

County of Albany

Harold L. Joyce
Albany County Office Building
112 State Street - Albany, NY 12207



Meeting Agenda

Tuesday, January 26, 2021

5:00 PM

Held Remotely

Public Works Committee

PREVIOUS BUSINESS:

1. APPROVING PREVIOUS MEETING MINUTES

CURRENT BUSINESS:

2. AUTHORIZING AN AGREEMENT WITH THE NEW YORK STATE UNIFIED COURT SYSTEM REGARDING CUSTODIAL AND BUILDING MAINTENANCE SERVICES FOR THE ALBANY COUNTY COURT HOUSE, JUDICIAL CENTER AND FAMILY COURT
3. AMENDING RESOLUTION NO. 58 FOR 2016 REGARDING THE RENOVATION AND REHABILITATION OF THE SHAKER SITE BUILDINGS
4. AUTHORIZING AN AGREEMENT WITH INTERNATIONAL DIOXIDE, INC. REGARDING ODOR CONTROL FOR THE WATER PURIFICATION DISTRICT
5. AUTHORIZING AGREEMENTS WITH NATIONAL GRID REGARDING THE PURCHASE OF COUNTY OWNED STREETLIGHTS
6. AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE NEW YORK STATE DEPARTMENT OF HOMELAND SECURITY AND EMERGENCY SERVICES REGARDING THE INSTALLATION OF FENCING AND GATES AT THE TIMES UNION CENTER

County of Albany

*Harold L. Joyce
Albany County Office Building
112 State Street - Albany, NY 12207*



Meeting Minutes

Tuesday, November 24, 2020

5:00 PM

Held Remotely

Public Works Committee

PREVIOUS BUSINESS:

- Present:** Chairperson Nathan L. Bruschi, Vice Chair Joseph E. O'Brien, Christopher H. Smith, Samuel I. Fein, William Reinhardt, Mickey Cleary, Matthew T. Peter and Paul J. Burgdorf
- Excused:** Jeff S. Perlee

1. APPROVING PREVIOUS MEETING MINUTES

A motion was made that the previous meeting minutes be approved. The motion carried by a unanimous vote.

CURRENT BUSINESS:**2. AUTHORIZING AN AGREEMENT WITH APALACHEE, LLC REGARDING THE PURCHASE OF ROAD SALT FOR THE CONTROL OF SNOW AND ICE ON STATE AND COUNTY ROADS**

A motion was made to move the proposal forward with a positive recommendation. The motion carried by a unanimous vote.

3. AUTHORIZING AN AGREEMENT WITH POLYDYNE, INC. TO SUPPLY THE WATER PURIFICATION DISTRICT WITH LIQUID POLYMER

A motion was made to move the proposal forward with a positive recommendation. The motion carried by a unanimous vote.

4. AUTHORIZING AN AGREEMENT WITH COUNTY WASTE & RECYCLING SERVICES, INC. REGARDING RUBBISH REMOVAL AT VARIOUS COUNTY FACILITIES

A motion was made to move the proposal forward with a positive recommendation. The motion carried by a unanimous vote.

5. AUTHORIZING AN AGREEMENT WITH NEW YORK STATE INDUSTRIES FOR THE DISABLED REGARDING CUSTODIAL SERVICES AT THE FAMILY COURT BUILDING

A motion was made to move the proposal forward with a positive recommendation. The motion carried by a unanimous vote.

6. AUTHORIZING AN AGREEMENT WITH NEW YORK STATE INDUSTRIES FOR THE DISABLED REGARDING CUSTODIAL SERVICES AT THE JUDICIAL CENTER BUILDING

A motion was made to move the proposal forward with a positive recommendation. The motion carried by a unanimous vote. Mr. Cleary abstained.

7. AUTHORIZING AN AGREEMENT WITH C.T. MALE ASSOCIATES REGARDING PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES FOR VARIOUS ALBANY COUNTY PROJECTS

A motion was made to move the proposal forward with a positive recommendation. The motion carried by a unanimous vote.

8. AUTHORIZING A UTILITY EASEMENT TO NIAGARA MOHAWK POWER CORPORATION REGARDING THE INSTALLATION OF ELECTRIC VEHICLE CHARGING STATIONS AT 304 MADISON AVE. IN THE CITY OF ALBANY

A motion was made to move the proposal forward with a positive recommendation. The motion carried by a unanimous vote.

County of Albany

*Harold L. Joyce
Albany County Office Building
112 State Street - Albany, NY 12207*



Meeting Minutes

Monday, December 21, 2020

5:30 PM

Held Remotely

Public Works Committee

CURRENT BUSINESS:

Present: Chairperson Nathan L. Bruschi, Vice Chair Joseph E. O'Brien, Christopher H. Smith, Samuel I. Fein, William Reinhardt, Mickey Cleary, Matthew T. Peter, Paul J. Burgdorf and Jeff S. Perlee

1. AUTHORIZING A CUSTOMER PROJECT COMMITMENT AGREEMENT WITH THE NEW YORK POWER AUTHORITY REGARDING THE STREETLIGHT CONVERSION PROJECT

A motion was made to move the proposal forward with a positive recommendation. The motion carried by a unanimous vote.



DANIEL P. MCCOY
COUNTY EXECUTIVE

DANIEL C. LYNCH, ESQ.
DEPUTY COUNTY EXECUTIVE

COUNTY OF ALBANY
DEPARTMENT OF GENERAL SERVICES
112 STATE STREET, SUITE 825
ALBANY, NEW YORK 12207
(518) 447-7210 FAX (518) 447-7747
WWW.ALBANYCOUNTY.COM

DAVID M. LATINA
COMMISSIONER

MARTIN V. MCCLUNE
DEPUTY COMMISSIONER

November 16, 2020

Honorable Andrew Joyce, Chairman
Albany County Legislature
112 State Street, Room 710
Albany, New York 12207

Re: Agreement between NYS Unified Court System and the County of Albany for custodial services, building maintenance and minor repairs.

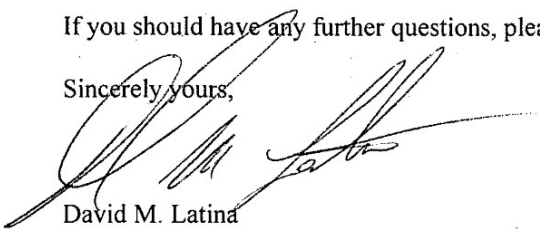
Dear Chairman Joyce:

The Department of General Services requests Legislative approval of a contract with New York State Unified Court System in the amount of \$709,061, pursuant to Section 1 of the existing contract between the Unified Court System and the County of Albany.

This contract is intended to establish the 3rd period within the context of the original five-year agreement. The services that will be provided include custodial services, building maintenance and minor repairs. During this period, all terms and conditions of the original Agreement shall continue to apply. This term will commence on April 1, 2020 through March 31, 2021.

If you should have any further questions, please do not hesitate to contact me.

Sincerely yours,


David M. Latina
Commissioner

DML:tas
Enclosure(s)

cc: Honorable Dennis Feeney, Majority Leader
Honorable Frank Mauriello, Minority Leader
Arnis Zilgme, Minority Counsel
Rebekah Kennedy, Majority Counsel



County of Albany

Harold L. Joyce
Albany County Office
Building
112 State Street - Albany,
NY 12207

Legislation Text

File #: TMP-2103, **Version:** 1

REQUEST FOR LEGISLATIVE ACTION

Description (e.g., Contract Authorization for Information Services):

Request Authorization for Third Period of NYS Unified Court System

Date: November 18, 2020
Submitted By: David M. Latina
Department: General Services
Title: Commissioner
Phone: 518-447-7210
Department Rep.
Attending Meeting: Commissioner Latina

Purpose of Request:

- ☐ Adopting of Local Law
- ☐ Amendment of Prior Legislation
- ☐ Approval/Adoption of Plan/Procedure
- ☐ Bond Approval
- ☐ Budget Amendment
- ☒ Contract Authorization
- ☐ Countywide Services
- ☐ Environmental Impact/SEQR
- ☐ Home Rule Request
- ☐ Property Conveyance
- ☐ Other: (state if not listed) Click or tap here to enter text.

CONCERNING BUDGET AMENDMENTS

Increase/decrease category (choose all that apply):

- ☐ Contractual
- ☐ Equipment
- ☐ Fringe
- ☐ Personnel
- ☐ Personnel Non-Individual

☐ Revenue

Increase Account/Line No.: Click or tap here to enter text.

Source of Funds: Click or tap here to enter text.

Title Change: Click or tap here to enter text.

CONCERNING CONTRACT AUTHORIZATIONS

Type of Contract:

☐ Change Order/Contract Amendment

☐ Purchase (Equipment/Supplies)

☐ Lease (Equipment/Supplies)

☐ Requirements

☒ Professional Services

☐ Education/Training

☐ Grant

Choose an item.

Submission Date Deadline Click or tap to enter a date.

☐ Settlement of a Claim

☐ Release of Liability

☐ Other: (state if not listed) Click or tap here to enter text.

Contract Terms/Conditions:

Party (Name/address):

NYS Unified Court System 2500 Pond View, Suite 210 Castleton-On-Hudson, NY 12033

Additional Parties (Names/addresses):

Click or tap here to enter text.

Amount/Raise Schedule/Fee: \$709,061

Scope of Services: This contract is intended to establish the 3rd period within the context of the original five-year agreement. The services that will be provided include custodial services, building maintenance and minor repairs. During this period, all terms and conditions of the original Agreement shall continue to apply.

Bond Res. No.: Click or tap here to enter text.

Date of Adoption: Click or tap here to enter text.

CONCERNING ALL REQUESTS

Mandated Program/Service: Yes ☒ No ☐

If Mandated Cite Authority: NYS Unified Court System

Is there a Fiscal Impact: Yes ☒ No ☐

Anticipated in Current Budget: Yes ☒ No ☐

County Budget Accounts:

Revenue Account and Line: A1164-4046
Revenue Amount: \$709,061

Appropriation Account and Line: Click or tap here to enter text.
Appropriation Amount: Click or tap here to enter text.

Source of Funding - (Percentages)

Federal: Click or tap here to enter text.
State: 100
County: Click or tap here to enter text.
Local: Click or tap here to enter text.

Term

Term: (Start and end date) April 1, 2020 - March 31, 2021
Length of Contract: 12 months

Impact on Pending Litigation

If yes, explain: Yes ☐ No ☒
Click or tap here to enter text.

Previous requests for Identical or Similar Action:

Resolution/Law Number: 453 of 2018, 526 of 2019
Date of Adoption: 10/9/2018, 12/2/2019

Justification: (state briefly why legislative action is requested)

The Department of General Services requests Legislative approval of a contract with New York State Unified Court System in the amount of \$709,061, pursuant to Section 1 of the existing contract between the Unified Court System and the County of Albany.

This contract is intended to establish the 3rd period within the context of the original five-year agreement. The services that will be provided include custodial services, building maintenance and minor repairs. During this period, all terms and conditions of the original Agreement shall continue to apply. This term will commence on April 1, 2020 through March 31, 2021.



STATE OF NEW YORK
UNIFIED COURT SYSTEM
THIRD JUDICIAL DISTRICT
2500 POND VIEW, SUITE 210
CASTLETON-ON-HUDSON, NY 12033
(518) 285-8300
FAX (518) 285-6169

LAWRENCE K. MARKS
Chief Administrative Judge

Vito C. Caruso
Deputy Chief Administrative Judge
Courts Outside New York City

Gerald W. Connolly
District Administrative Judge
Third Judicial District

CHRISTY Q. BASS
Acting District Executive

November 5, 2020

Hon. Daniel McCoy, County Executive
County of Albany
112 State Street - Room 900
Albany, New York 12207

Re: **Agreement between Unified Court System and the County of Albany
for Court Cleaning and Minor Repairs (Contract Number C300387)
Annual Renewal Letter and Budget (Appendix B) for SFY 2020-2021**

Dear Mr. McCoy:

Please be advised that pursuant to Section I of the existing contract between the Unified Court System and the County of Albany, we are hereby establishing a renewal period in the five-year term of this agreement. Said renewal period shall commence on April 1, 2020 and shall terminate on March 31, 2021. During this 2020-21 renewal period, all terms and conditions of the above-referenced Agreement shall continue to apply, except as specified below.

The proposed budget for services to be rendered pursuant to this contract in the 2020-21 period shall be **\$709,061.00**. Pursuant to the provisions of Chapter 686 of the Laws of 1996, as amended to date, the maximum compensation for the 2020-21 period shall be 100% of that amount. The attached revised Appendix B, detailing the proposed budget for the renewal period, shall be incorporated into the Agreement and shall replace all prior Appendix B's. The signatures below shall confirm acceptance of this renewal by the County of Albany and by the UCS.

Accordingly, the original of this letter should be signed by an authorized representative of the County of Albany, and the corresponding acknowledgment page should be notarized. The signed original letter together with the related documents should be returned to this office.

Thank you.

Sincerely,

Christy Q. Bass
Acting District Executive

Accepted For: the County of Albany

Name: _____

Title: _____

Dated: _____

Attachments

Accepted For: Unified Court System

Maureen McAlary, Director
Division of Financial Management

Dated: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
)SS:
COUNTY OF)

On the ____ day _____, 2020, personally came _____
to me known, who, being by me duly sworn, did depose and say that s/he resided in
_____, that she/he is the _____
of _____, the municipality described in and which executed
the above instrument; and that s/he is authorized to execute the above instrument on behalf
of said municipality.

NOTARY PUBLIC

Unified Court System
Court Cleaning and Minor Repairs Proposed Budget Form

(Appendix B to a contract between a local government entity and the NYS Unified Court System pursuant to Chapter 686, Laws of 1996)

State Fiscal Year: April 1, 2020 - March 31, 2021

Name of County or City: Albany county

List Court Buildings: Name and Address of Each Court Building (Including County Clerk Space)	Owned or Leased	Total Building Net Usable Square Feet	Court Spaces to be Cleaned and Repaired Pursuant to this Budget Court Related Aid Eligible Percentage	
			Net Usable Sq. Ft.	
County Court, 16 Eagle Street, Albany NY 12207	Owned	104,432	70,565	67%
Judicial Center, 6 Lodge Street, Albany NY 12207	Owned	76,066	40,315	53%
Family Court, 32 Clinton Ave, Albany NY 12207	Owned	83,595	66,040	79%
Combined		264,093	176,920	67%

Note: Divide Court SF by Total SF for percent

Anticipated Changes in Location or Space Utilization:

Name and Address of Affected Building(s)	Nature of Changes	Target Date
Family Court, 32 Clinton Ave., Albany NY 12207	Occupied Building Space	Summer 2020

1 Cleaning Costs:**1(a) Service Contracts**

Budget Line #	Contractor	Type of Service	Building	Contract Amounts for Budget Period	Aid Eligible Percentage	Budget Request
1	NYSID	Janitorial Services	Judicial	\$144,535	53%	\$76,604
2	Tri State Fascade Services	Window Cleaning	JC - CH - FC	\$13,550	100%	\$13,550
	Second Chance	Janitorial Services	CH	\$40,000	100%	\$40,000
3	Unifirst	Floor Mats	JC	\$4,750	53%	\$2,518
4	Unifirst	Floor Mats & Mops	Court House	\$8,650	67%	\$5,796
5	Unifirst	Floor Mats	Family Court	\$3,250	79%	\$2,568
6	NYSID	Cleaning Services	Family Court	\$149,174	79%	\$117,847
1(a) Subtotal:						\$258,882

1(b) Local Payroll

				Total			
No. of				Personal Service	Aid Eligible	Budget	
Positions	Building	Annual Wages	Fringe Benefits	Costs	Percentage	Request	
7							
8							
9	6	Court House	\$231,990	\$172,736	\$404,726	67%	\$271,166
10							
11							
12							
1(b) Subtotal:						\$271,166	

1(c) Supplies and Equipment

(c) Supplies and Equipment						
	Type of Material	Building	Quantity/Unit	Costs	Aid Eligible Percentage	Budget Request
13						
14	Housekeeping Supplies	Court House	1	\$10,725	67%	\$7,186
15						
16	Housekeeping Equipment	Court House	1	\$5,000	67%	\$3,350
17						
18						
					1(c) Subtotal:	\$10,536

1(d) - Total Cleaning Costs (1a+1b+1c): **\$540,584**

2 Trash Removal and Disposal

2(a) Trash Removal

	Contractor or Agency	Building	Quantity/Unit	Costs	Aid Eligible Percentage	Budget Request
19						
20	County Waste Service	Court House	1	\$6,975	67%	\$4,673
21	County Waste Service	Judicial Services	1	\$6,250	53%	\$3,313
22	County Waste Service	Family Court	1	\$5,025	79%	\$3,970
23						
2(a) Total:						\$11,956

2(b) Trash Disposal

	Contractor or Agency	Building	Quantity/Unit	Costs	Aid Eligible Percentage	Budget Request
24						
25						
26	None					
27						
28						
2(b) Total:						\$0

2(c) - Total Trash Removal & Disposal (2a+2b): 2(c) **\$11,956**

3 HVAC Cleaning Costs

3(a) Duct Work Cleaning and Filter Changing By Service Contract

	Contractor	Type of Service	Building	Contract Amounts for Budget Period	Aid Eligible Percentage	Budget Request
29						
30		Duct Work/Filter Change	Judicial	\$0	53%	\$0
31	None	Duct Work/Filter Change	Court House	\$0	67%	\$0
32		Duct Work/Filter Change	Family Court	\$0	79%	\$0
33						
34						

3(a) Subtotal:

\$0

3(b) Duct Work Cleaning and Filter Changing by Local Payroll

	No. of Positions	Building	Annual Wages	Fringe Benefits	Total Personal Service Costs	Aid Eligible Percentage	Budget Request
35							
36	1	Court House	\$2,250	\$750	\$3,000	67%	\$2,010
37							
38	1	Judicial Center	\$1,500	\$550	\$2,050	53%	\$1,087
39							
40	1	Family Court	\$1,000	\$350	\$1,350	79%	\$1,067
3(b) Subtotal:							\$4,163

3(c) Filter Changing - Filters Only

3(c) Filter Changing - Filters Only

Type of Material	Building	Quantity/Unit	Costs	Aid Eligible Percentage	Budget Request	
41						
42	Sock Filters	Court House	4	\$100	67%	\$268
43	Sock Filters	Judicial Center	6	\$100	53%	\$318
44	Sock Filters	Family Court	4	\$100	79%	\$316
45						
46						
3(c) Subtotal:					\$902	

3(d) Total HVAC Ductwork Cleaning & Filter Changing Costs (3a+3b+3c): 3(d) \$5,065

4 GRAND TOTAL - ALL "CLEANING COSTS":

Grand Total Boxes 1d + 2c + 3d: 4 \$557,604

5 Proposed "Tenant" Work

Use the following codes: a - Flooring and Carpeting
 b - Painting
 c - Interior Ceilings
 d - Bathrooms
 e - Fixtures
 f - Minor Renovation
 g - Other (Identify)

Work to be Performed:

	Code	Describe Work	Building	Wages	Fringe	Supplies	Total Costs	Aid Eligible Percentage	Budget Request
47	F		JC, CH, FC			\$25,000	\$25,000	100%	\$25,000
48									
49									
50									
51									
52									
53									
54									
55									
56									
57									
Total (5):									\$25,000

6 TOTAL - 100% REIMBURSIBLE EXPENSES:
 (Cleaning Costs & Tenant Work)

Total (4+5) 6: **\$582,604**

7 **Building and Property Maintenance:**

7(a) Service Contracts

Use Codes A-G:

a - Pest Control

e - Security & Alarm Systems

b - Elevators

f - Property Maintenance

c - HVAC

g - Other (Identify)

d - Telephone Wiring

	Code	Contractor	Type Work Performed	Building	Contract Amounts for Budget Period	Aid Eligible Percentage	Budget Request
58	A	Alleyamor	Pest Control	Court House	\$600	67%	\$402
59	A	Alleyamor	Pest Control	Family Court	\$600	79%	\$474
60	A	Alleyamor	Pest Control	Judicial Center	\$600	53%	\$318
61	B	Otis Elevator	Elevator Maintenance	Family Court	\$50,000	79%	\$39,500
62	B	Otis Elevator	Elevator Maintenance	Judicial Center	\$30,275	53%	\$16,046
63	B	Otis Elevator	Elevator Maintenance	Court House	\$17,550	67%	\$11,759
64	C	JC, BPI, Eastern Heating, PSS.	HVAC Maintenance	Family Court	\$50,250	79%	\$39,698
65	C	JC, Eckert, PSS, BPI, Eastern H.	HVAC Maintenance	Judicial Center	\$45,150	53%	\$23,930
66	C	Eastern Heating, BPI, JC, PSS.	HVAC Maintenance	Court House	\$35,450	67%	\$23,752
67	E	Worksheet will provide info.	Security Alarm Services	FC - CH - JC	\$35,225	100%	\$35,225
68	G	Worksheet will provide info.	Others	FC - CH - JC	\$22,250	100%	\$22,250
7(a) Subtotal:							\$213,352

7(b) Local Payroll

	No. of Positions	Building	Annual Wages	Fringes	Total Costs	Aid Eligible Percentage	Budget Request
69							
70	3	Court House Staff	\$145,143	\$41,038	\$186,181	67%	\$124,741
71							
72	9	112 Bldg Building Staff	\$12,750	\$6,550	\$19,300	67%	\$12,931
73							
74							
75							
76							
7(b) Subtotal:							\$137,672

7(c) Supplies and Equipment

	Type of Material	Building	Quantity/Unit	Costs	Aid Eligible Percentage	Budget Request
77	Maintenance Supplies	Court House	1	\$15,575	67%	\$10,435
78	Maintenanccce Supplies	Judicial Center	1	\$12,755	53%	\$6,760
79	Maintenance Supplies	Family Court	1	\$3,225	79%	\$2,548
80	Small Tools	Court House	1		67%	\$0
81						
7(c) Subtotal:						\$19,743

7 (d) Total - Building and Property Maintenance Costs (7a+7b+7c) 7(d): **\$370,767**

8 Total - Building and Property Maintenance Costs: 8 **\$370,767**

9 Total Cost Reimbursable @ 25% = (Box 8 x 25%) 9 **\$92,692**

10 Total Proposed Direct Costs (Item 6 + Item 9): 10 **\$675,296**

11 Overhead Costs (Item 10 x .05): 11 **\$33,765**

12 Total Proposed Contract Amount (Item 10 + Item 11): 12 **\$709,061**

13 Local Government Certification:

I hereby certify that the cost estimates contained herein were developed using the best available information and that the proposed budget amounts are just, true and correct to the best of my knowledge.

Name:

Title:

Signature:

County or City:

Address:

Date:

Phone:

ENDNOTES:

Use budget line numbers for reference and include remarks or explanations below.

Line No. Explanation:

67	The "Budget Request" for all three Departments = S35,225.00
68	The "Budget Request" for all three Departments = S22,250.00

**AGREEMENT BETWEEN THE
NEW YORK STATE UNIFIED COURT SYSTEM**

AND

County of Albany

This Agreement, between the New York State Unified Court System ("UCS"), with an address at 25 Beaver Street, New York, New York 10004, and the:

County of Albany
112 State Street - Room 900
Albany, New York 12207

("Municipality"), is for the purpose of obtaining cleaning services for the interior of the

County of Albany's Court Facilities ("Court Facilities") as well as minor and emergency repairs, and preventive building and property maintenance services for that facility.

WHEREAS, counties and cities are required by law to furnish and maintain adequate court facilities for use by trial courts of the State of New York; and

WHEREAS, Chapter 686 of the Laws of 1996 was enacted to invest the State of New York with the fiscal responsibility of managing the interior cleaning of COURT FACILITIES and the performance of minor repairs therein, and with the ability to cover the costs thereof; and

WHEREAS, Chapter 686 of the Laws of 1996 requires the State of New York to contract with political subdivisions of the State for the cleaning of court facilities, as well as minor and emergency repairs thereof, and

WHEREAS, MUNICIPALITY is responsible for furnishing and maintaining COURT FACILITIES;

NOW, THEREFORE, in consideration of the promises herein contained, the parties agree as follows:

I. TERM

A. When signed by the parties and approved by all necessary government agencies, the Agreement shall be effective beginning **April 1, 2018** for a maximum of five (5) years through **March 31, 2023**, unless terminated earlier or extended pursuant to its terms. This term shall consist of parts or Periods (hereinafter "Period"), each of which shall have its own maximum amount of monetary reimbursement by UCS to MUNICIPALITY for that Period.

B. The initial Period of this maximum five-year term shall commence on **April 1, 2018** and terminate on **March 31, 2019**.

C. The parties agree that a change in the dates of each subsequent Period, as well as the maximum compensation and budget for that Period and any revised scope of services for that Period, shall be established by the mutual written agreement of the parties, and shall be subject to

approval by the Comptroller of the State of New York in cases where the annual budget increase over the prior Period exceeds five (5) percent. The budget, scope of services and maximum compensation for each Period will be attached to and incorporated into the agreement as Appendix B for the applicable Period. Appendix B for the initial Period is attached hereto and incorporated herein.

D. Upon completion of the five-year contract, UCS will submit to the Office of the State Comptroller (OSC) a cumulative reconciliation identifying approved contract amounts and actual expenditures for each budget category listed in Appendix B. Upon OSC review and approval of the reconciliation, OSC will eliminate any remaining contract authority.

II. EXTENSION AND TERMINATION

A. This Agreement may be extended only by written agreement of the parties and approval by all necessary government agencies.

B. If at any time the Chief Administrator or her/his designee determines that MUNICIPALITY is not adequately providing services pursuant to this Agreement or that MUNICIPALITY is otherwise violating any material provision(s) of this Agreement, UCS may, upon approval by the Court Facilities Capital Review Board pursuant to section 39-b of the New York State Judiciary Law, implement an alternative plan for the cleaning of the interior of the COURT FACILITIES, including but not limited to, a plan pursuant to which MUNICIPALITY continues to perform some of the services described in Section III below, and UCS may contract with a third party to perform the remaining services described in Section III below.

III. SCOPE OF SERVICES

A. MUNICIPALITY shall, in accordance with the provisions of 22 NYCRR Parts 34.1 and 34.2 provide for the cleaning of the interior of COURT FACILITIES including all facilities used for the transaction of business by state-paid courts and court-related agencies of UCS and by judicial and nonjudicial personnel thereof, including rooms and accommodations for the courts and court-related agencies of UCS, the judges, justices and the clerical, administrative and other personnel thereof. Specific tasks to be performed and the cost associated with those tasks shall be as delineated in the Appendix B for the applicable Period.

B. MUNICIPALITY shall be responsible for the performance of all minor repairs to the interior of COURT FACILITIES as are required to replace a part, to put together what is torn or broken, or to restore a surface or finish, where such repairs are needed to preserve and/or to restore the COURT FACILITIES to full functionality.

C. MUNICIPALITY shall be responsible for the performance of emergency repairs to the interior of the COURT FACILITIES necessitated by a sudden and unexpected failure or by some accident or external force, resulting in a situation that adversely affects the suitability and sufficiency of the COURT FACILITIES for the dignified transaction of the business of the courts.

D. MUNICIPALITY's performance of the building and property maintenance work specified in the Appendix B for the applicable Period is included within the scope of this Agreement.

E. MUNICIPALITY shall maintain and operate the COURT FACILITIES in accordance with 22 NYCRR Parts 34.1 and 34.2.

IV. INSPECTION OF COURT FACILITIES

UCS shall cause an inspection of the COURT FACILITIES to ensure that MUNICIPALITY is complying with 22 NYCRR Parts 34.1 and 34.2, at least quarterly during the initial Period of this Agreement and any subsequent Period thereof and at any such other times as UCS shall deem necessary. At the conclusion of each such inspection, UCS shall notify MUNICIPALITY in writing that the inspection was completed. If UCS finds that MUNICIPALITY is not in compliance with 22 NYCRR Parts 34.1 and 34.2, or has not performed specific tasks as set forth in Appendix B, such written notice shall specify the specific provisions of 22 NYCRR Parts 34.1, 34.2 and/or Appendix B with which MUNICIPALITY is not in compliance. MUNICIPALITY shall correct the deficiency within twenty-four (24) hours after receiving such written notice or within such other amount of time as is mutually agreed upon, in writing, by the parties. MUNICIPALITY shall notify UCS, in writing, when such deficiency is corrected.

V. MAINTENANCE OF EFFORT

A. Nothing in this Agreement alters or affects the obligations of MUNICIPALITY to provide goods and services to the COURT FACILITIES pursuant to section 39 of the New York State Judiciary Law.

B. MUNICIPALITY shall certify in each Claim for Payment submitted to UCS pursuant to Section VII below that it has complied with section 39 of the New York State Judiciary Law during the time covered by the Claim for Payment.

VI. MAXIMUM COMPENSATION

Except as provided in section VII (F) below, the maximum total compensation to MUNICIPALITY from UCS for the services provided pursuant to this Agreement for any Period shall not exceed the amount approved for reimbursement as set forth in the Appendix B applicable to the Period.

VII. REIMBURSEMENT AND PAYMENT

A. On or before May 1 of the initial Period of this Agreement, MUNICIPALITY shall submit to UCS, on a form prescribed by UCS, a proposed itemized interim budget detailing the services to be provided pursuant to this Agreement and the projected costs MUNICIPALITY expects to incur in providing those services during the initial Period of this Agreement. UCS shall notify MUNICIPALITY, in writing, of the extent to which the proposed scope of services and projected costs detailed in such proposed itemized interim budget have been approved for reimbursement in accordance with Chapter 686 of the Laws of 1996 and Chapter 213 of the Laws of 1998 as soon thereafter as is practicable. Pursuant to Section I(C) above, the final approved scope of services and reimbursement amounts for the initial Period are appended to this Agreement as Appendix B.

B. On or before August 1 of the initial Period of this Agreement and each subsequent Period thereof, MUNICIPALITY shall submit to UCS, on a form prescribed by UCS, a proposed itemized budget detailing the services to be provided pursuant to this Agreement and the projected costs MUNICIPALITY expects to incur in providing those services during New York State fiscal year commencing April 1 next thereafter. MUNICIPALITY may include in such proposed itemized budget any unreimbursed balance remaining for services performed pursuant to Section III(C) above during the immediately preceding Period of this Agreement. UCS shall notify MUNICIPALITY, in writing, of the extent to which the proposed services and projected costs detailed in such proposed itemized budget have been approved for reimbursement in accordance with Chapter 686 of the Laws of 1996 and Chapter 213 of the Laws of 1998 for such next commencing fiscal year no later than the first day of March after the proposed itemized budget has been submitted, or as soon thereafter as is practicable. Pursuant to Section I(C) above, the final approved scope of services and reimbursement amounts shall be appended to this Agreement as Appendix B for the applicable Period.

C. During the term of this Agreement, MUNICIPALITY shall be reimbursed for the costs actually expended in the provision of services pursuant to this Agreement in accordance with and not exceeding the amounts set forth in the Appendix B applicable to the Period. Subject to subdivisions E and F below, reimbursement shall be made upon approval by UCS of a Claim for Payment submitted to UCS by MUNICIPALITY as described in subdivision D below, in a format approved by UCS and the Office of the State Comptroller.

D. No later than thirty (30) days after the end of every quarter during which this Agreement is in effect, MUNICIPALITY shall submit a Claim for Payment to UCS, showing the actual expenses incurred by MUNICIPALITY during the immediately preceding quarter and the amount of reimbursement claimed. Such Claim for Payment shall include the certification referred to in Section V above and a certification that MUNICIPALITY is in compliance with the Maintenance and Operations standards set forth in 22 NYCRR Parts 34.1 and 34.2. Upon receipt and approval of the Claim for Payment, UCS shall certify said Claim for Payment to the State Comptroller for payment of the amount of reimbursement approved by UCS for payment to MUNICIPALITY. Nothing contained herein shall increase the maximum amount payable to MUNICIPALITY as set forth in Section VI above and in the Appendix B applicable to the Period.

E. Notwithstanding any other provision of this Agreement, MUNICIPALITY shall not be reimbursed for the costs of any services performed pursuant to this Agreement under the following circumstances:

(1) UCS has performed an inspection of the COURT FACILITIES pursuant to Section IV above, and MUNICIPALITY has failed to correct a violation within twenty-four (24) hours after receiving written notice thereof or within such other amount of time as was mutually agreed upon, in writing, by the parties; or,

(2) The need for the services performed pursuant to this Agreement is due to MUNICIPALITY's failure to follow the Maintenance and Operation Standards for Court Facilities set forth in 22 NYCRR Parts 34.1 and 34.2, as determined by UCS; or,

(3) The services performed pursuant to this Agreement will be undertaken in lieu of replacement of a building system that, in accordance with MUNICIPALITY's normal and usual policies, procedures and practice, should be replaced; or

(4) Except as provided in subdivision F of this section, the services performed were not approved for reimbursement pursuant to subdivision A or B of this Section during the New York State fiscal year for which the Claim for Payment is submitted; or

(5) Pursuant to the New York State laws, rules and regulations to which MUNICIPALITY is subject, and to MUNICIPALITY's own normal and usual policies, procedures and practices, the services to be performed pursuant to this Agreement are being or could be bonded;

F. Notwithstanding that such cost was not approved in advance by UCS pursuant to subdivision A or B of this section, MUNICIPALITY may be reimbursed for the cost of services performed pursuant to Section III (C) of this Agreement up to the amount of \$15,000 during each Period of this Agreement.

MUNICIPALITY shall submit a request for reimbursement of the cost of such services on a standard Claim for Payment to UCS showing an itemized account of the services performed and the costs thereof. Upon receipt and approval of the Claim for Payment UCS shall certify said Claim for Payment to the State Comptroller for payment thereof to MUNICIPALITY.

VIII. AUDITING OF BOOKS

A. The Comptroller of the State of New York and UCS shall have the right to perform both pre and post-audits of the books of account of MUNICIPALITY with respect to the expenditures made or expenses incurred pursuant to this Agreement. Such books of account shall be open to inspection by the Comptroller of the State of New York and UCS at any mutually convenient time or times. Financial records of MUNICIPALITY pertaining to this Agreement shall be retained by MUNICIPALITY for a minimum of six (6) years after the expiration of this Agreement.

B. The UCS shall be entitled to recover any amounts paid to MUNICIPALITY, which are subsequently disallowed pursuant to a final audit.

IX. NOTICES

All notices to be given under this Agreement shall be made in writing and delivered either personally or by regular mail to MUNICIPALITY at its address as set forth herein and to UCS, attention:

Beth Diebel, District Executive
 Unified Court System
 Third District Administrative Office
 2500 Pond View, Suite 210
 Castleton-On-Hudson, New York 12033

or to such person or such address as each party may provide in writing from time to time. Any such notice shall be deemed to have been given when delivered, if by personal delivery, or when deposited with the US Postal Service, three (3) days after mailing.

X. MISCELLANEOUS PROVISIONS

A. Appendix A, containing standard terms for New York State contracts, is attached hereto and made a part hereof.

B. The terms and conditions of this Agreement, together with its appendices and any documents incorporated herein by reference, represent the full understanding of the parties with regard to the subject matter hereof. This Agreement may be amended only upon the mutual written agreement of the parties hereto. Any amendment is subject to the approval of OSC.

C. The headings used in this Agreement are for reference purposes only and shall in no way be deemed to define, limit or describe the scope or intent of this Agreement, or any provision thereof, or in any way affect this Agreement.

D. If any term or provision of this Agreement shall be found to be illegal or unenforceable, then that term or provision shall be deemed stricken and the remaining provisions of this Agreement shall remain in full force and effect.

E. This Agreement and the performance of the obligations of each party hereunder shall be governed by and construed in accordance with the laws rules and regulations of the State of New York.

F. No failure by UCS to insist upon the strict performance of any covenant, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial performance during the continuance of any such breach, shall constitute a waiver of any such breach or such covenant, term or condition. No covenant, term or condition of this Agreement to be performed or complied with by Contractor, and no breach thereof, shall be waived, altered, or modified except by a written instrument executed by UCS. No waiver of any breach shall affect or alter this Agreement but each and every covenant, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

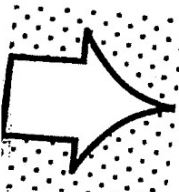
NYS Contract Number C300387

UCS Certification

UCS certifies that an original or photocopy of this signature page will be attached to every exact copy of this Agreement.

For: Municipality
County of Albany

For: NEW YORK STATE
UNIFIED COURT SYSTEM



Name: _____
Title: _____
Dated: _____

Maureen McAlary, Director
Division of Financial Management

Dated: _____

March, 2015

New York State Unified Court System
Appendix A
Standard Clauses for all 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 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, if this contract exceeds \$50,000.00, 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. 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. **WORKER'S 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-COLLUSIVE BIDDING REQUIREMENT.** 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 independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.
8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000.00, the Contractor agrees, as 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 or appeal (2 NYCRR 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. **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.
13. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
14. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law.
15. **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.
16. **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.
17. **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 §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.
18. **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.

Five Year Projection
 Court Facilities Contract
 County of Albany
 Contract UCS05-C300387-5000279

<u>Fiscal Year</u>	<u>Annual Contract</u>	<u>\$ Increase</u>	<u>% Increase *</u>
18-19	\$661,899	n/a	
19-20	\$694,994	\$33,095	5%
20-21	\$729,744	\$34,750	5%
21-22	\$766,231	\$36,487	5%
22-23	\$804,542	\$38,312	5%
Five Year -Total	\$3,657,410		

* Five percent (5%) annual increase attributable to inflation.

RESOLUTION NO. 453**AUTHORIZING AGREEMENTS WITH THE NEW YORK STATE UNIFIED COURT SYSTEM REGARDING CUSTODIAL AND BUILDING MAINTENANCE SERVICES FOR THE ALBANY COUNTY COURT HOUSE, JUDICIAL CENTER AND FAMILY COURT**

Introduced: 10/9/18

By Public Works Committee:

WHEREAS, The Department of General Services and the NYS Unified Court System have recommended to this Honorable Body that an agreement be entered into for custodial services, building maintenance and minor repairs to the Office of Court Administration offices located in the Albany County Court House, Judicial Center and Family Court, and

WHEREAS, It was indicated that the NYS Unified Court System will reimburse the County for said services in accordance with the terms included in the five-year agreement commencing April 1, 2018 and ending March 31, 2023 in an amount not to exceed \$3,657,410 which contains a provision for five (5) separate contracts for each year, now, therefore be it

RESOLVED, By the Albany County Legislature that the County Executive is authorized to enter into a five-year agreement (with a provision for five (5) separate one year contracts for each year of the agreement) with the NYS Unified Court System for the provision of the aforementioned custodial services, building maintenance and minor repairs at the aforementioned locations a term commencing April 1, 2018 and ending March 31, 2023 and, be it further

RESOLVED, That the County Executive is further authorized to enter into the first year of the aforementioned five-year agreement with NYS Unified Court System in the amount of \$661,899 for custodial services, building maintenance and minor repairs for a term commencing April 1, 2018 and ending March 31, 2019, and, be it further

RESOLVED, That the County Attorney is authorized to approve said agreements as to form and content, and, be it further

RESOLVED, That the Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials.

