDEP and/or the WWTP Owner, other than to disburse sums then in its possession for the SPDES Reimbursement costs as directed by NYCDEP.

ARTICLE 4 - PROCUREMENT OF GOODS AND SERVICES

Section 4.01 Competitive Bidding of the Final Upgrade Plan Work

The WWTP Owner shall comply with all public bidding requirements applicable to the WWTP Owner by State law.

Section 4.02 Selection of Engineering Services

A. Any consultant/contractor hired by the WWTP Owner for engineering or design work under this Agreement must be either chosen from the Pre-Qualified Engineers List prepared by EFC and provided to the WWTP Owner, or selected by the WWTP Owner as the highest qualified engineer or engineering firm for engineering services consistent with the WWTP Owner's standard selection practices and applicable law.

B. The WWTP Owner shall use the Engineer Request for Proposals ("Engineer RFP") attached to the Scope of Work as Attachment A, as the basis for its contract and scope of services with the engineer. The Engineer Proposal received from each engineer shall include the essential elements also set forth in Attachment A of the Scope of Work. The Owner's Representative may amend the Engineer Scope of Services, (attached hereto as Appendix A, Attachment A, Section 2) in order to define the level of bidding and/or construction management services that will be undertaken by the Engineer. The Owner's Representative will provide a copy of any such amendment to EFC with the Engineer proposals.

C. The WWTP Owner shall submit the top three proposals along with the name of, and negotiated fee proposal for the highest qualified professional firm for Engineering Services, to EFC for review. EFC shall forward the Engineer Proposal to NYCDEP for its review and approval. NYCDEP shall not unreasonably withhold approval of the WWTP Owner's named highest qualified professional firm. In the event NYCDEP withholds approval of the WWTP Owner's named highest qualified professional firm NYCDEP shall set forth the reason(s) for doing so in writing.

D. Within a reasonable time of receipt by EFC of NYCDEP's written approval of the Engineer Proposal, EFC shall authorize the WWTP Owner in writing to prepare a contract with the approved Engineer.

E. The WWTP Owner shall incorporate the NYCDEP-approved Engineer RFP, Engineer Proposal, and Standard Engineer Contract Clauses, as well as any of the other necessary attachments to the Scope of Work, into the Engineer Contract between the WWTP Owner and the Engineer/Engineering firm hired by the WWTP Owner. The WWTP Owner shall submit the proposed Engineer's contract to EFC for its review and forwarding to NYCDEP for their approval. Upon NYCDEP's approval of the Engineer's contract, EFC shall authorize the WWTP Owner in writing to execute a contract with the Engineer. The WWTP Owner agrees that it shall exercise any rights set forth in such Engineer Contract and legally enforce such rights, upon direction from NYCDEP or EFC.

F. After executing the Engineer Contract with the Engineer, the WWTP Owner shall not agree to changes in the Engineer Contract that would increase the amount that the Engineer may receive or vary the terms required by this Agreement to be incorporated into the Engineer Contract as set forth in sub-Section E above, without NYCDEP approval.
of such changes; such approval shall not be unreasonably withheld.

G. Notwithstanding the requirements of the above section, nothing herein shall be construed to run contrary to New York State law.

Section 4.03 Procurement of Non-Engineering Contracts

A. After NYCDEP final approval of the Final Upgrade Plan, and execution of an amendment to this Agreement incorporating modifications where necessary, EFC shall provide the WWTP Owner with a Notice to Proceed with Bid Solicitation. Upon receipt of bid proposals from contractors, the WWTP Owner shall compile and forward to EFC the recommended construction contracts for the two lowest responsible bidders, along with completed Uniform Contracting Questionnaire forms, confirmation that the bidding process has been undertaken in accordance with the WWTP Owner’s applicable law and this Agreement.

B. The WWTP Owner will award the construction contract to the lowest responsible and reliable bidder as determined by the WWTP Owner utilizing the Uniform Contracting Questionnaire.

C. Upon award of contracts by the WWTP Owner, the WWTP Owner shall provide EFC with documentation that all performance and payment bonds required by Section 5.01 have been received and are in accordance with this Agreement, that proof of all required insurance has been obtained, as well as confirmation that other contractor submittals are in order and in conformity with this Agreement. Additionally, the WWTP Owner shall provide original copies of all bonds and insurance certificates and the proposed construction documents to EFC, to be forwarded to NYCDEP for its review and approval.

D. Upon review and approval of such documentation, where necessary, and receipt of NYCDEP’s written confirmation that the construction contracts, bonds and insurance are complete in accordance with this Agreement, EFC shall provide the WWTP Owner with a Notice to Proceed with Execution of Contracts and Construction. Upon execution of construction contracts between the WWTP Owner and the successful bidder(s), the WWTP Owner shall submit to EFC for filing, copies of bid documents, bonds, insurance certificates, a fully State approved contract and a notice to proceed with respect to each contract awarded to a successful bidder.