RESOLUTION NO. 526

AUTHORIZING AN AGREEMENT WITH THE NEW YORK STATE UNIFIED COURT SYSTEM REGARDING CUSTODIAL AND BUILDING MAINTENANCE SERVICES FOR THE ALBANY COUNTY COURT HOUSE, JUDICIAL CENTER AND FAMILY COURT

Introduced: 12/2/19

By Public Works Committee:

WHEREAS, By Resolution No. 453 for 2018, this Honorable Body authorized a five-year agreement with the NYS Unified Court System in the amount of \$3,657,410 for the provision of custodial services, building maintenance, and minor repairs at the Albany County Court House, Judicial Center and Family Court for a term commencing April 1, 2018 and ending March 31, 2023, with a provision for five (5) separate contracts for each year, and

WHEREAS, The Commissioner of the Department of General Services has indicated that New York State requires the County to authorize each individual year by resolution, and

WHEREAS, The Commissioner has requested authorization to execute the second year of the aforementioned agreement with the NYS Unified Court System for the provision of custodial services, building maintenance and minor repairs at the aforementioned locations in an amount not to exceed \$696,394 for a term commencing April 1, 2019 and ending March 31, 2020, now, therefore be it

RESOLVED, By the Albany County Legislature that the County Executive is authorized to enter into the second year of the aforementioned five-year agreement with NYS Unified Court System for the provision of custodial services, building maintenance and minor repairs at the aforementioned locations in an amount not to exceed \$696,394 for a term commencing April 1, 2019 and ending March 31, 2020, and, be it further

RESOLVED, That the County Attorney is authorized to approve said agreements as to form and content, and, be it further

RESOLVED, That the Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials.



DANIEL P. MCCOY
COUNTY EXECUTIVE

DANIEL C. LYNCH, ESQ.
DEPUTY COUNTY EXECUTIVE

COUNTY OF ALBANY
DEPARTMENT OF GENERAL SERVICES
112 STATE STREET, SUITE 825
ALBANY, NEW YORK 12207
(518) 447-7210 FAX (518) 447-7747
WWW.ALBANYCOUNTY.COM

DAVID M. LATINA
COMMISSIONER

MARTIN V. MCCLUNE
DEPUTY COMMISSIONER

December 17, 2020

Honorable Andrew Joyce, Chairman
Albany County Legislature
112 State Street, Room 710
Albany, New York 12207

Re: Contract Extension Authorization

Dear Chairman Joyce:

The Department of General Services requests authorization to proceed with the State's authorization of a one year extension of the New York State Office of Parks, Recreation and Historic Preservation grant awarded to Albany County and accepted pursuant to Resolution 58 of 2016 for the preservation of the historical buildings located at the Ann Lee Shaker site.

The term of this extension is December 10, 2020 through December 9, 2021. All provisions of the current OPRHP contract remain in effect through the term of the extension.

Currently we are in the process of obtaining final approval of the Construction Documents from OPRHP. Once received we should be in a good position to complete the project within the term of the extension.

If you should have any questions, please do not hesitate to contact me.

Sincerely yours,

David M. Latina
Commissioner

DML:tas
Enclosure(s)

cc: Honorable Dennis Feeney, Majority Leader
Honorable Frank Mauriello, Minority Leader
Arnis Zilgme, Minority Counsel
Rebekah Kennedy, Majority Counsel



County of Albany

Harold L. Joyce
Albany County Office
Building
112 State Street - Albany,
NY 12207

Legislation Text

File #: TMP-2208, **Version:** 1

REQUEST FOR LEGISLATIVE ACTION

Description (e.g., Contract Authorization for Information Services):

New York State Office of Parks, Recreation and Historic Preservation - Shaker Site Preservation Grant Extension

Date:	January 5, 2021
Submitted By:	David Latina
Department:	Department of General Services
Title:	Commissioner
Phone:	518-447-7210
Department Rep.	
Attending Meeting:	David Latina

Purpose of Request:

- ☐ Adopting of Local Law
- ☐ Amendment of Prior Legislation
- ☐ Approval/Adoption of Plan/Procedure
- ☐ Bond Approval
- ☐ Budget Amendment
- ☒ Contract Authorization
- ☐ Countywide Services
- ☐ Environmental Impact/SEQR
- ☐ Home Rule Request
- ☐ Property Conveyance
- ☐ Other: (state if not listed) Click or tap here to enter text.

CONCERNING BUDGET AMENDMENTS

Increase/decrease category (choose all that apply):

- ☐ Contractual
- ☐ Equipment
- ☐ Fringe
- ☐ Personnel

- ☐ Personnel Non-Individual
☐ Revenue

Increase Account/Line No.: Click or tap here to enter text.
Source of Funds: Click or tap here to enter text.
Title Change: Click or tap here to enter text.

CONCERNING CONTRACT AUTHORIZATIONS

Type of Contract:

- ☒ Change Order/Contract Amendment
☐ Purchase (Equipment/Supplies)
☐ Lease (Equipment/Supplies)
☐ Requirements
☐ Professional Services
☐ Education/Training
☐ Grant

Choose an item.

Submission Date Deadline Click or tap to enter a date.

- ☐ Settlement of a Claim
☐ Release of Liability
☐ Other: (state if not listed) Click or tap here to enter text.

Contract Terms/Conditions:

Party (Name/address):

NYS Office of Parks, Recreation and Historic Preservation
625 Broadway
Albany NY 12207

Additional Parties (Names/addresses):

Click or tap here to enter text.

Amount/Raise Schedule/Fee: \$500,000.00
Scope of Services: Preservation of Various Shaker buildings

Bond Res. No.: 551 of 2015
Date of Adoption: December 14, 2015

CONCERNING ALL REQUESTS

Mandated Program/Service: Yes ☐ No ☒
If Mandated Cite Authority: Click or tap here to enter text.

Is there a Fiscal Impact: Yes ☒ No ☐

Anticipated in Current Budget: Yes ☒ No ☐

County Budget Accounts:

Revenue Account and Line: Click or tap here to enter text.

Revenue Amount: Click or tap here to enter text.

Appropriation Account and Line: Click or tap here to enter text.

Appropriation Amount: Click or tap here to enter text.

Source of Funding - (Percentages)

Federal: Click or tap here to enter text.

State: 50%

County: 50%

Local: Click or tap here to enter text.

Term

Term: (Start and end date) December 10, 2020 - December 9, 2021

Length of Contract: 12 Months

Impact on Pending Litigation Yes ☐ No ☒

If yes, explain: Click or tap here to enter text.

Previous requests for Identical or Similar Action:

Resolution/Law Number: 58 of 2016

Date of Adoption: 2/9/2016

Justification: (state briefly why legislative action is requested)

The Department of General Services requests authorization to proceed with the State's authorization of a one year extension of the New York State Office of Parks, Recreation and Historic Preservation grant awarded to Albany County and accepted pursuant to Resolution 58 of 2016 for the preservation of the historical buildings located at the Ann Lee Shaker site.

The term of this extension is December 10, 2020 through December 9, 2021. All provisions of the current OPRHP contract remain in effect through the term of the extension.

Currently we are in the process of obtaining final approval of the Construction Documents from OPRHP. Once received we should be in a good position to complete the project within the term of the extension.

NYS GRANTS GATEWAY Schedule Report: Modification

Organization Legal Name: County of Albany
Contract #: PRK01-C617/20030-12900001 (Fixed Term Agreement)
Grant Opportunity Type: Non-Competitive

Period From: 12/10/2019 - 12/31/2021
Term Dates: 10/20/19 - 12/09/2021
USPS: No

Modification: 1	Current Status: Grantee Contract Signature Required	Remaining Schedule Days	48
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Modification Request:

Status	Role	Scheduled Days	Actual Days	Remaining Days
Modification Request (PM)	Program Manager	N/A	0	
Modification Request Review (PM)	Program Manager	N/A	13	
Modification Request Review (CM)	Contract Manager	N/A	0	
Subtotal		0	13	0

Contract Development:

Status	Role	Scheduled Days	Actual Days	Remaining Days
Contract Info Requested Modification (PM)	Grantee	10		
Program Manager Review Modification	Program Manager	10		
Contract Manager Review Modification	Contract Manager	10	1	9
Contract in Internal Review Modification	Contract Manager	10		
Subtotal		40	1	

Contract Approval:

Status	Role	Scheduled Days	Actual Days	Remaining Days
Grantee Contract Signature Required	Grantee Contract Signatory	5	55	-50
Contract Package Validation	Contract Manager	5		
Agency Signature Required	Agency Signatory	5		
Contract Manager Routing	Contract Manager	5		

Run date: 12/20/2020

Page 1 of 3

NYS GRANTS GATEWAY Schedule Report: Modification

Organization Legal Name: County of Albany
Contract #: PRK01-C5172d3G-1290000 (Fixed Term Agreement)
Grant Opportunity Type: Non-Competitive

Period: 12/01/2015 - 12/09/2021
Term Dates: 12/01/2015 - 12/09/2021
Offline No

Modification 1		Current Status: Grantee Contract Signature Required		Remaining Schedule Days	48
	AG Review and Approval	Attorney General Signatory	15		
	AG Not Approved As To Form	Contract Manager	3		
	Agency STS Determination	Fiscal Staff	3		
	Transmit Contract Package to OSC	Contract Manager	3		
	Offline OSC Review And/Or SFS Approval	Contract Manager	15		
	Offline OSC Contract Information Requested	Contract Manager	5		
			Subtotal	64	55
			Total Days	104	56

NYS GRANTS GATEWAY Schedule Report: Modification

Organization Legal Name: County of Albany
Contract #: PRK01-C817283G-1290000 (Fixed Term Agreement)
Grant Opportunity Type: IT ->Consultative

Period 1: 12/10/2015 - 12/09/2021
Term Date: 12/10/2015 - 12/09/2021
Office: No

Modification 1	Current Status: Grantee Contract Signature Required	Remaining Schedule Days	48
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Status History

Status	Date/Time
Modification Request (PM)	10/20/2020 01:12:30PM
Modification Request Submitted	10/20/2020 01:24:03PM
Modification Request Review (PM)	10/20/2020 01:24:03PM
Modification Request Review (CM)	11/02/2020 03:41:40PM
Modification Request Approved	11/02/2020 03:48:11PM
Contract Manager Review Modification	11/02/2020 03:48:12PM
Grantee Contract Signature Required	11/03/2020 07:50:47AM



NEW YORK STATE
OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION

ROSE HARVEY
Commissioner

ANDREW M. CUOMO
Governor

December 10, 2015

Mr. George Penn
Commissioner of Financial Services
County of Albany
112 State Street
Albany, NY 12207

Dear Commissioner Penn:

In 2011, Governor Cuomo launched the Regional Economic Development Councils and the Consolidated Funding Application (CFA) to provide each region with the tools to create and implement their own roadmap for economic prosperity and job creation. This community-based model uses local assets to drive local economic growth and has resulted in unprecedented partnerships and collaboration that are building a reinvigorated economy.

After four successful rounds, the 2015 CFA made \$750 million in economic development resources available from over thirty programs across thirteen state agencies. The agency programs provide resources for projects focused on community development and job creation, tourism, waterfront revitalization, energy and environmental improvements, sustainability, and low-cost financing.

The New York State Office of Parks, Recreation and Historic Preservation (OPRHP) is proud to have contributed \$16,000,000 to this year's Consolidated Funding Application. I am pleased to inform you that a matching grant of **\$500,000.00** has been reserved from the Environmental Protection Fund Municipal Grant program for the **Albany County Shaker Site**.

Our agency will contact you to clarify specifics about the project, including next steps, disbursement terms, minority- and women-owned business hiring goals, employment requirements, environmental and historic preservation review requirements, and other terms and conditions. I urge you to work closely with our program staff and not to begin work on your project until appropriate contract conditions have been satisfied.

If you applied for funding from other OPRHP programs or other State agencies, you will receive information from those programs/agencies separately.

We look forward to working in partnership with you to expeditiously advance your project.

Congratulations,

Rose Harvey
Commissioner

Albany, New York 12238
518-474-0443 • Fax: 518-474-1365

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RESOLUTION NO. 58

AUTHORIZING THE ACCEPTANCE OF GRANT FUNDING AND AN AGREEMENT REGARDING THE RENOVATION AND REHABILITATION OF THE SHAKER SITE BUILDINGS

Introduced: 2/9/16

By Audit and Finance Committee and Ms. McLean Lane:

WHEREAS, By Resolution No. 414 for 2010, this Honorable Body requested the County Executive to seek NYS Local Government Efficiency Grant opportunities that might potentially benefit Albany County, and

WHEREAS, The Commissioner of the Department of General Services has submitted a grant application to the NYS Regional Economic Development Council regarding the preservation of structures at the Shaker Site, and

WHEREAS, The Commissioner indicated that grant funding in the amount of \$500,000 has been awarded, and will be used to address repairs to remediate the structural deterioration and to insure the preservation of numerous buildings at the Shaker Site, now, therefore be it

RESOLVED, By the Albany County Legislature that the County Executive is authorized to enter into an agreement with the NYS Regional Economic Development Council regarding the administration of the NYS Local Government Efficiency grant in an amount not to exceed \$500,000, and, be it further

RESOLVED, That the County Attorney is authorized to approve said grant and agreement as to form and content, and, be it further

RESOLVED, That the Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials.

Adopted by unanimous vote. 2/9/16

CFA Guidance Document

Office of Parks, Recreation & Historic Preservation (OPRHP) Environmental Protection Fund Municipal Grant Program (Up to \$16 Million)

DESCRIPTION:

Title 9 NYCRR (sections 439.1 – 443.4) implements the Environmental Protection Fund (EPF) Act of 1993 (Title 9 of Article 54 of the Environmental Conservation Law), which created OPRHP's Municipal Grant Program.

Funding is available under the EPF Municipal Grant Program for the acquisition, planning, development, and improvement of parks, historic properties, and heritage areas located within the physical boundaries of the State of New York. Grants can fund up to 50% of total project cost, up to 75% if the project is located in a high-poverty district. Grant awards are capped at \$500,000.

ELIGIBLE TYPES OF APPLICANTS:

- Municipalities
- State Agencies
- Public Benefit Corporations
- Public Authorities
- Not-for-profit Corporations that have tax-exempt status under the IRS code, are current with pertinent federal and state filings and have pre-qualified in the Grants Gateway (see <http://www.grantsreform.ny.gov/Grantees>).

The applicant must have an ownership interest in the project property:

- Where the applicant is not the property owner:
 - If the project is for planning only, the application must include a statement from the owner acknowledging the application and granting the applicant any access necessary to complete the project.
 - If the project involves acquisition of the property, the application must include documentation of the owner's intent to sell, donate or transfer the property.
 - If the project involves improvement/development of the property, the owner must agree to sign the project agreement and any long term protection document.
- If there are additional parties with an ownership interest in the property, including lien holders, all parties must agree to sign the project agreement and all lien holders must subordinate their interests to those of the State.

ELIGIBLE ACTIVITIES / PROGRAM BENEFIT AND LONG TERM PROTECTION REQUIREMENTS: Funding under the EPF Municipal Grant program is available for the grant categories and project elements listed below. To ensure the public benefit from the investment of State funds, all grant awards under this program come with long term protections, either through parkland alienation law, conservation easements, or public access or preservation covenants recorded against the deeds.

- **Park Acquisition, Development and Planning Program** - for the acquisition, development and planning of parks and recreational facilities to preserve, rehabilitate or restore lands, waters or structures for park, recreation or conservation purposes and for structural assessments and/or

planning for such projects. Examples of eligible projects include: playgrounds, courts, rinks, community gardens, and facilities for swimming, boating, picnicking, hunting, fishing, camping or other recreational activities.

- Public access covenants will be conveyed to the State for all park development projects undertaken by not-for-profit corporations.
 - Conservation easements will be conveyed to the State for parkland acquisition projects undertaken by not-for-profit corporations.
 - Parkland acquired or improved by a municipality must remain parkland in perpetuity. Information is available in the "Handbook on the Alienation and Conversion of Municipal Parkland," available at <http://www.nysparks.com/publications/>.
- **Historic Property Acquisition, Preservation and Planning Program** - to improve, protect, preserve, rehabilitate, restore or acquire properties listed on the State or National Register of Historic Places and for structural assessments and/or planning for such projects. All work must conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties.
 - Properties not currently listed, but scheduled for nomination review at the State Board for Historic Preservation meeting of either June 11, 2015, or September 17, 2015, are eligible to apply for funding. Questions about or proposals for listing on the State or National Register should be directed to the OPRHP National Register Unit at (518) 237-8643.
 - Preservation covenants or conservation easements will be conveyed to the State (OPRHP) for all historic property grants.
 - Grant funds cannot be used for constructing contemporary additions on an historic property unless that work will provide universal access and/or eliminate code deficiencies for access/egress, such as an elevator or stair tower.
 - Multi-purpose additions to historic buildings and free-standing new construction on historic properties are not eligible for this grant program.
 - **Heritage Areas System Acquisition, Development and Planning Program** - for projects to acquire, preserve, rehabilitate or restore lands, waters or structures identified in the approved management plans for Heritage Areas designated under sections 35.03 and 35.05 of the Parks, Recreation and Historic Preservation Law, and for structural assessments or planning for such projects. The designated Heritage Areas with approved Management Plans are listed at <http://www.nysparks.com/grants/heritage-areas/default.aspx>, which also provides links to maps showing exact Heritage Area boundaries.
 - To ensure a public benefit from the investment of state funds, appropriate long-term protections in the form of public-access covenants, preservation covenants or conservation easements will be conveyed to the State (OPRHP) for all Heritage Areas System grants.

ALLOWABLE COSTS:

All expenditures under these grants must be for goods and services procured in a manner so as to assure the prudent and economical use of public money in the best interests of the taxpayers of the State of New York, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against nepotism, favoritism, improvidence, extravagance, fraud and corruption. Such procedures may include, but are not limited to, competitive bidding, the solicitation of three price quotes, written requests for proposals, etc.

Eligible budget items include:

Pre-Development Planning and Design

- **Design Fees** and other **Professional Fees** are allowed for the preparation of construction documents and to satisfy other pre-construction requirements. **Pre-development** costs must be incurred during the project term or in the three years prior to the application deadline. In general, pre-development costs **should not exceed fifteen percent (15%) of the construction costs**.
- **Archeology** includes field work, report writing, curation of artifacts and interpretation. If your project includes any ground-disturbing activity (e.g., trenching, grading, demolition, new construction, etc.), it is very likely that an archeological survey will be required unless you can provide adequate documentation of prior ground disturbance. Your budget should take into account the need for an archeological survey. Contact your regional grants administrator (RGA) to determine the need and anticipated costs for archeology.
- **Project planning** is eligible for stand-alone funding in all three grant categories. This funding is intended for project-specific planning, such as designs and specifications for rehabilitation of an historic property or structural assessment of a dock for public fishing, not for comprehensive Open Space or Management Plans.

Construction

- Include only the costs of permanent capital improvements to the property that are directly related to the recreational, conservation, historic preservation, and/or heritage development purposes of the grant program. The budget should be broken down by categories of expenditure, such as utilities/infrastructure, site preparation, landscaping, carpentry, etc.
- The budget may include purchase of permanent equipment necessary to achieve the project purposes (e.g., playground equipment, interpretive kiosks), but cannot include operational or maintenance equipment such as mowers or automotive equipment.
- The budget may include costs to undertake construction, such as rent/lease of heavy equipment, but cannot offset overhead and operating expenses, such as office rental.
- For historic preservation projects on sectarian properties, grant assistance can fund only costs necessary for historically accurate restoration to restore and preserve the historic integrity of the historic property, and only to the extent that those costs exceed the cost of basic restoration.

Acquisition

- The application must identify each parcel proposed for acquisition, the type of interest to be acquired (fee simple, lease, easement, etc.) and method of acquisition (purchase, donation or transfer from another use), number of acres and estimated fair market value of the parcel(s) documented by a written estimate of value (windshield appraisal) by a qualified appraiser. Acquisition costs must be incurred during the project term or up to one year prior to the application deadline.
- Associated acquisition costs, such as the cost of **appraisals, surveys, title search, legal fees, title insurance (required for this grant)** and, where a conservation easement is required, the cost of **title continuation and recordation** are eligible costs.

Administration

- **Construction Supervision** costs are those associated with the coordination, supervision and scheduling of work and may be provided by a qualified member of the applicant's staff, the design professional who prepared the construction documents, or a clerk of the works.
- **Grant Administration** costs include expenses associated with administering the grant after it is awarded, such as preparing the project agreement, affirmative action, MWBE, and payment request documentation. The cost of preparing this application is **NOT** eligible. In general, these costs **should not exceed ten percent (10%) of the grant amount.**
- **Procurement Costs** include costs for assuring competitive pricing, such as costs for distributing Requests for Proposals and for public advertising for bids, including the cost of advertising in specialty publications, such as minority newspapers and appropriate construction publications.
- **Audit:** Upon completion of the project, an accounting of expenditures and revenues is required. Based on the grant award and complexity of the project, this will be in the form of either an agreed upon procedure review performed by a Certified Public Accountant, or an expense summary audit. Prior to final reimbursement, the audit must be submitted to and approved by OPRHP.
- **Project Sign:** All grant-funded projects must have a project sign noting the funding assistance. Signs are available for purchase through the State for approximately \$57.

INELIGIBLE COSTS:

- Work completed prior to award is not eligible for reimbursement or for match. There are two exceptions:
 - Professional services and materials purchased or donated, but not installed, up to three years prior to the application deadline may be applied toward the matching share.
 - Acquisition costs retroactive no more than one year prior to the application deadline are eligible costs.
- Contingencies, training, travel, OJT wages, working capital, marketing, taxes, interest, purchase of operational or maintenance equipment, salaries and wages, rent/lease are ineligible unless noted otherwise above.

MATCHING SHARE (APPLICANT SHARE) REQUIREMENTS

This grant program is administered on a reimbursement basis. Successful applicants will be expected to fund project expenditures upfront, then submit for reimbursement. Applicants must plan their financial arrangements accordingly.

Successful applicants are reimbursed for up to 50 percent of their eligible expenditures. For projects located in impoverished areas (as defined by 10 percent or more of the population below the poverty level according to most recent Census data), the reimbursement can be up to 75 percent of the eligible project cost. All applicants are expected to raise their share within one year of the award, or risk cancellation of the grant. Principal types of applicant share are:

- **Cash:** Includes grants other than this grant request.
- **Force Account (Payroll of applicant):** Itemize according to job title or job assignment (on project). At the time of the reimbursement request, grant recipients will be required to document time worked, tasks, pay ratio and payment (including components and percentage of fringe benefit rate).

- **Professional Services:** The value of services provided by professional and technical personnel and consultants. Three-year retroactivity applies.
- **Supplies and Materials:** The current market value of items warehoused (not yet installed). Three-year retroactivity applies; use value current at time items were obtained.
- **Volunteer Labor:** Skilled and professional labor can be computed at the job rate. The value for labor (unskilled labor and work performed by professionals or skilled laborers in an area outside of their area of expertise) of an adult (18 and over) donating time to a project may be computed up to the amount identified as the Value of Volunteer Time for New York State at http://www.independentsector.org/volunteer_time. (For example, a lawyer donating legal services may compute the value based on the standard billing rate, but the value for the same lawyer donating time painting walls will be computed up to the amount identified as the Value of Volunteer Time for New York State).
- **Equipment Usage:** Compute the value according to its fair market rental value in project location.
- **Real Property:** The value of all property acquired, donated or converted from other purposes should be included in the project schedule. One year retroactivity applies to all three categories. For real property owned by the applicant and converted from other purposes, the value of such property may be included under the EPF budget, provided it has not been previously designated as parkland or otherwise used for purposes related to this project.

PRE-APPLICATION REQUIREMENTS:

The following documentation will be required with the application; applications lacking these attachments (or an acceptable explanation) will be deemed incomplete. Depending upon the particular circumstances of your project, other attachments may be required. Still other attachments, while not required, may be essential to support rating points. All documents should be current to this grant cycle. See the **ADDITIONAL RESOURCES** section at the end of this document, and the Attachment Checklist at <http://www.nysparks.com/grants/consolidated-funding-app.aspx>, for additional guidance on required documents as well as supporting documentation that is requested but not required.

For All Applicants:

- **State Environmental Quality Review Act (SEQR) compliance documentation:** Not-for-profits must fill out the Environmental Review Form (EMB Form for NFP Grants) available at <http://www.nysparks.com/grants/consolidated-funding-app.aspx>. Municipalities must document or describe where they are in the SEQR process.
- **Photos** showing the project area
- **1:24,000 scale topographic or planimetric map** with the subject property circled
- **Schematic Site Plan**

For Not-for-Profit Applicants:

Documentation of Registration and Pre-Qualification with the Grants Gateway, to include: **Document Vault Identifier** (i.e., GDV-XXXXX-XXXX) and the **State Pre-qualification Application Status Report**. Information on this process is available at <http://www.grantsreform.ny.gov/Grantees>.

For Not-for-Profit Applicants applying for a Park or Trail project under the Parks Program:

A **resolution of municipal endorsement**, passed by the governing body of the municipality in which the project is located, which stipulates the approval/endorsement of the application. See

a sample of an acceptable resolution of municipal endorsement at <http://www.nysparks.com/grants/consolidated-funding-app.aspx>.

For Heritage Area Applicants:

Written approval/endorsement of the project by the local heritage area management entity, if it is not the project sponsor, is required with the application. See a list of approved Heritage Areas at <http://www.nysparks.com/grants/heritage-areas/default.aspx>.

For Partner Groups of State Parks or Historic Sites:

Letter(s) of support from the Regional Director AND Capital Facilities Manager.

For Applications including Acquisition (purchase, donation or transfer from another use):

- Evidence of the owner's intent to sell, donate or transfer the property.
- A written estimate of fair market value (windshield appraisal/market valuation) for each parcel that will be acquired or used as match as part of the proposal.

For Stand-alone Planning Applications where the Applicant does not own the Property:

For applications including ONLY planning activities, where the applicant does not have any ownership interest in the property, the applicant must provide a statement from the owner acknowledging the application and granting the applicant any access necessary to complete the project.

SUCCESSFUL APPLICANT REQUIREMENTS:

Successful applicants are advised NOT to begin work until a project contract has been fully executed. Proceeding without advance OPRHP approval will jeopardize grant reimbursement. Certain conditions of award must be met to the satisfaction of OPRHP before a contract can be executed with the applicant/grantee. These will include:

- submission of a signed authorizing resolution that names the contact for the grant and authorizes that contact to enter into and execute a contract with the State
- registration in the Grants Gateway
- for not-for-profit grantees:
 - maintenance of pre-qualification status in the Grants Gateway
 - documentation of coverage or exemption for Workers' Compensation and Disability Insurance
 - being current with pertinent filings under Section 501 of the United States Internal Revenue Code and the following New York State Laws, as applicable: Article 7-A of the Executive Law; Section 8-1.4 of the Estates, Powers and Trusts Law; Section 1508 of the Not-for-Profit Corporation Law; or Section 215 of the Education Law
 - documentation of current Vendor Responsibility Questionnaire
- evidence of ownership interest, for development projects, including:
 - property deed and affidavit of title or opinion of municipal counsel
 - if the grantee does not own the property in fee, documentation of the ownership interest, such as a lease, management agreement, or memorandum of agreement
- for projects located on land under the jurisdiction of the Canal Corporation, all necessary approvals of the Canal Corporation
- environmental and historic preservation reviews (including archeological review).

Grant contracts will require that prior to commencement of project work, certain procedures must be followed and documentation provided and approved by OPRHP including:

- For any project involving ground disturbance (trenching, grading, demolition, new construction, etc.), prior ground disturbance documentation or an archeological investigation will be required.*
- Acquisition projects require certification of clear title by the Office of the Attorney General. In order to facilitate that review, the following is required:
 - A detailed (self-contained) appraisal for each parcel to be acquired; two appraisal reports for any parcel valued at \$300,000 or more.* (Appraisal standards can be found at: <http://www.nysparks.com/grants/forms-resources.aspx>.)
 - Title insurance.*
- Any permits required from agencies such as the NYS Department of Environmental Conservation (DEC) or the US Army Corps of Engineers (COE) must be filed with the State before construction begins.
- OPRHP must accept/approve plans and specifications, bidding documents, competitive bidding, and solicitation of Minority and Women-owned Business Enterprises (MWBES), etc.

*These costs should be included in the project budget. The State will share in these expenses.

Project costs will be eligible for reimbursement only if grant work meets State standards and the expenditures are made in compliance with State requirements, including:

- Pursuant to Article 15A of the Executive Law, Minority and Women-owned Business Enterprises/Equal Employment Opportunity, grant recipients will be required to solicit MWBEs before commencing work and to document efforts involving MWBEs during the project term.
- Municipalities must comply with General Municipal Law Sections 103 (competitive bidding) and 104-b (procurement policies and procedures). Not-for-profit corporations must follow procurement policies that ensure prudent and economical use of public money.
- All reimbursements for historic preservation projects must be satisfactorily documented so that the State Historic Preservation Office can ensure work was done in conformance with the Secretary of the Interior Standards.

Failure to comply with these requirements could jeopardize full reimbursement.

OPRHP staff will conduct periodic inspections, including a final inspection of the project and may conduct post completion inspections as warranted to ensure the public benefit is maintained.

FUNDING PRIORITIES: Priority projects are those that clearly demonstrate and document:

- Impact – For park projects, the importance of the project to the community in terms of economic stimulus, impetus to community renewal, revenue generation, visual appeal, health and vitality of the community, and community involvement and support of the project. For historic preservation, the extent to which the project will contribute to preservation of a historically significant property. For Heritage Areas, the extent to which the project will contribute to the local Heritage Area. For all projects, the advancement of New York Rising or the Opportunity Agendas of the Regional Economic Development Councils.
- Community support and consistency with state/region/community plans, including and especially the Statewide Comprehensive Outdoor Recreation Plan (SCORP).

- Sound administrative infrastructure/reasonableness of costs, including demonstration of project planning, administrative structures and a budget that reflects fiscal prudence and readiness to proceed.
- The Commissioner's priorities for the grant program:
 - Projects that include "green" improvements that restore, improve and maintain park lands, historic properties and heritage area resources and infrastructure, and in doing so promote sustainability, increase energy conservation and/or efficiency, install renewable energy sources, and decrease long term maintenance and management costs.
 - Projects that include "climate protection" improvements incorporating cost-effective, park-compatible principles that protect park lands, infrastructure, historic properties or heritage-area resources from climate change or storm-related impacts creating a more resilient and sustainable function. Preference may be given to concepts that utilize natural or soft buffering and protections over hardened solutions.
 - Projects that enhance the public's access to parks and their environmental and recreational resources (including landscape and trail improvements to facilitate connections and special features or signage to improve programming and interpretation), create physical and functional connections among, or provide or enhance public access to, already-protected state and local lands, historic sites, greenways, trails and waterways to bring visitors back.
 - Projects that are undertaken by partner groups in State Parks and Historic Sites.

SELECTION CRITERIA: Each application will be reviewed for eligibility and, if determined eligible, will be rated according to the Grant Selection Criteria. Applications will be evaluated to assess the degree to which they meet the elements of each criterion below. A successful grant proposal is not expected to meet all of these criteria. Within each region, applications are ranked according to project category, competing only against others in their region and category. The Grant Selection Criteria are:

I. Poverty Level (0-5) Points are predetermined, based on project location. See the Poverty Table at <http://nysparks.com/grants/consolidated-funding-app.aspx> (also determines eligibility for 75% funding).

II. Resource Impact (up to 25 points)

For Parks Projects:

A1. Community Impact (0-9) Points are based on the importance of the project to the community (physical or social) in terms of economic stimulus, impetus to community renewal, revenue generation, visual appeal (downtown anchor) or provide health and vitality to the community. If not funded, how would this impact the community?

A2. Local Commitment and Need (0-14) Points are based on community involvement in the concept of the project, as evidenced by documentation of public meetings, involvement of a recreation committee, friends group or community interest group, etc. Consider additional points if the project meets the needs for an aging population, encourages participation by youth and teens, responds to population and social changes in the community, and/or provides new access and/or ensures open and reasonable access to a property. Evidence of need can include documentation of: number of similar facilities in the service area; level of use of existing facility

and anticipated level of use of proposed facility; condition of facilities; emergencies, mandates or development pressure.

A3. Advancement of New York Rising or the Opportunity Agendas of the Regional Economic Development Councils (0-2)

For Historic Preservation Projects:

B1. Level of Significance (0-9) Points are awarded based on the level and area(s) of significance recorded for the property in the State/National Register nomination (or in the National Historic Landmark documentation), and consideration of the significance of the specific feature(s) of the property to be addressed in the proposed project (e.g., a primary contributing resource versus a secondary contributing resource).

B2. Severity/Immediacy of Threat (0-14) Points are awarded based on the type (e.g., deterioration, damage, demolition, inappropriate development), extent (e.g., isolated, wide-spread, accelerated), severity, immediacy, and degree (e.g., recent, on-going, imminent) of threat to the property from negligence, development pressure, inappropriate treatment, etc.

B3. Advancement of New York Rising or the Opportunity Agendas of the Regional Economic Development Councils (0-2)

For Heritage Area Projects:

C1. Addresses current Heritage Area programs (0-9) Points are awarded based on how well the project fits into current programs/projects/plans of the Heritage Area, as documented by the applicant, the Heritage Area director, and other community sources. At minimum, the project should be consistent with the Heritage Area Management Plan; at maximum, the project would be essential to the success of the Heritage Area's highest priority programs.

C2. Addresses Heritage Area goals (0-14) At a minimum a HAS project will address one of the HA goals (preservation/conservation, education/interpretation, recreation, and economic revitalization), but a typical HAS project addresses two or more. Therefore, points should reflect both the number of goals met and how well they are met.

C3. Advancement of New York Rising or the Opportunity Agendas of the Regional Economic Development Councils (0-2)

For Acquisition Projects:

D1. Environmental and Recreational Contribution (0-9) Protection of watershed, aquifer, animal or plant species, significant natural communities, or other natural and cultural resources, wetlands, shorelines, unique areas biodiversity, wildlife habitats, forested wildlife, flood plains, corridors. Provide access to water or public fishing rights, trails or greenways, increased land for active recreation in existing or new parklands, buffer/protection to a listed historic resource, property that serves or benefits Heritage Area System visitors and users, a recognized brownfield site for park development.

D2. Surrounding Area Contribution and Impact and Protection of Historic Resources (0-14) Consolidate public ownership by eliminating gaps in ownership between two or more parcels of public land, proximity to urban areas, providing a linkage between parks, trails or designated

open space, economic stimulus or community renewal, local revenue generation, visual appeal (downtown anchor) or impetus to community health and vitality, diversity of population served. Significance of resource (national; state or local, contributing element in a district), preserves significant view shed, contributes to existing preservation efforts or established Heritage Area System goals, heritage tourism, or economic development initiative, working landscape, scenic easement, contributes to the economic vitality of the area (i.e., façade easements), provides for the long term preservation of the resource, immediate threat of a listed property.

D3. Advancement of New York Rising or the Opportunity Agendas of the Regional Economic Development Councils (0-2)

III. Planning Initiatives (up to 10 points)

For Parks Projects:

A1. Statewide Index of Need (0-5): (points are predetermined by SCORP)

A2. Consistent with Plans (0-5): In determining whether the project relates or contributes to documented plans, examine documents cited and submitted, such as:

- NYS Open Space Conservation Plan as a priority project
- Heritage Area Management Plan
- Local Waterfront Revitalization Program (LWRP)
- Recognized local Open Space Plan
- Community participation in the Certified Local Government Program (CLG)
- Other state or federal plans
- Local plans adopted or reaffirmed within the last 5 years
- Project implements a prior Planning grant

For Historic Preservation and Heritage Area Projects:

B1/C1. Community Support: In determining whether the project demonstrates community support, examine evidence submitted regarding community support and involvement, including efforts to publicize and/or engage the community in project planning, such as:

- letters of support, especially those from people directly impacted by the project
- official project endorsements/partnerships
- press releases/announcements/publicity
- plans for public outreach or fundraising campaign
- news articles
- records of public meetings (including project-specific meetings (such as press event), official government reviews (e.g., Community Board, Planning Board, etc.) and presentations to a group such as a neighborhood association or interest group

B2/C2. Consistent with Plans: In determining whether the project relates or contributes to documented plans, examine documents cited and submitted, such as:

- New York State Historic Preservation Plan
- Other state/federal/local plans, such as Heritage Area Management Plan, LWRP, Preserve America designation, Path Through History, etc.
- Community comprehensive or master plans
- Local historic preservation ordinance/designations

- Community participation in the CLG program
- Project implements a prior Planning grant

For Acquisition Projects:

D1. Community Support: Demonstration of local participation in and commitment to the project, such as:

- Clear consensus by the local community showing a need to purchase and finance
- Evidence the project is supported by local elected officials and community groups, such as Land Trusts, environmental councils, preservation boards, friends groups, local activists
- Documentation of meetings and involvement (e.g., newspaper articles, meeting notes, letters of support)

D2. Consistent with Plans: In determining whether the project relates or contributes to documented plans, examine documents cited and submitted, such as:

- NYS Open Space Conservation Plan as a priority project
- New York State Historic Preservation Plan
- Heritage Area Management Plan
- LWRP
- Recognized local Open Space Plan
- Community participation in the CLG program
- Other state/federal/local plans, such as Preserve America designation, Path Through History, etc.
- Local plans adopted or reaffirmed within the last 5 years
- Project implements a prior Planning grant

IV. Reasonableness of Cost (0-20) Project planning, administrative structures and budget demonstrate fiscal prudence and readiness to proceed. Is there a logical justification for all expenses? Does the budget narrative include an explanation for each budget line and clearly support the applicant's need for additional financial resources to achieve project outcomes? Does the budget include the required matching funds? Does the proposal describe how the grant recipient will monitor expenditures during the life of the project to ensure that the project stays on schedule and within budget?

A. Budget

- Budget in the application is complete, detailed, computed correctly and contains no extraneous or ineligible expenses.
- The budget is based on a cost estimate from a reliable source.
- Matching funds are on hand and/or application evidences a reasonable expectation that matching funds will be available as and when needed.

B. Readiness

- Necessary project planning and document preparation has been completed.
- Qualified project professionals, properly procured/hired, are on hand.
- Proposed project/work is appropriate and conforms to accepted professional standards.
- Application evidences viable strategy and resources for implementing/operating and maintaining the project in the future.

C. Feasibility

- Administrative structures are in place to handle grants.
- Applicant has proven experience in projects of similar scale and/or scope.
- Timeframe presented in application is reasonable to accomplish all aspects of the work and grant administration (including any necessary fundraising).

V. OPRHP Commissioner Priorities (0-10)

A. Green improvements – that restore, improve and maintain park lands, historic properties and heritage area resources and infrastructure, and in doing so promote sustainability, increase energy conservation and/or efficiency, install renewable energy sources, and decrease long term maintenance and management costs.