E. Once the costs of the Final Upgrade Plan have been agreed upon by the WWTP Owner and NYCDEP, the WWTP Owner shall not enter into any contracts with Contractors if such contracts are greater than the costs allocated by the Final Upgrade Plan to the work to be performed under such contract without NYCDEP approval; such approval shall not be unreasonably withheld.

F. After execution of a contract by the WWTP Owner, the WWTP Owner shall not agree to changes in such contract if the changes would result in an increase in the cost of such contract without NYCDEP approval; which approval shall not be unreasonably withheld.

G. Notwithstanding the requirements of the above section, nothing herein shall be construed to run contrary to New York State Law.

Section 4.04 Contract between WWTP Owner and Contractor

A. The WWTP Owner agrees that any contract between the WWTP Owner and a Contractor to perform any work to be paid with City funds hereunder shall include without limitation the following provisions:

1. A requirement that the Contractor perform all work in accordance with the applicable terms of this Agreement;

2. A statement and a requirement that the Contractors shall agree to indemnify the City and EFC and assume liability for injuries on the same basis identified in this Agreement, pursuant to Article 13;

3. A requirement that all contracted work, with the exception of professional services, require a budget, a scope of work, a progress schedule for completion of the work within specified milestones and payment which is dependent upon completion of the work within the specified period of performance;
4. A statement and requirement that nothing contained in the contract shall impair the rights of the City and EFC under this Agreement or the Watershed MOA;

5. A statement and requirement that nothing contained in the contract shall create any contractual relation between the Contractor and the City and EFC;

6. A statement and requirement that the Contractor will not engage in any unlawful discrimination in hiring employees under the contract based upon race, creed, color, national origin, sex, age, disability, marital status or sexual orientation; and

7. A requirement that Contractors performing public work within the meaning of Section 220 of the New York State Labor Law pay not less than the prevailing wage to laborers, workmen and mechanics performing such public work pursuant to Section 220 and comply with all other applicable provisions of Section 220 of the Labor Law; and

8. A requirement that the Contractor provide the insurance and bonding required by this Agreement.

B. The WWTP Owner shall enforce the foregoing provisions of its contracts where (i) the WWTP Owner knows of the existence of a breach of the foregoing provisions by the Contractor, or (ii) the WWTP Owner, maintaining a level of oversight consistent with that of a similarly situated reasonable business person, should have known of the existence of such breach.

C. The breach of this Section by the WWTP Owner shall be deemed a material breach of this Agreement, entitling EFC and/or the City to withhold payments to the WWTP Owner in accordance with Section 3.01 F of this Agreement, or to terminate this Agreement in accordance with Article 11.

D. The WWTP Owner remains fully responsible to EFC and NYCDEP for the satisfactory completion of the WWTP Owner’s Scope of Work.

ARTICLE 5 - BONDS

Section 5.01 Bonds

A. In addition to any other bonds required by law, if any, for the completion of the work specified in the Final Upgrade Plan, the WWTP Owner shall require the following bonds from construction contractors who bid on or are awarded any contract from the WWTP Owner that exceeds $50,000.00.

1. From each construction contractor who bids on a construction contract from the WWTP Owner for any portion of such work - a bid bond or other security satisfactory to NYCDEP in an amount not less than five percent (5%) of the amount bid by such contractor for such contract, to secure the contractor’s commitment to honor such bid and enter into a contract with the WWTP Owner at the price bid, if awarded the contract in question; and

2. From each construction contractor who is awarded a construction contract from the WWTP Owner for any portion of such work - (a) a performance bond, or other security satisfactory to NYCDEP, in an amount not less than one hundred percent (100%) of the amount of such contract, to secure the faithful performance of such contract by the contractor and the completion of all work required thereunder, and (b) a payment bond in compliance with the State Finance Law Section 137, or other security satisfactory to NYCDEP, in an amount not less than one hundred percent (100%) of the amount of such contract, to secure the prompt payment of all monies due and owing to all persons furnishing labor or materials in prosecution of such work.

Required bonds shall be submitted to EFC (attn: Director of Operations and Administration) for forwarding to NYCDEP for review and approval prior to commencing any work under the contract in question. All bonds submitted shall be on a standard state form.