B. Climate Protection - incorporating cost-effective, park-compatible principles that protect park lands, infrastructure, historic properties or heritage-area resources from climate change or storm-related impacts creating a more resilient and sustainable function. Preference may be given to concepts that utilize natural or soft buffering and protections over hardened solutions.

C. Enhanced access, connections, resources – that enhance the public's access to parks and their environmental and recreational resources (including landscape and trail improvements to facilitate connections and special features or signage to improve programming and interpretation), create physical and functional connections among, or provide or enhance public access to, already-protected state and local lands, historic sites, greenways, trails and waterways to bring visitors back.

D. Partners to State Parks – projects undertaken by partner groups in State Parks and Historic Sites. Letter(s) from the Regional Director and Capital Facilities Manager must be submitted with the application.

VI. Regional Economic Development Council Assessment (0-20)

VII. Statewide Assessment "Commissioner Points" (0-10)

A. Geographic Distribution. Consideration may be given to projects in areas that have or have not received funding in recent cycles or where funding is not commensurate with the population of the area. This will be based on the proximity to other funded sites and the diversity of projects being funded on a regional and local basis, as well as the service area of the developed or planned facilities.

B. Maximize Use and Accessibility. Consideration may be given to projects where funding will allow underutilized facilities to be accessed or to develop underutilized resources for public use. This will be based on the resources offered by the facility, the use of those resources and whether the proposed project will help the facility expand and enhance its public use.

C. Special Engineering, Environmental, Preservation Benefits. Consideration may be given to develop particularly significant resources and facilities or to develop innovative approaches to preserve valuable resources. This will be based on the type of resource being developed or rehabilitated; its rarity on a local, regional, statewide and national basis; the ability of an innovative technology to address an emergency or mitigate future problems; how well a

technology can be "exported" for use on other properties and resources; and how/if the project will allow public access that would not otherwise be available.

D. Past Performance. Consideration may be given to how timely an applicant completed previous projects, including its reporting requirements; how successful it was in outreach, especially to minority- and woman-owned businesses; the ongoing upkeep and maintenance of the property; and its cooperation in allowing OPRHP to complete inspections and other follow-up activities.

TOTAL (0-100)

VIII. Project in a Hudson River Greenway Compact Community (5 percent bonus)

Award points if the proposed project is located in a Hudson River Valley Greenway Compact Community, and the application documents that the project is consistent with the Greenway criteria of natural and cultural resource protection, regional planning, economic development, heritage and environmental education, and/or public access to the Hudson River (for information, go to:

http://www.hudsongreenway.ny.gov/Planning/Greenway_Compact.aspx or the Greenway map at http://www.hudsongreenway.ny.gov/Libraries/PDF_s/Greenway_Map_01-15-2014_1.sflb.ashx).

AWARD CRITERIA DETAILS

- **ELIGIBLE AREA, CITY, COUNTY, POPULATION LIMITS, OR POPULATION TARGET TYPES:** \$7.875 million of the \$15.75 million appropriation must be awarded to projects located in Inner City/Underserved areas. {Note: \$900,000 of the appropriated amount is directed to specific line items, leaving \$14,850,000 available for the competitive award program.}
- **LIMITATIONS:** While applicants may apply for more than one grant category funded under OPRHP's EPF Program, no project will receive more than one grant award in any funding year. There is no statutory limit on the number of grants one property or one applicant may receive, but in the interest of equity and fairness and in consideration of applicant capacity, applicants that have three or more open grants with OPRHP should not receive additional awards. There is an administrative cap of \$500,000 for 2015-2016 awards. Should project costs increase post award, the grant award will not be adjusted upward.
- **LONG RANGE GOALS:** Special consideration should be given to projects that are referenced in the Statewide Comprehensive Outdoor Recreation Plan (SCORP) or included in other state and local planning initiatives.
- **PROJECT TERM COMPLETION DATES:** Once all conditions of award are met (see SUCCESSFUL APPLICANT REQUIREMENTS above) and a contract is executed, it is anticipated that acquisition and planning projects will be completed within one year and construction projects within two years; all projects must be completed within five years from the date of the award of the grant. OPRHP will monitor the progress of project work and will recapture awarded funds if significant progress is not made.

ADDITIONAL RESOURCES:

Go to <http://www.nysparks.com/grants/consolidated-funding-app.aspx> to view forms and resources containing additional instructions concerning attachments to the application. For more information,

contact the NYS Office of Parks, Recreation and Historic Preservation (OPRHP) Regional Grants Administrator for your county (see list below).

Western New York Region

Noelle Kardos
Beaver Island State Park
2136 West Oakfield
Grand Island, NY 14072
(716) 773-5292, FAX (716) 773-4150
COUNTIES: Allegany, Cattaraugus, Chautauqua,
Erie and Niagara

Finger Lakes Region

Tom Livak
Allegany State Park
ASP Rte 1, Salamanca, NY 14779
(716) 354-9101, FAX (716) 354-2255
COUNTIES: Genesee, Livingston, Monroe, Ontario,
Orleans, Seneca, Wayne, Wyoming and Yates

Long Island Region

Traci Christian
Belmont Lake State Park
PO Box 247
Babylon, NY 11702
(631) 321-3543, FAX (631) 321-3721
COUNTIES: Nassau and Suffolk

New York City Region

Merrill Hesch
NYS OPRHP
Adam Clayton Powell, Jr. State Office Building
163 West 125th Street, 17th Floor
New York, NY 10027
(212) 866-2599, FAX (212) 866-3186
COUNTIES: Bronx, Kings, New York, Queens and
Richmond

Capital Region

Danielle Dwyer
Saratoga Spa State Park
19 Roosevelt Drive
Saratoga Springs, NY 12866-6214
(518) 584-2000, FAX (518) 584-5694
COUNTIES: Albany, Columbia, Greene,
Rensselaer, Saratoga, Schenectady, Warren and
Washington

Central New York Region

Jean Egenhofer
Clark Reservation State Park
6105 East Seneca Turnpike
Jamesville, NY 13078-9516
(315) 492-1756, FAX (315) 492-3277
COUNTIES: Cayuga, Cortland, Madison, Onondaga
and Oswego

Mohawk Valley Region

Jean Egenhofer
Clark Reservation State Park
6105 East Seneca Turnpike
Jamesville, NY 13078-9516
(315) 492-1756, FAX (315) 492-3277
COUNTIES: Fulton, Herkimer, Montgomery, Oneida,
Otsego and Schoharie

Southern Tier Region

Laurie Moore
2221 Taughannock Park Road
Trumansburg, NY 14886
(607) 387-7041, FAX (607) 387-3390
COUNTIES: Broome, Chemung, Chenango,
Delaware, Schuyler, Steuben, Tioga and Tompkins

Mid-Hudson Region

Erin O'Neil
NYS OPRHP
Taconic Regional Office
9 Old Post Road
Staatsburg, NY 12580
(845) 889-3866, FAX (845) 889-8321
COUNTIES: Dutchess, Orange, Putnam, Rockland,
Sullivan, Ulster and Westchester

North Country Region

Sunshine Jenkins
Keewaydin State Park
Alexandria Bay, NY 13607
(315) 482-2593, FAX (315) 482-9413
COUNTIES: Clinton, Essex, Franklin, Hamilton,
Jefferson, Lewis, and St. Lawrence

Attachments listed in the **PRE-APPLICATION REQUIREMENTS** section of the guidance document are required of every application as indicated. Following is additional guidance on required attachments. All documents should be current to this grant cycle.

State Environmental Quality Review Act Compliance (SEQR)

NOT-FOR-PROFIT CORPORATIONS: Complete the Environmental Review Form (EMB Form for NFP Grants) available online at <http://www.nysparks.com/grants/consolidated-funding-app.aspx>. Also include with your application clear drawings, maps, or plans of existing and proposed natural and man-made conditions on the site and the areas immediately adjacent to the site.

MUNICIPALITIES: The municipality will be SEQR lead agency if OPRHP is the only other agency involved, or will be responsible for initiating lead agency designation procedures if there are other involved agencies (e.g., the Department of Environmental Conservation (DEC) via a required permit). The lead agency is required to classify projects under SEQR as follows:

If your project is Type II, it is not subject to SEQR. If this is the case, provide a statement as to the classification of your project and the reason. If any permits are required, list them in your statement. If your project is subject to SEQR, consult SEQR regulations to determine if it is classified Unlisted or Type I. If it is Unlisted, submit a completed Short Environmental Assessment Form (EAF) (Parts I-III). If the project is classified Type I, submit a completed Full Environmental Assessment Form and either a negative declaration or a Final Environmental Impact Statement (FEIS) and SEQR Findings. If the project's impacts have been previously reviewed under SEQR, supporting documentation must be submitted (e.g., FEIS and SEQR Findings Statement).

Photos

Provide images (scanned photographs or born-digital; photocopies are not acceptable substitutes) showing the overall project area and documenting existing conditions. Include photos of any structures more than 50 years old within, or immediately adjacent to, the project area. Provide views to these features from the project site, as well as views of the project site from them. Key all images to a schematic site plan (see below).

Schematic Site Plan

Provide a document that connects the narrative, photos, budget, and for a historic property the work detail, together pictorially.

For parks, a site plan that identifies the boundary of the park that is the subject of the application as well as how it relates to the surrounding areas (properties adjoining the site, roadways, water bodies, public access), what facilities are currently existing on proposed site (arrows or legend to indicate type - baseball fields, playgrounds, pavilions, parking areas, public access to the site, links to surrounding areas via trails, etc. and location of those facilities within the park), and what facilities are being proposed (type and location); these would then be linked to photos showing the subject area and surrounding areas, the narrative describing the work being contemplated, and the budget showing estimated costs.

With historic properties, two dimensional plans or elevations which identify the areas of the structure or site with the conditions as they currently exist that are the subject of the application (i.e., arrows to mortar joints, cracks, bricks); these would have a legend or some other way to link back to photos which show the areas of concern, the narrative and work detail which describe both existing conditions and

the proposed work to correct issues, and the budget showing the estimated costs to accomplish the work.

Map

Submit a 1:24,000 scale USGS or DOT planimetric map with the subject property circled. An 8½" x 11" section, copy, or printout is acceptable, so long as it shows at least 1:24,000 scale and is clearly marked as to scale and source, including Quad Name and/or Code. Go to the NYS GIS Clearinghouse <http://gis.ny.gov/gisdata/quads/> for downloadable, printable maps.

Local, State and Federal Planning Documents

Provide clearly marked excerpts in support of the project narrative AND either a copy of the resolution adopting or reaffirming the local plan within the last five years OR if the project is not specifically identified in a formally adopted plan, provide written documentation clearly identifying community involvement (e.g., an official resolution by the governing body of the applicant, approving and/or endorsing the project and affirming public and community support for it, evidence of public participation, public outreach plan, press releases/announcements, public meetings, events, fundraising campaign plans). Provide copies of official project endorsements, partnerships and letters of support.

Stand-Alone Planning Grants

For planning budgets involving just the preparation of plans and specifications, provide at least two professional estimates for construction costs or submitted construction bids to justify the proposed consultant costs. For other planning projects (condition studies, etc.), submit justification for consultant costs.

SUPPORTING DOCUMENTATION:

Depending upon the particular circumstances of your project, other attachments may be required. Still other attachments, while not required, may be essential to support rating points. All documents should be current to this grant cycle. See below for a list of supporting documentation.

- Evidence of local historic preservation or landmark designation
- Clearly marked excerpts from federal, statewide, regional or local planning documents
- Written documentation clearly identifying community involvement, including resolution that local plan was adopted or reaffirmed within the last 5 years, if in a formally adopted plan
- Documentation from State agencies regarding remediated brownfields, protected species, habitats, etc.
- Documentation of pre-construction planning, procurement of services, consultant qualifications, etc.
- Ground disturbance documentation
- All official project endorsements, partnerships and letters of support
- For stand-alone planning projects, submit justification of budget estimate

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

STATE AGENCY (Name & Address): Office of Parks Recreation & Historic Preservation 625 Broadway Albany, NY 12207	BUSINESS UNIT/DEPT. ID: PRK01 CONTRACT NUMBER: PRK01-C51726GG-1290000 CONTRACT TYPE: ☐ Multi-Year Agreement ☐ Simplified Renewal Agreement ☒ Fixed Term Agreement
CONTRACTOR SFS PAYEE NAME: ALBANY COUNTY OF	TRANSACTION TYPE: ☒ New ☐ Renewal ☐ Amendment
CONTRACTOR DOS INCORPORATED NAME: County of Albany	PROJECT NAME: Albany County Shaker Site Building Restorations-Project #151726-HP Dev
CONTRACTOR IDENTIFICATION NUMBERS: NYS Vendor ID Number: 1000002428 Federal Tax ID Number: 146002563 DUNS Number (if applicable): 060536653	AGENCY IDENTIFIER: CFDA NUMBER (Federally Funded Grants Only):
CONTRACTOR PRIMARY MAILING ADDRESS: 112 STATE ST RM 930 ALBANY, NY 12207 CONTRACTOR PAYMENT ADDRESS: ☒ Check if same as primary mailing address CONTRACT MAILING ADDRESS: ☒ Check if same as primary mailing address	CONTRACTOR STATUS: ☐ For Profit ☒ Municipality, Code: 010100000000 ☐ Tribal Nation ☐ Individual ☐ Not-for-Profit Charities Registration Number: Exemption State/Code: ☐ Sectarian Entity

Contract Number: # PRK01-C51726GG-1290000

Page 1 of 3

Master Grant Contract, Face Page

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

CURRENT CONTRACT TERM:

From: 12/10/2015 To: 12/09/2020

CURRENT CONTRACT PERIOD:

From: 12/10/2015 To: 12/09/2020

AMENDED TERM:

From: To:

AMENDED PERIOD:

From: To:

CONTRACT FUNDING AMOUNT

(Multi-year - enter total projected amount of the contract;
Fixed Term/Simplified Renewal - enter current period
amount):

CURRENT: \$500,000.00

AMENDED:

FUNDING SOURCE(S)

- ☒ State
☐ Federal
☐ Other

FOR MULTI-YEAR AGREEMENTS ONLY - CONTRACT AND FUNDING AMOUNT:

(Out years represents projected funding amounts)

#	CURRENT PERIOD	CURRENT AMOUNT	AMENDED PERIOD	AMENDED AMOUNT
1				
2				
3				
4				
5				

Contract Number: # PRK01-C51726GG-1290000

ATTACHMENTS PART OF THIS AGREEMENT:

Attachment A: ☒ A-1 Program Specific Terms and Conditions
☐ A-2 Federally Funded Grants

Attachment B: ☐ B-1 Expenditure Based Budget
☐ B-2 Performance Based Budget
☒ B-3 Capital Budget
☐ B-4 Net Deficit Budget
☐ B-1 (A) Expenditure Based Budget (Amendment)
☐ B-2 (A) Performance Based Budget (Amendment)
☐ B-3 (A) Capital Budget (Amendment)
☐ B-4 (A) Net Deficit Budget (Amendment)

Attachment C: Work Plan

Attachment D: Payment and Reporting Schedule

Other:

Contract Number: # PRK01-C51726GG-1290000

IN WITNESS THEREOF, the parties hereto have electronically executed or approved this Master Contract on the dates below their signature.

In addition, I, acting in the capacity as Contractor, certify that I am the signing authority, or have been delegated or designated formally as the signing authority by the appropriate authority or officials, and as such I do agree, and I have the authority to agree, to all of the terms and conditions set forth in the Master Contract, including all appendices and attachments. I understand that (i) payment of a claim on this Master Contract is conditioned upon the Contractor's compliance with all applicable conditions of participation in this program and (if I am acting in the capacity as a not-for profit Contractor) the accuracy and completeness of information submitted to the State of New York through the Gateway vendor prequalification process and (ii) by electronically indicating my acceptance of the terms and conditions of the Master Contract, I certify that (a) to the extent that the Contractor is required to register and/or file reports with the Office of Attorney General's Charities Bureau ("Charities Bureau"), the Contractor's registration is current, all applicable reports have been filed, and the Contractor has no outstanding requests from the Charities Bureau relating to its filings and (b) all data and responses in the application submitted by the Contractor are true, complete and accurate. I also understand that use of my assigned User ID and Password on the State's contract management system is equivalent to having placed my signature on the Master Contract and that I am responsible for any activity attributable to the use of my User ID and Password. Additionally, any information entered will be considered to have been entered and provided at my direction. I further certify and agree that the Contractor agrees to waive any claim that this electronic record or signature is inadmissible in court, notwithstanding the choice of law provisions.

CONTRACTOR:

ALBANY COUNTY OF

By: Philip Calderone

Printed Name

Title: Deputy County Executive

Date: 02/21/2018

In addition, the party below certifies that it has verified the electronic signature of the Contractor to this Master Contract.

STATE AGENCY:

Office of Parks Recreation & Historic Preservation

By: Dorothy Lechmanski

Printed Name

Title: Director of Financial Administration

Date: 02/22/2018

ATTORNEY GENERAL'S SIGNATURE
APPROVED AS TO FORM

By: Benjamin Maggi

Printed Name

Title: Assistant Attorney General

Date: 02/22/2018

STATE COMPTROLLER'S SIGNATURE

By: Carmen Story

Printed Name

Title: Contract Management Specialist 2

Date: 03/06/2018

Contract Number: # PRK01-C51726GG-1290000

Page 1 of 1, Master Contract for Grants Signature Page

**STATE OF NEW YORK
MASTER CONTRACT FOR GRANTS**

This State of New York Master Contract for Grants (Master Contract) is hereby made by and between the State of New York acting by and through the applicable State Agency (State) and the public or private entity (Contractor) identified on the face page hereof (Face Page).

WITNESSETH:

WHEREAS, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

WHEREAS, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Master Contract;

NOW THEREFORE, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree as follows:

STANDARD TERMS AND CONDITIONS

I. GENERAL PROVISIONS

A. Executory Clause: In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Master Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Master Contract.

B. Required Approvals: In accordance with Section 112 of the State Finance Law (or, if the Master Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Master Contract exceeds \$50,000 (or \$85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Master Contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the AG and OSC.

Budget Changes: An amendment that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the AG and OSC where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than

five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment D (Payment and Reporting Schedule).

C. Order of Precedence:

In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as follows:

1. Standard Terms and Conditions
2. Modifications to the Face Page
3. Modifications to Attachment A-2¹, Attachment B, Attachment C and Attachment D
4. The Face Page
5. Attachment A-2², Attachment B, Attachment C and Attachment D
6. Modification to Attachment A-1
7. Attachment A-1
8. Other attachments, including, but not limited to, the request for proposal or program application

D. Funding: Funding for the term of the Master Contract shall not exceed the amount specified as “Contract Funding Amount” on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Master Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

E. Contract Performance: The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Master Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Master Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program.

F. Modifications: To modify the Attachments or Face Page, the parties mutually agree to record, in writing, the terms of such modification and to revise or complete the Face Page and all the appropriate attachments in conjunction therewith. In addition, to the extent that such modification meets the criteria set forth in Section I.B herein, it shall be subject to the approval of the AG and

¹ To the extent that the modifications to Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the modifications to Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

² To the extent that the terms of Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the Federal requirements of Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V). Contract Number: # PRK01-C51726GG-1290000

OSC before it shall become valid, effective and binding upon the State. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Master Contract.

G. Governing Law: The Master Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

H. Severability: Any provision of the Master Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Master Contract shall attempt in good faith to reform the Master Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

I. Interpretation: The headings in the Master Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Master Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

J. Notice:

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:
 - a) by certified or registered United States mail, return receipt requested;
 - b) by facsimile transmission;
 - c) by personal delivery;
 - d) by expedited delivery service; or
 - e) by e-mail.
2. Notices to the State shall be addressed to the Program Office designated in Attachment A-1 (Program Specific Terms and Conditions).
3. Notices to the Contractor shall be addressed to the Contractor's designee as designated in Attachment A-1 (Program Specific Terms and Conditions).
4. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery 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 e-mail, upon receipt.
5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the

Master Contract by giving fifteen (15) calendar days prior written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

K. Service of Process: In addition to the methods of service allowed by the State Civil Practice Law & Rules (CPLR), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. The Contractor shall have thirty (30) calendar days after service hereunder is complete in which to respond.

L. Set-Off Rights: The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold, for the purposes of set-off, any moneys due to the Contractor under the Master Contract up to any amounts due and owing to the State with regard to the Master Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Master 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 OSC.

M. Indemnification: The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Master Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Master Contract.

N. Non-Assignment Clause: In accordance with Section 138 of the State Finance Law, the Master Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the State's previous written consent, and attempts to do so shall be considered to be null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract, let pursuant to Article XI of the State Finance Law, may be waived at the discretion of the State Agency and with the concurrence of OSC, where the original contract was subject to OSC's approval, where the assignment is due to a reorganization, merger, or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that the merged contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless the Master Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

O. Legal Action: No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Master Contract. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from

any of the State of New York, the State Agency, or any county, or other local government entity. The term “regulatory action” shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

P. No Arbitration: Disputes involving the Master 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.

Q. Secular Purpose: Services performed pursuant to the Master Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

R. Partisan Political Activity and Lobbying: Funds provided pursuant to the Master Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

S. Reciprocity and Sanctions Provisions: The Contractor is hereby notified that if its principal place of business is located in a country, nation, province, state, or political subdivision that penalizes New York State vendors, and if the goods or services it offers shall be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that it be denied contracts which it would otherwise obtain.³

T. Reporting Fraud and Abuse: Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the Federal False Claims Act, the New York State False Claims Act, and whistleblower protections.

U. Non-Collusive Bidding: By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor’s behalf.

V. Federally Funded Grants and Requirements Mandated by Federal Laws: All of the Specific Federal requirements that are applicable to the Master Contract are identified in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto. To the extent that the Master Contract is funded in whole or part with Federal funds or mandated by Federal laws, (i) the provisions of the Master Contract that conflict with Federal rules, Federal regulations, or Federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable Federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto.

³As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

II. TERM, TERMINATION AND SUSPENSION

A. Term: The term of the Master Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

B. Renewal:

1. General Renewal: The Master Contract may consist of successive periods on the same terms and conditions, as specified within the Master Contract (a “Simplified Renewal Contract”). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Master Contract.

2. Renewal Notice to Not-for-Profit Contractors:

a) Pursuant to State Finance Law §179-t, if the Master Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State’s intent to renew or not to renew the Master Contract no later than ninety (90) calendar days prior to the end of the term of the Master Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State’s intent to renew or not to renew the Master Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Master Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State (“Unusual Circumstances”), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, “Unusual Circumstances” shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

b) Notification to the not-for-profit Contractor of the State’s intent to not renew the Master Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Master Contract as required in this Section and State Finance Law §179-t, the Master Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Master Contract.

C. Termination:

1. Grounds:

- a) Mutual Consent: The Master Contract may be terminated at any time upon mutual written consent of the State and the Contractor.
- b) Cause: The State may terminate the Master Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Master Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Master Contract.
- c) Non-Responsibility: In accordance with the provisions of Sections IV(N)(6) and (7) herein, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Master Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.
- d) Convenience: The State may terminate the Master Contract in its sole discretion upon thirty (30) calendar days prior written notice.
- e) Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Master Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Master Contract, the Master Contract may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Master Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Master Contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.
- f) Force Majeure: The State may terminate or suspend its performance under the Master Contract immediately upon the occurrence of a "force majeure." For purposes of the Master Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

2. Notice of Termination:

- a) Service of notice: Written notice of termination shall be sent by:
 - (i) personal messenger service; or
 - (ii) certified mail, return receipt requested and first class mail.

b) Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:

(i) if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or

(ii) if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

3. Effect of Notice and Termination on State's Payment Obligations:

a) Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.

b) The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Master Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Master Contract after its termination date.

4. Effect of Termination Based on Misuse or Conversion of State or Federal Property:

Where the Master Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Master Contract for the purposes set forth herein, the State may, at its option, require:

a) the repayment to the State of any monies previously paid to the Contractor; or

b) the return of any real property or equipment purchased under the terms of the Master Contract; or

c) an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

D. Suspension: The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time as the State issues a formal written notice authorizing a resumption of performance under the Master Contract.

III. PAYMENT AND REPORTING

A. Terms and Conditions:

1. In full consideration of contract services to be performed, the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.
2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Master Contract shall not be reimbursed.
3. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Attachment D (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.
4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of the State Agency, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments.
5. If travel expenses are an approved expenditure under the Master Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.
6. Timeliness of advance payments or other claims for reimbursement, and any interest to be paid to Contractor for late payment, shall be governed by Article 11-A of the State Finance Law to the extent required by law.
7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, "Full Execution" shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

B. Advance Payment and Recoupment:

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Attachment D (Payment and Reporting Schedule).
2. Initial advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page. Subsequent advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the dates specified in Attachment D (Payment and Reporting Schedule).
3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Attachment D) will be modified as part of the renewal process.
4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Attachment D (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.
5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.

C. Claims for Reimbursement:

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Master Contract in accordance with this Section and the applicable claiming schedule in Attachment D (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Attachment B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:

a) Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

b) Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

c) Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

d) Milestone/Performance Reimbursement:⁴ Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event.

Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Attachment D (Payment and Reporting Schedule). The State Agency shall make milestone payments subject to the Contractor's satisfactory performance.

e) Fee for Service Reimbursement:⁵ Payment shall be limited to only those fees specifically agreed upon in the Master Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f) Rate Based Reimbursement:⁶ Payment shall be limited to rate(s) established in the Master Contract. Payment may be requested no more frequently than monthly.

g) Scheduled Reimbursement:⁷ The State Agency shall generate vouchers at the frequencies and amounts as set forth in Attachment D (Payment and Reporting Schedule), and service reports shall be used to determine funding levels appropriate to the next annual contract period.

⁴ A milestone/ performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Master Contract effort.

⁵ Fee for Service is a rate established by the Contractor for a service or services rendered.

⁶ Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.

⁷ Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Master Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

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- h) Interim Reimbursement: The State Agency shall generate vouchers on an interim basis and at the amounts requested by the Contractor as set forth in Attachment D (Payment and Reporting Schedule).
- i) Fifth Quarter Payments:⁸ Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall use a written directive for fifth quarter financing. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.
3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.
4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Master Contract as security for the faithful completion of services or work, as applicable, under the Master Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Master Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.
5. The State shall not be liable for payments on the Master Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.
6. All vouchers submitted by the Contractor pursuant to the Master Contract shall be submitted to the State Agency no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency to the Contractor shall not exceed the amount of actual expenditures.
7. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Master Contract is funded, in whole or in part, with Federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures.

D. Identifying Information and Privacy Notification:

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property, must include the Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number,

⁸ Fifth Quarter Payments occurs where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract.

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(ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.

2. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. The personal information is requested by the purchasing unit of the State Agency contracting to purchase the goods or services or lease the real or personal property covered by the Master Contract. This information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York, 12236.

E. Refunds:

1. In the event that the Contractor must make a refund to the State for Master Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in Attachment A-1 (Program Specific Terms and Conditions). The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Refund Office at the address specified in Attachment A-1 (Program Specific Terms and Conditions).

2. If at the end or termination of the Master Contract, there remains any unexpended balance of the monies advanced under the Master Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Master Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

F. Outstanding Amounts Owed to the State: Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Master Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

G. Program and Fiscal Reporting Requirements:

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Attachment D (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Master Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.

2. Consistent with the selected reporting options in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:

a) If the Expenditure Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with one or more of the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

- (i) *Narrative/Qualitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Attachment C (Work Plan). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.
- (ii) *Statistical/Quantitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)
- (iii) *Expenditure Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.
- (iv) *Final Report*: The Contractor shall submit a final report as required by the Master Contract, not later than the time period listed in Attachment D (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Attachment C (Work Plan).
- (v) *Consolidated Fiscal Report (CFR)*: The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Attachment D (Payment and Reporting Schedule).

b) If the Performance-Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

- (i) *Progress Report*: The Contractor shall provide the State Agency with a written progress report using the forms and formats as provided by the State Agency, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Attachment C (Work Plan). Progress reports shall be submitted in a format prescribed in the Master Contract.

- (ii) *Final Progress Report*: Final scheduled payment is due during the time period set forth in Attachment D (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Attachment D (Payment and Reporting Schedule). The State Agency shall complete its audit and notify the Contractor of the results no later than the date set forth in Attachment D (Payment and Reporting Schedule). Payment shall be adjusted by the State Agency to reflect only those services/expenditures that were made in accordance with the Master Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Attachment D (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.

3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Attachment D (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Master Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Attachment D (Payment and Reporting Schedule).

H. Notification of Significant Occurrences:

1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to the State Agency within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.
2. The Contractor shall immediately notify in writing the program manager assigned to the Master Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Master Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

A. Contractor as an Independent Contractor/Employees:

1. The State and the Contractor agree that the Contractor is an independent contractor, and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. Notwithstanding the foregoing, the State and the Contractor agree that if the Contractor is a New York State municipality, the Contractor shall be permitted to hold itself out, and claim, to be a subdivision of the State.

The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Master Contract, and all applicable Federal and State laws and regulations.

2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Master Contract and/or any subcontract entered into under the Master Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Master Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Master Contract, Contractor shall immediately notify the State.

B. Subcontractors:

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Master Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Master Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.

2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of \$100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of \$100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Master Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the subcontract, nor under the Master Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.

3. If requested by the State, prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.

4. If requested by the State, when a subcontract equals or exceeds \$100,000, the subcontractor shall submit a Vendor Responsibility Questionnaire (Questionnaire).

5. If requested by the State, upon the execution of a subcontract, the Contractor shall provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.

6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting

Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

C. Use Of Material, Equipment, Or Personnel:

1. The Contractor shall not use materials, equipment, or personnel paid for under the Master Contract for any activity other than those provided for under the Master Contract, except with the State's prior written permission.
2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Master Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Master Contract.

D. Property:

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.
 - a) If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.
 - b) If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Master Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Master Contract.
 - c) In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.
 - d) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Master Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to the State Agency, naming the State Agency as an additional insured, covering the loss, theft or destruction of such equipment.
 - e) A rental charge to the Master Contract for a piece of Property owned by the Contractor shall not be allowed.
 - f) The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Master Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any

Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.

g) No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Master Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.

2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Master Contract:

a) For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.

b) For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.

3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Master Contract shall be governed by the terms and conditions of Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.

5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

E. Records and Audits:

1. General:

a) The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Master Contract (collectively, Records).

b) The Contractor agrees to produce and retain for the balance of the term of the Master Contract, and for a period of six years from the later of the date of (i) the Master Contract and (ii) the most recent renewal of the Master Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Master Contract. Such Records may include, but not be limited to, original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

(i) personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders,

detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(ii) payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(iii) non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.

(iv) receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.

c) The OSC, AG and any other person or entity authorized to conduct an examination, as well as the State Agency or State Agencies involved in the Master Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

d) The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records, as exempt under Section 87 of the Public Officers Law, is reasonable.

e) Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

2. Cost Allocation:

a) For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of OMB Circulars A-87, A-122, and/or A-21. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.

b) For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

3. Federal Funds: For records and audit provisions governing Federal funds, please see Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

F. Confidentiality: The Contractor agrees that it shall use and maintain personally identifiable information relating to individuals who may receive services, and their families pursuant to the Master Contract, or any other information, data or records marked as, or reasonably deemed, confidential by the State (Confidential Information) only for the limited purposes of the Master Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

G. Publicity:

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.

2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Master Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:

a) Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and

b) State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.

3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Master Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Master Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) day period in which to review each manuscript for compliance with Confidential Information requirements; or (ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section IV(G)(2) (Publicity) hereof.

H. Web-Based Applications-Accessibility: Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Master Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility

Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by the State Agency and the results of such testing must be satisfactory to the State Agency before web content shall be considered a qualified deliverable under the Master Contract or procurement.

I. Non-Discrimination Requirements: Pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that the Master Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Master Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Master Contract. The Contractor shall be subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises: In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Master Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting State Agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State Agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting State Agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;

2. The Contractor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts;
3. The Contractor shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
4. At the request of the State, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative shall not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and
5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of subclauses 1 – 5 of this Section (IV)(J), in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Master Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law and if such duplication or conflict exists, the State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

K. Omnibus Procurement Act of 1992: It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises, as bidders, subcontractors and suppliers on its procurement contracts.

1. If the total dollar amount of the Master Contract is greater than \$1 million, the Omnibus Procurement Act of 1992 requires that by signing the Master Contract, the Contractor certifies the following:
 - a) The Contractor has made reasonable efforts to encourage the participation of State business enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

c) The Contractor agrees to make reasonable efforts to provide notification to State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of the Master Contract and agrees to cooperate with the State in these efforts.

L. Workers' Compensation Benefits:

1. In accordance with Section 142 of the State Finance Law, the Master Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of the Master Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

M. Unemployment Insurance Compliance: The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to the State Agency staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;
2. any debts owed for UI contributions, interest, and/or penalties;
3. the history and results of any audit or investigation; and
4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Master Contract.

N. Vendor Responsibility:

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may

obtain a paper form from the OSC prior to execution of the Master Contract. The Contractor further covenants and represents that as of the date of execution of the Master Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.

2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.

3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.

4. The State reserves the right, in its sole discretion, at any time during the term of the Master Contract:

- a) to require updates or clarifications to the Questionnaire upon written request;
- b) to inquire about information included in or required information omitted from the Questionnaire;
- c) to require the Contractor to provide such information to the State within a reasonable timeframe; and
- d) to require as a condition precedent to entering into the Master Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and
- e) to require the Contractor to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. By signing the Master Contract, the Contractor agrees to comply with any such additional conditions that have been made a part of the Master Contract.

5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Master Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Master Contract.

6. The State, in its sole discretion, reserves the right to make a final Determination of Non-Responsibility at any time during the term of the Master Contract based on:

- a) any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or
- b) the State's discovery of any material information which pertains to the Contractor's responsibility.

7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non- responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

O. Charities Registration: If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish the State Agency with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Master Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Master Contract.

P. Consultant Disclosure Law:⁹ If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services, then in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

Q. Wage and Hours Provisions: If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

⁹ Not applicable to not-for-profit entities.

ATTACHMENT A-1
PROGRAM SPECIFIC TERMS AND CONDITIONS ENVIRONMENTAL
PROTECTION FUND

I. Agency Specific Terms and Conditions

- A.** The **Program Office, Designated Payment Office and Designated Refund Office** shall be the STATE AGENCY identified on the face page. Document submission and inquiries should be directed to the Regional Grant Administrator for the Contractor's county of operations.
- B.** For purposes of notice, the **Contractor's designee** shall be the CONTRACTOR DOS INCORPORATED NAME at the CONTRACTOR PRIMARY MAILING ADDRESS, as identified on the face page.
- C.** **Payment** shall be made to CONTRACTOR SFS PAYEE NAME at the CONTRACTOR PAYMENT ADDRESS identified on the Face Page.
- D.** **Special Conditions and Requirements** specific to the project, including the timeline for submission of required documents and reports, are contained in Attachment C (Work Plan)
- E.** **Changes to Budget and Program Work Plan.** Changes shall not be made in the work described in Attachment C (Work Plan) or the proposed expenditure of funds as shown in Attachment B-3 (Budget), without the prior written approval of the State. Such approval will be granted if the changes are not substantive and do not alter the scope, intent or basic elements of the contract. Changes in the Work Plan or Budget that are substantive or alter the scope, intent or basic elements of the contract, if agreed to by the State, will be implemented by an amendment that may require approval and filing with the New York Attorney General Contract Approval Unit (AG) and the Office of the State Comptroller (OSC or State Comptroller), per Section I(B) of this Master Contract.
- F. Procurement.** All goods and services required for this project must be procured in a manner so as to assure the prudent and economical use of grant moneys, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against nepotism, favoritism, improvidence, extravagance, fraud and corruption.
 - 1. If the Contractor is subject to General Municipal Law, documentation of the Contractor's compliance with the procurement and bidding requirements of General Municipal Law shall be included with the applicable request for reimbursement.
 - 2. If the total amount of the goods or services is less than the dollar threshold for competitive bidding, or if the Contractor is not subject to General Municipal Law, the Contractor must follow procurement procedures designed to achieve the purpose of this clause. Such procedures may include, but are not limited to, competitive bidding, the solicitation of three price quotes, written requests for proposals, etc. When submitting a request for reimbursement, the Contractor must include a copy of the organizational procurement policy applicable to the relevant expenditures and/or documentation of the specific procurement process used for those expenditures.
- G.** The Contractor and all users of this contract are strongly encouraged, to the maximum extent practicable and consistent with legal requirements, to use responsible and responsive **New York State businesses** as subcontractors, suppliers, and in other supporting roles. The Contractor will be required to identify and describe New York State businesses used and the value of subcontracts and supply contracts.

H. New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) Participation. Providing equal employment opportunities for minority group members and women (EEO) and contracting opportunities for certified minority and women- owned business enterprises (MWBEs) are a priority of the State of New York. In addition to the requirements set forth in Section IV(J) of this Master Contract, outreach to New York State certified MWBE firms and demonstration of “good faith efforts” shall be required under this Master Contract.

1. For purposes of this Master Contract, MWBE shall mean any business certified as a minority- or women-owned business enterprise pursuant to section 314 of the Executive Law. Information about the certification program and a directory of MWBEs are available at

ESD Division of MWBD
Albany, NY 12245
(518) 292-5250
<https://ny.newnycontracts.com/>

2. The Contractor shall submit, and shall require subcontractors to submit, reports showing the participation of all business enterprises on this contract, including minority and women- owned business enterprises, on forms and at intervals to be established by the State. Reports not submitted at such times as shall be required by the State shall be cause for the State to delay implementing scheduled payments to the Contractor.
3. The State has established a goal for MWBE participation of MBE 13% and WBE 17%.
4. The MWBE Participation goal assignment applies to projects with NYS Grant Awards (State Funds) in excess of \$100,000. Grant awards of \$100,000 or less are subject to good faith efforts for all discretionary purchases.
5. The Contractor is expected to make good faith efforts to achieve MWBE participation. Failure to achieve MWBE participation goals and/or to demonstrate sufficient effort to achieve MWBE participation goals may be grounds for termination of this Master Contract.
6. If any federal funds are involved in the project, the applicable federal program for contracting with small and minority firms, women’s business enterprise and labor surplus area firms and/or federal Disadvantaged Business Enterprises (DBEs) will supersede the state MWBE program outlined above.

I. Non-Discrimination:

1. If the project involves development or acquisition of public facilities, the Contractor shall not limit access or discriminate in the operation of the facilities on the basis of place of residence, race, creed, color, national origin, sex, age, disability or marital status.
2. The Contractor agrees to comply with all applicable Federal, State, and local Civil Rights and Human Rights laws with reference to equal employment opportunities and the provisions of service.

J. Termination. In addition to the options available to the State in the Master Contract, in the event the Contractor fails to comply with its terms and conditions regarding completion of the project, the State at its option may require the Contractor to bring the project to a point of educational/interpretive, historical, recreational or conservation usefulness as determined by the State.

- K. Documents submitted to the State may be subject to disclosure under the Freedom of Information Law.**
- L. Non-Sectarian Purposes.** The Contractor agrees that funds made available as shown in Attachment B-3 will only be used to achieve the intended public benefit and will not be used for any sectarian purposes.
- M. 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).
- N. 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 State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the State.
- In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime contractor for the project will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive..
- O. 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.
- P. 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.
- Q. 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.