B. Each bond furnished pursuant to sub-section A above shall be issued by a surety company qualified to do business in the State of New York and shall name the City and the WWTP Owner as obligees.
ARTICLE 6 - TRAINING

Section 6.01 Training

The WWTP Owner agrees that to the extent possible, in the acquisition of the equipment and appurtenances in connection with the Upgrade Project, training shall be provided by the vendor/manufacturer, such training to be provided in accordance with the requirements specified by the Engineer in accordance with the Scope of Work. Charges for any supplemental training associated with the Regulatory Upgrade must be pre-approved by NYCDEP. Training shall be part of Upgrade Start-up and Performance Testing in accordance with the Scope of Engineering Services.

ARTICLE 7 - STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS

Section 7.01 SPDES Permits

A. The WWTP Owner agrees to cooperate with NYSDEC in modifying the SPDES permit for the WWTP to reflect the effluent limits and technological requirements of the Watershed Regulations and the schedule set forth in the Final Upgrade Plan. The funding for the Upgrade at the WWTP to be provided hereunder, however, is not dependent upon the WWTP Owner obtaining a modified SPDES permit. The inclusion of any effluent limits and technological requirements of the Watershed Regulations in a WWTP’s SPDES permit is not and should not be considered evidence of any federal law, regulation or enforceable standard otherwise applicable to a WWTP. Nothing herein limits or prevents a WWTP Owner from seeking clarification in its SPDES permit that the permit modification is done by consent. Further, the WWTP Owner’s consent to the inclusion of the effluent limits and technological requirements of the Watershed Regulations in its SPDES permit shall not be considered evidence of any federal or State law, regulation, or enforceable standard otherwise applicable to a WWTP.

B. The WWTP Owner shall be responsible for obtaining any future SPDES modifications that may be required by law and/or pursuant to the terms of this Agreement.

ARTICLE 8 - INSURANCE

Section 8.01 Insurance

A. In accordance with the long standing policy of the State of New York to not insure against risks associated with the operation of State facilities or property, the New York State WWTP Owner retains the risk of exposure to liability for personal injury or property damage, through its waiver of immunity to liability and action, which waiver is additionally supported by an annual multi-million dollar claims appropriation to the State Court of Claims.

B. Before any work is commenced under any contract between the WWTP Owner and the Engineer, and under any contract between the WWTP Owner and any other professional consultant (excluding attorneys) engaged or retained to assist or advise the WWTP Owner in connection with any of the work contemplated by the Scope of Work, the WWTP Owner agrees to cause the Engineer or the consultant (as the case may be), to procure and maintain the amounts and forms of insurance covering the Engineer or the consultant as required by applicable state law and practices and in accordance with the attached Appendix H.

C. Before any work is commenced under any contract between the WWTP Owner and any Contractor selected to perform any of the work covered by the Scope of Work (including construction of any portion of any Regulatory or SPDES Upgrades hereunder), the WWTP Owner agrees to cause such Contractor to procure and maintain the amounts and forms of insurance covering the Contractor as required by applicable state law and practices and in accordance with the attached Appendix H.

D. Copies of all policies, endorsements, certificates or other documents evidencing proof of insurance required by applicable state law and practices for the Contractor and Engineer shall be furnished to EFC (attn: Director of Operations and Administration) for forwarding to NYCDEP for approval prior to any disbursement of funds under this Agreement. EFC and the City shall be named as additional insureds on all commercial general liability policies held by the Engineer or the Contractors. All certificates or documents evidencing the required insurance shall name EFC and the City as certificate holders and must unconditionally grant
to EFC and the City sixty (60) calendar days' written notice of cancellation or non-renewal. Notice which contains qualifying language such as "Endeavor" or any other language seeking to limit the liability of the insurer for failure to give 60 days prior written notice is not acceptable.

**ARTICLE 9: PERSONNEL**

Section 9.01 Employees

A. The WWTP Owner agrees that, EFC, its employees, agents, contractors, subcontractors and/or consultants, are independent contractors and not employees of the WWTP Owner or the City or any of its departments or agencies. In accordance with their status as independent contractors, neither EFC nor its employees or agents, contractors, subcontractors and/or consultants will hold themselves out as, nor claim to be, officers or employees of the WWTP Owner or the City or any of its departments or agencies. Likewise, EFC agrees that the WWTP Owner and its employees, agents, contractors, subcontractors and/or consultants are independent contractors and not employees of EFC or the City or any of its departments or agencies. In accordance with their status as independent contractors, neither the WWTP Owner nor the Owner’s Representative nor its employees or agents, contractors, subcontractors and/or consultants will hold themselves out as, nor claim to be, officers or employees of EFC or the City or any of its departments or agencies.

B. EFC, the WWTP Owner, and the Owner’s Representative are each responsible for the work, direction, compensation and personal conduct of each of their employees, agents, contractors, subcontractors and/or consultants while engaged under this Agreement.