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

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 this contract, should the State receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the State 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 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 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.

II. Program Specific Terms and Conditions

- A.** Funding for this project is provided pursuant to the terms of the **Environmental Protection Act**, Title 9 of Article 54 of the Environmental Conservation Law, and governed by the Rules and Regulations set forth in 9 NYCRR Sections 439-443.
- B. Retroactive funding.** Notwithstanding the provisions of Section III(A)(2) of this Master Contract, program regulations set forth in 9 NYCRR 440.5 (Project sponsor's match) permit retroactive reimbursement of certain expenses, when those expenses are included in the project Budget.
- C.** Notwithstanding the provisions of Section III(C)(4) of this Master Contract, the State will **withhold ten percent (10%)** of the Contract Funding Amount identified on the face page of this Master Contract as security until all terms and conditions of this Master Contract have been satisfied by the Contractor to the satisfaction of the State.
- D. Project Sign.** **At the commencement of the work described in the Work Plan, the Contractor shall erect a sign at the project site noting the State's assistance to the project. The project sign specifications and term length for this requirement are set forth in Attachment C (Work Plan).**
- E. Public Benefit Requirements.**

- 1. In order to ensure a public benefit accrues from an acquisition, development or construction

project that is being funded the Contractor shall:

- a) Afford the public reasonable access to or use of the project as specified by the State;
- b) Not impose a fee for use of or access to the project without the prior written approval of the State;
- c) Own or hold by lease or maintain and operate the project as specified by the State;
- d) Not allow operation of the project, or any portion thereof, by any other person, entity, or organization pursuant to any management agreement, license or other arrangement without first obtaining the written approval of the State;
- e) Not alter, demolish, sell, lease or otherwise convey the project, in whole or in part, or permit a change in use of the project, without the prior written approval of the State; and
- f) Submit all plans in writing for restoration, rehabilitation, improvement, demolition or other physical change to the completed project for State approval before work commences.

2. Other public benefit requirements specific to this project, including the term length of any property restriction (e.g., preservation covenant or public access covenant) and the legal mechanism for enforcing the restriction as specified by the State are set forth in Attachment C.

3. Parkland acquired or improved by a municipality shall not be sold, leased, exchanged or otherwise disposed of (collectively, "disposed of") or converted to other than public park purposes without the express authority of an act of the Legislature, which shall provide for the substitution of other land of equal fair market value and reasonably equivalent usefulness and location to that being disposed of or converted, and such other additional requirements as shall be required by the State.

4. Land acquired for recreation or conservation purposes by a not-for-profit organization shall be subject to a conservation easement (see, Title 3 of Article 49 of the Environmental Conservation Law) to be held by the State. Parkland shall not be disposed of by the not-for-profit organization except to the State, a local government unit or another qualifying tax exempt not-for-profit organization that shall be required to use it for recreation or conservation purposes. Disposal to any other entity of parkland acquired for recreation or conservation purposes by a not-for-profit corporation shall require the express authority of an act of the Legislature.

F. It is the Contractor's responsibility, pursuant to Sections 57 and 220(8) of the Workers' Compensation Law, to maintain for State audit and review either proof that they have **Workers' Compensation and Disability Benefits Insurance** coverage for any employees, or proof of exemption from the New York State Workers' Compensation Board. The Contractor must also obtain from any contractor or subcontractor hired to provide a service pursuant to this Master Contract, similar proof or waivers from the contractor or subcontractor, and must maintain such documentation on file for audit.

G. **Archeology.** In the event of any unanticipated archeological discoveries, the Contractor shall stop all work and notify the State immediately. Work shall not resume until the State determines how any previously undiscovered archeological remains will be treated. Special attention shall be given to any discovery of burials, graves, or human remains.

H. Preservation of Historic Properties. It is the public policy and in the public interest of the State to preserve New York's historical, archeological, architectural and cultural heritage. All activities under this Master Contract shall be reviewed under either Section 106 of the National Historic Preservation Act or Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law to ensure that adverse effects or impacts on significant properties are avoided or mitigated. Any work that affects historic properties shall conform to *The Secretary of the Interior's Standards for the Treatment of Historic Properties 1995*, *The Secretary of the Interior's Standards and Guidelines for Archeological Documentation* or any other applicable *Secretary of the Interior's Standards* (collectively referenced as *STANDARDS*), which are available from the State.

I. Planning Requirements.

1. All planning documents, plans and specifications must be accepted by the State before the Contractor awards contracts for the project or the subject property. These must be prepared by a qualified professional accepted by the State.
2. Any documents developed under this Master Contract shall include recognition of funding through the Environmental Protection Fund from the Office of Parks, Recreation and Historic Preservation.

J. Construction Requirements. If the Project described in this Master Contract includes construction, the following shall apply:

1. Contract plans, specifications, and cost estimates shall be submitted to the State for review prior to the letting of any construction contract by the Contractor. The State shall verify that the plans, specifications and cost estimates are in conformance with the work described in Attachment B-3 and shall so notify the Contractor in writing; the State shall further verify that appropriate documents have been prepared by a professional licensed to practice in the State of New York. All plans and specifications as reviewed shall become part of this Master Contract, and no change or revision may be made to such plans and specifications without the express written consent of the State.
2. The Contractor shall be responsible for assuring that the project is designed and constructed in conformance with the Uniform Federal Accessibility Standards (UFAS -- Appendix A to 41 CFR part 101- 19.6), the Americans with Disabilities Act Accessibility Guidelines (ADAAG -- Appendix A to 28 CFR part 36) and the New York State Uniform Fire Prevention and Building (I)(Code (parts 1219-1228 of Title 19 NYCRR). Where there are discrepancies among the sets of standards with regard to a particular design/construction requirement, the one providing for the greatest degree of accommodation for the disabled shall apply.
3. It is the Contractor's responsibility to assure that all work on the project complies with the State Environmental Quality Review Act, receives all required permits in advance, and complies with all applicable Federal, State and/or local laws including, but not limited to, zoning ordinances and building codes.

K. Post-Completion Requirements. Following completion of the project, the Contractor shall be responsible for maintaining project records. Where the project involves acquisition of equipment or acquisition of or improvement of real property, the Contractor shall be responsible for maintaining and operating the equipment, property, and/or improvements; providing public access; maintaining public signage related to the project; and seeking any required State approvals. The State shall have the right and responsibility to audit records and inspect the project and property for compliance.

ATTACHMENT B-3 CAPITAL BASED BUDGET
SUMMARY

PROJECT NAME: Albany County Shaker Site Building Restorations-Project #151726-HP Dev

CONTRACTOR SFS PAYEE NAME: ALBANY COUNTY OF

CONTRACT PERIOD: From: 12/10/2015
To: 12/09/2020

CATEGORY OF EXPENSE	GRANT FUNDS	MATCH FUNDS	MATCH %	OTHER FUNDS	TOTAL
1. Scoping and Pre-Development	\$5,000.00	\$5,000.00	100 %	\$0.00	\$10,000.00
2. Design	\$30,000.00	\$30,000.00	100 %	\$0.00	\$60,000.00
3. Acquisition	\$0.00	\$0.00	0 %	\$0.00	\$0.00
4. Construction	\$460,000.00	\$460,000.00	100 %	\$0.00	\$920,000.00
5. Administration	\$5,000.00	\$5,000.00	100 %	\$0.00	\$10,000.00
6. Working Capital/Reserves	\$0.00	\$0.00	0 %	\$0.00	\$0.00
7. Other	\$0.00	\$0.00	0 %	\$0.00	\$0.00
TOTAL	\$500,000.00	\$500,000.00	100 %	\$0.00	\$1,000,000.00

Contract Number: # PRK01-C51726GG-1290000

Page 1 of 7, Attachment B-3 - Capital Based Budget

ATTACHMENT B-3 CAPITAL BASED BUDGET

DETAIL

SCOPING AND PRE DEVELOPMENT - TYPE/DESCRIPTION	ITEM # (IF APPLICABLE)	QUANTITY (IF APPLICABLE)	UNIT PRICE (IF APPLICABLE)	TOTAL
Archaeology				\$10,000.00
TOTAL				\$10,000.00

Contract Number: # PRK01-C51726GG-1290000

Page 2 of 7, Attachment B-3 - Capital Based Budget

ATTACHMENT B-3 CAPITAL BASED BUDGET

DETAIL

DESIGN - TYPE/DESCRIPTION	ITEM # (IF APPLICABLE)	QUANTITY (IF APPLICABLE)	UNIT PRICE (IF APPLICABLE)	TOTAL
Architectural / Engineering				\$60,000.00
TOTAL				\$60,000.00

ATTACHMENT B-3 CAPITAL BASED BUDGET

DETAIL

ACQUISITION - TYPE/DESCRIPTION	ITEM # (IF APPLICABLE)	QUANTITY (IF APPLICABLE)	UNIT PRICE (IF APPLICABLE)	TOTAL
NA				\$0.00
TOTAL				\$0.00

ATTACHMENT B-3 CAPITAL BASED BUDGET

DETAIL

CONSTRUCTION - TYPE/DESCRIPTION	ITEM # (IF APPLICABLE)	QUANTITY (IF APPLICABLE)	UNIT PRICE (IF APPLICABLE)	TOTAL
Repair/stabilize/repoint masonry, repair/replace roofs, stabilize porch, correct site drainage, & install composting toilets				\$920,000.00
TOTAL				\$920,000.00

ATTACHMENT B-3 CAPITAL BASED BUDGET

DETAIL

ADMINISTRATION - TYPE/DESCRIPTION	ITEM # (IF APPLICABLE)	QUANTITY (IF APPLICABLE)	UNIT PRICE (IF APPLICABLE)	TOTAL
Grant Administration				\$10,000.00
TOTAL				\$10,000.00

ATTACHMENT B-3 CAPITAL BASED BUDGET

DETAIL

OTHER - TYPE/DESCRIPTION	ITEM # (IF APPLICABLE)	QUANTITY (IF APPLICABLE)	UNIT PRICE (IF APPLICABLE)	TOTAL
TOTAL				

ATTACHMENT C - WORK PLAN

SUMMARY

PROJECT NAME: Albany County Shaker Site Building Restorations-Project #151726-HP Dev

CONTRACTOR SFS PAYEE NAME: ALBANY COUNTY OF

CONTRACT PERIOD: From: 12/10/2015
To: 12/09/2020

Project Summary: A high-level overview of the project, including the overall goal and desired outcomes.

A. PROJECT DESCRIPTION:

This project will allow for stabilization and functional improvements for several buildings including the 1920 garage, 1825 ministry, 1915 manure shed, 1858 wash house, 1822 brethren's workshop and 1830 trustees' office of the Church Family community within the Watervliet-Shaker Historic District, America's first Shaker settlement, that will ensure the survival of the historic buildings and improve public access to this historic location. The improvements will enable us to share this piece of history with local visitors to the area.

B. PROJECT SPECIFIC REQUIREMENTS

1. With the execution of this Master Contract, the CONTRACTOR shall erect a 28"x20" project sign at the project site noting the State's assistance to the project. The project sign specifications are available from the STATE. The project sign shall remain in place until disbursement of the final reimbursement. Photographic documentation that the project sign has been erected at the project site will be required prior to submission of the first Interim/Performance Expenditure Report.

2. The CONTRACTOR will consult with the STATE's Historic Preservation Office (SHPO) before finalizing any plans for and/or designs of development of existing features at the involved properties. Such features include buildings, structures, topography (the height, depth or shape of natural or man-made ground features), vegetation (hedges, fields, wood lots), circulation components (roads, paths, trails, parking areas), natural and man-made water features, and site furnishings and objects. Materials describing existing conditions (photographs and written narratives) will be submitted for SHPO review; subsequently, information regarding proposed work (drawings, written narratives, technical materials) also might be required. SHPO approval must be on file with the STATE prior to commencement of work on the project or the submission of an Interim/Performance Expenditure Report.

Contract Number: # PRK01-C51726GG-1290000

3. In order to assure the preservation of the historic resource, the CONTRACTOR agrees to execute, record, and keep in effect an agreement conveying a Preservation Covenant to the STATE or such others as the STATE deems appropriate. The entity acquiring the Preservation Covenant and the form of the document shall be subject to the approval of the STATE. The Preservation Covenant must not be subordinate to any other security interest in the property including, but not limited to, purchase money mortgages. The agreement shall be binding upon the CONTRACTOR for 25 years from the date of the recording of the Preservation Covenant. A copy of the Preservation Covenant indicating the Liber and Page or Electronic Recording number must be on file with the STATE prior to submission of an Interim/Performance Expenditure Report.

4. The CONTRACTOR agrees to permit the public to have access to the subject property as follows: Since the SUBJECT PROPERTY is visible from a public right-of-way, and its significant interior spaces are generally accessible to the public, no additional public access is required.

5. At the discretion of the State, an Agreed Upon Procedure Review may be required of the grant performed by a representative of the STATE or a certified public accountant procured by the STATE or the CONTRACTOR currently licensed by the NYS Board of Public Accountancy, in accordance with attestation standards established by the American Institute of Certified Public Accountants and in accordance with Government Auditing Standards issued by the Comptroller General of the United States of America to the satisfaction of the STATE.

C. SCHEDULE

The following Schedule is a recommended timeframe for monitoring major thresholds which will result in completion of the grant by the scheduled ending date as specified on the Face Page. This does NOT describe all the required steps involved in meeting these thresholds, nor is it intended to be a precise calendar. Nevertheless, not only is the schedule to be used as a monitoring tool by the CONTRACTOR and by the STATE, non-adherence to these timeframes without acceptable justification will be used as criteria in determining grant cancellation. The project documentation listed below should be submitted for approval/acceptance by the STATE as follows:

MILESTONE / TIMEFRAME

- (1) Progress Reports will be done on a Semi-Annual basis from contract approval date to project completion
- (2) Satisfaction of Archaeological Concerns - Due prior to starting the Bidding Process
- (3) A copy of the Solicitation/RFP for Design Services - Due prior to starting the Bidding Process
- (4) Review of plans and specifications by the State Historic Preservation Office (SHPO) and/or the Regional Grants Administrator (RGA) - Due prior to starting the Bidding Process
- (5) Copy of the Permit(s) or a letter(s) from the appropriate Agency which states no permits required - Prior to starting the Bidding Process
- (6) Construction Bidding Process Commences - Upon notice of Approval by the STATE
- (7) Bid Award - Upon notice of Approval by the STATE

Contract Number: # PRK01-C51726GG-1290000

Page 2 of 3 , Attachment C - Work Plan Summary

- (8) M/WBE Utilization Plan - Due upon notice of Approval by the STATE
- (9) Start of Construction - Upon notice of Approval by the STATE
- (10) M/WBE Required Reports: Cumulative Payment Statements - ONGOING – To accompany Interim/Performance Expenditure Reports
- (11) Reimbursements - ONGOING, as expenditures accrue for costs incurred for the project as outlined in the related Attachments, and satisfaction of all program requirements
- (12) Project Completion – Current Contract End Date
- (13) Final Report/Closeout Documentation - Due 90 days after the current Contract End Date
- (14) Final Reimbursement (10% withholding) - Will be released upon approval of Final Report-Closeout documentation and Final Interim/Performance Expenditure Report

Contract Number: # PRK01-C51726GG-1290000

Page 3 of 3 , Attachment C - Work Plan Summary

ATTACHMENT C - WORK PLAN

DETAIL

Objective	
1	Stabilization and functional improvements of the Albany County Shaker Site
Tasks	
1	Stabilization and functional improvements of the Albany County Shaker Site
<u>Performance Measures</u>	
1	Progress reports - Semi-annual progress reports to be submitted.

ATTACHMENT D
PAYMENT AND REPORTING SCHEDULE

I. PAYMENT PROVISIONS

In full consideration of contract services to be performed the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page hereof. All payments shall be in accordance with the budget contained in the applicable Attachment B form (Budget), which is attached hereto.

A. Advance Payment, Initial Payment and Recoupment Language (if applicable):

1. The State Agency will make an advance payment to the Contractor, during the initial period, in the amount of ____ percent (____%) the budget as set forth in the most recently approved applicable Attachment B form (Budget).
2. The State Agency will make an initial payment to the Contractor in the amount of ____ percent (____%) of the annual budget as set forth in the most recently approved applicable Attached B form (Budget). This payment will be no later than ____ days from the beginning of the budget period.
3. Scheduled advance payments shall be due in accordance with an approved payment schedule as follows:

Period	Amount	Due Date

4. Recoupment of any advance payment(s) or initial payment(s) shall be recovered by crediting (____%) of subsequent claims and such claims will be reduced until the advance or initial payment is fully recovered within the contract period.

Contract Number: # PRK01-C51726GG-1290000

Page 1, Attachment D - Payment and Reporting Schedule

B. Interim and/or Final Claims for Reimbursement

Claiming Frequency: Interim Reimbursement

Number of Days/Claims:

For Quarterly, Monthly and Biannual Reimbursement Claim Frequency, the above field represents the number of days after the claim period that the claim is due to the State from the Grantee.

For Interim Reimbursement as Requested by Contractor the Number of Days/Claims is not applicable.

For all other selected Claim Frequency, the Number of Days/Claims represents the number of claims due under the contract and listed in the table below.

Expenditure Period Dates		Due Date
From	To	

II. REPORTING PROVISIONS

A. Expenditure-Based Reports (select the applicable report type):

☒ Narrative/Qualitative Report

The Contractor will submit, on a quarterly basis, not later than 30 days from the end of the quarter, the report described in Section III(G)(2)(a)(i) of the Master Contract

☐ Statistical/Quantitative Report

The Contractor will submit, on a quarterly basis, not later than ____ days from the end of the quarter, the report described in Section III(G)(2)(a)(ii) of the Master Contract.

☐ Expenditure Report

The Contractor will submit, on a quarterly basis, not later than ____ days after the end date for which reimbursement is being claimed, the report described in Section III(G)(2)(a)(iii) of the Master Contract.

☒ Final Report

The Contractor will submit the final report as described in Section III(G)(2)(a)(iv) of the Master Contract, no later than 90 days after the end of the contract period.

☐ Consolidated Fiscal Report (CFR)

The Contractor will submit the CFR on an annual basis, in accordance with the time frames designated in the CFR manual. For New York City contractors, the due date shall be May 1 of each year; for Upstate and Long Island contractors, the due date shall be November 1 of each year.

¹

The Consolidated Fiscal Reporting System is a standardized electronic reporting method accepted by Office of Alcoholism & Substance Services, Office of Mental Health, Office of Persons with Developmental Disabilities and the State Education Department, consisting of schedules which, in different combinations, capture financial information for budgets, quarterly and/or mid-year claims, an annual cost report, and a final claim. The CFR, which must be submitted annually, is both a year-end cost report and a year-end claiming document.

Contract Number: # PRK01-C51726GG-1290000

B. Progress-Based Reports

1. Progress Reports

The Contractor shall provide the report described in Section III(G)(2)(b)(i) of the Master Contract in accordance with the forms and in the format provided by the State Agency, summarizing the work performed during the contract period (See Table 1 below for the annual schedule).

2. Final Progress Report

Final scheduled payment will not be due until 90 days after completion of agency's audit of the final expenditures report/documentation showing total grant expenses submitted by vendor with its final invoice. Deadline for submission of the final report is 03/15/2021. The agency shall complete its audit and notify vendor of the results no later than 04/15/2021. The Contractor shall submit the report not later than 90 days from the end of the contract.

C. Other Reports

The Contractor shall provide reports in accordance with the form, content and schedule as set forth in Table 1.

TABLE 1 - REPORTING SCHEDULE

PROGRESS REPORT #	PERIOD COVERED		Due Date
1	12/10/2015	06/09/2016	07/11/2016
2	06/10/2016	12/09/2016	01/09/2017
3	12/10/2016	06/09/2017	07/10/2017
4	06/10/2017	12/11/2017	01/11/2018
5	12/12/2017	06/11/2018	07/11/2018
6	06/12/2018	12/10/2018	01/10/2019
7	12/11/2018	06/11/2019	07/11/2019
8	06/12/2019	12/12/2019	01/13/2020
9	12/13/2019	06/12/2020	07/13/2020
10	06/13/2020	12/09/2020	03/15/2021
11			
12			

III. SPECIAL PAYMENT AND REPORTING PROVISIONS

1. Grant funds will reimburse up to 75% of total eligible project costs, or the total grant amount listed in Attachment B-3, whichever is less.
2. Interim reimbursement requests will be reimbursed up to 90% of the total grant award. The final 10% will be released upon approval of the final report. For each payment submission, an expense summary that details the eligible project costs by type of work/materials/services, contractor/vendor/employee, invoice/bill number and date, check number and date, should be submitted for review and approval to the satisfaction of the STATE.



DANIEL P. MCCOY
COUNTY EXECUTIVE

COUNTY OF ALBANY
WATER PURIFICATION DISTRICT
1 CANAL ROAD, SOUTH
ALBANY, NEW YORK 12204

REMITTANCE: 112 STATE ST., BASEMENT, ALBANY, NY 12207
PHONE: (518) 447-1611 FAX: (518) 433-0369
www.albanycounty.com

COMMISSION

JOHN R. ADAIR, JR.
CHAIRMAN

JOHN W. BISHOP, JR.
NICHOLAS W. FOGLIA
DENNIS RIGOSU
SEAN E. WARD

ANGELO GAUDIO
EXECUTIVE DIRECTOR

December 2, 2020

Hon. Andrew Joyce
Chairman
Albany County Legislature
112 State Street – Suite 710
Albany, New York 12207

Re: RFB #2020-120 – Supply Hydrogen Sulfide/Odor Control Oxidant

Dear Mr. Joyce,

The Albany County Water Purification District (District) is requesting authorization to enter into a contract with International Dioxide Inc (IDI) for the supply of odor control oxidant per the above subject bid.

The contract term is for two years with the option for a one year renewal. The estimated contract amount for the two year term is \$350,000 or \$175,000 per year.

IDI was the sole responsible bidder with a bid price of \$0.798 per pound. Enclosed with this letter is the bid result along with the District's recommendation memo and Purchasing Department's concurrence memo.

Should you have any questions please contact me at 518-447-1617.

Sincerely,

Angelo Gaudio, P.E.
Executive Director

Enc. Bid Results
District Recommendation Memo
Purchasing Dept. Concurrence Memo

cc: Dennis A. Feeney, Majority Leader
Rebekah Kennedy, Majority Counsel
Frank Mauriello, Minority Leader
Arnis Zilgme, Minority Counsel

RFB-2020-120- Hydrogen Sulfide/Odor Control
11/19/2020 11:00

<u>Vendor</u>		<u>Product</u>	<u>Oxidant Type</u>	<u>Price/lb.</u>
International Dioxide	Bond	Endimal DW	Endimal DW 31% NaClO2	\$0.798/lb



DANIEL P. MCCOY
COUNTY EXECUTIVE

COUNTY OF ALBANY
WATER PURIFICATION DISTRICT
1 CANAL ROAD, SOUTH
ALBANY, NEW YORK 12204

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SEAN E. WARD

ANGELOS. GAUDIO, P.E.
EXECUTIVE DIRECTOR

MEMORANDUM

To: Karen Storm, Purchasing Agent
From: Angelo Gaudio, Executive Director *AG*
Subject: RFB-2020-120 Hydrogen Sulfide/Odor Control Oxident
Date: November 19, 2020

The Water Purification District recommends award RFB-2020-120 Hydrogen Sulfide/Odor Control Oxidant to the sole bidder International Dioxide Corp. at a price of \$0.798/lb total cost not to exceed \$350,000.00.

Please issue a notice of concurrence so that I may submit a Request for Legislative Action to award this contract.

If you have any questions, please feel free to contact me at 447-1617.



DANIEL P. McCOY
COUNTY EXECUTIVE

COUNTY OF ALBANY
DEPARTMENT OF GENERAL SERVICES
PURCHASING DIVISION
112 STATE STREET, ROOM 1000
ALBANY, NEW YORK 12207-2021
(518) 447-7140 - FAX (518) 447-5588

DAVID M. LATINA
COMMISSIONER OF GENERAL SERVICES

KAREN A. STORM
PURCHASING AGENT

MEMORANDUM

TO: Angelo Gaudio, Executive Director
Water Purification District

FROM: Karen Storm *Karen Storm*
Purchasing Agent

DATE: November 19, 2020

RE: RFB #2020-120, Hydrogen Sulfide/ Odor Control Oxidant

I am in receipt of your recommendation to award the aforementioned Request for Bids to International Dioxide Corp. in the amount not to exceed \$350,000.00 (0.798/lb).

As International Dioxide Corp. is the sole responsive and responsible bidder, I concur with your recommendation.

Please obtain the necessary contract approval of the County Legislature, so that we may issue a Notice of Award to the successful bidder.



County of Albany

Harold L. Joyce
Albany County Office
Building
112 State Street - Albany,
NY 12207

Legislation Text

File #: TMP-2115, **Version:** 1

REQUEST FOR LEGISLATIVE ACTION

Description (e.g., Contract Authorization for Information Services):

Contract Authorization with International Dioxide Inc (IDI) for the supply of odor control oxidant .

Date: 12/2/2020
Submitted By: Angelo Gaudio
Department: Water Purification District
Title: Executive Director
Phone: 518-447-1624
Department Rep: Angelo Gaudio
Attending Meeting: Angelo Gaudio

Purpose of Request:

- ☐ Adopting of Local Law
- ☐ Amendment of Prior Legislation
- ☐ Approval/Adoption of Plan/Procedure
- ☐ Bond Approval
- ☐ Budget Amendment
- ☒ Contract Authorization
- ☐ Countywide Services
- ☐ Environmental Impact/SEQR
- ☐ Home Rule Request
- ☐ Property Conveyance
- ☐ Other: (state if not listed) Click or tap here to enter text.

CONCERNING BUDGET AMENDMENTS

Increase/decrease category (choose all that apply):

- ☐ Contractual
- ☐ Equipment
- ☐ Fringe
- ☐ Personnel
- ☐ Personnel Non-Individual

☐ Revenue

Increase Account/Line No.: Click or tap here to enter text.

Source of Funds: Click or tap here to enter text.

Title Change: Click or tap here to enter text.

CONCERNING CONTRACT AUTHORIZATIONS

Type of Contract:

☐ Change Order/Contract Amendment

☒ Purchase (Equipment/Supplies)

☐ Lease (Equipment/Supplies)

☐ Requirements

☐ Professional Services

☐ Education/Training

☐ Grant

Choose an item.

Submission Date Deadline Click or tap to enter a date.

☐ Settlement of a Claim

☐ Release of Liability

☐ Other: (state if not listed) Click or tap here to enter text.

Contract Terms/Conditions:

Party (Name/address):

International Dioxide Inc

40 Whitecap Drive

North Kingstown, RI 02852

Additional Parties (Names/addresses):

Click or tap here to enter text.

Amount/Raise Schedule/Fee: \$350,000 (\$175,000/year)

Scope of Services: Supply of odor control oxidant

Bond Res. No.: Click or tap here to enter text.

Date of Adoption: Click or tap here to enter text.

CONCERNING ALL REQUESTS

Mandated Program/Service: Yes ☐ No ☒

If Mandated Cite Authority: Click or tap here to enter text.

Is there a Fiscal Impact: Yes ☒ No ☐

Anticipated in Current Budget: Yes ☒ No ☐

County Budget Accounts:

Revenue Account and Line:

Click or tap here to enter text.

Revenue Amount:

Click or tap here to enter text.

Appropriation Account and Line:

G98130.44107

Appropriation Amount:

\$350,000 (\$175,000/year)

Source of Funding - (Percentages)

Federal:

Click or tap here to enter text.

State:

Click or tap here to enter text.

County:

100

Local:

Click or tap here to enter text.

Term

Term: (Start and end date)

January 1, 2021-December 31, 2022

Length of Contract:

2 years

Impact on Pending Litigation

Yes ☐ No ☒

If yes, explain:

Click or tap here to enter text.

Previous requests for Identical or Similar Action:

Resolution/Law Number:

133 of 2020

Date of Adoption:

3/24/2020

Justification: (state briefly why legislative action is requested)

The odor control oxidant is used in the District's sludge dewatering process to mitigate odors and hydrogen sulfide levels within the solids building. The District has a long history with IDI as they have been a reliable supplier for this product.



DANIEL P. MCCOY
COUNTY EXECUTIVE

COUNTY OF ALBANY
OFFICE OF THE EXECUTIVE
112 STATE STREET, ROOM 1200
ALBANY, NEW YORK 12207-2021
(518) 447-7040 - FAX (518) 447-5589
WWW.ALBANYCOUNTY.COM

DANIEL C. LYNCH, ESQ.
DEPUTY COUNTY EXECUTIVE

January 5, 2021

Honorable Andrew Joyce, Chairman
Albany County Legislature
112 State Street, Room 710
Albany, New York 12207

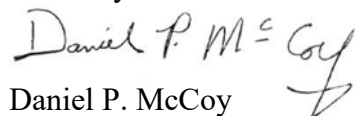
Dear Chairman Joyce:

As part of ongoing efforts to make Albany County a leader in sustainability I am requesting authorization to enter into agreements with National Grid for the purchase the County's 105 streetlights for conversion to high efficiency LEDs. Following the Customer Project Commitment Agreement with the New York Power Authority, which was approved at the Legislature's December, 21, 2020 meeting. The next step is entering into a Purchase and Sale Agreement ("PSA") for the assets subject to sale and a License Agreement for Customer-Owned Street and Area Lighting Attachments to Utility Poles and Structures ("Attachment Agreement"). The PSA governs the terms and conditions of the asset sale and the Attachment Agreement is necessary for any street lighting assets that will remain on National Grid electric facilities.

The New York Power Authority is financing the purchase and conversion project for Albany County and will provide reimbursement for the full purchase price of the streetlights. The estimated purchased price provided by National Grid is \$142,198.70 and I am requesting authorization to execute an agreement not to exceed \$150,000 to account for any adjustments when the final purchase price is calculated prior to closing. Following execution of the abovementioned agreements National Grid will submit the proposed sale to the Public Service Commission for approval. A closing date will be identified following PSC approval, likely in summer or fall of 2021.

If you should have any questions, please do not hesitate to contact me.

Sincerely


Daniel P. McCoy
Albany County Executive

cc: Hon. Dennis Feeney, Majority Leader
Hon. Frank Mauriello, Minority Leader
Rebekah Kennedy, Majority Counsel
Arnis Zilgme, Minority Counsel



County of Albany

Harold L. Joyce
Albany County Office
Building
112 State Street - Albany,
NY 12207

Legislation Text

File #: TMP-2195, **Version:** 1

REQUEST FOR LEGISLATIVE ACTION

Description (e.g., Contract Authorization for Information Services):

Requesting Authorization to Enter into an Agreement with National Grid for the Purchase of Streetlights

Date: 12/31/2020
Submitted By: Lucas Rogers
Department: County Executive
Title: Senior Policy Analyst
Phone: 518-447-5566
Department Rep.
Attending Meeting: Lucas Rogers

Purpose of Request:

- ☐ Adopting of Local Law
- ☐ Amendment of Prior Legislation
- ☐ Approval/Adoption of Plan/Procedure
- ☐ Bond Approval
- ☒ Budget Amendment
- ☒ Contract Authorization
- ☐ Countywide Services
- ☐ Environmental Impact/SEQR
- ☐ Home Rule Request
- ☐ Property Conveyance
- ☐ Other: (state if not listed) Click or tap here to enter text.

CONCERNING BUDGET AMENDMENTS

Increase/decrease category (choose all that apply):

- ☒ Contractual
- ☐ Equipment
- ☐ Fringe

- ☐ Personnel
☐ Personnel Non-Individual
☒ Revenue

Increase Account/Line No.: See Budget Amendment
Source of Funds: NYPA
Title Change: N/A

CONCERNING CONTRACT AUTHORIZATIONS

Type of Contract:

- ☐ Change Order/Contract Amendment
☒ Purchase (Equipment/Supplies)
☐ Lease (Equipment/Supplies)
☐ Requirements
☐ Professional Services
☐ Education/Training
☐ Grant

Choose an item.

Submission Date Deadline Click or tap to enter a date.

- ☐ Settlement of a Claim
☐ Release of Liability
☐ Other: (state if not listed) Click or tap here to enter text.

Contract Terms/Conditions:

Party (Name/address):

NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID
300 Erie Boulevard West
Syracuse, New York 13202

Additional Parties (Names/addresses):

Click or tap here to enter text.

Amount/Raise Schedule/Fee: Not to Exceed \$150,000
Scope of Services: Purchase of Streetlights from National Grid

Bond Res. No.: Click or tap here to enter text.
Date of Adoption: Click or tap here to enter text.

CONCERNING ALL REQUESTS

Mandated Program/Service: Yes ☐ No ☒
If Mandated Cite Authority: Click or tap here to enter text.

Is there a Fiscal Impact: Yes ☒ No ☐Anticipated in Current Budget: Yes ☐ No ☒**County Budget Accounts:**

Revenue Account and Line: A35110.03074 NYPA Streetlight Purchase Program

Revenue Amount: \$150,000

Appropriation Account and Line: A95110.44012.10000 Streetlight Purchase Program

Appropriation Amount: \$150,000

Source of Funding - (Percentages)

Federal: Click or tap here to enter text.

State: 100%

County: Click or tap here to enter text.

Local: Click or tap here to enter text.

Term

Term: (Start and end date) Closing will be scheduled after PSC approval

Length of Contract: Purchase

Impact on Pending LitigationYes ☐ No ☒

If yes, explain: Click or tap here to enter text.

Previous requests for Identical or Similar Action:

Resolution/Law Number: Resolution 494 for 2020

Date of Adoption: 12/21/2020

Justification: (state briefly why legislative action is requested)

As part of ongoing efforts to make Albany County a leader in sustainability I am requesting authorization to enter into agreements with National Grid for the purchase the County's 105 streetlights for conversion to high efficiency LEDs. Following the Customer Project Commitment Agreement with the New York Power Authority, which was approved at the Legislature's December, 21, 2020 meeting. The next step is entering into a Purchase and Sale Agreement ("PSA") for the assets subject to sale and a License Agreement for Customer-Owned Street and Area Lighting Attachments to Utility Poles and Structures ("Attachment Agreement"). The PSA governs the terms and conditions of the asset sale and the Attachment Agreement is necessary for any street lighting assets that will remain on National Grid electric facilities.

The New York Power Authority is financing the purchase and conversion project for Albany County and will provide reimbursement for the full purchase price of the streetlights. The estimated purchased price provided by National Grid is \$142,198.70 and I am requesting authorization to execute an agreement not to exceed \$150,000 to account for any adjustments when the final purchase price is calculated prior to closing. Following execution of the abovementioned agreements National Grid will submit the proposed sale to the Public Service Commission for approval. A closing date will be identified following PSC approval, likely in summer or fall of 2021.

December 1, 2020

VIA CERTIFIED MAIL

Honorable Daniel P. McCoy
County Executive
Albany County
112 State Street, Room 1200
Albany, New York, 12207-2021

Re: Sale of Street Lighting Assets Located in COUNTY OF ALBANY
Bill Account Nos. 13752-95105, 16350-80108, 80752-92105, 97752-93107

Dear County Executive McCoy:

Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid” or “the Company”) is writing in connection with your letter indicating the interest of the County of Albany (“the County”) to proceed with the acquisition of certain street lighting assets located in the County. Accompanying this letter are forms for the Purchase and Sale Agreement (“PSA”) for the assets subject to sale and the License Agreement for Customer-Owned Street and Area Lighting Attachments to Utility Poles and Structures (“Attachment Agreement”) that will govern the future arrangement for street lighting assets purchased by the County that remain located on Company facilities. In addition, this letter describes next steps, required approvals, and timeline going forward.

Purchase and Sale and Attachment Agreements

Both parties are required to execute a PSA and Attachment Agreement to formalize the transaction. The PSA will govern the terms and conditions of the asset sale. The Company’s form PSA is attached for your review, insertion of municipal information, finalization and execution. The Attachment Agreement is also necessary for any street lighting assets that will remain on National Grid electric facilities. Some municipalities have indicated an interest in smart city technology, such as network lighting control nodes, and the Company has worked with those municipalities to accommodate such technology consistent with the Company’s tariff obligations. If the County intends to pursue smart city technology as part of the street light acquisition, please let me know, as this will require additional terms and conditions in the Attachment Agreement.

Once all the documents are executed and returned, the Company will then review the materials, and if all are in order, the Company will countersign the PSA and Attachment Agreement, date the documents, and provide you with fully executed copies.

Section 70 Filing Process

Upon execution of the documents, the Company, which is regulated by the New York State Public Service Commission (“PSC”), must petition the PSC for approval pursuant to Public Service Law § 70. National Grid will compile and file the necessary documents required for PSC review. Because the original cost of the assets subject to sale is greater than \$100,000, a formal PSC proceeding is required. The time for a formal PSC review varies and can take several months depending on the complexity of the transaction.

Closing, Disconnection and Service Classification

The parties will be able to close the transaction once all necessary approvals are received for the sale. A sample of the bill of sale that will be executed at closing is included as an exhibit to the PSA. After closing, the County will have twenty-four (24) months to install disconnect devices for the assets in accordance with the Company's standards. Descriptions of the process and financial security requirements associated with asset separation are included in the PSA. The County will be responsible for the operation, maintenance, replacement, and installation of the street light assets subject to the sale after the closing. The County's service classification ("SC") for the account associated with the assets will then be changed in accordance with the Company's P.S.C. 214 – Outdoor Lighting Tariff from Service Classification ("SC-2") to SC-3 (energy only).

I hope this letter provides the information helpful for your evaluation of the street light sale. Please contact me if you have any questions. National Grid looks forward to working with the County towards completion of this sale.

Sincerely,

Michael A. DiAcetis
Manager,
Customer & Community Engagement

cc:

Enc. PSA
Attachment Agreement

AGREEMENT FOR PURCHASE AND SALE OF STREET LIGHTS

THIS AGREEMENT FOR PURCHASE AND SALE OF STREET LIGHTS (this “Agreement”) is made as of this _____ day of _____, 20__ (the “Effective Date”), between **NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID**, a corporation organized and existing under the laws of the State of New York, having an office and place of business at 300 Erie Boulevard West, Syracuse, New York 13202 (“Seller”), and the **COUNTY OF ALBANY**, a municipal corporation organized and existing under the laws of the State of New York with its principal place of business at 112 State Street, Room 1200, Albany, NY 12207 (“Buyer”). Buyer and Seller are sometimes herein referred to individually as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, Seller owns, operates and maintains an electric transmission and distribution system, including certain street lights used to provide lighting service under bill account number 13752-95105, 16350-80108, 80752-92105, and 97752-93107 to Buyer within its municipal boundaries under Service Classification (“S.C.”) No. 2 of Seller’s Outdoor Lighting Tariff (defined below);

WHEREAS, Buyer desires to purchase the Street Lights (as defined below in Section 1) from Seller as provided in Section F.8 of S.C. No. 2 of Seller’s Outdoor Lighting Tariff (defined below), and Seller is willing to sell the Street Lights to Buyer.