C. Nothing contained in this Agreement shall impose any liability or duty on the Parties for the acts, omissions, liabilities or obligations of the other Parties, or of any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the other Parties or the payment of taxes of any nature including but not limited to sales tax, unemployment insurance, workman’s compensation, disability benefits and social security, or, except as specifically stated in this Agreement, to any person, firm or corporation.

**ARTICLE 10: RECORDS AND REPORTS**

Section 10.01 General

The WWTP Owner agrees that a copy of any and all non-privileged written materials and documents that are prepared pursuant to this Agreement shall be forwarded to EFC and the City upon request. EFC and the City shall have the right to use all non-privileged and non-confidential written materials, documents and information that are gathered or prepared pursuant to this Agreement for any purpose deemed appropriate by EFC or the City.

Section 10.02 Maintenance of Records

The WWTP Owner shall maintain complete and accurate records in readily accessible files on all of its activities in connection with this Agreement. Such records shall include, but are not limited to, the Close-Out Package, and financial records detailing the receipt, management, and disbursement of all funds provided pursuant to this Agreement. The WWTP Owner shall maintain all records relating to this Agreement for a period of at least seven (7) years after completion of the Upgrade Project.

Section 10.03 Audit and Inspection

A. This Agreement is subject to audit by EFC, the State, including the State Comptroller, and by the City, including the City Comptroller, to the extent authorized by State and/or local law, including Section 93 of the New York City Charter.

B. The WWTP Owner shall submit such documentation and justification in support of expenditures under this Agreement as may be required by EFC, the State, including the State Comptroller, and the City, including the City Comptroller, so that they may evaluate whether the expenditures were made in accordance with this Agreement and shall make its program related records available to the State, including the State Comptroller, and the City, including the City Comptroller, as they consider necessary.

C. The WWTP Owner agrees to allow EFC, NYCDEP and the City access to the WWTP, and its environs, to permit inspection and observation of the work, and the operation and maintenance of the equipment during the period this Agreement is in effect.
Section 10.04 Monthly Reports

The WWTP Owner shall submit to EFC and the City progress reports with respect to the Scope of Work, in the form set forth in Appendix F to this Agreement. The reports shall be submitted each month, not later than the 10th day of the following month and at the end of the term of this Agreement. Upon the written consent of NYCDEP with notice to EFC, progress reporting requirements as set forth herein may be modified or amended. Failure to provide the report in accordance with this Section shall be deemed to be a material breach of this Agreement as set forth in Article 11.

Section 10.05 Budgets and Cost Estimates

A. The WWTP Owner shall provide EFC with an Annual Budget, in the form set forth in this Agreement as Appendix G, in order to provide EFC with a long range projected estimate of costs for the upcoming year. Such Annual Budgets shall be submitted to EFC on or before February 1st of each year and shall estimate the need for funding from July 1st to June 30th of each year during the Term of this Agreement.

B. As part of its Disbursement Request in accordance with Article 3 of this Agreement, and in the form attached to this Agreement as Appendix C, the WWTP Owner shall provide EFC with cost estimate information which shall update the information contained in the Annual Budget and shall provide EFC with the WWTP Owner's reasonable updated estimation of costs reasonably expected to be incurred in each month of the remainder of the Annual Budget period. If the Disbursement Request is not submitted in any given month, then the WWTP Owner shall provide EFC with the updated estimation of costs with the monthly progress reports required pursuant to Section 13.04 of this Agreement.

C. In addition to the above information, the WWTP Owner shall provide EFC with information with respect to any costs or expenses expected to be incurred, and not previously reported to EFC in accordance with sub-Sectons A and B above. The WWTP Owner shall provide such information to EFC as soon as is practicable.

D. The WWTP Owner acknowledges that failure to provide the cost reporting information set forth in this Section may jeopardize the WWTP Owner's ability to receive Program Funds on a timely basis.

ARTICLE 11 DEFAULT, SUSPENSION OR TERMINATION

Section 11.01 Default, Suspension and Termination

A. If either Party defaults in the observance or performance of any material terms of this Agreement, and such default continues for more than thirty (30) calendar days after written notice of such default is received by the defaulting party from the non-defaulting party, the non-defaulting party may (in addition to any other rights or remedies available at law or in equity) suspend work or terminate this Agreement in accordance with Section 11.02 upon written notice to the defaulting party. If a material breach of the Agreement cannot be cured within thirty (30) calendar days, the Agreement may not be terminated if the breaching Party commences appropriate actions to cure the breach prior to the end of the thirty days and diligently prosecutes the actions necessary to cure the breach.

B. Where a default remains uncured by a defaulting party within the period set forth in Section 11.01A and proper notice has been provided in accordance with Sections 11.01 and 11.02 by a non-defaulting party, the non-defaulting party shall have the right to terminate this Agreement, at any time thereafter, by providing written notice to the other, specifying an effective date of termination, which date shall be no less than ten business days from the date such notice is sent.

C. In the event the WWTP Owner, after due notice set forth in Sub-Section A above and subject to the provisions of Section 3.01 (F), fails to perform any material term or covenant of this Agreement, or fails to progress the work in accordance with the Schedule of Work, EFC may upon notification to NYCDEP, take such other and further action as may be necessary to protect its and the City's interest, including without limitation, the withholding of payments from the WWTP Owner or the assigning of the Agreement to the City. Where the construction of the Upgrade Project has commenced, the City shall have the right to enforce specific performance of completion of the construction of the Upgrade Project in accordance with the terms and conditions of this Agreement.
Section 11.02 Termination and Assignment Procedures

Upon termination of this Agreement, whether by the election of a non-defaulting party due to the default of the other Party or the expiration of its terms or otherwise, the following procedures shall be followed:

A. EFC’s Rights of Termination. If the WWTP Owner is the defaulting party, EFC may terminate and/or assign this Agreement upon notice in writing to the WWTP Owner, with such notice setting forth a termination and/or assignment date that is no less than ten (10) business days after the date such notice is sent. In the event of termination, EFC agrees to assign all of its rights, title and interest to enforce, and obligations under, this Agreement, in whole, or in part, to the City. The City shall have a direct cause of action against the WWTP Owner, its agents, employees and subcontractors for monetary or injunctive relief arising out of the termination and/or assignment of this Agreement. EFC’s termination and/or assignment of this Agreement does not relieve whatever obligation the City may have under Paragraph 141 of the Watershed MOA to fund upgrades at the WWTP.

B. The WWTP Owner’s Rights of Termination. If EFC is the defaulting party, the WWTP Owner may terminate this Agreement upon notice in writing to EFC, with such notice setting forth a termination date that is no less than ten (10) business days after the date such notice is sent. Such termination shall result in the assignment of EFC’s rights and obligations of this Agreement to the City. The WWTP Owner’s termination of this Agreement shall, in no way, relieve the WWTP Owner from complying with any and all applicable laws, rules, and regulations, including the Watershed Regulations, and/or any terms of this Agreement that may survive or extend beyond the Agreement’s termination. In addition, the WWTP Owner’s termination shall not affect the City’s obligations under the Watershed MOA.

C. In the event this Agreement is terminated by either Party or assigned by EFC to the City, EFC shall not be responsible for any further obligation incurred pursuant to this Agreement after the termination and/or assignment date. Any obligation necessarily incurred by the WWTP Owner pursuant to this Agreement prior to receipt of notice of termination, and falling due after such date, shall be paid by EFC in accordance with the terms of this Agreement. In the event that EFC terminates this Agreement, the WWTP Owner shall refund to EFC any monies advanced to the WWTP Owner pursuant to this Agreement, except those funds which are necessary to discharge outstanding obligations incurred by the WWTP Owner before the date of termination, in compliance with this sub-Section C. In the event this Agreement is assigned by EFC to the City, the City shall assume all rights and obligations of EFC under this Agreement and EFC shall no longer have any rights or obligations under this Agreement.

Section 11.03 Force Majeure

In the event EFC or the WWTP Owner cannot comply with the terms and conditions of this Agreement because of an act of God, war, strike or other condition as to which conduct by EFC or the WWTP Owner, as applicable, was not the proximate cause, EFC’s or the WWTP Owner’s performance hereunder may be excused or delayed provided EFC or the WWTP Owner, as applicable, notifies the other Party to this Agreement and NYCDEP, in writing within ten (10) calendar days of obtaining knowledge of such condition and requests an appropriate extension of the relevant terms and conditions of this Agreement from the other Party and NYCDEP, as appropriate, and further provided that EFC or the WWTP Owner makes its best efforts to provide for alternate arrangements to fulfill the terms and conditions of this Agreement.

ARTICLE 12 - REPRESENTATIONS AND WARRANTIES

Section 12.01 Status and Authority

A. Status and Authority of WWTP Owner. The WWTP Owner represents and warrants that:

1. The WWTP Owner has all requisite power and authority to execute, deliver and perform this Agreement.

2. This Agreement has been duly authorized by all necessary action on the part of the WWTP Owner and has been duly executed and delivered by the WWTP Owner and, assuming due execution and delivery by EFC, constitutes a legal, valid, binding and enforceable obligation of the
WWTP Owner subject to New York State Attorney General and Office of New York State Comptroller approval.