NOW THEREFORE, in consideration of the commitments made herein and intending to be legally bound thereby, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.** Capitalized terms shall have the meanings defined throughout this Agreement or as specified below in this Section 1.

“**Agreement**” means this Agreement for Purchase and Sale of Street Lights, together with the exhibits and schedules attached hereto, as the same may be amended from time to time.

“**Attachment Agreement**” means the License Agreement for Customer-Owned Street and Area Lighting Attachments to Utility Poles and Structures executed by Buyer and Seller and hereto as Exhibit A.

“**Bill of Sale**” means the Quit Claim Bill of Sale, substantially in the form of Exhibit B hereto, to be executed and delivered by the Parties at the Closing, to evidence the transfer by Seller to Buyer of Seller’s right, title and interest in and to the Street Lights.

“**Breaching Party**” has the meaning set forth in Section 17.1(e).

“**Business Day**” means any day other than Saturday, Sunday, and any day on which banking institutions in the State of New York are authorized by law or other governmental action to close.

“Buyer’s Required Approvals” means: (i) all required approvals of Buyer’s governing board to authorize Buyer (by an authorized representative) to enter into this Agreement, the Bill of Sale, the Attachment Agreement and the Service Agreement; and (ii) those other approvals, if any, listed on Exhibit C.

“Closing” has the meaning set forth in Section 6.1.

“Closing Date” has the meaning set forth in Section 6.1.

“Commercially Reasonable Efforts” means efforts which are designed to enable the performing Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by this Agreement and which do not require the performing Party to expend any funds or assume any liabilities other than expenditures and liabilities which are customary and reasonable in nature and amount in the context of the transactions contemplated by this Agreement.

“Commission” means the New York State Public Service Commission.

“Estimated Purchase Price” has the meanings set forth in Section 6.2.

“Excluded Assets” has the meaning set forth in Section 5.

“Final Purchase Price” has the meanings set forth in Section 6.2.

“Letter(s) of Credit” means an irrevocable, unconditional and nontransferable standby Letter of Credit, in the form attached hereto as Appendix S-1, which is issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least: (a) “A-” by Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successors (“S&P”) and “A3” by Moody’s Investor Services Inc. or its successor (“Moody’s”), if such entity is rated by both S&P and Moody’s; or (b) “A” by S&P or “A2” by Moody’s, if such entity is rated by either S&P or Moody’s, but not both.

“Outside Date” has the meaning set forth in Section 17.1(b).

“Permitted Lien” means: (a) any lien for taxes not yet due or delinquent; (b) any lien for taxes being contested in good faith by appropriate proceedings and not in excess of \$100,000; (c) any lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent or which is being contested in good faith by Seller; (d) zoning, planning, and other similar governmental limitations and restrictions, all rights of any governmental authority to regulate any asset, and all matters of public record; and (e) any lien released prior to Closing.

“Purchase Price” has the meanings set forth in Section 6.2.

“Reconfiguration Work” means that work requested by Buyer and performed by Seller in order to continue to provide safe and reliable electric service to Buyer after the Street Lights have been acquired by Buyer.

“Seller’s Electricity Tariff” means Seller’s P.S.C. No. 220 – Electricity Tariff, as modified and in effect from time to time.

“Seller’s Outdoor Lighting Tariff” means Seller’s P.S.C. No. 214 – Outdoor Lighting Tariff, as modified and in effect from time to time.

“Seller’s Required Approvals” means: (a) approval of an authorized officer of Seller to sell the Street Lights; (b) pursuant to Section 70 of the New York State Public Service Law, approval of the sale of the Street Lights by operation of law or an order of the Commission approving the sale of the Street Lights pursuant to the terms of this Agreement; and (c) those other approvals, if any, listed on Exhibit D.

“Separation Work” means that work required to install electric disconnection equipment and identification labels complying with Seller’s standards associated with the Street Lights and also includes removal of Seller’s existing labeling from such facilities.

“Service Agreement” means that service agreement to be executed and delivered by Buyer to Seller at Closing providing for the supply of electricity to be used for such Street Lights under the applicable provisions of Rate Schedule S.C. No. 3 of Seller’s Outdoor Lighting Tariff (in the case of unmetered service) or Seller’s Electricity Tariff (in the case of metered service).

“Street Lights” means those certain street lights and related facilities owned solely by Seller and used to provide lighting service to Buyer under bill account number 13752-95105, 16350-80108, 80752-92105, and 97752-93107 located within Buyer’s geographical boundaries, used solely for street lighting purposes, and which consist of luminaires, lamps, brackets, associated wiring, convenience outlets, electrical connections and appurtenances, as described in Exhibit E, which description shall be revised under Exhibit E-1 in accordance with Section 2 below, and will not include Excluded Assets.

“Surety Bond(s)” means the form attached hereto as Appendix S-2, which shall be considered as security for the performance of all of the Buyer’s contractual obligations contained in this Agreement, issued by a major insurance carrier (“Surety”) with a credit rating of at least: (a) “B+” by A.M. Best & Company; or (b) “A-” by S&P.

“Transaction Costs” consist of transfer taxes and recording fees associated with the sale of the Street Lights.

“Transition Costs” consist of costs related to the Seller’s internal system inventory updates, billing data changes, and data updates associated with the sale of the Street Lights.

2. Transfer of Street Lights. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, assign, convey, transfer, and deliver to Buyer, and Buyer shall purchase, assume, acquire, and receive from Seller, all of Seller’s right, title, and interest in and to the Street Lights.

The Buyer understands and agrees that the list of the Street Lights on Exhibit E (“Preliminary Description of Street Lighting Assets”), provided by the Seller as of the Effective Date, is a

preliminary list of Street Lights which might not include all of the Street Lighting facilities that the Buyer is purchasing under this Agreement. The Buyer further understands and agrees that on the Closing Date, the Seller shall deliver to the Buyer a final list of Street Lights which shall be provided as Exhibit E-1 (“Final Closing Description of Street Lighting Assets”) under this Agreement. The Seller agrees to perform such task and deliver Exhibit E-1 to the Buyer on the Closing Date. The Parties agree that the Street Lights as listed on Exhibit E-1 will be the final description of the Street Light facilities provided by the Seller under this Agreement. Notwithstanding anything to the contrary in this Agreement, the Buyer maintains sole responsibility for the accuracy and completeness of the Street Lights listed in Exhibit E and Exhibit E-1.

After the Closing Date, the purchase of any street lights and related facilities (“Additional Facilities”) not included in Exhibit E and Exhibit E-1 shall be subject to an additional purchase price calculation. If, at such time, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller such Additional Facilities, Buyer shall pay to Seller an additional purchase price in consideration for the Additional Facilities.

3. **Demarcation of Ownership.** From and after Closing, Buyer shall own the Street Lights as follows:

3.1 The Parties acknowledge and agree that there may not be a physical ownership demarcation point to separate or identify ownership (post-Closing) of Buyer’s Street Lights from Seller’s electric distribution structures or systems. Accordingly, the Parties agree that the point of ownership demarcation shall be deemed to be the existing connection point where the applicable Street Light is energized from the electric distribution system (“Connection Point”). The Seller shall retain ownership of the electric distribution system up to and including the Connection Point. Buyer shall own the street lighting system from the Connection Point to the luminaire inclusive of the applicable Street Light.

3.2 The Buyer shall own Street Lights supplied from overhead conductors from the Connection Point at Seller’s secondary conductor to the street light and including the luminaires, lamps, brackets, and associated wiring, with Seller retaining ownership of the electrical distribution system up to that Connection Point; and

3.3 The Buyer shall own Street Lights supplied from underground conductors from the Connection Point at Seller’s secondary conductor to the underground conductor supplying such street light, including the foundation, standard, luminaires, lamps, brackets, and associated wiring, and conduits in which any underground conductors transferred to Buyer under this Agreement may be located.

3.4 To the extent there is any uncertainty or conflict with respect to the Connection Point, the Seller shall, in its sole discretion, define the Connection Point.

4 **Convenience Outlets.** After the Closing, the Customer shall own convenience outlets located on Street Light they purchase. Customer’s usage of such convenience outlets shall be billed as an unmetered estimate in accordance with the terms of Seller’s Electricity Tariff. Convenience outlets located on distribution poles or any poles or street lights not purchased by Customer shall continue to be owned by the Company. With regard to such convenience outlets, customer shall

continue to pay an annual facility charge pursuant to Seller's Outdoor Lighting Tariff, and its usage of such outlets shall be billed as an unmetered estimate in accordance with the terms of Seller's Electricity Tariff.

5 **Excluded Assets.** Seller is not assigning, conveying, transferring, or delivering to Buyer and Buyer is not purchasing, assuming, acquiring or receiving from Seller any of Seller's right, title, and interest in and to the following, all of which are being retained by Seller following the Closing (collectively, the "Excluded Assets"):

5.1 Any and all of Seller's right, title, and interest in and to any poles, structures, facilities, or facilities attached or appurtenant to, but not comprising, the Street Lights, with the exception of those certain lighting poles identified in Exhibit F, if any;

5.2 Any and all of Seller's right, title, and interest in and to any and all spare parts or spare components relating to the Street Lights or any poles, structures, facilities, or components attached or appurtenant to, but not comprising, the Street Lights;

5.3 Any and all of Seller's right, title, and interest in and to any and all vehicles, facilities, tools, and supplies relating to installing, operating, inspecting, maintaining, repairing, replacing, or decommissioning in whole or in part any Street Lights or any poles, structures, facilities, or components attached or appurtenant to, but not comprising, the Street Lights;

5.4 Any and all of Seller's right, title, and interest in and to any and all agreements and contracts with third parties relating to installing, operating, inspecting, maintaining, repairing, replacing, or decommissioning in whole or in part any Street Lights or any poles, structures, facilities, or components attached or appurtenant to, but not comprising, the Street Lights;

5.5 Any and all of Seller's right, title, and interest in and to any and all franchise grants, license, permits, and interests in real property pertaining in any way to any Street Lights or any poles, structures, facilities, or components attached or appurtenant to, but not comprising, the Street Lights; and

5.6 Any and all of Seller's right, title, and interest in and to any and all intellectual property rights associated with the street lights, including but not limited to engineering standards, facility information, warranty information, maps and asset records.

6 **Closing and Purchase Price.**

6.1 **Closing.** The closing of the purchase and sale of the Street Lights (the "Closing") shall take place at the offices of Seller at 10:00 a.m. (Eastern Time) on the tenth Business Day after the conditions to Closing set forth in Sections 13 and 14 (other than actions to be taken or items to be delivered at Closing) have been satisfied or waived by the Party entitled to waive such condition, or on such other date and at such other time and place as Buyer and Seller mutually agree in writing. The date of Closing is hereinafter referred to as the "Closing Date." The Closing shall be effective for all purposes as of 12:01 a.m. (Eastern Time) on the Closing Date.

6.2 **Purchase Price.** The total “Estimated Purchase Price” for the Street Lights is ONE HUNDRED FORTY TWO THOUSAND ONE HUNDRED NINETY EIGHT AND 70/100 Dollars (\$142,198.70). The Estimated Purchase Price consists of the estimated Net Book Value (“NBV”) of the Street Lights of ONE HUNDRED THIRTY NINE THOUSAND NINE HUNDRED NINETY Dollars (\$139,990.00), plus estimated Transition Costs and Transaction Costs totaling TWO THOUSAND TWO HUNDRED EIGHT AND 70/100 Dollars (\$2,208.70). The Company will calculate the actual NBV and associated impact on the Transition Costs and Transaction Costs at the date of the Closing and will adjust (up or down) the Estimated Purchase Price to arrive at the “Final Purchase Price.” Seller will provide Buyer written notice of the amount of the Final Purchase Price no less than ten (10) days prior to the Closing Date.

6.3 **Security for Separation Work.** At Closing, Buyer shall provide financial security assurance, in a form acceptable to Seller, for the performance of the Separation Work and Additional Separation Work (as defined in Section 8.1) and for any costs incurred by Seller to repair damages or site alterations to Seller’s facilities caused by Buyer’s employees, contractors or subcontractors in performing the Separation Work and Additional Separation Work, in the amount of SIXTEEN THOUSAND FIVE HUNDRED Dollars (\$16,500.00) pursuant to either a Letter of Credit or a Surety Bond. The form of Letter of Credit is attached hereto as Appendix S-1, and the form of Surety Bond is attached hereto as Appendix S-2. The Parties’ rights and obligations with respect to such security are set out in Section 8.1.

6.4 **Payment of Final Purchase Price and Posting of Security.** The Final Purchase Price shall be payable at Closing in immediately available U.S. funds by wire transfer to the account designated by Seller or by certified or bank cashier’s check payable to “Niagara Mohawk Power Corporation d/b/a National Grid.”

7 Condition; Disclaimers; Indemnification.

7.1 **Condition and Liability.** The Street Lights are being sold, assigned, conveyed, transferred, and delivered to Buyer “as is, where is” without warranties or representations of any kind and subject to all faults of whatever nature, except Seller represents and warrants that to Seller’s knowledge, it has good and marketable title to the Street Lights and that they shall be conveyed to Buyer, at the time of Closing, free and clear of all liens and encumbrances except for Permitted Liens. All liabilities, obligations, and claims in connection with the Street Lights that arise or are incurred after the Closing Date shall not be deemed liabilities or obligations of Seller and shall be the full responsibility of Buyer. As of the Closing Date, Buyer shall assume all responsibility and obligations associated with ownership of the Street Lights, including without limitation any repair, maintenance, replacement and operation responsibilities. Seller will conduct stray voltage testing of the Street Lights in conformance with the requirements of the Commission’s Electric Safety Standards (established in Case 04-M-0159 and any other applicable requirements). In the event Seller identifies a stray voltage condition, Seller will make the condition safe and immediately notify Buyer of its responsibility to take all steps necessary to safeguard, mitigate, and permanently repair the stray-voltage condition. Buyer shall indemnify, defend, and hold Seller, its affiliates, and their respective, officers, directors, employees, representatives, and contractors, harmless for all injuries, damages, losses, or claims resulting from the failure of Buyer, or any of its agents, employees, or contractors, to exercise reasonable care in permanently repairing such stray-voltage condition. Buyer will report to Seller when it has

completed the permanent repairs.

7.2 Warranty Disclaimer. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT SELLER SHALL IN NO WAY BE DEEMED OR HELD TO BE OBLIGATED, LIABLE, OR ACCOUNTABLE UPON OR UNDER ANY GUARANTEES OR WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO THE STREET LIGHTS, THEIR DESIGN, MANUFACTURE, CONSTRUCTION, FABRICATION, CONDITION OR PERFORMANCE, INCLUDING IN PARTICULAR, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OR COMPLIANCE WITH ANY LAWS OR STANDARDS, INCLUDING THE NATIONAL ELECTRIC SAFETY CODE (“NESC”), THE NATIONAL ELECTRICAL CODE (“NEC”), THE ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA, “THE ELECTRIC POWER GENERATION, TRANSMISSION, AND DISTRIBUTION” STANDARD, THE OCCUPATIONAL SAFETY AND HEALTH ACT AND ANY RULES OR REGULATIONS THEREUNDER, WHETHER OR NOT SELLER KNOWS OR HAS REASON TO KNOW OF ANY SUCH PURPOSE OR VIOLATION AND WHETHER ALLEGED TO ARISE BY OPERATION OF LAW OR BY ANY APPLICABLE CUSTOM OR USAGE IN THE TRADE OR INDUSTRY OR BY A COURSE OF DEALING BETWEEN THE PARTIES, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY SELLER.

7.3 Liability Disclaimer. FROM AND AFTER THE CLOSING DATE, THE SELLER, ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AND CONTRACTORS SHALL NOT BE LIABLE TO BUYER OR ITS OFFICERS, OFFICIALS, EMPLOYEES, REPRESENTATIVES, OR CONTRACTORS FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL PUNITIVE, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES IN CONNECTION WITH THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE CONDITION, DESIGN, ENGINEERING, INSTALLATION, MAINTENANCE, CONSTRUCTION, LOCATION, OPERATION OF, OR FAILURE OF OPERATION OF, THE STREET LIGHTS, UNDER ANY THEORY OF LAW THAT IS NOW OR MAY IN THE FUTURE BE IN EFFECT, INCLUDING WITHOUT LIMITATION: CONTRACT, TORT, N.Y. GEN. BUS. LAW ARTICLE 22A, STRICT LIABILITY, OR NEGLIGENCE. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, IF THE BUYER’S LIABILITY IN CONNECTION WITH THIS AGREEMENT IS LIMITED OR CAPPED PURSUANT TO ANY APPLICABLE STATUTE OR REGULATION, THEN THE SELLER HERETO SHALL BE ENTITLED TO ELECT AN IDENTICAL LIABILITY LIMITATION AND/OR CAP AS IF SUCH STATUTE OR REGULATION WERE APPLICABLE TO THE SELLER.

7.4 Indemnification. The Buyer agrees that from and after the Closing Date, to the extent permitted by law and to the full extent of the Buyer’s insurance coverage, it shall defend, pay, protect, indemnify, and save harmless the Seller, its direct and indirect parent companies, subsidiaries and affiliates against and from any and all liabilities, claims, suits, fines, penalties, damages, personal injury, losses, fees (including reasonable attorneys’ fees), costs, and expenses

arising out of or in connection with this Agreement and/or the ownership, maintenance, and operation or the failure to maintain or operate the Street Lights resulting from any act, failure, or omission on the part of the Buyer or any of its agents, employees, or contractors. The Seller, and not the Buyer, shall remain responsible for claims in connection with the Street Lights that accrued prior to the Closing Date, including costs and damages resulting from pending claims in litigation relating to the Street Lights, if any, to the extent such claims arose from events occurring prior to the Closing Date.

7.5 **Operability of the Street Lights.** Seller has maintained and currently maintains, the operability of the Street Lights in a manner consistent with Seller's Outdoor Lighting Tariff. Until Closing, Seller shall continue its regular program of operating and maintaining the Street Lights.

7.6 **Survival.** The obligations set forth in this Section 7 shall survive the termination or expiration of this Agreement.

8 **Separation Work; Reconfiguration Work.**

8.1 **Separation Work.**

(a) Buyer elects to perform all of the Separation Work and shall perform all such Separation Work. Buyer further agrees that it shall provide Seller with financial security assurance, as set forth in Section 6.3 above, in the form of a Letter of Credit or Surety Bond (the choice of which is in Buyer's sole discretion) and shall cause such Separation Work to be completed within twenty-four (24) months of the Closing or such other period as Buyer and Seller shall agree in writing. Seller agrees to work in good faith, at Buyer's request, to timely provide the information necessary to help Buyer perform such Separation Work. If Buyer further requests Geographical Information System ("GIS") data or maps of the Street Lights, Seller will work in good faith, at Buyer's sole cost, to reasonably develop and provide such information.

(b) In the case that a Letter of Credit has been secured by the Buyer to satisfy its obligations under this Agreement, if: (i) at any time prior to the expiration of the Letter of Credit, the credit rating of the bank issuing any Letter of Credit falls below the level set forth in the definition of Letter of Credit above, or (ii) the bank repudiates its obligations under, or fails to honor or pay against, the Letter of Credit before completion of the Separation Work, Buyer shall furnish or cause to be furnished to Seller one (1) or more substitute Letters of Credit from a bank meeting the credit rating level set forth in this Agreement (a "Substitute Letter of Credit") within two (2) weeks after the occurrence of such event. If the Letter of Credit is terminated before completion of the Separation Work, Buyer shall furnish or cause to be furnished to Seller one (1) or more Substitute Letters of Credit from a bank meeting the credit rating level set forth in this Agreement at least thirty (30) days before such expiration. In the event that the Buyer fails to comply with the provisions of this paragraph, Seller may drawdown on the entire Letter of Credit.

(c) In the case that a Surety Bond has been secured by the Buyer to satisfy its obligations under this Agreement, if: (i) at any time prior to the expiration date of the Surety Bond, the credit rating of the Surety issuing any Surety Bond falls below the level set forth in the definition of Surety Bond above, or (ii) the Surety repudiates its obligations under, or fails to honor or pay against, the

Surety Bond before completion of the Separation Work, Buyer shall furnish or cause to be furnished to Seller one (1) or more substitute Surety Bonds from a Surety meeting the credit rating level set forth in this Agreement (a “Substitute Surety Bond”) within five (5) business days after the occurrence of such event. If the Surety Bond is terminated before completion of the Separation Work, Buyer shall furnish or cause to be furnished to Seller one (1) or more Substitute Surety Bonds from a Surety meeting the credit rating level set forth in this Agreement at least thirty (30) days before such expiration. If the Surety is declared bankrupt or becomes insolvent, or if its right to do business is terminated, or if its status for any other reason is rendered inadequate for the Buyer to meet its obligations hereunder, Buyer shall furnish or cause to be furnished to Seller one (1) or more Substitute Surety Bonds from a Surety meeting the credit rating level set forth in this Agreement within fifteen (15) days after the occurrence of such event. In the event that the Buyer fails to comply with the provisions of this paragraph, Seller may make a claim against the entire Surety Bond. To the extent Seller makes a claim against the Surety Bond for any performance obligation under this Agreement and in the event the Surety does not honor it, either in whole or in part (the “Rejected Claim”), then Buyer understands and agrees that Buyer shall remain financially responsible for such Rejected Claim. In addition, Buyer’s right to reduce the Surety Bond amount pursuant to this Agreement shall be suspended until Buyer satisfies the Rejected Claim.

(d) To the extent that the Separation Work is performed by Buyer or Buyer’s contractor, and is not performed by Seller, Buyer represents and warrants to Seller that any personnel that perform work on the Street Lights will be qualified by complying with established regulations and standards associated with the work to be conducted. To identify requirements related to safety or the construction, repair, or maintenance of the street lighting system, Buyer should consult among other documentation, the Occupational Health and Safety Administration (“OSHA”) requirements, including but not limited to OSHA 1910.269, “The Electric Power Generation, Transmission, and Distribution” standard, the NEC, the NESC, the New York State Labor Law governing how close workers (qualified) and non-workers (unqualified) can get to energized equipment at primary and/or secondary voltages, and requirements by the New York State Department of Transportation. In addition to that which is provided in Section 7.4, Buyer shall indemnify, defend, and hold harmless Seller from any injury, damage, loss or claims resulting from any breach by Buyer of this representation and warranty.

(e) Within thirty (30) days of Buyer’s completion of the Separation Work, Buyer shall provide written notice to Seller that such Separation Work has been fully performed in accordance with this Agreement. Upon such notice from Buyer, Seller may perform any necessary inspections, at Seller’s cost, to determine that all Separation Work has been completed. If such inspections reveal that, in Seller’s sole and reasonable discretion, the required Separation Work has not been performed or adequately performed, Seller shall: (i) notify Buyer of the need for additional Separation Work (the “Additional Separation Work”); and (ii) allow Buyer until twenty-four (24) months after Closing to perform or cause to be performed by a third party the necessary Additional Separation Work. Upon completion of the Additional Separation Work, Buyer shall provide written notice to Seller that such Additional Separation Work is complete.

(f) If Buyer has not completed all Separation Work and Additional Separation Work, within twenty-four (24) months of the Closing in accordance with this Section 8.1, Seller may at its option elect to notify Buyer of its intention to perform such work on Buyer’s behalf. Seller shall

provide such notice within thirty (30) days of the end of the twenty-four (24) month period set forth above. In such event, upon completion of such work by Seller, Seller shall determine its actual costs of performing such work, inclusive of all applicable overheads and adders, and shall invoice Buyer for that amount. If Buyer fails to pay any invoice issued by Seller for the cost of performing such work within thirty (30) days of the date of such invoice, Seller may draw on the financial security amount provided by Buyer for such purposes under Section 6.3 of this Agreement. In the event that the financial security amount is in excess of Seller's invoice for the Separation Work, Seller shall release the financial security amount in excess of such amount. In the event that the financial security amount is insufficient to satisfy Seller's invoice for the Separation Work, Seller may, at its option, include all or any part of the remaining invoice balance for the Separation Work in Seller's bills or invoices to Buyer for street lighting electric service. Notwithstanding the foregoing, Seller shall release the financial security assurance provided by Buyer for the Separation Work within ninety (90) days of Seller's reasonable determination that all necessary Separation Work and Additional Separation Work has been adequately completed by Buyer in accordance with this Agreement; or (b) if applicable, Buyer's full payment of any invoices for Seller's performance of the Separation Work.

(g) Nothing in this Agreement shall be construed to require Seller to perform any Separation Work or Additional Separation Work beyond that which is expressly agreed to herein, to perform any other work on facilities owned by Seller at the request of Buyer, or to maintain, repair or replace any equipment owned by Buyer.

8.2 **Reconfiguration Work.** Buyer elects not to have Seller perform any Reconfiguration Work, and Seller shall not perform any such Reconfiguration Work.

9 **Taxes and Assessments.**

9.1 Real property taxes and assessments and any other applicable fees, taxes and charges assessed or imposed on Seller, by virtue of its ownership, use, operation, inspection, maintenance or repair of the Street Lights, will be prorated and adjusted as of 11:59 p.m. of the day before the Closing Date, with Seller bearing the expense of the item applicable to the period before the Closing Date and Buyer bearing the expense of the item applicable to the period on or after the Closing Date. In consideration of Seller's agreement hereunder, Buyer agrees that it shall exercise Commercially Reasonable Efforts to obtain, and cooperate with Seller in obtaining, a reduction from New York State, prior to the next tax status date, in the assessed valuation of its real property facilities located within the Buyer's municipal boundaries that accurately reflects the removal of the Street Lights from the real property owned by Seller within the Buyer's municipal boundaries.

9.2 All transfer and sales taxes incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by Buyer. Buyer shall prepare and file in a timely manner any and all tax returns or other documentation relating to such taxes; provided that, to the extent required by applicable law, Seller will join in the execution of any such tax returns or other documentation relating to any such taxes. Buyer shall provide to Seller copies of each such tax return at least thirty (30) days prior to the date such tax return is required to be filed.

10 **Bill of Sale and Risk of Loss.** The sale, assignment, conveyance, transfer, and delivery

of the Street Lights will be effected by the Bill of Sale. On the Closing Date, Seller shall deliver to Buyer the Bill of Sale, fully executed and acknowledged and sealed and, simultaneously with such delivery, Seller shall take all such steps as may be necessary to put Buyer in actual possession of the Street Lights as and where presently located. Seller shall bear the risk of loss of and damage to the Street Lights during the period from the Effective Date up to but not including the Closing Date, and Buyer shall bear the risk of loss of and damage to the Street Light from and after the Closing Date.

11 **Representations of Seller.** Seller represents and warrants to Buyer that as of the Closing Date:

11.1 **Organization and Good Standing.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, with full power to own its properties and conduct its business as it is now being conducted.

11.2 **Absence of Conflicts.** Subject to obtaining Seller's Required Approvals, neither the execution of this Agreement, the consummation of the transactions contemplated hereby, nor compliance with the terms and provisions of this Agreement, will: (a) conflict with or result in a breach of the terms, conditions, or provisions of or constitute a default under Seller's Certificate of Incorporation or any material contract to which Seller is a party, except for any such violations or defaults that would not, in the aggregate, reasonably be expected to materially adversely affect Seller's ability to perform its obligations hereunder or to consummate the transactions contemplated hereby; (b) conflict with, violate or breach, in each case in any material respect, any provision of any law applicable to Seller; or (c) require any approval, consent, authorization, or other order or action of any court, governmental authority, or regulatory body under any law applicable to Seller, which has not already been obtained.

11.3 **Authorization.** Subject to obtaining Seller's Required Approvals, Seller has all requisite corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; the execution and delivery of this Agreement has been duly and validly authorized by all necessary corporate action; and this Agreement has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar laws relating to affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity).

12 **Representations of Buyer.** Buyer represents and warrants to Seller that as of the Closing Date:

12.1 **Organization and Good Standing.** Buyer is a municipality duly constituted, authorized and validly existing and in good standing under the laws of the State of New York, with full power to own its properties and conduct its business as it is now being conducted

12.2 **Absence of Conflicts.** Subject to obtaining Buyer's Required Approvals, neither the execution of this Agreement, the consummation of the transactions contemplated hereby, nor compliance with the terms and provisions of this Agreement, will: (a) conflict with or result in a breach of the terms, conditions, or provisions of or constitute a default under Buyer's organizational

documents or any material contract to which Buyer is a party, except for any such violations or defaults that would not, in the aggregate, reasonably be expected to materially adversely affect Buyer's ability to perform its obligations hereunder or to consummate the transactions contemplated hereby; (b) conflict with, violate or breach, in each case in any material respect, any provision of any law applicable to Buyer; or (c) require any approval, consent, authorization, or other order or action of any court, governmental authority, or regulatory body under any law applicable to Buyer, which has not already been obtained.

12.3 **Authority.** Subject to obtaining Buyer's Required Approvals, Buyer has all requisite municipal power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; the execution and delivery of this Agreement has been duly and validly authorized by all necessary municipal action; and this Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar laws relating to affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity).

12.4 **Availability of Funds.** Buyer has sufficient funds available to it to enable Buyer to pay the Final Purchase Price to Seller at the Closing.

13 **Conditions Precedent to Buyer's Obligations.** All obligations of Buyer under this Agreement are subject to the fulfillment at or before the Closing of each of the following conditions:

13.1 **Seller's Representations and Warranties.** The representations and warranties made by Seller in this Agreement shall have been materially true and correct as of the Effective Date and shall be materially true and correct as of the Closing Date; provided that Seller shall have no liability to Buyer for any such representation not being materially true and correct as of the Closing Date due to occurrences, matters, events, facts or circumstances occurring after the Effective Date.

13.2 **Seller's Performance.** Seller shall have performed and complied, in all material respects, with the agreements, covenants and obligations required by this Agreement to be performed or complied with by Seller at or before the Closing.

13.3 **Buyer's Required Approvals.** On or before the Closing Date, Buyer shall have obtained Buyer's Required Approvals, and they shall be in full force and effect.

13.4 **Seller's Deliverables.** On the Closing Date, Seller shall deliver:

- (a) a counterpart of the Bill of Sale duly executed by Seller;
- (b) a counterpart of the Attachment Agreement duly executed by Seller; and
- (c) a counterpart of the Service Agreement duly executed by Seller.

14 **Conditions Precedent to the Seller's Obligations.** All obligations of Seller under this Agreement are subject to the fulfillment, at or before the Closing, of each of the following conditions:

14.1 **Buyer's Representations and Warranties.** The representations and warranties made by Buyer in this Agreement shall have been materially true and correct as of the Effective Date and shall be materially true and correct as of the Closing; provided that Buyer shall have no liability to Seller for any such representation not being materially true and correct as of the Closing due to occurrences, matters, events, facts or circumstances occurring after the Effective Date.

14.2 **Buyer's Performance.** Buyer shall have performed and complied, in all material respects, with the agreements, covenants and obligations required by this Agreement to be performed or complied with by Buyer at or before the Closing.

14.3 **Seller's Required Approvals.** On or before the Closing Date, Seller shall have obtained Seller's Required Approvals and they shall be in full force and effect.

14.4 **Buyer's Deliverables.** On the Closing Date, Buyer shall deliver:

- (a) a counterpart of the Bill of Sale duly executed by Buyer;
- (b) a counterpart of the Attachment Agreement duly executed by Buyer;
- (c) a counterpart of the Application for Service and Service Agreement duly executed by Buyer;
- (d) resolutions of the governing board for Buyer certified by the Secretary, Assistant Secretary, or other officer of Buyer authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby; and
- (e) the financial security assurance as outlined in Section 6.3.

15 **Expenses.** Except to the extent expressly provided to the contrary in this Agreement, and whether or not the transactions contemplated herein are consummated, all costs and expenses incurred by a Party in connection with the negotiation, execution, and consummation of the transactions contemplated hereby, including attorneys' fees and the cost of filing for and prosecuting applications for Seller's Required Approvals and Buyer's Required Approvals, shall in all instances be borne by the Party incurring such costs and expenses.

16 **Further Assurances.** Subject to the terms and conditions of this Agreement, at either Party's request and without further consideration, the other Party shall execute and deliver to such requesting Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as such requesting Party may reasonably request in order to consummate the transactions contemplated by this Agreement; provided that the other Party shall not be obligated to execute or deliver any instruments, provide any materials or information, or take any actions that modify the rights, remedies, obligations, or

liabilities of such other Party pursuant to this Agreement or applicable law.

17 **Termination.**

17.1 **Termination Prior to Closing.**

(a) This Agreement may be terminated at any time prior to the Closing by mutual written consent of Seller and Buyer.

(b) This Agreement may be terminated at any time prior to the Closing by either Party upon written notice to the other Party if: (i) any governmental authority of competent jurisdiction (other than the Buyer) issues an order, judgment or decree permanently restraining, enjoining or otherwise prohibiting the Closing, and such order, judgment or decree is final and non-appealable; or (ii) any statute, rule, order or regulation is enacted or issued by any governmental authority which, directly or indirectly, prohibits the consummation of the Closing; or (iii) the Closing contemplated by this Agreement has not occurred on or before one year after the Effective Date (the "Outside Date"); provided that the right to terminate this Agreement under this Section 17.1(b) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before the Outside Date.

(c) This Agreement may be terminated at any time prior to the Closing by Buyer upon written notice to Seller if any of Buyer's Required Approvals shall have been denied.

(d) This Agreement may be terminated at any time prior to the Closing by Seller upon written notice to Buyer if any of Seller's Required Approvals shall have been denied.

(e) This Agreement may be terminated at any time prior to the Closing by either Party upon written notice to the other Party if the other Party (the "Breaching Party") has materially breached or violated a representation, warranty, covenant or agreement hereunder so as to cause the failure of a condition to the Closing set forth in Section 13 or Section 14, as applicable, and such breach (other than a breach of Buyer's obligation to pay the Final Purchase Price in accordance with the terms of Section 6, for which no cure period shall be allowed) has not been cured by the earlier of thirty (30) days following written notice thereof or the Outside Date, provided that if such violation or breach is not capable of being cured within such thirty (30) day period and such thirty (30) day period shall have ended before the Outside Date, the Breaching Party shall have an additional period to cure the breach that expires on the earlier of thirty (30) days thereafter or the Outside Date.

17.2 **Remedies Upon Termination Prior To Closing.**

(a) If this Agreement is validly terminated prior to the Closing by a Party pursuant to Section 17.1(a), (b), (c), or (d) hereof, neither Party shall have any liability to the other Party arising from this Agreement.

(b) If this Agreement is validly terminated prior to the Closing by a Party pursuant to Section 17.1(e) hereof, such Party may pursue any remedies against the Breaching Party available under this Agreement or applicable law, subject to the provisions of Sections 13 and 14 and subject to the limitation of liability set forth in Section 7 hereof.

18 **Mutual Releases.**

18.1 In consideration for the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of such which is hereby acknowledged, Buyer for itself, its successors, assigns, and affiliates, and the officers, directors, employees, agents, representatives and contractors of all of them (“Buyer Releasors”), shall and hereby does release, remise, acquit, and forever discharge Seller, its successors, assigns, and affiliates, and the officers, directors, employees, representatives, agents, and contractors of all of them, of and from any and all manner of claims, demands, damages, debts, dues, sums, accounts, costs, obligations, proceedings, actions, causes of action, or suits, of any nature whatsoever, whether in tariff, law, equity, or otherwise, which Buyer Releasors now have or hereafter can, shall, or may have arising in any way out of, or with respect to, any and all street lighting service provided by Seller to Buyer, or any matter related thereto, including those not yet ascertainable, if any, resulting therefrom at any time prior to and through and including the Effective Date.

18.2 In consideration for the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Seller for itself, its successors, assigns, and affiliates, and the officers, directors, employees, agents, representatives, and contractors of all of them (“Seller Releasors”), shall and hereby does release, remise, acquit and forever discharge Buyer, its successors, assigns, and affiliates, and the officers, directors, employees, representatives agents and contractors of all of them, of and from any and all manner of claims, demands, damages, debts, dues, sums, accounts, costs, obligations, proceedings, actions, causes of action, or suits, of any nature whatsoever, whether in tariff, law, equity, or otherwise, which Seller Releasors now have or hereafter can, shall, or may have arising in any way out of, or with respect to, street lighting service provided by Seller to Buyer, or any matter related thereto, including those not yet ascertainable, if any, resulting therefrom at any time prior to and through and including the Effective Date.

18.3 Each Party agrees not to take a position in any proceedings before the Commission or any court in these matters contrary to the agreements set forth in this Section 18, and agrees not to assist another participant in taking such a contrary position.

19 **Miscellaneous.**

19.1 **Entire Agreement.** Seller and Buyer agree that this Agreement (together with its exhibits) constitutes the entire agreement between the Parties.

19.2 **Notices, Etc.** All notices, requests, demands, and other communications permitted or required under this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered, when received by mailing, by certified mail, postage prepaid, return receipt requested, when delivered by a reputable overnight courier, or when sent by facsimile with electronic confirmation of receipt, to:

Buyer: COUNTY OF ALBANY, NY
Attn:
Address:

Seller: Niagara Mohawk Power Corporation d/b/a National Grid
300 Erie Boulevard West
Syracuse, New York 13202
Attn: Outdoor Lighting Manager

or to such other address as shall be subsequently designated by notice to the Parties.

19.3 **Counterparts; Facsimile and Electronic Copies.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Any facsimile or electronically transmitted copies hereof or signature hereon shall, for all purposes, be deemed originals.

19.4 **Severability.** If any provision of this Agreement is held invalid by any court or body of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

19.5 **Survival.** The terms and provisions of this Agreement, to the extent necessary or contemplated, shall survive the Closing. In particular, but not by way of limitation, all limitations on liability and indemnities contained in Section 7 and Buyer's obligation to reduce Seller's real property assessment shall survive the termination or expiration of this Agreement.

19.6 **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect or limit in any way the meaning or interpretation of this Agreement.

19.7 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to the principles of the conflict of laws contained therein. Each Party hereby submits to the personal and subject matter jurisdiction of the courts of the State of New York for the purpose of interpretation and enforcement of this Agreement. Venue in any action or proceeding shall be in the State of New York.

19.8 **Waiver.** Any term or condition of this Agreement may be waived at any time by the Party that is entitled to benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

19.9 **Amendment.** This Agreement may be amended, supplemented or modified only by a written instrument duly executed by authorized representatives of each Party.

19.10 **No Third-Party Beneficiaries.** Except for the provisions of Section 7 (which are intended to be for the benefit of the persons identified therein), the terms and provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person.

19.11 **Assignment; Binding Effect.** This Agreement and the rights and obligations

set forth herein shall not be assigned by either Party without the written agreement of both Parties; provided, however, that Seller shall be permitted to assign this Agreement to any of its affiliates without the written agreement of Buyer.

19.12 **Remedies Under Seller's Tariffs.** The Parties stipulate and agree that all of the services and charges provided for in this Agreement are authorized and governed by the provisions of Seller's Outdoor Lighting Tariff (in the case of unmetered service) or the Seller's Electricity Tariff (in the case of metered service) and, accordingly, that Seller and Buyer expressly reserve all of their rights and remedies under the tariffs, including Seller's right to terminate electric service to Buyer under such tariffs in conformance with Section 14.3 of the Commission's Rules and Regulations, 16 N.Y.C.R.R. § 13.3, in the event of the Buyer's failure to pay any amounts due under this Agreement or any other violation of this Agreement for which termination of service is authorized under such tariffs or the Commission's Rules and Regulations. The Parties further stipulate and agree that in the event of any conflict between the provisions of this Agreement and the provisions of the tariffs, the applicable provisions of such tariffs shall apply.

19.13 **Conflicts.** In the event of any conflict between the terms of this Agreement, the Service Agreement, and the Attachment Agreement, the agreements shall prevail in the following order: (i) the Service Agreement; (ii) the Attachment Agreement, and (iii) this Agreement.

19.14 **Supersedes Previous Agreements.** This Agreement revokes and supersedes all prior or contemporaneous agreements (whether written or oral), negotiations, commitments, and writings that pertain to the subject matter hereof. All such agreements, negotiations, commitments, and writings will be of no further force or effect, and the parties to any such other agreement, negotiation, commitment, or writing will have no further rights or obligations thereunder.

IN WITNESS WHEREOF, intending to be legally bound, the Parties' duly authorized representatives have executed this Agreement as of the Effective Date.

**NIAGARA MOHAWK POWER
CORPORATION**
"Seller"

COUNTY OF ALBANY, NY
"Buyer"

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
ATTACHMENT AGREEMENT

EXHIBIT B

FORM OF QUIT CLAIM BILL OF SALE

Reference is made to that certain Agreement for Purchase and Sale of Street Lights dated as of the _____ day of _____, 20__ between the [BUYER] and NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID (the “Transaction Agreement”). Pursuant to the Transaction Agreement, the undersigned, NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID (the “Seller”), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, and transfers, all of its right, title, and interest in and to the assets described on Exhibit A attached hereto and incorporated herein by reference and made a part hereof (collectively, “Assets”) to the [____BUYER____], a municipal corporation organized and existing under the laws of the state of New York having its principal office and place of business located at [____ADDRESS____] (the “Buyer”).

It is the intent of the Seller and Buyer that this instrument transfers all of Seller’s right, title, and interest in and to the Assets. Seller hereby represents to Buyer that Seller has the right to transfer all of Seller’s right, title, and interest in and to the Assets.

Seller hereby covenants and agrees for the benefit of Buyer that Seller will defend, at Seller’s sole cost and expense, the right, title, and interest of Buyer in and to the Assets against the lawful claims and demands of all persons.

Buyer acknowledges that it has examined the Assets as fully as desired and Buyer waives and disclaims any right to seek recovery from Seller based on the current condition of the Assets. BUYER AGREES THAT ALL OF THE ASSETS ARE SOLD “AS IS” AND “WHERE IS” AND WITHOUT ANY ORAL, STATUTORY, EXPRESS OR IMPLIED WARRANTIES OR GUARANTEES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TENANTABILITY, HABITABILITY, USE AND WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE). SELLER SPECIFICALLY DISCLAIMS, AND BUYER HEREBY WAIVES, ALL WARRANTIES AND GUARANTEES. Buyer shall take title to the Assets upon execution of this document, and Buyer assumes any and all liability of any kind for claims or damages in connection with the Assets arising from acts, omissions, or events occurring after the date hereof. Buyer agrees to take the Assets with knowledge that they have been used for a period of time by Seller in its business. The provisions of this paragraph shall apply notwithstanding any other provisions of this Bill of Sale or the Transaction Agreement, and shall survive, termination, cancellation, or completion of this Bill of Sale or the Transaction Agreement.

Buyer agrees to defend with counsel satisfactory to Seller and to pay, protect, indemnify, defend, release and save harmless Seller and its parents and affiliates and their successors and assigns and any of the officers, directors, employees, and shareholders of any of them, from and against, any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all attorneys’ fees), causes of action, suits, claims, damages, obligations, demands or judgments of any nature in connection with the Assets to the extent arising from acts, omissions, or events occurring after the Closing (hereinafter referred to as “Claims”) including, without limitation, all Claims

brought by third parties for personal injury and property damage, economic damage, or environmental damage or harm (including, without limitation, for investigation, response, removal, clean-up, and/or remediation). The Seller, and not the Buyer, shall remain responsible for claims, other than Buyer's claims, in connection with the Assets that accrued prior to the Closing, including costs and damages resulting from pending claims in litigation relating to the Assets, if any, to the extent such claims arose from events occurring prior to the Closing. The provisions of this paragraph shall apply notwithstanding any other provisions of this Bill of Sale or the Transaction Agreement, and shall survive, termination, cancellation, or completion of this Bill of Sale or the Transaction Agreement.

In no event, whether as a result of breach of contract, tort (including negligence and strict liability), or otherwise shall Seller be liable for any or all special, indirect, incidental, penal, punitive or consequential damages of any nature in connection with, or arising from, the transactions contemplated by this Bill of Sale, including, without limitation, delays, lost profits, business interruptions, loss of use, lost business opportunities, loss of revenue, losses and other damages by reason of facility shutdown, equipment damage, cost of replacement power or substitute or temporary facilities or services, cost of capital, loss of goodwill, and claims of suppliers and customers, whether or not: (i) such damages were reasonably foreseeable, or (ii) Seller was advised or aware that such damages might be incurred. The provisions of this paragraph shall apply notwithstanding any other provisions of this Bill of Sale or the Transaction Agreement, and shall survive, termination, cancellation, or completion of this Bill of Sale or the Transaction Agreement.

Nothing in this instrument, express or implied, is intended or shall be construed to confer upon, or give to, any third party any remedy or claim under or by reason of this instrument or any agreements, terms, covenants or conditions hereof, and all the agreements, terms, covenants and conditions contained in this instrument shall be for the sole and exclusive benefit of the Buyer and Seller and their respective successors and assigns.

This instrument and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

To the extent that any provision of this instrument shall be held to be invalid, illegal or unenforceable, it shall be modified so as to give as much effect to the original intent of such provision as is consistent with applicable law and without affecting the validity, legality or enforceability of the remaining provisions of this instrument. Each party represents and warrants to the other that the signatory identified beneath its name below has full authority to execute this instrument on its behalf.

This instrument shall be governed by and construed in accordance with the laws of the state of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of laws). Venue in any action with respect to this instrument shall be in the state of New York; the parties agree to submit to the personal jurisdiction of courts in the state of New York with respect to any such actions.

This instrument may be executed in multiple counterparts, each of which shall be considered an original.

[Signatures are on the following page.]

IN WITNESS WHEREOF, intending to be legally bound, the Parties' duly authorized representatives have executed this Quit Claim Bill of Sale as of the dates written below.

NIAGARA MOHAWK POWER CORPORATION
Seller

By: _____

Name: _____

Title: _____

Date: _____

COUNTY OF ALBANY, NY,
Buyer

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A
to
FORM OF QUIT CLAIM BILL OF SALE
FINAL CLOSING DESCRIPTION OF STREET LIGHTING ASSETS

EXHIBIT C
BUYER'S APPROVALS

EXHIBIT D
SELLER'S APPROVALS

EXHIBIT E

PRELIMINARY DESCRIPTION OF STREET LIGHTING ASSETS

STREET LIGHT INVENTORY

EXHIBIT E-1

FINAL CLOSING DESCRIPTION OF STREET LIGHTING ASSETS

STREET LIGHT INVENTORY

EXHIBIT F
EXCLUDED LIGHTING POLES

N/A

Appendix S-1

SPECIMEN LETTER OF CREDIT

_____ Bank

(address)

IRREVOCABLE STANDBY LETTER OF CREDIT

DATE: _____
AMOUNT U.S. \$[_____] _____
EFFECTIVE DATE: _____

Our No. _____

Beneficiary:

Niagara Mohawk Power Corporation
d/b/a National Grid
300 Erie Boulevard West, D-1
Syracuse, NY 13202

Attn:
Commercial Credit & Collections Manager

Applicant:

[Buyer]
[ADDRESS]
[ADDRESS]
City/Town, NY [ZIP]

At the request of:

Reference: This Letter of Credit supports the “Agreement for Purchase and Sale of Street Lights by and between Niagara Mohawk Power Corporation d/b/a National Grid and the [Buyer],” by and between Applicant and Beneficiary dated _____.

LADIES AND GENTLEMEN:

We hereby establish this irrevocable, and unconditional, except as stated herein, Letter of Credit Number _____ (this “Letter of Credit”), by order of, for the account of, and on behalf of the [Buyer] (the “Applicant”) in favor of **Niagara Mohawk Power Corporation d/b/a National Grid** (the “Beneficiary”) for drawings, in one or more drafts, up to an aggregate amount not exceeding U.S. \$[_____] effective immediately. The term “Beneficiary” includes any successor of the named Beneficiary.

This Letter of Credit cannot be amended, modified or revoked without the prior written consent of both the Bank and the Beneficiary. The Beneficiary shall not be deemed to have waived any rights under this Letter of Credit, unless an officer of the Beneficiary shall have signed a written waiver expressly referencing the right to be waived. No such waiver shall be effective as to any transaction that occurs subsequent to the date of the waiver, or with respect to any continuance of a breach after the waiver.

We hereby undertake to promptly honor your draft(s) drawn on us, indicating our Letter of Credit number _____, for all or any part of this Letter of Credit. This Letter of Credit is issued, presentable and payable and we guaranty to the drawers, endorsers, and bone fide holders of this Letter of Credit, that drafts under and in compliance with the terms of this Letter of Credit will be honored. This Letter of Credit may not be transferred or assigned by us.

Partial drawings are permitted.

Subject to the express terms and conditions herein, funds under this Letter of Credit are available to you by presentation at our offices located at [] of Beneficiary's drawing certificate issued substantially in the form of Annex 1 attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary. Presentation of any drawing certificate under this Letter of Credit may be made in person to us or may be sent to us by overnight courier or by facsimile transmission to facsimile telephone number [].

All commissions and charges will be borne by the Applicant.

If documents, in compliance with the terms of this Letter of Credit, are received before 10:00 am (Eastern Time) on a Banking Day (as such term is defined in the uniform customs defined below), payment will be effected on or before 5:00 pm (Eastern Time) on the next Banking Day. If documents, in compliance with the terms of this Letter of Credit are received after 10:00 am on a Banking Day, payment will be effected on or before 5:00 pm on the second Banking Day following such date of receipt.

Presentation of document(s) that are not in compliance with the applicable anti-boycott, anti-money laundering, anti-terrorism, anti-drug trafficking, export denial or economic sanctions laws, regulations or orders (collectively "the Regulations") is not acceptable. Applicable laws vary depending on the transaction and may include United Nations, United States and/or local laws.

In the event that a drawing certificate fails to comply with the terms of this Letter of Credit including the regulations, we shall provide the Beneficiary prompt notice thereof stating the reasons that the certificate was determined to be non-compliant and shall upon Beneficiary's instructions hold any non-conforming drawing certificate and other related documents at Beneficiary's disposal or return any non-conforming drawing certificate and other related documents to the Beneficiary by delivery in person or facsimile transmission (with originals thereof sent by overnight courier). Upon being notified that the drawing was not effected in compliance with this Letter of Credit, the Beneficiary may attempt to correct such non-conforming drawing certificate in accordance with the terms of this Letter of Credit.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. This Letter of Credit does not incorporate, and shall not be deemed modified or amended by reference to any document, instrument or agreement (a) that is referred to herein (except for the Uniform Customs, as defined below), or (b) in which this Letter of Credit is referred to or to which this Letter of Credit relates.

Our obligation under this Letter of Credit shall be our individual obligation and is in no way contingent upon the reimbursement with respect thereto, or upon our ability to perfect any lien, security interest or any other reimbursement.

This Letter of Credit expires with our close of business on three hundred sixty four (364) days from the effective date; however, it is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for 364 days from the present or any future expiration date hereof, unless at least sixty (60) days before any such expiration date we notify you by registered mail / courier addressed to the address noted above, that we elect not to extend this Letter of Credit for such additional period.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 revision) International Chamber of Commerce, Publication No. 600 (the "Uniform Customs"), provided, however, that: (a) we specifically agree that a "reasonable time" within the meaning of Article 14(b) of the Uniform Customs shall not exceed three (3) Banking Days following the day of receipt of the relevant documents, and (b) if this Letter of Credit expires during the Interruption of Business as described in Article

36 of the Uniform Customs then the expiration date of this Letter of Credit shall be automatically extended without amendment to a date thirty (30) calendar days after the resumption of business and we hereby specifically agree to effect payment if the Letter of Credit is drawn against within thirty (30) days after the resumption of business.

Sincerely yours,

[_____ bank name _____]

By: [insert name and title of authorized bank representative]

Authorized signature of Bank representative

**ANNEX 1 TO
IRREVOCABLE LETTER OF CREDIT NO. _____
ISSUED BY _____ [BANK NAME]**

DATE: _____

[BANK NAME]
[ATTENTION]
[BANK ADDRESS1]
[BANK ADDRESS2]

APPLICANT: [BUYER]

Ladies and Gentlemen:

The undersigned _____, a duly elected and acting officer of **Niagara Mohawk Power Corporation d/b/a National Grid** (the "Beneficiary"), hereby certifies to _____ (the "Bank"), with reference to irrevocable Letter of Credit no. _____ dated _____ (the "Letter of Credit"), issued by the Bank on behalf of the Applicant and in favor of the Beneficiary, as follows, as of the date hereof:

1. Beneficiary is making a drawing under the Letter of Credit in the amount of \$[_____] because [check applicable provision]:

[_____] (A) Applicant has failed to complete Separation Work or Additional Separation Work as defined in the Agreement for Purchase and Sale of Street Lights, by and between Beneficiary and Applicant ("the [Buyer]"), dated _____.

[_____] (B) [Bank name]'s has failed to maintain a corporate long term debt rating of at least "A-" from Standard & Poor's or "A3" from Moody's Investors Service and Beneficiary has made written demand on Applicant to deliver a replacement Letter of Credit issued by a third party bank satisfying the requirements of the Beneficiary, and Applicant has failed to deliver such replacement Letter of Credit to Beneficiary prior to the close of business on the tenth (10th) day following such written demand.

[_____] (C) the Beneficiary has received notice from the Bank of its intention to cancel this Letter of Credit before its normal expiration date and Applicant has failed, prior to the close of business on _____ [insert date which is not more than thirty (30) days before the present expiration date], to deliver to Beneficiary one or more replacement Letter of Credits satisfying the requirements of the agreement titled "Agreement for Purchase and Sale of Street Lights between Niagara Mohawk Power Corporation d/b/a National Grid and the [Buyer]," dated _____.

[_____] (D) Applicant has failed to reimburse Beneficiary for any costs incurred by Beneficiary to repair damages or site alterations to Beneficiary's facilities caused by Applicant's employees, contractors or subcontractors, as required in the Agreement for Purchase and Sale of Street Lights, by and between the Applicant and Beneficiary dated _____.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. dollars _____ and ____/100ths (U.S. \$ _____).

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

In witness whereof, this certificate has been duly executed and delivered on behalf of the Beneficiary by its duly elected and acting officer as of this _____ day of _____, _____.

Beneficiary: **Niagara Mohawk Power Corporation**

By: _____ (signature)

Name: _____ (print name)

Title: _____

Appendix S-2

Performance (Surety) Bond

Bond No. _____

WITNESSETH:

The [Buyer], having an address at [ADDRESS], and [Surety Provider], having an address at _____, a corporation organized under the laws of the State of _____ and being duly authorized to transact the business of indemnity and suretyship in this State of New York, as **Surety**, do hereby acknowledge our indebtedness to, and are jointly and severally bound unto Niagara Mohawk Power Corporation d/b/a National Grid, as **Obligee**, in the aggregate sum of \$[_____] (the “*Maximum Obligation*”) for the payment of which the Principal and Surety bind themselves, their heirs, executors, administrators, successors, assigns or other legal representatives, jointly and severally.

The condition of this obligation is such, that:

WHEREAS, the Principal has entered into an agreement called “AGREEMENT FOR PURCHASE AND SALE OF STREET LIGHTS BETWEEN NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID AND THE [BUYER],” by and between Principal and Obligee dated _____, the “*Agreement*”); and

WHEREAS, as a condition precedent to the commencement and/or continuation of the Agreement, the Principal agrees to furnish Obligee with this surety bond, issued by the Surety in the amount above mentioned for the purpose of establishing credit and securing their performance obligations under the Agreement; and

NOW, THEREFORE, if Principal shall timely perform or cause to be performed any and all of its contractual obligations under the Agreement that may at any time be due and owing to the Obligee from Principal, then this obligation shall be null and void, otherwise it shall remain in full force and effect as a continuing obligation and shall not be extinguished. Should the Principal fail to perform or cause to be performed all obligations that may at any time be due and owing to the Obligee by the Principal in connection with the Agreement, then the Surety holds itself bound hereunder for the payment of all such amounts, and such amounts shall become immediately due from the Surety upon demand by the Obligee. Any liability which accrues while this bond is in force and is in effect shall remain and shall not be extinguished, regardless of the cancellation or termination of this bond, as set forth herein. Partial payment(s) shall not be deemed to extinguish this bond.

Surety hereby waives all defenses with respect to (i) notice of default of performance, (ii) notice of amounts owed by Principal to the Obligee, (iii) demand and diligence, (iv) notice of any extension of time granted by the Obligee to Principal, (v) any forbearance by the Obligee in favor of Principal, and (vi) any errors or inaccuracies with respect to the current formal corporate name of Principal as appearing on any documents established by Obligee in connection with the Agreement. Surety further waives any right to require that the Obligee institute suit against Principal for any amount owed or obligation to be performed by Principal to or for the benefit of the Obligee in connection the Agreement, it being the intent of this bond, and Surety hereby agrees, that if Principal fails or refuses to pay any such amount or perform any obligation due and owing to the Obligee under the Agreement, Surety shall pay such amount to the Obligee upon demand by the Obligee.

Amounts paid by Surety to the Obligees hereunder shall be credited against Surety's Maximum Obligation but shall not otherwise affect Surety's obligations under this bond. Principal and Surety agree that, subject to the Maximum Obligation, in any suit successfully prosecuted on this bond by the Obligees, the Obligees shall be entitled to recover, in addition to any other amount recovered by the Obligees, the reasonable attorneys' fees incurred by the Obligees in prosecuting said suit. Principal and Surety further agree that the Obligees does not, whether by accepting this bond or accepting any payment from Surety under this bond, waive its right to discontinue, in whole or in part and without prior notice, the Agreement in the event Principal fails or refuses to pay any amount and/or perform any obligation owed by Principal to the Obligees in connection with the Agreement, provided, however, the Obligees shall be under no duty to exercise such rights.

This bond is subject to the following additional terms, limitations and conditions:

1. The term of this bond shall commence [] and shall be continuous.
2. The Surety shall have the right to terminate its liability hereunder, but only as to amounts owed by Principal as a result of nonperformance as required under the Agreement after the effective date of such termination, at any time by giving notice in writing by registered mail to the Obligees and the Principal and stating therein the effective date of such termination which date shall not be less than thirty (30) days after receipt of said notice by the Obligees. Such notice shall not limit or terminate this bond in respect to any liability for acts, omissions, or indebtedness occurring or arising prior to the effective date of such termination by the Surety. Written notice must be by certified letter, return receipt requested, and mailed to the Obligees at Niagara Mohawk Power Corporation d/b/a National Grid, 300 Erie Boulevard West, D-1, Syracuse, NY 13202 (Attn: Commercial Credit and Collections Dept.), and to Principal at the [BUYER], [ADDRESS].
3. It is understood and agreed between the Principal and the Obligees that, upon receipt of Surety's thirty-day written notice of cancellation as provided above, the Obligees may demand from the Principal a replacement surety bond, in the amount corresponding to the existing amount of this Surety Bond at the time of such cancellation notice, by written notice to Principal and Principal shall deliver the replacement Surety Bond to the Obligees at least ten (10) days prior to the effective date of termination or expiration of this bond. In the event that a replacement Surety Bond is not provided in compliance with this paragraph, the Obligees shall have the right, but not the obligation, to pursue all legal rights afforded to Obligees under the Agreement, either in whole or in part and without prior notice.
4. No proceeding in law or in equity may be brought under this bond unless the same shall be commenced and process served prior to the expiration of one (1) year from the effective date of cancellation of this bond.
5. Obligees may make a claim on this bond by mailing the completed and signed Annex 1, along with a copy of this bond, to the following address of Surety: [ADDRESS] .
6. It is understood and agreed that any person(s) having a claim under the conditions of this bond may initiate suit in any court of competent jurisdiction upon this bond.
7. Surety agrees that no change, extension of time, alteration or addition to the Agreement shall in any way affect the obligation of this bond and it does hereby waive notice of any such change, extension of time, alteration or addition. Surety further agrees that any changes in, to, or under any contractual documents relating to the Agreement, and any compliance or non-compliance with formalities connected with such documents or changes, shall not affect Surety's obligation under this bond, and it does hereby waive notice of any such changes, compliance or non-compliance.

8. In this bond, (i) words denoting the singular include the plural and vice versa, and (ii) words such as “hereunder,” “hereto,” “hereof” and “herein” and other words of similar import shall, unless the context requires otherwise, refer to this bond as a whole and not to any particular article, section, subsection, paragraph or clause hereof.

9. In no event shall the Surety’s obligation exceed the Maximum Obligation.

IN WITNESS WHEREOF, the Principal and Surety have executed and delivered this bond this _____ day of _____, 20____.

(Seal) _____, as Principal

By: _____
Name:
Title:

(Seal) _____, as Surety

By: _____
Name:
Title:

Annex 1

1. This Annex 1 shall be considered part of the following Performance (Surety) Bond (the "Surety Bond").

Bond # _____
Surety: _____ [Surety Provider] _____
Obligee: Niagara Mohawk Power Corporation d/b/a National Grid
Principal: [BUYER]

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Surety Bond.

DATE: _____

[Surety Name] _____
[Attention] _____
[SuretyAddress1] _____
[Surety address2] _____

Principal: [BUYER]

Ladies and Gentlemen:

The undersigned _____, a duly elected and acting officer of **Niagara Mohawk Power Corporation d/b/a National Grid** (the "Obligee"), hereby certifies to

_____ (the "Surety"), with reference to Surety Bond No.

_____ dated _____ (the "Surety Bond"), issued by the Surety on behalf of the Principal and in favor of the Obligee, as follows, as of the date hereof:

1. Obligee is making a claim under the Surety Bond in the amount of \$ _____ because [check applicable provision]:

[] (A) Principal has failed to complete Separation Work or Additional Separation Work as defined in the Agreement for Purchase and Sale of Street Lights, by and between Obligee and Principal dated _____

[] (B) Surety has failed to maintain a corporate long term debt rating of at least "A-" from Standard & Poor's or a "B+" rating from A.M. Best and Company and Obligee has made written demand on Principal to deliver a replacement Surety Bond issued by another Surety satisfying the requirements of the Obligee, and Principal has failed to deliver such replacement Surety Bond to Obligee prior to the close of business on the tenth (10th) day following such written demand.

[] (C) the Obligee has received notice from the Surety of its intention to cancel this Surety Bond before its normal expiration date and Principal has failed, prior to the close of business on _____ [insert date which is not more than thirty (30) days before the present Expiration Date], to deliver to Obligee one or more replacement Surety Bonds satisfying the requirements of the Agreement for Purchase and Sale of Street Lights, by and between the Principal and Obligee dated _____.

[] (D) Principal has failed to reimburse Obligee for any costs incurred by Obligee to repair damages or site alterations to Obligee's facilities caused by Principal's employees, contractors or subcontractors, as required in the Agreement for Purchase and Sale of Street Lights, by and between the Principal and Obligee dated _____.

2. Based upon the foregoing, the Obligee hereby makes a claim under the Surety Bond for payment of U.S Dollars _____ and ____/100ths (U.S. \$ _____).

3. To the extent possible, funds paid pursuant to the provisions of the Surety Bond shall be wire transferred to the Obligee in accordance with the following instructions:

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Obligee by its duly elected and acting Officer as of this _____ day of _____, _____.

Obligee: **Niagara Mohawk Power Corporation**

_____(signature)

Name: _____(print name)

Title: _____



LICENSE AGREEMENT

FOR

CUSTOMER-OWNED
STREET AND AREA LIGHTING
ATTACHMENTS
TO
UTILITY POLES AND STRUCTURES

BETWEEN

Niagara Mohawk Power Corporation
d/b/a National Grid
(COMPANY)

AND

The County of Albany,
New York
(CUSTOMER)

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THIS LICENSE AGREEMENT (“Agreement”), is made as of the last date appearing on the signature page of this Agreement (the “Effective Date”), by and between **NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID**, a corporation organized and existing under the laws of New York, having an office at 300 Erie Boulevard West, Syracuse, New York, 13202, (the “Company”) and the County of Albany, a municipal corporation organized and existing under the laws of New York, having its principal office at 112 State Street, Room 1200, Albany, NY 12207 (the “Customer”). The Company and the Customer are collectively referred to herein as the “Parties” and individually as a “Party.”

WITNESSETH

WHEREAS, the Customer currently receives street lighting service from the Company within its municipal boundaries under Service Classification (“S.C.”) No. 2 of the Lighting Tariff (defined below) and owns, operates and maintains and/or intends to install, own, operate and maintain, certain Equipment (defined below) to provide street and area lighting within the Customer’s municipal boundaries and to thereafter receive the electricity required to power the Customer’s street lights from the Company; and

WHEREAS, that certain Equipment (defined below) that the Customer has purchased from the Company, has previously installed, and/or intends to purchase and/or install, that is or will be attached to Facilities (defined below) owned in whole or in part by the Company; and

WHEREAS, as part of any Purchase and Sale Agreement (defined below) with the Company for that certain Equipment, Customer has agreed to perform or to pay the Company to perform any Separation Work (defined below) required to install a Disconnect Device (defined below) between each street light purchased from the Company or thereafter installed and the Company’s distribution system and to install Identification Labels (defined below) at each such location within twenty-four (24) months of the Effective Date of this Agreement or the closing of a sale transaction pursuant to a Purchase and Sale Agreement including satisfaction of all closing conditions set forth in the Purchase and Sale Agreement (“Closing”), whichever is earlier; and

WHEREAS, the Customer and the Company also desire to establish a process to govern the modification of the Customer's existing Equipment and the installation by the Customer of any such additional Equipment on the Facilities within the Customer's municipal boundaries as the Customer may require from time to time for street lighting and related purposes; and

WHEREAS, the Company and the Customer understand that this Agreement does not cover any Supplemental Attachments (defined below), and that the placement of any Supplemental Attachments will require and be subject to a separate agreement between the Company and the Customer; and

WHEREAS, the Company is willing to permit, to the extent it may lawfully do so, the continued existence and new attachment of the Equipment on the Facilities within the Customer's municipal boundaries pursuant to the terms and conditions established in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the Parties do hereby agree as follows:

1. DEFINITIONS

Whenever used in this Agreement with initial capitalization, the following terms shall have the following meaning:

1.1. **"Attachment"** means any luminaire, supporting bracket, hardware, apparatus, assembly, structure, wire, conductor, cable or other circuitry and/or other lighting components, including the applicable Lighting Control, owned by Customer, existing or proposed to be installed on a Pole and/or connected to the Company's overhead or aerial distribution system or connected or proposed to be connected to the Company's underground distribution systems, for the sole purpose of providing street and/or area lighting within the Customer's municipal boundaries.

1.2. **"Authorized Attachment"** means any Equipment attached to the Company's Facilities within the Customer's municipal boundaries on or after the Effective

Date of this Agreement for which a License or a Preliminary License has been granted under this Agreement and remains in effect.

1.3. **“Conduit”** means a Structure containing one or more Ducts.

1.4. **“Connection Point”** means the point at which any Attachment receives electric power from the Company’s distribution system for the sole purpose of street and/or area lighting and shall also serve as the point of ownership demarcation.

1.5. **“Costs”** means all direct and indirect costs incurred by the Company pursuant to this Agreement, inclusive of all applicable adders and overheads in effect from time to time, and including, but not limited to, any federal, state or local taxes incurred on the Company’s receipt of amounts from Customer, on a grossed-up basis.

1.6. **“Disconnect Device”** means a Company-approved, physical disconnection assembly or apparatus that will function as a means to disengage electrical services between the Company’s electrical system and any Equipment, and may include an “in-line fuse” assembly or other form of dual pole disconnection device that may also provide a level of electrical system protection.

1.7. **“Duct”** means a single enclosed raceway or pipe in which wires or cables are or may be enclosed.

1.8. **“Electric Tariff”** means National Grid’s P.S.C. No. 220 – Electricity, Schedule for Electric Service, as the same may be changed, amended, or supplemented from time to time, and any successor tariff thereto duly approved by the Commission.

1.9. **“Electrical Space”** means the portion of the space on each Company or Joint Owned Pole between the top of such Pole and the point at which the lowest electrical conductor attaches to such Pole. This space is also known as the “supply space,” as defined in the National Electric Safety Code (“NESC”).

1.10. **“Equipment”** shall include all Customer-owned structural or electrical components, devices, assemblies or apparatus including the Lighting Control used or proposed to be used by the Customer to provide outdoor illumination of streets or areas, including all associated support infrastructure and electrical circuitry. Supplemental Attachments are not Equipment.

1.11. **“Facility”** or **“Facilities”** shall include all Structures, Poles, wires and other components, equipment, assemblies, apparatus or infrastructure owned by the

Company in whole or in part and used or proposed to be used by the Company to support any of the Equipment and / or to provide electric service and / or street lighting service.

1.12. **“Field Survey”** means the Company’s on-site audit and/or office asset/mapping record review of each Facility upon which the Customer proposes to:

- (i) Make a new Authorized Attachment(s);
- (ii) Relocate an existing Authorized Attachment(s); or
- (iii) Materially Change an existing Authorized Attachment.

1.13. **“Identification Labels”** means markings, tags, decals, signage or other displays that indicate ownership, location or asset reference and functional attributes of the Equipment.

1.14. **“Joint Owner”** means a person, firm, or corporation sharing an ownership interest in a Pole, Structure and/or related ancillary equipment with the Company. “Joint Owned” Poles, Structures, and/or related ancillary equipment are those in which Joint Owners share such ownership interest with the Company.

1.15. **“Joint User”** means any other utility, which shall now or hereafter have established the right to use specific Poles and/or Structures. The term “Joint User” shall not include Customer.

1.16. **“License”** means a revocable, nonexclusive license for the installation, maintenance and operation of the Customer’s Authorized Attachments subject to the provisions of this Agreement.

1.17. **“Lighting Control”** means the required ancillary device that, when connected to the individual luminaire or integral electric lighting circuitry associated with a designated group of luminaires, provides the minimal on/off operation of the luminaire(s) and may incorporate enhanced functionality (including but not limited to scheduled operation, varied illumination output and managed energy consumption as may be provided from a static, manufacturer preset or field adjustable control device or an NLC Node), but does not include any other Equipment and/or any other NLC System components, assemblies or apparatus used to facilitate the networked operation, communication, metering or other functional attributes.

1.18. **“Lighting Tariff”** means National Grid’s P.S.C. No. 214 – Street, Highway, Roadway, and Other Outdoor Lighting, Schedule for Electric Service, including

portions of the Electric Tariff incorporated therein by reference, as the same may be changed, amended, or supplemented from time to time, and any successor tariff thereto duly approved by the Commission.

1.19. **“Make-Ready Work”** means the work to be performed by or on behalf of the Customer, the Company, a Joint User or Other Customer, as applicable, in order to safely accommodate a new Authorized Attachment or a Material Change to an Authorized Attachment.

1.20. **“Material Change”** or **“Materially Change,”** means any alteration, modification, or replacement made to any Authorized Attachment that, in the Company’s sole judgment, would change the characteristics, licensed specifications, safety, mode of operation or maintenance, physical attributes, or use of the Facilities by the Company or Other Customers, or that would change the attributes of any such Facility related to engineering, billing or financial reporting. For avoidance of doubt, neither the conversion of an existing luminaire with a like-kind light-emitting diode (“LED”) luminaire, including the specified luminaire control, with similar physical and operational characteristics in the same location and orientation as the existing luminaire and the continued use of the existing luminaire support infrastructure, nor the initial installation of a Disconnect Device within twenty-four (24) months after Closing, as set forth in the Purchase and Sale Agreement, will be considered a Material Change except as required to facilitate accurate billing and inventory records.

1.21. **“Network Lighting Control Node”** or **“NLC Node”** means a communication-enabled photoelectric control device connected directly (affixed) or indirectly (non-affixed) to a luminaire as a component of the Equipment for the primary purpose of a Lighting Control to operate the designated luminaire and having secondary, generally recognized functional capabilities of energy consumption measurement, Equipment diagnostic monitoring, electrical surge protection, global positioning system location coordinate referencing, and having the additive incremental weight and maximum power consumption (watts) as defined in the latest version of the product manufacturer’s technical specification literature provided to the Company by the Customer for use in any required engineering analysis and/or determination of billing parameters per the Company’s Lighting Tariff. The NLC Node, and specifically the energy consumption

measurement integrated circuit or meter chip, will not be used for energy consumption billing until such time as meter chip testing standards are available, applicable regulatory metering guidelines and tariff applications are approved, the Company's information systems are compatible with the inventory, qualification testing and monthly billing requirements, and the Customer's NLC Nodes and NLC System are compliant with all regulatory requirements.

1.22. **“Network Lighting Control (“NLC”) System”** means any individual or combination of components, equipment, assemblies, devices and apparatuses, including, but not limited to, NLC Nodes, backhauls, gateways, receivers, transmitters, repeaters, and antennas to facilitate the networked operation of the wireless and/or wired communication of the Lighting Controls, attached to Equipment and including any associated information system management software.

1.23. **“OSHA”** means the Occupational Safety and Health Act, latest rule revisions as administered by the Occupational Safety and Health Administration within the U.S. Department of Labor.

1.24. **“Other Customer”** means any entity, other than the Customer, to whom the Company has extended or hereafter shall extend the privilege of attaching Equipment of any kind to the Facilities.

1.25. **“Pole”** means any vertically oriented utility structure constructed of treated wood, metal, composites or concrete used to support electrical conductors and other utility equipment necessary to facilitate the operation of the Company's electric distribution.

1.26. **“Purchase and Sale Agreement”** means any agreement(s) between the Customer and the Company providing for the purchase by the Customer of part or all of the Equipment, including street lights, located within the Customer's municipal boundaries and owned and operated by the Company prior to the execution of the Purchase and Sale Agreement and Closing of the transaction as provided therein.

1.27. **“Preliminary License”** means the limited license authorizing Customer to maintain Equipment purchased from the Company under the Purchase and Sale Agreement without change or modification as provided in Section 2.1 of this Agreement pending completion of the Separation Work.

1.28. **“PSC”** means the New York State Public Service Commission.

1.29. **“Qualified Electrical Worker”** means any worker, electrical worker, contractor or other designated individual electrically qualified to accommodate the environment within which Customer’s Equipment shall exist, in compliance with established standards associated with work in close proximity to electrical equipment and having successfully achieved a specified minimum level of training and/or experience including, but not limited to, all applicable federal, state, and local work rules and Company work rules, including compliance with OSHA 1910.269.

1.30. **“Removal Rights”** shall refer to the Company’s right pursuant to Article 6 of this Agreement or applicable laws to request or perform the removal of Unauthorized Attachments.

1.31. **“Separation Work”** means that work required to install Disconnect Devices and Identification Labels complying with the Company’s requirements on all of the Equipment purchased by the Customer under the Purchase and Sale Agreement, and includes removal of all existing Company labeling from such Equipment.

1.32. **“Structures”** includes, but is not limited to, the Ducts, Conduits, vaults, manholes, handholes, foundations, standards and other utility equipment or infrastructure necessary to facilitate the operation of an underground electric distribution system or underground sourced street and/or area light(s) owned by the Company.

1.33. **“Supplemental Attachment”** means any Customer-owned, Customer-leased or other third-party wired, wireless or self-energized hardware, equipment, assembly, apparatus, or device, including all support infrastructure and associated wiring, cabling and circuitry, that is physically affixed and/or electrically connected to the Equipment, and used for a purpose other than the primary operational function of luminaires to provide outdoor illumination. Supplemental Attachments are outside the scope of this Agreement, and must be authorized under a separate Supplemental Attachment Agreement.

1.34. **“Unauthorized Attachment”** means any Equipment attached to the Company’s Facilities other than an Authorized Attachment.

2. **SCOPE OF AGREEMENT**

2.1. **Preliminary License.** The Company hereby grants Customer a Preliminary License, effective as of the Closing as set forth in the Purchase and Sale Agreement dated _____, 2020, for the attachment to the Facilities of any and all Equipment sold by the Company to Customer in the Purchase and Sale Agreement as shown in APPENDIX II, Forms A-1 and A-2 hereto. The Preliminary License shall be limited to an initial term of twenty-four (24) months and shall only authorize Customer to maintain such existing Equipment, with no modification or change whatsoever, in its existing locations on the Company's Facilities. This Preliminary License shall terminate with respect to each individual Attachment upon completion of the Separation Work for that Attachment, at which point such Attachment and all Equipment therein shall be deemed to be an Authorized Attachment. Provided, however, that for any Equipment as to which the Separation Work is not completed within such twenty-four (24) month period and for which the Company is therefore required to perform the Separation Work on the Customer's behalf under the terms of the Purchase and Sale Agreement, the Preliminary License shall be extended until the Company completes such Separation Work, at which time such Attachment and all Equipment therein shall be deemed to be an Authorized Attachment. Upon the termination or expiration of the Preliminary License, the term of any License hereunder shall be determined in accordance with Section 15 of this Agreement.

2.2. **Use of NLC Nodes or NLC System; Supplemental Attachments.** The Customer agrees that if at any time it installs or utilizes an NLC System (as defined herein), only the NLC Node used for the primary operational function of the luminaire(s) (as further addressed in the Lighting Tariff) will be considered Equipment as defined and covered by this Agreement. All other NLC System equipment components or assemblies ("Additional NLC Equipment") will be considered Supplemental Attachments that will require execution of a separate Supplemental Attachment Agreement. Customer agrees not to install any Supplemental Attachments, including Additional NLC Equipment, until it has executed a Supplemental Attachment Agreement with the Company.

2.3. **Additional Equipment.** Any Equipment that is not listed in the Purchase and Sale Agreement and that is found within three (3) months following the Effective Date of this Agreement to be attached to the Company's Facilities within any area inside Customer's municipal boundaries and determined to have been owned by the Company as of the Effective Date will be considered to have existed prior to the date of this Agreement and to have been inadvertently omitted from the Purchase and Sale Agreement. If Customer purchases such additional Equipment in accordance with the Purchase and Sale Agreement, the Company shall grant Customer a Preliminary License for such Equipment, provided Customer agrees within thirty (30) days of notice to or by the Company of the discovery of such Equipment to perform any Separation Work required for such Equipment within the twenty-four (24) month period for such work established in the Purchase and Sale Agreement. If Customer does not agree to perform the Separation Work for such Equipment within such thirty (30) day period, such Equipment shall be de-energized and may be removed by the Company at the Customer's expense.