3. The WWTP Owner has all the requisite rights, power and authority to operate and modify the WWTP and to perform its obligations under this Agreement.

B. Status and Authority of EFC. EFC represents and warrants that:

1. EFC has all requisite power and authority to execute, deliver and perform this Agreement.

2. This Agreement has been duly authorized by all necessary action on the part of EFC and has been duly executed and delivered by EFC and, assuming due execution and delivery by the WWTP Owner, constitutes a legal, valid, binding and enforceable obligation of EFC.

Section 12.02 Conflict of Interest

No officer, director, or employee of EFC shall participate in any decision relating to this Agreement which affects her/his personal interest or the interest of any corporation, partnership or association other than EFC, in which s/he is, directly or indirectly, interested.

ARTICLE 13 - INDEMNIFICATION

Section 13.01 Indemnification

A. The WWTP Owner agrees to indemnify the City and EFC and save them harmless from all claims, liabilities, losses or expenses of every character whatsoever (including EFC’s reasonable attorney’s fees) relating to or arising out of this Agreement, where such injury or damage is the result of the WWTP Owner’s negligence occurring while working on activities relating to this agreement. In the event such injury or damage is caused by the combined negligence of the Parties, each Party shall be responsible for its relative culpability. Where the WWTP Owner and EFC are both named defendants, the WWTP Owner and EFC shall endeavor to enter into an agreement to cooperate in defense strategies and when appropriate, joint representation by counsel.

B. EFC and the City shall give written notice to the WWTP Owner of any matters hereunder which may give rise to a claim for indemnification promptly upon receiving actual knowledge of facts which may give rise to such claim, and EFC and the City shall specify in such notice the material facts known to it relating to such potential indemnification right together with the amount or an estimate of the amount of the potential liability arising therefrom, but failure to give such notice shall not release the WWTP Owner from liability with respect to such claims, except to the extent such lack of notice has prejudiced the defense of such claim. In addition, EFC and the City shall give written notice to the WWTP Owner of any court proceeding or litigation within ten (10) business days of receipt of service of such court proceeding or litigation.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Severability

If any term or provision of this Agreement or the applications thereof to any person or circumstance shall for any reason be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, the Agreement shall continue in full force and effect, but without giving effect to such term or provision.

Section 14.02 Assignment or other Disposition of the Agreement

The WWTP Owner agrees to notify EFC and NYCDEP at least thirty (30) calendar days prior to an assignment, transfer, conveyance, sublet or otherwise disposition of this Agreement or any part thereof, or of its right, title, or interest therein, or its power to execute such Agreement to any person, company or corporation. Notwithstanding this Section 14.02, the WWTP Owner may retain and employ contractors to assist in performing services hereunder subject to the limitations and restrictions on contractors set forth in Article 4 of this Agreement.

Section 14.03 Modification

No amendment to this Agreement shall be binding on any of the Parties hereto unless such amendment is in writing and is executed by the Party against whom enforcement of such amendment is
sought subject to New York State Attorney General and Office of New York State Comptroller approval.

Section 14.04 Notifications

A. Unless otherwise expressly provided in this Agreement, any notice from one Party to the other Parties required or permitted to be given hereunder shall be in writing and shall be delivered by hand, or by certified mail, return receipt, requested or by overnight mail to the following addresses:

If to EFC:
New York State Environmental Facilities Corporation
50 Wolf Road, Room 501
Albany, New York 12205
Attention: Director of Technical Advisory Services

with a copy to:
New York State Environmental Facilities Corporation
50 Wolf Road, Room 508
Albany, New York 12205
Attention: General Counsel

If to the WWTP Owner:
New York State Department of Transportation
Building 5, State Office Campus
1220 Washington Avenue
Albany, New York 12232
Attention: Director of Contracts Management and Transportation Maintenance

with a copy to:
New York State Office of General Services
Corning Tower, 35th Floor
Empire State Plaza
Albany, New York 12242
Attention: Director of Contract Administration

If to the City or NYCDEP:
New York City Department of Environmental Protection
465 Columbus Avenue, Suite 350
Valhalla, New York 10595
Attention: Deputy Commissioner Bureau of Water Supply Quality and Protection

with a copy to:
New York City Department of Environmental Protection
59-17 Junction Boulevard, 19th Floor
Corona, New York 11368
Attention: General Counsel

B. Either Party or the City/NYCDRE, at any time, may designate a new address for the receipt of notices by providing written notice of such new address to the other Party, in the manner specified in this Section.

C. Notices sent to either Party or the City/NYCDRE in accordance with this Section 14.04 shall be deemed to be delivered when sent.