2.4. **Purpose of Licenses; Approval of Attachments and Changes.** Any Licenses granted by the Company to the Customer under this Agreement authorize the Customer to maintain its Equipment on the Company's Facilities for street lighting purposes only, subject to the provisions of this Agreement. The Company also agrees to grant Customer Licenses for such additional Authorized Attachments and for such Material Changes to Customer's existing Authorized Attachments as the Customer may request in accordance with the provisions provided in Article 4 of this Agreement. Any change to an Authorized Attachment not approved in advance by the Company as provided in Article 4 of this Agreement shall cause such Attachment to become an Unauthorized Attachment subject to the Company's Removal Rights in accordance with the provisions of Article 6 of this Agreement.

2.5. **Report of Equipment.** To assist the Company in maintaining its billing records, Customer shall provide the Company with a report of all Equipment in service as of December 31 of each calendar year during the term of this Agreement, in a form approved by the Company. This report shall be provided within thirty (30) days following the end of each calendar year and shall be provided in the form contained in the Company's

Application for Street and Area Lighting Attachment License, attached hereto as APPENDIX II, Forms A-1 and A-2, or in such other form as the Company may direct.

2.6. **Field Audits.** The Company may perform random field audits of the Customer's Equipment to determine the accuracy of any report provided by the Customer. To the extent there are any differences between either the Equipment identified in any Customer report or the Equipment listed in the Company's records and the Equipment identified by the Company after any such field audit that cannot be reconciled by the Company, the Company shall provide the Customer with written notice thereof. Within thirty (30) days of receipt of such notice, Customer shall either:

- (i) Provide the Company with written notice that it has removed such Equipment from the Facilities; or
- (ii) Submit a written request for the approval of such Equipment as a new Authorized Attachment pursuant to Article 4 of this Agreement.

If Customer fails to remove such Equipment or request approval of the Equipment as a new Authorized Attachment within such thirty (30) day period, such Equipment shall be deemed an Unauthorized Attachment subject to the provisions of Articles 5 and 6 of this Agreement.

2.7. **No Requirement to Construct, Retain, or Maintain.** Nothing contained in this Agreement shall be construed to compel the Company to construct, retain, extend, place or maintain any Facilities not needed for the Company's own service requirements. This Section is not intended to limit the obligation of the Company to provide electric distribution service to Authorized Attachments pursuant to the Lighting Tariff. In the event the Company and Joint Users / Other Customers no longer require the use of a Pole or Structure, the Company will notify the Customer and the Customer shall have the option to purchase the Pole or Structure at a price to be determined by the Company. If Customer fails to advise the Company of its intent to exercise such option within thirty (30) days of receipt of notice thereof from the Company, the License for use of that Pole or Structure shall terminate and the Company shall be free to remove the Pole or Structure with no further obligation to the Customer under this Agreement.

2.8. **No Limitation on Company's Agreements.** Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against the

Company with respect to any agreement(s) or arrangement(s) that the Company has heretofore entered into or may in the future enter into with any Joint Owner(s), Joint User(s) or Other Customers not party to this Agreement regarding use of the Facilities covered by this Agreement. The rights of Customer shall at all times be subject to any such existing and future agreement(s) or arrangement(s) between the Company and any Joint Owner(s), Joint User(s) or Other Customers. Nothing contained in this Agreement shall be construed to grant, and the Company makes no representations or warranties with respect to, and is not purporting to provide, Customer with any attachment rights, licenses or consents for or in connection with the attachment of Equipment to the facilities of any Joint Owner(s), Joint User(s) or other third parties. Customer is solely responsible to obtain all approvals, licenses, attachment rights or other consents required for the attachment of the Equipment to the facilities of any such Joint Owner(s), Joint User(s) or other third parties.

2.9. **Separate Agreement for Supplemental Attachments Required.** Nothing contained in this Agreement shall be construed to grant any rights to Customer to include or install any Supplemental Attachments and/or any wired or wireless hardware, equipment, apparatus, device, antennae, or signage used for any purpose other than illumination directly on the Facilities. To the extent the Customer desires to install any such equipment directly on the Facilities, a separate agreement with the Company shall be required.

2.10. **Ownership Rights.** No use, however extended, of the Facilities and no payment of any fees or charges by Customer pursuant to this Agreement shall create or vest in Customer any ownership or property rights in such Facilities. Customer's rights herein shall be and remain a license. Neither this Agreement nor any License granted hereunder shall constitute an assignment of any of the Company's rights to use the public or private property at the location of any of the Facilities.

3. REQUIREMENTS APPLICABLE TO ALL AUTHORIZED ATTACHMENTS

3.1. Compliance with Applicable Regulations, Codes and Standards.

3.1.1. **Safety Requirements.** Customer shall, at its own expense and in accordance with the terms and conditions set forth in this Agreement, install, maintain and operate all Authorized Attachments in a safe condition and in a manner that does not:

- (a) Interfere with the Company's operation of its electric distribution system;
- (b) Conflict with the use of the Facilities by the Company or by any other authorized user thereof; or
- (c) Electrically interfere with the Facilities or any equipment attached thereon or therein.

3.1.2. **Compliance with Standards.** Customer shall install, maintain and operate all Authorized Attachments in compliance with all applicable federal, state and local laws, regulations, codes and the Company's policies, practices and standards, as amended and in effect from time to time, and in accordance with the applicable requirements and specifications of the most recent editions of National Grid's engineering standards, as may be amended from time to time; the National Electrical Code ("NEC"); the National Electrical Safety Code ("NESC"); the Occupational Health and Safety Administration ("OSHA") rules and regulations, including but not limited to OSHA 1910.269; Section 70-a(5) of the New York Public Service Law; "The Electric Power Generation, Transmission, and Distribution" standard, the New York State Labor Law governing how close workers (qualified) and non-workers (unqualified) can get to energized equipment at primary and/or secondary voltages, requirements by the New York State Department of Transportation, and any governing authority having jurisdiction over the subject matter of this Agreement, as each may be amended from time to time.

3.1.3. **Clearance.** Customer shall ensure that clearances between each of the Authorized Attachments and all communications, electric distribution system and street lighting Facilities are fully in compliance with all applicable codes, standards and Company requirements, all as amended and in effect from time to time, to allow for proper maintenance, repair and reconfiguration of electric distribution system, street lighting and communications cables.

3.1.4. **Notification of Unsafe Conditions.** Customer and its agents, contractors, servants, representatives, and/or employees shall by test or observation determine that the Facilities are safe to perform work thereon. If the integrity of any Facility is in question or is marked by Company as unsafe, the Customer shall immediately confirm said condition with Company via phone and email and refrain from working on

the Facility.

3.1.5. **Notice of Planned Work.** The Customer agrees to provide Company with at least forty-eight (48) hours notice via phone and email to the person named in Section 18 of this Agreement (Notices) of when it intends to perform any work with regard to the Authorized Attachments, in order to ensure that such work will not interfere with any Company maintenance, inspection, or operation work. Such notice shall include an estimate of the time the Customer will require to perform the work. The Customer understands and agrees that Company maintenance, inspection, or operation work takes precedence over the Customer's work with regard to the Authorized Attachments, and if a conflict exists, the Customer agrees to coordinate with Company to reschedule its work with regard to the Authorized Attachments.

3.1.6. **Compliance with Tariffs and Policies.** Customer shall ensure that the Authorized Attachments conform to applicable requirements of the Lighting Tariff and Electric Tariff and applicable Company policies. All lighting or illumination sources (*i.e.*, lamps and luminaires) shall comply with the energy consumption schedules and defined hours of operation as set forth in the Lighting Tariff.

3.1.7. **Make-Ready Work.** Subject to Section 4.3.4 of this Agreement, Customer shall have no obligation to perform Make-Ready Work related to the pre-existing conditions of Authorized Attachments or Facilities at a location as of the Effective Date unless and until such time as Customer makes a Material Change that affects that location.

3.1.8. **Company's Obligations.** Except as set forth in Article 6, the Company shall have no obligation to, and shall not perform construction, maintenance repairs, reconfiguration, relocation, connection / disconnection or removal of the Equipment on the Facilities unless: (i) Customer has provided specific written authorization for the Company to do so and the Company is able to perform such work in compliance with all applicable PSC rules and requirements, including without limitation Rule V.F.4 of the General Information Section of the Lighting Tariff governing "Relocation of Existing Facilities;" or (ii) there is a safety-related emergency that the Company must address with respect to such Equipment or a Facility to which such Equipment is attached. If the Company does perform construction, maintenance repairs, reconfiguration, relocation, connection / disconnection or removal of the Equipment,

Customer shall reimburse the Company for all Costs incurred in connection with such work in accordance with Rule V.F.4 of the General Information Section of the Lighting Tariff governing “Relocation of Existing Facilities.”

3.1.9. **Removed Materials.** Any materials removed by Customer, or removed by the Company on Customer’s behalf, as part of or from within any Facilities shall be managed, tested, treated, transported, stored and disposed of by the Company in accordance with applicable rules, regulations or statutes and Customer shall reimburse the Company for all Costs incurred in connection therewith.

3.1.10. **Identification Labels.** Customer shall maintain applicable National Electric Manufacturers Association (“NEMA”) or other industry standard Identification Labels upon each luminaire, in a clear and legible condition, to identify the type of light source and associated wattage or lumen output.

3.2. **Personnel Authorized to Perform Work on The Company’s Facilities.**

3.2.1. **Qualified Electrical Workers.** Customer represents and warrants that any personnel that perform work on the Equipment in the Electric Space on the Company’s Poles or within the Company’s Structures shall at all times be Qualified Electrical Workers. Customer shall indemnify, defend and hold the Company harmless from any injury, damage, loss or claims resulting from any breach by Customer of this representation and warranty. Except where such work is performed by the Company, Customer is required to execute the “Acknowledgment For The Use of Qualified Electrical Worker” form (APPENDIX III) to affirm that any person(s) under contract with and/or the direction of the Customer, including Customer’s agents, who perform the installation, maintenance, and/or removal of Attachments in the Electric Space on the Company’s Poles or on or within Structures are qualified to perform such work in accordance with the requirements of this Agreement and have completed any required training for such work.

3.2.2. **Requirements If Workers Not Qualified Electrical Workers.** In the event Customer or its agents are unable to confirm the current status of their workers as Qualified Electrical Workers, before performing any work on the Equipment, Customer shall be required to: (i) notify the Company of its inability to confirm such status of its or its agents’ workers as Qualified Electrical Workers and to determine the appropriate electrical clearance distances for such work; (ii) only perform work on Equipment in a de-

energized condition; and (iii) perform such work in full compliance with all applicable requirements of the NEC, including without limitation any electrical clearance requirements established therein. If a Disconnect Device is not installed for such Equipment, the Customer or its agent must schedule a disconnect service request with the Company prior to performing any work on such Equipment. Following the completion of the work, the Customer or its agent must schedule a connection service request with the Company to re-energize such Equipment. The Customer will be assessed a Lighting Service Charge for each service work order occurrence as stated in the Lighting Tariff.

3.2.3. **No Access to Enclosed and Underground Structures.** Customer and its agents are prohibited from, have no authority to, and shall not permit or cause any third party to, access or ingress any of the Company's enclosed or underground primary or secondary electric distribution system Structures, including, but not limited to, manholes, handholes, vaults, transformers, and switchgears, unless such access or ingress is under the direct supervision of the Company.

3.2.4. **Company Assistance in Enclosed and Underground Structures.** If and to the extent the Customer or its agent needs access or ingress to any of the Company's underground electric distribution system infrastructure, the Customer or its agent shall contact the Company and the Company shall respond to such request, provide required support, and/or perform the necessary work as requested following its normal work order scheduling protocol, provided that the Company determines, in its sole discretion, that such connection / disconnection or other requested work is appropriate under the terms of applicable codes, standards, laws, regulations, agreements and the Company's practices and policies.

3.2.5. **No Connections/Disconnections.** Customer and its agents shall not perform or make any connections (permanent or temporary) to, disconnections from, or in any way handle, tamper or interfere with, or otherwise disrupt, the Company's electric distribution system or assets, in whole or in part, nor shall the Customer permit or cause any third party (including without limitation, Customer's agent) to do so. The Company shall be the sole party with authority to perform or make any and all (permanent and temporary) connections to or disconnections from the Company's electric distribution system or other assets. If and to the extent the Customer or its agent has a need for a

connection or disconnection associated with the Company's electric distribution system or assets, the Customer or its agent shall contact the Company by making a connection / disconnection request through normal customer contact channels and the Company shall make the necessary connection / disconnection, provided that the Company determines, in its sole discretion, that such connection is appropriate under the terms of applicable codes, standards, laws, regulations, agreements and the Company's practices and policies.

3.2.6. **Customer Responsibility for Costs.** The Customer agrees to compensate the Company for all Costs incurred by the Company in connection with work performed by the Company associated with each Attachment consistent with the charges or fees as set forth in this Agreement and/or as defined in the applicable provisions of the Lighting Tariff.

3.3. **Maintenance of Authorized Attachments.**

3.3.1. **Cable Locating; One Call System.** Customer shall be responsible for its own underground cable locating and for participation in the "One Call System(s)" providing one-call notifications within the Customer's operating service area. The One Call System is an independent association which, in compliance with federal, state and local requirements, facilitates the location identification of underground utility infrastructure through a notification / communication process between excavators and underground facility owners. The contact information for the One Call System responsible for a specific geographic area within the United States can be obtained by calling 811 nationally. As of the Effective Date, Dig Safely New York, Inc. is this association.

3.3.2. **NJUNS.** Customer shall participate, at its sole expense, in any forum, group or organization and utilize any designated common information management system established to facilitate communications, priority, schedule, and any other functions necessary to manage, locate or identify the attachment assets and actions of all customers and other facility owner(s) which are in conjunction with or may have an impact upon an Attachment. As of the Effective Date, the National Joint Utilities Notification System (NJUNS), is this organization.

3.3.3. **Access to Company Structures.** Customer may (or may expressly authorize the Company, its employees or agents to) access or enter the Company's Structures for the purpose of asset verification, inventory, inspection and/or other

engineering or asset management functions provided the Customer provides sufficient advance notice to the Company to accommodate all aspects of scheduling. A representative of the Company shall be present at all such times, for which Customer shall pay the Company the applicable fee or charge specified in the Lighting Tariff unless, in the sole discretion of the Company, the scope of such support service is in excess of the defined fee or charge scope, in which instance the Customer will pay all fully loaded costs for such support service. All personnel entering any Company Structure are to be properly qualified and outfitted with personal protective equipment (PPE) for the physical, environmental and electrical conditions to be encountered. Where Customer or its agent has been granted access as provided above, the Company may halt such activities if they threaten the safety of any individuals or property or the integrity or reliability of the Company's electric distribution system.

3.3.4. **Tree Trimming.** All tree trimming required to accommodate prospective maintenance and operation of Authorized Attachments, including but not limited to the functional performance, lumen output or illumination orientation, shall be performed by Customer or Customer's qualified contractor provided appropriate approvals have been granted by the owner(s) of the tree(s) and all governing authorities. The portion of the tree(s) to be impacted by trimming shall only be within a radial distance of three (3) feet of the luminaire extending below a horizontal plane established from the highest vertical point of the luminaire unless such area is within specified clearance distances of the electric distribution or transmission system as designated by the Company and/or other governing authorities.

3.4. **Inspection and Remediation of Authorized Attachments.**

3.4.1. **Right to Inspect.** The Company reserves the right, at its sole discretion, to make inspections of all or any part of the Equipment, at any time, without notice to Customer, at the Company's own expense.

3.4.2. **Right to Recover Costs of Inspection.** The Company reserves the right, at its sole discretion, to make inspections of all or any part of the Equipment and to recover its Costs in connection therewith from Customer, if the inspection performed pursuant to Section 3.4.1 of this Agreement reveals any of the following:

- (a) Unauthorized Attachments;

- (b) Material discrepancy in type, style or size of installed Attachment as compared with the Company's records;
- (c) Any situation creating a safety-related emergency or any condition that prevents safe access to or operation of any facilities or equipment installed on Pole(s) and/or Structures; or
- (d) Equipment that have been installed in violation of the provisions of this Agreement.

3.4.3. **Other Charges; No Ratification or Waiver.** Any charges imposed by the Company for such inspections shall be in addition to any other sums due and payable by Customer under this Agreement. No act or failure to act by the Company with regard to the charge or any unlicensed use by Customer shall be deemed ratification or the authorization of the unlicensed use. If any License should subsequently be issued, the License shall not operate retroactively or constitute a waiver by the Company of any of its rights or privileges under this Agreement or otherwise.

3.4.4. **Equipment Not in Compliance.** If, in the reasonable judgment of the Company, any of the Equipment is not in compliance with the provisions of this Agreement, the Company may provide Customer with notice thereof, whereupon Customer shall bring such Equipment into compliance with the requirements of this Agreement within fifteen (15) days or such additional time as agreed to by the Company in writing (the "Notice Period"). If Customer fails to bring its Equipment into compliance with the requirements of this Agreement with such Notice Period, the Company shall provide Customer with a Final Notice of Termination of Service with respect to the Attachment that includes such Equipment in accordance with Section 13.3(b) of the PSC's Rules and Regulations, 16 N.Y.C.R.R. § 13.3(b), and shall exercise its right to discontinue service to such Equipment in accordance with the provisions thereof.

3.4.5. **Hazardous Conditions.** If, in the reasonable judgment of the Company, any of the Equipment is not in compliance with the provisions of this Agreement and the existing physical and/or operational conditions of such Equipment creates an emergency or has the potential to cause an imminent hazard and/or immediate danger to the safety of Company employees, contractors, other persons or property, or interfere with the performance of the Company's service obligations, the Company shall have the right to disconnect or remove such Equipment from the Facilities without notice to the Customer

in accordance with Section 13.13 of the PSC's Rules and Regulations, 16 N.Y.C.R.R. § 13.13, and to recover all Costs incurred in connection therewith from Customer under this Agreement. After disconnection and/or removal, Company will make the Facility electrically safe, and then notify the Customer to retrieve and/or replace its Equipment via phone and email using the appropriate business-hour or 24-hour contact information set forth in the Notices section herein.

3.4.6. **Emergency Situations.** In the event of an emergency, Company will make the Facility electrically safe, and then notify the Customer to retrieve and/or replace its Equipment via phone and email using the appropriate business-hour or 24-hour contact information set forth in the Notices section herein.

3.4.7. **No Obligation with Regard to Removed Equipment.** In the event Company removes and/or disconnects Customer Equipment following a hazardous condition or emergency situation pursuant to Sections 3.4.5 or 3.4.6 above, Company shall not be responsible for disposal, delivery, or safekeeping of the Customer's Equipment (including but not limited to the control device or ancillary attachment) or replacement of same, nor shall Company be liable if any such Equipment is damaged, missing, or destroyed. The Customer shall be responsible for the proper disposal and any associated restoration caused by the removal of its Equipment and all appropriate actions required to replace such Equipment including the performance of all separation work (fuse and labeling) following such event.

3.4.8. **Customer Obligation to Remedy.** The Customer shall, at its sole cost and expense, remedy any condition identified by the Company as causing any of its Equipment to be not in compliance with the provisions of this Agreement, which remedy may include but not be limited to the relocation, reorientation, transfer or de-energizing of the Equipment as deemed acceptable by the Company. The Company shall promptly restore electric service to such Equipment upon receipt of notice from the Customer that remedial action has been taken to address such emergency or non-compliance, provided however that the Company shall have no obligation to restore service to such Equipment if it has the lawful right to withhold service from such Equipment for any other reason.

3.4.9. **Failure to Remedy.** If the Customer fails to remedy any condition identified by the Company as not in compliance with the provisions of this Agreement

within thirty (30) days or such longer period as may be agreed to by the Company in writing, the Company may deem the License for the Equipment in question to be revoked, deem the Equipment an Unauthorized Attachment and proceed to exercise its Removal Rights with respect to the Equipment constituting such Unauthorized Attachment as stated in Article 6 of this Agreement.

3.4.10. **No Warranty.** Neither by inspection, if any, or non-rejection, nor in any other way, does the Company give any warranty, expressed or implied, as to the adequacy, safety or other characteristics or any structures, equipment, wires, appliances or devices owned, installed or maintained by Customer or leased by Customer from third parties.

3.5. **Damage to Facilities.**

3.5.1. **Liability; Obligation to Report.** Customer shall be liable for any damages it causes to the Facilities and to any equipment of third parties (including any Joint Owner(s), Joint User(s), and/or Other Customers) attached to the Facilities, and Customer assumes all responsibility for any and all loss from such damage caused by Customer or any of its agents, contractors, servants or employees. Customer shall make an immediate report to the Company and any Joint Owner(s), Joint User(s), and / or Other Customers of the occurrence of any such damage and agrees to reimburse the respective parties for all Costs incurred by the Company, Joint Owner(s), Joint User(s) and/or Other Customers in making repairs to the Facilities or such other equipment.

4. **REQUIREMENTS APPLICABLE TO NEW ATTACHMENTS OR EQUIPMENT AND MATERIAL CHANGES TO AUTHORIZED ATTACHMENTS OR EQUIPMENT**

4.1. **License Application.**

4.1.1. **Customer Requirements.** Customer shall not install any new Equipment on the Facilities, add any Attachments, or make any Material Change to any Authorized Attachment or to any Equipment that has been granted a Preliminary License until:

- (a) Customer has first analyzed any Equipment, Attachments, or Authorized Attachments and confirmed that any new Equipment or Attachments can be installed, or any Material Changes to any Authorized Attachment or Equipment can be implemented, in compliance with all applicable safety

codes, including the NESC, and will not create loading or other issues on the Equipment or Authorized Attachments;

- (b) Customer has submitted a written application to the Company for a new License authorizing such new Equipment, Attachment, or Material Change to any Authorized Attachment or Equipment utilizing the form in APPENDIX II, Form A-1 (Application for Street and Area Lighting Attachment License); and
- (b) The Company has approved such request and issued a new License authorizing such new Equipment, Attachment, or Material Change to any Authorized Attachment or Equipment, which shall then be deemed a new Authorized Attachment under the terms of this Agreement

The Company shall provide an assessment and response to the application based upon the proposed action(s), description and engineering / construction detail provided.

4.1.2. **Unique Identification Number.** Such additional Licenses shall establish a unique identification number for each such additional Authorized Attachment, which identification number shall be used as the individual license reference and for purposes of inventory and billing administration.

4.1.3. **Right to Refuse License.** The Company reserves the right to refuse to grant a License(s) or refuse authorization for the relocation, reconfiguration, Material Change or replacement of existing Equipment or Authorized Attachments, or the installation of new Equipment or Attachments, when the Company reasonably determines that:

- (a) Refusal is necessary to maintain the safe operation of the Company's electric distribution system;
- (b) The relevant Pole or Structure may not be replaced to accommodate Customer's proposed Attachment;
- (c) The existing Facilities on the Pole or within the Structure may not be rearranged to accommodate the proposed Attachment; or
- (d) The proposed Attachment will negatively impact other customer services provided by the Company.

For the avoidance of doubt, the Parties understand and agree that the list of above-mentioned conditions is not an exhaustive list as other conditions may exist that would require the Company to refuse to grant a License.

4.2. **Field Survey.**

4.2.1. **Requirements for Field Survey.** The Company shall perform a Field Survey for each Facility upon or within which the Customer requests a new Authorized Attachment requiring an electrical connection or the reconfiguration, relocation, Material Change or replacement of existing Equipment. The Field Survey shall identify the required work, if any, that is necessary to facilitate the electrical connection and determine whether the Pole or Structure is adequate to accommodate the requested Attachment. The Company shall provide Customer with a Field Survey cost estimate representing all anticipated Costs. The Company shall perform the Field Survey(s) following receipt of the Customer's written authorization and advance payment of the estimated amount specified by the Company in accordance with the provisions of Section 7.2.1 of this Agreement.

4.2.2. **When Survey Not Required.** The Company may determine that a Field Survey is not required if Customer proposes a new, in-kind replacement of existing Equipment having the same physical and operational characteristics and is to be in the same location and orientation as the existing Equipment in an Authorized Attachment. For avoidance of doubt, neither the conversion of an existing luminaire with a like-kind LED luminaire and/or the installation or inclusion of an NLC Node with similar physical and operational characteristics in the same location and orientation as the existing luminaire nor the initial installation of a Disconnect Device within the specified twenty-four (24) months following the Closing will require a Field Survey.

4.2.3. **Connection Point.** The Connection Point shall have the meaning ascribed to it in the Purchase and Sale Agreement, as further defined herein and as the Parties understand such to be where the street light Facility is energized from the electric distribution system or similarly referenced as the point of ownership demarcation. The Company shall own the electric distribution system up to and including the Connection Point. To the extent there is any uncertainty or conflict with respect to the Connection Point, the Company, at its sole discretion, shall define the Connection Point.

4.3. **Make-Ready Work.**

4.3.1. **Authorization of Make-Ready Work.** In the event that the Company determines in the Field Study that a Pole or Structure is physically inadequate or

that the reconfiguration of the existing electric distribution system equipment or other Facilities is required, the Company will indicate on the Authorization for Make-Ready Work (APPENDIX II, Form B-2) its estimate of its Cost of completing the design for the Make-Ready Work and for performing the required Make-Ready Work and forward such completed authorization form to the Customer.

4.3.2. **Performance of Make-Ready Work.** The Company will schedule and perform the required Make-Ready Work following its receipt of the executed Authorization for Make-Ready Work form and Customer's advance payment of the estimated amount specified by the Company. Customer shall pay the Company for all the Costs of all Make-Ready Work in accordance with the provisions of Section 7.2.2 of this Agreement, and shall also arrange with the owner(s) of other attachment(s) on the Pole or within the Structure or other Facility for the transfer or rearrangement of such facilities to accommodate the installation, reconfiguration or removal of the Attachment(s).

4.3.3. **No Reimbursement.** Customer shall not be entitled to reimbursement of any amounts paid to the Company for Pole and/or Structure replacements, capacity upgrades, or for the reconfiguration or rearrangement of other attachment(s) on its Poles or within its Structures by reason of the use by the Company or other authorized user(s) of any additional space or capacity resulting from such Make Ready Work.

4.3.4. **Costs for Additional Equipment and Changes.** If the Company or a Joint Owner needs to attach additional equipment or make changes to existing Facilities within or upon which Customer has an Authorized Attachment, Customer agrees to be responsible to perform or to reimburse the Company for all Costs either: (i) to reconfigure its Authorized Attachment(s) in or on such Structure(s), as such reconfiguration shall be determined by the Company; or (ii) to transfer its Authorized Attachment(s) to an alternate location designated by the Company so that the additional Facilities of the Company may be attached where either an agency of government, whether local, state or federal, requires the removal, relocation, or modification of a Structure affecting Customer's Authorized Attachment; or a Structure must be repaired or replaced for any reason (as determined by the Company).

4.3.5. **Scheduled Workload.** The Company will endeavor to perform all Make-Ready Work to accommodate Customer's Authorized Attachments as a part of its normal, scheduled workload.

4.3.6. **Costs for Reconfiguration, Transfer, or Removal.** When reconfiguration, transfer or removal of Facilities of the Company is required to facilitate attachments of Other Customers or third parties on or within Structures, Customer shall be responsible for all costs incurred in connection with such reconfiguration, transfer or removal of Customer's Attachments as a result. Customer has sole responsibility for the recovery of the costs of the reconfiguration, transfer or removal of Attachments from such Other Customer(s) or third party(ies).

4.4. **Installation Requirements for New Authorized Attachments and Material Changes.**

4.4.1. **Disconnect Device.** Customer shall install a Disconnect Device within each Authorized Attachment. The Disconnect Device shall be located as close as feasibly practical to the energizing source or Connection Point and shall be readily accessible to both the Company and the Customer. The Disconnect Device shall, at a minimum, be dual pole to completely separate the Customer's energized conductors from the Company's distribution system.

4.4.2. **No Joint Use of Ducts.** Joint use of the Company's Ducts by Customer for the installation of new Equipment is not permitted.

4.4.3. **Authorization Required.** The installation of Customer Equipment is to be external of Company Structures except to facilitate access to the Connection Point as specified by the Company. If unique circumstances cause the Customer to request the installation of Equipment, such as splice boxes and coiled cables to be within Structures, the installation will only be allowed if specifically authorized by the Company in writing and such Equipment complies in all respects with Article 2 of this Agreement. Where splice boxes are allowed, cable slack shall be installed to allow the Equipment to be moved clear of the Structure, which will allow for the Company to perform facility maintenance and/or Facility repairs.

4.4.4. **Identification Labels.** Customer shall place or have placed by the Company (at Customer's sole cost and expense) as Make-Ready Work, Identification

Labels on all of Customer's Equipment including, but not limited to, cables located within or in close proximity to the Company's underground Structures and Customer handholes containing circuit Disconnect Devices. The Company shall have the right to approve or reject Customer Identification Labels that are significantly different than those described in APPENDIX II, Form E.

4.4.5. **Tree Trimming.** All tree trimming made necessary to accommodate initial construction, reconstruction, relocation, or Material Change of Authorized Attachments shall be performed by qualified contractors approved by the Company and Customer, at the sole cost and expense of Customer. The Customer and not the Company shall be solely responsible for the performance of such work and shall also be responsible for obtaining permission for such work from the owner(s) of such tree(s) and from any other governing authorities regulating such work.

5. **UNAUTHORIZED ATTACHMENTS**

5.1. **Failure to Comply with Tariffs.** In the event that Customer converts, replaces or otherwise uses a lighting or illumination source other than those provided in the Lighting Tariff in any Authorized Attachment, or operates such Equipment in a manner other than as stated in the Lighting Tariff, the Electric Tariff, or in this Agreement, such action shall cause the Authorized Attachment to become an Unauthorized Attachment subject to the Company's removal rights under Article 6 of this Agreement.

5.2. **Backbilling.** If any Equipment is found on the Facilities within the Customer's municipal boundaries at any time after the third month following the Closing as set forth in the Purchase and Sale Agreement that is not covered by a License or a Preliminary License, the Company shall provide Customer with written notice thereof and may, without prejudice to its other rights or remedies under this Agreement, submit a backbill to the Customer for service to such Unauthorized Attachments as authorized by the Lighting Tariff and the PSC's rules.

5.3. **Application.** If Customer wishes to retain such Equipment, Customer shall submit to the Company a written Application For Street and Area Lighting Attachment License (Form A-1) within thirty (30) days after receipt of the Company's written notice of the existence of such Unauthorized Attachment(s). If such application is not received

by the Company within the specified time period or is rejected by the Company, the Equipment shall be deemed to be an Unauthorized Attachment subject to the Company's removal rights under Article 6 of this Agreement.

5.4. **Company Modification or Removal of Structures.** If the Company elects, in its sole discretion, to modify, change or replace any Structure on which Equipment is located or is directly impacted, including, without limitation, to upgrade such Structure or any Facilities located on or near that Structure, the Company shall provide Customer with written notice of such work ("Company Notice") and Customer agrees to remove and relocate the Customer's Equipment located on or adjacent to such Structure to an alternate location designated by the Company within six (6) months following the date of the Company Notice, at Customer's expense and in compliance with all applicable laws, rules, regulations, codes and standards, as provided in Section 4.3.4 of this Agreement. Any Equipment not removed by Customer in accordance with a Company Notice shall be deemed to be Unauthorized Attachments.

6. REMOVAL RIGHTS

6.1. Removal of Authorized Attachments.

6.1.1. **Costs, Fees and Charges; Company's Right to Remove and Dispose.** Customer, at its sole expense, shall remove or have removed in accordance with this Agreement any Attachment(s) from any Facilities within thirty (30) days of its receipt of a notice from the Company requiring removal of such Attachment(s). If Customer fails to remove such Attachment(s) from the Company's Facilities within such time, the Company shall have the right to remove those Attachment(s) without any liability for damage or injury thereto, and Customer shall pay all Costs incurred by the Company in connection therewith. If the Company exercises its Removal Rights as described herein, the Company shall have the option to sell or otherwise dispose of the removed Attachment(s) provided that the Company shall credit any amounts received to Customer's account. Customer shall be liable for and pay all fees and charges pursuant to the Lighting Tariff and the terms of this Agreement to the Company until such Attachment(s) are removed.

6.2. **Removal of Unauthorized Attachments.**

6.2.1. **Right to Remove; No Notice.** The Company may de-energize and remove any Unauthorized Attachments without the need to provide any further notice to the Customer and without liability to Customer of any kind.

6.2.2. **Liability.** The Customer shall be liable to the Company for its charges under the Lighting Tariff and the Electric Tariff for electric service furnished to any Unauthorized Attachment within Customer's municipal boundaries through and until the date of its de-energization or removal and for all Costs incurred by the Company in removing the Unauthorized Attachment, and the Company shall have no liability to Customer for loss of service provided by Customer or any damage or injury to Customer's Unauthorized Attachment(s).

7. **FEES, CHARGES AND PAYMENTS**

7.1. **Fees for electric service.**

7.1.1. **Applicable Tariff.** Charges for electric energy supplied to the Equipment and for the attachment of the Equipment to the Facilities shall be as specified in the Lighting Tariff unless such equipment is not specified in the Lighting Tariff, in which instances the charges set forth in the Electric Tariff shall apply.

7.1.2. **Calculation and Payment of Fees and Charges.** Electric service charges and fees for individual Equipment not specified in the Lighting Tariff are in addition to any fee for outdoor lighting service associated with the Equipment and shall be either: (i) metered and billed per the applicable provision of the Electric Tariff; or (ii) an unmetered estimate in accordance with the terms of the Electric Tariff, with the kWh use calculation based on the cumulative maximum energy consumption value of each individual piece of Equipment at a location applied continuously over a 24 hours per day, 7 days per week, 365 days per year operation schedule, unless otherwise defined by the Company in its sole discretion. Customer will pay the electric service fees to the Company in accordance with the Electric Tariff and the Company's established monthly billing period and conditions as stated upon the rendered bill.

7.1.3. **Right to Convert to Metered Service.** Customer agrees that the Company reserves the right to convert any unmetered electric service to a metered electric

service in its sole discretion, with all conversion costs from unmetered electric service to metered electric service borne by Customer, except as otherwise provided in the Electric Tariff or the Lighting Tariff. Electric service fees shall be assessed continuously, inclusive of periods of inactive service, temporary inoperable condition, replacement, or relocation, until written notice is provided by Customer to the Company of the permanent removal of the Licensed Equipment.

7.2. **Costs for Modifying/Relocating Facilities.** Customer shall reimburse the Company for all Costs incurred in modifying and/or relocating Facilities owned by the Company to accommodate any Customer-desired service or Attachment in accordance with Rule V.F.4 of the General Information Section of the Lighting Tariff governing Relocation of Existing Facilities.

7.2.1. **Field Surveys.** The Company's obligation to perform any Field Survey requested by the Customer pursuant to Section 4.2 of this Agreement is contingent on the Customer making advance payment to the Company of the estimated Costs of that Field Survey determined by the Company, which shall be sufficient to cover the Company's Costs of performing the required Field Survey. The estimated amount shall include the standard Field Survey charge as found in APPENDIX I, Schedule of Fees and Charges, and any other required ancillary service costs incurred in the performance of the Field Survey. The estimated ancillary service costs shall include but not be limited to; applicable permits, work zone and police detail protection and other safety and environmental functions which shall be required to perform the Field Survey at a specific location. The Parties agree that upon completion of the Field Survey by the Company, no adjustment of the Field Survey costs paid by Customer shall be made to reflect the Company's actual costs to perform the Field Survey, whether or not the Company's actual costs are more or less than the estimated costs paid by Customer. The current standard charge assessed to Customer and all Other Customers for the Field Survey can be found in APPENDIX I, Schedule of Fees and Charges, and is based on the Company's current estimated cost to perform and complete the Field Survey. The Company reserves the right to change such standard Field Survey charge assessed to Customer and all Other Customers from time to time and to provide written notice as stated in Section 7.4 of this Agreement.

7.2.2. **Make-Ready Work.** The Company's obligation to perform any Make-Ready Work requested by the Customer in accordance with Section 4.3 of this Agreement is contingent on the Customer making advance payment to the Company of the estimated Costs of such Make-Ready Work as determined by the Company. The Parties agree that upon completion of the Make-Ready Work by the Company, no adjustment of the Make-Ready Work amount paid by Customer shall be made to reflect the Company's actual Costs of performing the Make-Ready Work, whether or not the Company's actual Costs are more or less than the estimated costs paid by Customer.

7.2.3. **Fees for New Attachments or Material Changes.** Customer shall pay to the Company the fees and charges for any other services performed by the Company in conjunction with any request by Customer for License(s) for new Attachments or for Material Change to existing Attachments. Such charges will be established in accordance with the terms and conditions of APPENDIX I, attached hereto and are incorporated into this Agreement by reference.

7.3. **Costs for Failure to Comply with Agreement.** Customer shall also reimburse the Company for all Costs incurred by the Company in disconnecting, removing or performing any other required work on the Equipment necessitated by Customer's failure to install, operate and maintain such Equipment in compliance with the requirements of this Agreement, provided, however, that any such action by the Company shall be without prejudice to any other remedies that the Company may have as a result of such failure by Customer to comply with the requirements of this Agreement.

7.4. **Changes to Fees and Charges.** The Company may change the amount of fees and charges specified in APPENDIX I, Schedule of Fees and Charges by giving Customer no fewer than sixty (60) days' written notice prior to the date the change becomes effective or as otherwise approved and made effective by the PSC. Notwithstanding any other provision of this Agreement, Customer may terminate this Agreement at the end of such sixty (60) day notice period if the change in fees and charges is not acceptable to Customer, provided that Customer gives the Company no fewer than thirty (30) days' written notice of its election to terminate this Agreement prior to the end of such sixty (60) day period. Upon termination of the Agreement, the Customer shall be responsible for the removal of all of its Attachments as provided in Section 16.3.3 of this Agreement.

8. LEGAL REQUIREMENTS

8.1. **Obligation to Obtain Authorizations.** Customer shall be responsible for obtaining from the appropriate public and/or private authority any authorizations required to construct, operate and/or maintain its Attachments on the public and private property at the location of Poles and/or Structures for which Customer has obtained License(s) under this Agreement and shall submit to the Company evidence of such authorizations before making Attachments on such public and / or private property.

8.2. **Obligation to Comply with Applicable Law.** The provisions of this Agreement are subject to, and the Parties hereto shall at all times observe and comply with, all laws, ordinances, regulations, and rulings that in any manner affect the rights and obligations of the Parties, so long as such laws, ordinances, regulations or rulings remain in effect.