Section 14.05 No Third Party Beneficiary

This Agreement between EFC and the WWTP Owner is not intended to create any benefit or interest in any third party except for the City.

Section 14.06 Cooperation

The Parties and the City acknowledge and agree, that during the term of this Agreement they will mutually cooperate with each other and provide each other promptly with all documentation, reports, and information which may be necessary to carry out their respective obligations under this Agreement. Nothing in this Agreement shall be deemed as consent by, or an obligation of, either Party or the City to provide documents or information protected by, or to waive, the attorney-client privilege or the attorney-work product privilege.

Section 14.07 Claims or Actions Related to this Agreement

A. The WWTP Owner shall report to NYCDEP and EFC in writing within ten (10) business days of the initiation by or receipt of service
against the WWTP Owner of any legal action or proceeding in connection with or relating to this Agreement. Additionally, as soon as is practicable, the WWTP Owner shall also report to the City, NCDEP and EFC all potential claims related to the Upgrade Project, of which the WWTP Owner or the Engineer is aware or should be aware.

B. The WWTP Owner shall also submit with the Close-Out Package a final verified statement of any and all known potential claims against the City, NCDEP or EFC in any way connected with or arising out of this Upgrade Contract setting forth with respect to each such claim the total amount thereof and the alleged value of each item; and if the alleged claim be one for delay, the alleged cause of such delay, the period or periods of time giving the dates claimed for performance of the work, or a particular part thereof, was delayed, and an itemized statement and breakdown of the amount claimed for each such delay. The WWTP Owner is warned that unless such claims are completely set forth as herein required, the WWTP Owner upon acceptance of the final payment, pursuant to this Agreement, will have waived any such claims under this Agreement.

C. The WWTP Owner agrees that any contract between the WWTP Owner and a Contractor to perform any work to be paid with Program Funds hereunder shall include, without limitation (i) a provision advising the Contractor of the provisions of Section 14.07B, (ii) a provision requiring that the Contractor provide to the City, NCDEP and EFC, as well as to the WWTP Owner, written notification of any claim or potential claim arising under such Contract, and (iii) advising the Contractor that failure to provide such written notification prior to or upon acceptance of the final payment under such contract, the Contractor will have waived any and all such claims against the City, NCDEP, EFC and the WWTP Owner.

Section 14.08 Miscellaneous

A. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. To the extent permitted by law, the Parties consent to the jurisdiction of the court of competent jurisdiction for disputes arising from this Agreement.

B. With the exception of the Watershed MOA, this Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof. In the event of any conflict between the terms of this Agreement and the terms of the Watershed MOA, the Watershed MOA shall govern. Other than the Watershed MOA, this Agreement supersedes all inconsistent prior agreements with respect to the subject matter hereof, whether written or oral. Except for the foregoing, by entering into this Agreement, the WWTP Owner accepts all of the terms and conditions of this Agreement as governing its rights and obligations.

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

D. The titles of sections and subsections of this Agreement have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa.

E. Neither the failure of either Party to exercise any power given such Party hereunder, or to insist upon strict compliance by the other Party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof shall constitute a waiver of either Party’s right to demand exact compliance with the terms hereof.

F. The Standard Clauses for All New York State Contracts, as set forth in Appendix E annexed hereto, are hereby incorporated herein and made a part hereof.

G. All representations, indemnifications, warranties and guarantees made in, required by or given by the WWTP Owner in accordance with Articles 3, 10, and 12 of this Agreement, as well as all continuing obligations of the WWTP Owner indicated in Articles 3, 10 and 12 of the Agreement, will survive final payment to the WWTP Owner, completion of the work and termination or completion of the Agreement.
IN WITNESS WHEREOF, the Parties have caused this agreement to be executed by their duly authorized representatives as of the date hereinafter first written, in duplicate, one part to be filed with the Commissioner of the Department of Environmental Protection, one part to be retained by EPC and one part to be delivered to the WWTP Owner.

WWTP Owner

BY: [Signature]

Rex K. Grathwohl, Director of
Contracts Management
New York State Department of Transportation

Owner's Representative

BY: [Signature]

William O'Connor, Deputy Commissioner
New York State Office of General Services

New York State Environmental Facilities Corporation ("EFC")

BY: [Signature]

Approved as to Form:

OFFICE OF THE ATTORNEY GENERAL

BY: [Signature]

PETER FAVRETTO
ASSOCIATE ATTORNEY

Date: DEC 1 7 1998

APPROVED:

OFFICE OF THE STATE COMPTROLLER

BY: [Signature]

DATE: DEC 2 8 1998

ACENOWLEDGMENT

STATE OF NEW YORK: ss.
COUNTY OF: ss.

On this ____ day of ________, 199__, before me personally came Rex K. Grathwohl, to me known, who, being by me duly sworn, did depose and say that he is the Director of Contract Management of the New York State Department of Transportation, the individual described in and who executed the foregoing instrument, and that he signed his name thereto as authorized by said State Agency.

Notary Public

STATE OF NEW YORK: ss.
COUNTY OF: ss.

On this ____ day of ________, 199__, before me personally came William O'Connor, to me known, who, being by me duly sworn, did depose and say that he is the Deputy Commissioner of the New York State Office of General Services, the individual described in and who executed the foregoing instrument, and that he signed his name thereto as authorized by said State Agency.

Notary Public

STATE OF NEW YORK:
COUNTY OF ALBANY: ss.

On this 14th day of December, 199__, before me personally came [Signature], to me known, who, being by me duly sworn, did depose and say that the individual described herein and who executed the foregoing instrument, and that he signed his/her name thereto as authorized by the said public benefit corporation.

Notary Public
STATE OF NEW YORK |
COUNTY OF ALBANY |

On the 1st day of October, 1998 before me appeared [Signature] to me known and known to me to be the [Title], of the Office of General Services of the State of New York and the same person described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same as such, for and on behalf of and in the name of the People of the State of New York.

JOHN D. LEWYCKYJ
Notary Public, State of New York
No. 46053288
Qualified in Saratoga County
Commission Expires February 17, 2000

STATE OF NEW YORK |
COUNTY OF ALBANY |

On the 1st day of October, 1998 before me appeared [Signature] to me known and known to me to be the [Title], of the Department of Transportation of the State of New York and the same person described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same as such, for and on behalf of and in the name of the People of the State of New York.

Notary Public
IN WITNESS WHEREOF, the Parties have caused this agreement to be executed by their duly authorized representatives as of the date hereinabove first written, in triplicate, one part to be filed with the Commissioner of the Department of Environmental Protection, one part to be retained by EFC and one part to be delivered to the WWTP Owner.

WWTP Owner

BY: [Signature]

Rev. K. Grathwohl, Director of Contracts Management
New York State Department of Transportation

Owner's Representative

BY: [Signature]

William O'Connor, Deputy Commissioner
New York State Office of General Services

New York State Environmental Facilities Corporation ("EFC")

BY: [Signature]

APPROVED AS TO FORM:

OFFICE OF THE ATTORNEY GENERAL

BY: [Signature]

Title

Date: DEC 17 1998

APPROVED:

OFFICE OF THE STATE COMPTROLLER

BY: [Signature]

Title

Date: DEC 28 1998

ACKNOWLEDGMENT

STATE OF NEW YORK:
COUNTY OF:

On this ______ day of_________, 1999, before me personally came Rev. K. Grathwohl, to me known, who, being by me duly sworn, did depose and say that he is the Director of Contract Management of the New York State Department of Transportation, the individual described in and who executed the foregoing instrument, and that he signed his name thereto as authorized by said State Agency.

Notary Public

STATE OF NEW YORK:
COUNTY OF:

On this ______ day of_________, 1999, before me personally came William O'Connor, to me known, who, being by me duly sworn, did depose and say that he is the Deputy Commissioner of the New York State Office of General Services, the individual described in and who executed the foregoing instrument, and that he signed his name thereto as authorized by said State Agency.

Notary Public

STATE OF NEW YORK:
COUNTY OF ALBANY:

On this ______ day of December, 1999, before me personally came [Name], to me known, who being by me duly sworn did depose and say that he/she is the [Occupation], the individual described herein and who executed the foregoing instrument, and that he/she signed his/her name thereto as authorized by the said public benefit corporation.

Notary Public

MAUREEN WITKIE
Notary Public in and for the State of New York
Wc. Commissioner/Exempt No. 65773

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## Schedule 1

**I-684 Brewster Rest Area (NB)**  
**Wastewater Treatment Plant**

<table>
<thead>
<tr>
<th>Incremental Cost</th>
<th>Baseline</th>
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<td>Insurance</td>
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### Itemizable Regulatory Upgrade Cost

- Fuel Oil
- Chemicals
- Legal
- Clerical
- Engineering
- Office Supplies
- Spare Parts
- Instrumentation Spare Parts
- Laboratory Contract
- Maintenance Contract(s)
- Contingency

### Proportional Cost

- Electricity
- WWTP Operation labor
- Generator Contract
- Generator Oil
- Building Maintenance
- Auto
- Auto Gas
- Tipping Fees
- Training

### Other C&M Costs

- Office Supplies
- Telephone
- Maintenance Supplies
- Lab Supplies