8.3. **No Forfeiture of Rights.** No Preliminary License or License granted under this Agreement shall extend to any Facilities or Equipment outside of the Customer's municipal boundaries or where the placement of Attachments would result in a forfeiture of the rights of any of the Company, Joint Users, or Other Customers to occupy the property on which such Facilities are located. If placement of Customer's Attachments would result in a forfeiture of the rights of the Company, Joint User(s), or Other Customers to occupy such property, Customer agrees to remove its Attachments forthwith; and Customer agrees to pay the Company, Joint User(s), or Other Customers all losses, damages, and Costs incurred as a result thereof.

8.4. **Not Evidence of Usable/Unusable Space.** Neither this Agreement nor the payment of any fees under this Agreement shall be used by any Party as evidence that the space occupied by Customer's Attachments is either usable or unusable space.

9. LIMITATION OF LIABILITY

9.1. **Limitation on Type of Damages.** The Company, the Company's affiliates and their respective officers, directors, agents, employees, parents, affiliates, successors or assigns, shall not be liable to Customer or to its officers, directors, agents, employees, successors or assigns for any claims, suits, actions or causes of action or otherwise for

incidental, punitive, special, indirect, multiple or consequential damages (including, without limitation, attorneys' fees or litigation costs) connected with, or resulting from, performance or non-performance of this Agreement, or any actions undertaken in connection with or related to this Agreement, including, without limitation, any such damages which are based upon causes of action for breach of contract, tort (including negligence and misrepresentation), breach of warranty or strict liability.

9.2. **Limitation on Amount of Liability.** To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the Company and the Company's affiliates and their respective officers, directors, agents, and employees to Customer and anyone claiming by or through Customer, for any and all claims, losses, costs or damages, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Agreement from any cause or causes shall not exceed the total compensation received by the Company under this Agreement, or the total amount of \$100,000, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

9.3. **No Warranty.** The Company is not responsible or liable and gives no warranty, expressed or implied, including without limitation any warranty of merchantability or fitness for a particular purpose, for the adequacy, safety or other characteristics of any Structures, Equipment or wires purchased by the Customer under this Agreement or owned, installed, operated or maintained by Customer or leased by Customer from third parties.

9.4. **Survival.** The provisions of this Article 9 shall apply regardless of fault and shall survive termination, cancellation, suspension, completion, or expiration of this Agreement.

10. **REPRESENTATIONS AND WARRANTIES; COVENANTS**

10.1. **Representations and Warranties.** On the Effective Date, each Party represents and warrants to the other Party that:

- (i) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) The execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action, and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party, or any law, rule, regulation, order or the like applicable to it;
- (iii) This Agreement and each other document executed and delivered in accordance with this Agreement constitutes the legally valid and binding obligation enforceable against it in accordance with its terms;
- (iv) It is not bankrupt or insolvent, and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;
- (v) There is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceeding that could materially adversely affect its ability to perform its obligations under this Agreement;
- (vi) It is acting for its own account, has made its own independent decision to enter into this Agreement, and, as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement; and
- (vii) It is in compliance with all relevant and applicable laws, tariffs, and regulations.

10.2. **General Covenants.** Each Party covenants that throughout the term of this Agreement:

- (i) it shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) it shall maintain (or obtain from time to time as required, including through renewal, if applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and
- (iii) it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions of its governing

documents, any contracts to which it is a party, or any law, rule, regulation, or order applicable to it.

11. INDEMNITY

11.1. **Requirement to Indemnify.** Customer shall at all times indemnify, defend, and save harmless, as applicable, the Company and its affiliates and their respective officers, directors, agents, and employees, from any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from:

- (i) Any work or action done upon the Facilities licensed hereunder or any part thereof performed by Customer or any of its agents, contractors, servants, or employees;
- (ii) Any use, occupation, condition, operation of the Facilities or any part thereof by Customer or any of its agents, contractors, servants, or employees;
- (iii) Any act or omission on the part of Customer or any of its agents, contractors, servants, or employees, for which the Company may be found liable;
- (iv) Any accident, injury (including, but not limited to, death) or damage to any person or property occurring upon the Facilities or any part thereof or arising out of any use thereof by Customer or any of its agents, contractors, servants, or employees, except where such work is performed by the Company;
- (v) Any failure on the part of Customer to perform or comply with any of the representations, warranties, covenants, agreements, terms or conditions contained in this Agreement;
- (vi) Any payments made under any Workers' Compensation Law or under any plan for employee disability and death benefits arising out of any use of the Poles, Structures, or Facilities by Customer or any of its agents, contractors, servants, employees;
- (vii) Any installation, operation, maintenance, presence, use, occupancy or removal of the Equipment by Customer or any of its agents, contractors, servants or employees, including without limitation, taxes, special charges by others, and all claims and demands for infringement of patents with respect to the manufacture, use, and

operation of the Attachments in combination with Poles, Structures, Facilities, or otherwise; or

- (viii) The proximity of the Equipment to the property of the Company or of any third party.

11.2. FAILURE TO INDEMNIFY. IF THE COMPANY IS ENTITLED TO INDEMNIFICATION UNDER THIS ARTICLE 11 AS A RESULT OF A CLAIM BY A THIRD PARTY, AND CUSTOMER FAILS, AFTER NOTICE AND REASONABLE OPPORTUNITY TO PROCEED UNDER SECTION 11.3 OF THIS AGREEMENT, TO ASSUME THE DEFENSE OF SUCH CLAIM, THE COMPANY MAY AT CUSTOMER'S EXPENSE, SETTLE OR CONSENT TO THE ENTRY OF ANY JUDGMENT WITH RESPECT TO, OR PAY IN FULL, SUCH CLAIM. IF CUSTOMER IS OBLIGATED TO INDEMNIFY AND HOLD THE COMPANY HARMLESS UNDER THIS ARTICLE 11, THE AMOUNT OWING TO THE COMPANY SHALL BE THE AMOUNT OF THE COMPANY'S ACTUAL LOSS, NET OF ANY INSURANCE OR OTHER RECOVERY.

11.3. Indemnity Procedures.

11.3.1. Notification. Promptly after receipt by the Company of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article 11 may apply, the Company shall notify Customer of such fact. Any failure of or delay in such notification shall not affect Customer's indemnification obligation unless such failure or delay is materially prejudicial to Customer.

11.3.2. Right to Assume Defense; Right to Participate. Except as stated below, Customer shall have the right to assume the defense thereof with counsel designated by Customer and reasonably satisfactory to the Company. If the defendants in any such action include the Company and Customer and if the Company reasonably concludes that there may be legal defenses available to it which are different from or additional to those available to the Customer, the Company shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. The Company shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by Customer.

11.3.3. Notwithstanding the foregoing, Customer:

- (i) Shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Company and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Company, or there exists a conflict or adversity of interest between the Company and Customer, in which event the Customer shall pay the Company's reasonable expenses; and
- (ii) Shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Company, which shall not be unreasonably withheld, conditioned or delayed.

12. EXCLUSION OF WARRANTIES

12.1. **No Representations Regarding Condition of Poles, Structures, or Facilities.** The Company makes no warranties, representations, guarantees or promises, whether statutory, oral, written, express, or implied as to the present or future strength, condition, or state of any Poles, Structures, Facilities, wires, apparatus or otherwise in connection with any Attachment, Equipment or any other facilities or equipment in connection with this Agreement. To the extent applicable, the Customer, or its contractors, agents and representatives performing any Attachment work, shall be responsible and liable for observations, assessments and non-destructive testing of the Poles and/or Structures to determine whether the Poles and/or Structures are safe to utilize, support, access or ascend. If the Customer questions the integrity or safety of any Pole, Structure or Facility or if any Pole, Structure or Facility is marked as unsafe, the Customer shall refrain from utilizing, accessing, ascending, or handling the Pole, Structure or Facility in any manner whatsoever and shall notify or confirm such condition with the Company. Should the Customer, or its contractor, agent or representative decide, in its sole judgment, to utilize or access a Pole, Structure or Facility (including, without limitation, Poles, Structures or Facilities that are marked unsafe or appear to be unsafe), the Customer, not the Company or its affiliates, shall assume all risk of loss, liability and damages (including injury to any person(s) (including death) or property), and Customer shall indemnify, defend, release and hold harmless the Company, its affiliates, and the Company's and its

affiliates' successors, assigns, officers, agents, representatives from all claims arising in whole or in part from use of such Poles, Structures, or Facilities in accordance with the provisions of Article 11 of this Agreement.

12.2. **No Warranties**. Neither by inspection, if any, or non-rejection, nor in any other way, does the Company give any warranty, expressed or implied, including without limitation any implied warranty of merchantability or fitness for a particular purpose, to the Customer or its contractors, agents or representatives performing any Attachment work as to the adequacy, safety or other characteristics of any Poles, Structures or Facilities owned by the Company or by any third party or of any Equipment, wires, appliances or other devices owned, installed or maintained by Customer or leased by Customer from third parties. It is understood that any Field Survey or other assessment of the condition of any Facilities of the Company made pursuant to this Agreement is performed solely for the protection of the Company and its other customers and not for the benefit of the Customer, its contractors, agents, employees or representatives.

12.3. **Survival**. The provisions of this Article 12 shall survive the expiration or earlier termination of this Agreement or any license issued under this Agreement.

13. **INSURANCE**

13.1. **Customer's Obligation to Insure**. Customer shall carry insurance issued by an insurance carrier satisfactory to the Company to protect the parties hereto from and against any and all claims, demands, actions, judgments, costs, expenses, and liabilities of every kind and nature which may arise or result, directly or indirectly from or by reason of such loss, injury, or damage as covered in Article 11 of this Agreement.

13.2. **Comprehensive/Commercial Liability Insurance**. Comprehensive or Commercial General Liability Insurance, including Contractual Liability and Product/Completed Operations Liability covering all insurable operations required under the provisions of this Agreement and, where applicable, coverage for damage caused by any explosion or collapse with the following minimum limits of liability:

Bodily Injury Liability	\$5,000,000
Property Damage Liability	\$5,000,000

If a combined single limit is provided, the limit shall not be less than \$5,000,000 per occurrence. Customer's insurance requirements for General Liability or Automobile Liability may be satisfied through any combination of excess liability and/or umbrella. Coverage shall include contractual liability with this Agreement and all associated agreements with respect to the Customer's ownership of the street lights being included. In the event the Customer is a governmental entity and such entity's liability to a third party is limited by law, regulation, code, ordinance, by-laws or statute (collectively the "Law"), this liability insurance shall contain an endorsement that waives such Law for insurance purposes only and strictly prohibits the insurance company from using such Law as a defense in either the adjustment of any claim, or in the defense of any suit directly asserted by an insured entity.

13.3. **Worker's Compensation.** Workers' Compensation Insurance for statutory obligations imposed by Workers' Compensation or Occupational Disease Laws, including Employer's Liability Insurance with a minimum limit of \$500,000. When applicable, coverage shall include The United States Longshoreman's and Harbor Workers' Compensation Act and the Jones Act.

13.4. **Automobile.** Automobile Liability covering all owned, non-owned and hired vehicles used in connection with the work or services to be performed under this Agreement with minimum limits of:

Bodily Injury & Property Damage
Combined Single Limit - \$1,000,000

13.5. **Self-Insurance:** Customer may elect to self-insure any or all the requirements herein, provided the Company consents, and Customer provides written notice and evidence of self-insurance to the Company prior to the Closing as set forth in the Purchase and Sale Agreement. With respect to the Workers' Compensation, such evidence shall consist of a copy of a current self-insured certificate or other acceptable form of proof of self-insurance. Any deductible or self-insured retention shall be at Customer's expense.

13.6. **Waiver.** The Customer and its insurance carrier(s) shall waive all rights of recovery against the Company and their directors, officers and employees, for any loss or

damage covered under those policies referenced in this insurance provision. To the extent the Customer's insurance carriers will not waive their right of subrogation against the Company, the Customer agrees to indemnify the Company for any subrogation activities pursued against them by the Customer's insurance carriers. However, this waiver shall not extend to the gross negligence or willful misconduct of the Company or its employees, subcontractors or agents.

13.7. **Insurance Required Before Attachments Made; Changes to Insurance.**

All insurance must be effective before the Company will authorize Customer to make Attachments to any Pole and/or Structure to the Equipment and shall remain in force until such Attachments have been removed from all such Poles and/or Structures. Customer accepts the obligation to inform the Company of changes in insurance or insurance carrier and/or policy on a prospective basis.

13.8. **Certificates of Insurance.** Customer shall submit to the Company certificates of insurance including renewal thereof, by each company insuring Customer to the effect that it has insured Customer for all liabilities of Customer covered by this Agreement; and that such certificates will name the Company as an additional insured under the General Liability and Automobile Liability policies and provide that the insurance company will not cancel or change any such policy of insurance issued to Customer except after the giving of not less than thirty (30) days' written notice to the Company. Customer shall also notify and send copies to the Company of any policies maintained under this Article 13 written on a "claims-made" basis. The following language shall be used when referencing the additional insured status of the Company: National Grid USA, its direct and indirect parents, subsidiaries and affiliates, shall be named as additional insureds.

13.9. **Contractor Insurance.** Customer shall require all of its contractors to carry insurance which meets the requirements specified under this Article 13, and to name the Company as an additional insured.

14. **ASSIGNMENT OF RIGHTS**

14.1. **No Right to Assign.** Customer shall not assign or transfer this Agreement, or any rights or authorization granted hereunder, and this Agreement shall not inure to the

benefit of Customer's successors, without the prior written consent of the Company. In no event shall any assignment of this Agreement extend the territory to which this Agreement applies beyond the Customer's municipal boundaries or permit any entity that is not eligible under the Lighting Tariff to receive street lighting service from the Company in such location, to assume any of the rights or obligations of Customer hereunder.

14.2. **Successors Bound.** In the event such consent or consents are granted by the Company, this Agreement shall extend to and bind the successors and assigns of the Parties.

14.3. **No Right to Lease.** Pole and Structure space licensed to Customer hereunder is for Customer's exclusive use only and is licensed to Customer for the sole purpose of permitting Customer to place or retain Authorized Attachments. Customer shall not lease, sublicense, share with, convey, or resell to others any such space or rights granted hereunder. Customer shall not allow a third party, including affiliates, to place attachments or any other Equipment anywhere on its Attachments or on the Facilities, Poles or within Structures, including, without limitation, the space on Facilities, Poles or within Structures licensed to Customer for Authorized Attachments, without the prior written consent of the Company.

14.4. **Maintenance Not an Assignment.** No contract between the Customer and any other party limited solely to the operation, maintenance, modification, or repair of the Equipment shall be considered an assignment or transfer under this Article.

15. TERM OF AGREEMENT

15.1. This Agreement shall be co-terminus with the Customer's Service Agreement(s) for service to its Street Lights under either Service Classification No. 3 (energy only) of the Company's Lighting Tariff, or under the applicable provisions of the Company's Electric Tariff, or applicable successor tariffs, as may be amended from time to time, unless this Agreement is terminated earlier in accordance with Article 16 of this Agreement.

15.2. Termination of this Agreement or any licenses issued hereunder shall not affect: (i) Customer's liabilities and obligations incurred hereunder prior to the latter of the effective date of such termination or the date on which Customer's Attachments are

removed from the Facilities; or (ii) the Company's and Customer's rights pursuant to the laws, ordinances, regulations, and rulings governing the subject matter of this Agreement; or (iii) any provisions of this Agreement that shall survive expiration or earlier termination of this Agreement, including Articles 9, 11 and 12 of this Agreement.

16. TERMINATION RIGHTS

16.1. Termination of Service to Authorized Attachments.

16.1.1. **Termination for Past-Due Bills.** The Company's bills for service under this Agreement are due when issued and are past due if not paid within twenty (20) days of issue. If Customer fails to pay such bills within such twenty (20) day period, the Company may serve Customer with a written Final Notice of Termination of Service in conformance with Section 13.3(b) of the PSC's rules, 16 N.Y.C.R.R. § 13.3(b) (a "Final Termination Notice") and may thereafter terminate service to all or any part of the Authorized Attachments in accordance with the provisions of Section 13 of the PSC's rules.

16.1.2. **Final Termination Notice.** The Company may also issue a Final Termination Notice to Customer if Customer fails to comply with any of the requirements of this Agreement, the Lighting Tariff, or the Electric Tariff and may thereafter terminate service to all or any part of the Authorized Attachments in accordance with the provisions of Section 13 of the PSC's rules. Any such notice shall identify the specific Attachments that are not in compliance with the requirements of this Agreement, the Lighting Tariff, or the Electric Tariff and the specific requirements that those Attachments do not meet.

16.1.3. **No Restriction on Removal Rights.** Nothing in this Agreement shall be construed as restricting in any way the Company's Removal Rights under Article 6 of this Agreement or the Company's right to terminate service to Authorized Attachments without notice in the event of an emergency as authorized by Section 3.4.5 of this Agreement and Section 13.13 of the PSC's rules.

16.2. Termination of Individual Licenses.

16.2.1. Any License(s) issued pursuant to this Agreement shall automatically terminate when Customer ceases to have authority to construct, operate,

and/or maintain its Attachments on the public or private property at the location of the Facilities covered by the License.

16.2.2. Customer may at any time terminate a License for a specific Attachment provided written notice of such termination is received by the Company no less than fifteen (15) days prior to the proposed removal of the Attachment from the specific Facilities (APPENDIX II, Form D), in accordance with Article 6 of this Agreement. Following such removal, Customer shall not make any new Attachment to such Facilities until Customer has first complied with the provisions of this Agreement as though no Attachment had ever been made to such Facilities.

16.2.3. The Company may terminate a License for specific Attachment(s) on fifteen (15) days' written notice to the Customer. The Company may exercise its Removal Rights under Article 6 of this Agreement upon the expiration of this fifteen (15) day notice period.

16.3. **Termination of Agreement.**

16.3.1. **Termination for Failure to Comply with Agreement.** If Customer fails to materially comply with any of the terms or conditions of this Agreement or defaults in any of its obligations under this Agreement, or if the Attachments or Equipment is maintained or used in violation of any law and Customer shall fail within thirty (30) days after written notice from the Company to correct such default or noncompliance, the Company may, at its option, terminate this Agreement in whole or in part, along with all Licenses granted hereunder or the Licenses covering the Facilities as to which such default or noncompliance shall have occurred.

16.3.2. **Termination for Failure to Adequately Insure.** If, at any time, an insurance carrier notifies the Company that any policy or policies of insurance, acquired pursuant to Article 13 of this Agreement, will be canceled or changed so that the requirements of Article 13 of this Agreement will no longer be satisfied and, prior to the effective date of the cancellation or change in the insurance policy(ies), Customer fails to furnish to the Company new certificates providing evidence of insurance, or other sufficient documentation that Customer meets the requirements for self-insurance in accordance with the provisions of Article 13 of this Agreement, then the Company shall have the right, at its option, to either: (i) purchase insurance at the required coverage and

to include all Costs incurred by the Company in connection therewith in the Company's bills for service under this Agreement; or (ii) terminate this Agreement.

16.3.3. **Schedule for Removal; Costs.** In the event of any termination of part or all this Agreement by the Company, Customer shall submit a plan and schedule to the Company pursuant to which Customer (or its agents) will remove the Attachments affected by such termination from the Facilities within six (6) months from the date of termination, unless otherwise agreed to by both Parties in writing, provided, however, that Customer shall be liable for and pay all fees, charges and associated Costs due to the Company pursuant to the terms of this Agreement until its Attachments are removed from the Company's Poles, Structures, and Facilities.

17. **CONSTRUCTION**

17.1. **AUTHORIZATION NOT EXCLUSIVE.** Nothing herein contained shall be construed as a grant of any exclusive authorization, right or privilege to Customer. The Company shall have the right to grant, renew and extend rights and privileges to others that are not parties to this Agreement, by contract or otherwise, to use any Pole, Structure, or Facility subject to this Agreement.

17.2. **CHOICE OF LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles contained therein. Only the courts in the State of New York shall have jurisdiction over this Agreement and any controversies arising out of or relating to this Agreement and/or provisions hereunder. Each Party respectively waives personal service by manual delivery and agrees that service of process in any action arising out of this Agreement may be made by registered or certified mail, return receipt requested, and directed to each Party.

17.3. **SEVERABILITY.** In the event that any provision or part of this Agreement or the application thereof to any Party or circumstance is deemed invalid, against public policy, void, or otherwise unenforceable by a court of competent

jurisdiction, the remaining provisions or parts hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

17.4. **NO THIRD-PARTY BENEFICIARIES.** The terms and provisions of this Agreement are intended solely for the benefit of Customer, the Company and their permitted successors and assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person.

17.5. **FAILURE TO ENFORCE.** Failure of the Company to enforce or require compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a general waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect.

17.6. **ENTIRE AGREEMENT.** The Parties have freely entered into this Agreement and agree to each of its terms without reservation. Section headings are for the convenience of the Parties only and are not to be construed as binding under this Agreement. This Agreement constitutes the entire Agreement between the Parties with respect to the matters addressed herein, and all previous representations either oral or written (including, but not limited to any and all previous Attachment Agreements and/or license agreements for overhead poles/structures or underground structures insofar as Customer is concerned except as to liabilities accrued, if any), are hereby annulled and superseded.

17.7. **REMEDIES UNDER THE TARIFFS.** The Parties stipulate and agree that all of the services and charges provided for in this Agreement are authorized and governed by the provisions of the Lighting Tariff and the Electric Tariff and, accordingly, that the Company and the Customer expressly reserve all of their rights and remedies under the Lighting Tariff and the Electric Tariff, including the Company's right to terminate electric service to the Customer under the Lighting Tariff or the Electric Tariff in conformance with Section 13.3 of the PSC's Rules and Regulations, 16 N.Y.C.R.R. § 13.3 (2016), in the event of the Customer's failure to pay any amounts due under this Agreement or any other violation of this Agreement for which termination of service is authorized under the Lighting Tariff, the Electric Tariff, or the PSC's Rules and Regulations. The Parties further stipulate and agree that in the event of any conflict between the provisions

of this Agreement and the provisions of the Lighting Tariff and the Electric Tariff, the applicable provisions of the Lighting Tariff and the Electric Tariff shall apply.

17.8. **AMENDMENT.** This Agreement may be amended, supplemented, or modified only by a written instrument duly executed by authorized representatives of both Parties.

18. **NOTICES**

All written notices required under this Agreement shall be given by posting the same via first class mail as follows:

- (i) **To Customer:** All correspondence related to Customer's street and area lighting including but not limited to; this Agreement, Application for Street Light Attachment License, Authorization for Field Survey Work, Authorization for Make Ready Work, and Notification of Discontinuance of Street Light Attachment License to Customer's office at:

County of Albany, Corporation Counsel

Attention: _____

Address: _____

Email: _____

Phone number: _____

24-hour Emergency Situation contact:

Name: _____

Title: _____

Phone: _____

Email: _____

- (ii) **To the Company:** Application for Street Light Attachment License, Authorization for Field Survey Work, Authorization for Make Ready Work, and Notification of Discontinuance of Street Light Attachment License, and a copy of all certificates of Insurance to the Company's district office at:

Niagara Mohawk Corporation d/b/a National Grid
Attention: Director, Community & Customer Management
1125 Broadway
Albany, NY 12204

All original certificates of Insurance to:

National Grid USA Service Company, Inc.
Attn: Risk Management, A-4
300 Erie Boulevard West
Syracuse, NY 13202

A copy of all applications, notices, authorizations and certificates to:

Niagara Mohawk Power Corporation d/b/a/ National Grid
Attention: Outdoor Lighting and Attachments
300 Erie Boulevard West
Syracuse, NY 13202

For Notification of Planned Work or Unsafe Conditions:

National Grid Customer Service

Email: customerservice@nationalgrid.com

Phone number: (800) 642-4272

- (iii) Each Party has the right to add, modify, change or remove contact information as presented herein provided such corrections are communicated in writing to the other party and made part of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate as of the Effective Date.

**NIAGARA MOHAWK POWER
CORPORATION d/b/a NATIONAL GRID**

COUNTY OF ALBANY, NY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

APPENDIX I
SCHEDULE OF FEES AND CHARGES
STREET LIGHT ATTACHMENTS

(A) Design and Engineering Fees

Design and engineering fees will be equivalent to the lighting service charge found in the Lighting Tariff, as such charge may be modified or amended from time to time.

(B) Field Survey

Whenever a Field Survey is required under this Agreement, Customer shall pay the Company for the Cost thereof. The current standard charge assessed to Customer and all Other Customers for the Field Survey is \$130.00 per Attachment and is based on the Company's current estimated Cost to perform and complete the Field Survey, but may be adjusted, as necessary, by the Company to account for estimated Costs at the time the survey is performed. Specific to each occurrence, any actions required by the Company to remedy a Pole or Structure ingress or egress condition in compliance with applicable laws, regulations, codes and company policies and procedures is considered to be in addition to the Field Survey function. The Customer shall be responsible for the associated Costs which will be predefined as an estimate in addition to the aforementioned fee.

(C) Make-Ready Work

Whenever Make-Ready Work is required under this Agreement, Customer shall pay the Company for the Costs thereof. Make-Ready Work may include, but is not limited to, the modification or replacement of the Pole, Structure, or Facility within or upon which Customer's Attachments will be placed, to safely accommodate Customer's Attachments, and such other changes in the existing facilities within or upon such Pole, Structure, or Facility as accommodating Customer's Attachments may require. Make-Ready Work Costs charged by the Company may also include the following:

- (1) The net loss to the Company on the replaced Pole, Structure, or Facility based on its reproduction cost less depreciation, plus cost of removal;
- (2) Transferring the Company's attachments from the old Pole, Structure, or Facility to the new Pole, Structure, or Facility; and
- (3) Any other rearrangements and changes necessary by reason of Customer's proposed or existing Attachments.

(D) Other Charges and Fees

Customer shall be subject to and responsible for all other applicable charges and fees under the Lighting Tariff and the Electric Tariff.

(E) Payment Date

Bills are due and payable when rendered. Full payment must be received on or before the date shown on the bill to avoid a late payment charge of one and one-half percent (1-1/2%) per month pursuant to subpart C of the Rules on Determination of Billing established in Rule IV of the Lighting Tariff.

APPENDIX II

ADMINISTRATIVE FORMS AND NOTICES

INDEX OF ADMINISTRATIVE FORMS

APPLICATION FOR STREET & AREA LIGHTING ATTACHMENT LICENSE	A-1
STREET LIGHT ATTACHMENT DETAILS	A-2
ESTIMATE FOR FIELD SURVEY / AUTHORIZATION FOR FIELD SURVEY	B-1
MAKE-READY WORK ESTIMATE / AUTHORIZATION FOR MAKE-READY WORK	B-2
ITEMIZED MAKE-READY WORK	C
NOTIFICATION OF DISCONTINUANCE OF USE FOR STREET LIGHT ATTACHMENT	D
IDENTIFICATION TAGS	E
LIGHTING SOURCE IDENTIFICATION LABELS	F

Agreement No.: _____

Form A-1

Application No.: _____ (to be provided by the Company)

APPLICATION FOR
STREET LIGHT ATTACHMENT LICENSE

DATE _____

CUSTOMER _____

Street Address _____

City, State, Zip Code _____

In accordance with the terms and conditions of the Street Light Attachment License Agreement between the Company and Customer, dated _____, _____ application is hereby made for a license to make _____ as Attachments to Poles or Structures as indicated on the attached Form A-2.

CUSTOMER _____

By (Print Name) _____

Signature _____

Title _____

Telephone No. _____

STREET LIGHT ATTACHMENT LICENSE

Street Light Attachment License(s) is hereby granted to make the Attachments described in this application, identified as License No(s).: _____ as Attachments to Poles or Structures as indicated on the attached Form A-2.

DATE _____

COMPANY _____

By (Print Name) _____

Signature _____

Title _____

Telephone No. _____

NOTES:

1. Applications shall be submitted to the Company.
2. Applications to be numbered in ascending order by municipality.
3. The Company will process in order of application numbers assigned by Customer.

Agreement No.: _____

Form A-2

Application No.: _____

STREET LIGHT ATTACHMENT DETAILS

CUSTOMER _____

Municipality _____

(Note: Provide separate sheets for each municipality)

Location
Reference

Pole or Structure Type
Reference

Attachment Description

_____ (Yes/No) CUSTOMER HEREBY REQUESTS THE COMPANY TO
PROVIDE AN ITEMIZED ESTIMATE OF MAKE READY
WORK REQUIRED AND ASSOCIATED CHARGES
(APPENDIX II FORM C).

DATE _____

CUSTOMER _____

By (Print Name) _____

Signature _____

Title _____

Telephone No. _____

Agreement No.: _____

Form B-1

Application / Request No.: _____

ESTIMATE FOR FIELD SURVEY

(Customer)

In accordance with the Street Light Attachment License Agreement, dated _____, _____, the following is a summary of the charges which will apply to complete a field survey covering Application / Request Number _____.

<u>Unit Quantity</u>	<u>Rate / Unit</u>	<u>Total</u>
Field Survey	_____	_____ \$ _____
Ancillary Services	_____	_____ \$ _____
Administrative Compensation	_____ %	_____ \$ _____
TOTAL		_____ \$ _____

If you wish us to complete the required field survey, please sign this copy below and return with an advance payment in the amount of \$ _____.

Date _____

Company _____

By (Print Name) _____

Signature _____

Title _____

Telephone No. _____

AUTHORIZATION FOR FIELD SURVEY

The required field survey covering Application / Request Number _____ is authorized and the costs therefore will be paid to the Company in accordance with Appendix I to Street Light Attachment License Agreement.

DATE _____

CUSTOMER _____

By (Print Name) _____

Signature _____

Title _____

Telephone No. _____

Agreement No.: _____

Form B-2

Application / Request No.: _____

MAKE-READY WORK ESTIMATE

(Customer)

Field survey work associated with your Application / Request Number
dated _____, _____, for
Attachment to Poles or Structures has been completed. The following is a summary of
the charges which will apply to complete the required Make-Ready Work.

TOTAL MAKE-READY CHARGES \$ _____

Attached as requested, is an itemized description (Form C) of required Make-Ready
Work. A cost estimate of associated Make-Ready Work is also attached. If you wish us
to complete the required Make-Ready Work, please sign this copy below and return with
an advance payment in the amount of \$ _____.

DATE _____

COMPANY _____

By (Print Name) _____

Signature _____

Title _____

Telephone No. _____

AUTHORIZATION FOR MAKE-READY WORK

The Make-Ready Work associated with Application / Request Number _____ is authorized and the costs therefore will be paid to the Company in accordance with Appendix I to License Agreement.

DATE _____

CUSTOMER _____

By (Print Name) _____

Signature _____

Title _____

Telephone No. _____

Form C

[illegible]

Agreement No.: _____

Form D

Application / Request No.: _____

**NOTIFICATION OF DISCONTINUANCE OF
STREET LIGHT ATTACHMENT**

CUSTOMER _____

Street Address _____

City, State, Zip Code _____

In accordance with the terms and conditions of the Street Light Attachment License Agreement dated _____, notice is hereby given that specific Attachments to Poles or Structures, as listed below, in the municipality of _____, covered by permit number _____ were removed on _____.

<u>Attachment License No.</u>	<u>Location Reference Street Address</u>	<u>Pole or Structure Ref. Type</u>	<u>Attachment Description</u>	<u>Removal Date</u>
-----------------------------------	--	--	-----------------------------------	-------------------------

Total quantity of Attachments to Poles or Structures to be discontinued is _____.

DATE _____

By
(Print Name) _____

Signature _____

Title _____

**ACKNOWLEDGMENT OF DISCONTINUANCE OF
STREET LIGHT ATTACHMENT**

Use of Poles or Structures has been discontinued as above.

DATE _____

COMPANY _____

By (Print Name) _____

Signature _____

Title _____

IDENTIFICATION LABELS

(A) GENERAL

This Appendix describes identification tags to be installed and maintained by Customer on its cables and other apparatus to allow the Company to readily identify the owner of such cables and apparatus.

(B) DESCRIPTION OF IDENTIFICATION LABELS

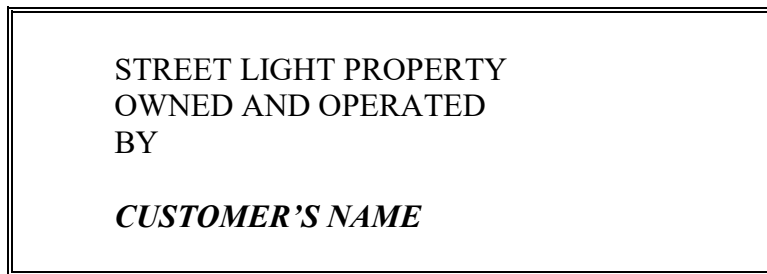


FIGURE 1: Identification Label

The tags shall be white or yellow with black lettering. Customer shall be responsible for maintaining the legibility of identification tags at all times.

The Identification Tag shall be placed on Customer's facilities including, but not limited to, cables guys, terminals, terminal closures, and cabinets. The Identification Label shall read as follows: "STREET LIGHT PROPERTY OWNED AND OPERATED BY" and clearly display CUSTOMER's name. Customer's name may be printed on the tag using indelible ink.

(C) PROCUREMENT OF TAGS

It shall be the responsibility of Customer to obtain, place, and maintain Identification tags.

(D) INSTALLATION OF IDENTIFICATION TAGS

When required by Section 5.5, Identification Labels shall be installed at the following locations:

- (1) On cables at each manhole or handhole, on the top of the cable so that it is visible from outside the manhole or handhole.
- (2) At terminal or Connection Point locations.
- (3) Within cabinets or other equipment where appropriate.

LIGHTING SOURCE IDENTIFICATION LABELS

The Customer is required to provide and affix to each luminaire a clear, legible and comprehensive lighting source identification label consistent with ANSI-NEMA Standards for Roadway and Area Lighting Equipment – Field Identification of High Intensity Discharge Lamps and Luminaires, (ANSI/NEMA C136.15-2009, latest revision) or other industry standard compliant with the specific lamp or lighting source, as applicable.

APPENDIX III

ACKNOWLEDGMENT FOR THE USE OF QUALIFIED ELECTRICAL WORKERS

The COUNTY OF ALBANY hereby acknowledges and agrees to the following:

1. Niagara Mohawk Power Corporation d/b/a National Grid (hereinafter “National Grid”) expects the use of electrically-qualified personnel as required by OSHA in 29 CFR 1910.269 for all work associated with the LICENSE AGREEMENT FOR ATTACHMENTS TO UTILITY POLES AND STRUCTURES FOR STREET AND AREA LIGHTING BETWEEN NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID and COUNTY OF ALBANY DATED _____, 2020 (hereinafter “COUNTY OF ALBANY LICENSE AGREEMENT”).
2. The County of Albany hereby agrees that any work being done pursuant to the COUNTY OF ALBANY LICENSE AGREEMENT will be done by qualified electrical workers as defined by OSHA in 29 CFR 1910.269 and in accordance with all relevant laws, regulations, codes, and industry standards.
3. The County of Albany understands and agrees that any injuries to persons or property arising out of or related to this work, including without limitation as a result of a failure to comply with this ACKNOWLEDGMENT, will be the sole responsibility of the County of Albany.

COUNTY OF ALBANY, NY

BY: _____

NAME: _____

TITLE: _____

DATE: _____, 2020

Account #	Pole #	Rate	Location ID	Str Seq	Street Name	Street Suffix	Bill Code Title	Existing WES Code	Roadway Classifications	Preliminary Luminaire Design	LED Wattage	Proposed Luminaire Design	LED Wattage
9453662102	157 1/2	SC2	60039038	1	ALBANY COUNTY HIGHWAY G	LM Roadway 400	MV400CH	N/A	Philips RFM-BOW4BLD	81	Philips RFM-BOW4BLD	81	
9453662102	157 1/2-2	SC2	60039037	1	ALBANY COUNTY HIGHWAY G	LM Roadway 100	HP5100CH	N/A	Philips RFS-30W ILED	38	Philips RFS-30W ILED	38	
9453662102	17A	SC2	60039036	1	ALBANY COUNTY HIGHWAY G	LM Roadway 70	HP5100CH	N/A	Philips RFS-30W ILED	38	Philips RFS-30W ILED	38	
9453662102	161	SC2	60039035	1	ALBANY COUNTY HIGHWAY G	LM Roadway 70	HP5700CH	N/A	Philips RFS-30W ILED	29	Philips RFS-30W ILED	29	
9453678106	35-1	SC2	60013564	1	ALBANY SHAKER	LM Roadway 250	HP5250CH	Collector	Philips RFM-130W3LED	128	Philips RFM-130W3LED	128	
9453678106	35-1	SC2	60013564	1	ALBANY SHAKER	LM Roadway 250	HP5250CH	Collector	Philips RFM-130W3LED	128	Philips RFM-130W3LED	128	
9453678106	35-4	SC2	60013568	1	ALBANY SHAKER	LM Roadway 250	HP5250CH	Collector	Philips RFM-130W3LED	128	Philips RFM-130W3LED	128	
9453678106	35-4	SC2	60013568	2	ALBANY SHAKER	LM Roadway 250	HP5250CH	Collector	Philips RFM-130W3LED	128	Philips RFM-130W3LED	128	
9453678106	37	SC2	60042948	1	ALBANY SHAKER	LM Roadway 150	HP5150CH	Collector	Philips RFM-BOW4BLD	81	Philips RFM-BOW4BLD	81	
9453678106	35-2	SC2	60013595	1	ALBANY-SHAKER	LM Roadway 250	HP5250CH	Collector	Philips RFM-130W3LED	128	Philips RFM-130W3LED	128	
9453678106	35-2A	SC2	60013596	1	ALBANY-SHAKER	LM Roadway 250	HP5250CH	Collector	Philips RFM-130W3LED	128	Philips RFM-130W3LED	128	
9453678106	35-3	SC2	60013597	1	ALBANY-SHAKER	LM Roadway 250	HP5250CH	Collector	Philips RFM-130W3LED	128	Philips RFM-130W3LED	128	
6153800101	34	SC2	60012480	1	ALBANY-SHAKER	LM Roadway 250	HP5250CH	Collector	Philips RFM-130W3LED	128	Philips RFM-130W3LED	128	
6153800101	35	SC2	60012489	1	ALBANY-SHAKER	LM Roadway 250	HP5250CH	Collector	Philips RFM-130W3LED	128	Philips RFM-130W3LED	128	
9453678106	16	SC2	60012481	1	ALBANY-SHAKER	LM Roadway 175	MV175CH	Collector	Philips RFS-30W ILED	38	Philips RFS-30W ILED	38	
9453678106	16	SC2	60012482	1	ALBANY-SHAKER	LM Roadway 175	MV175CH	Collector	Philips RFS-30W ILED	38	Philips RFS-30W ILED	38	
9453678106	17	SC2	60012483	1	ALBANY-SHAKER	LM Roadway 175	MV175CH	Collector	Philips RFS-30W ILED	38	Philips RFS-30W ILED	38	
9453678106	18	SC2	60012484	1	ALBANY-SHAKER	LM Roadway 175	MV175CH	Collector	Philips RFS-30W ILED	38	Philips RFS-30W ILED	38	
9453678106	19	SC2	60012491	1	ALBANY-SHAKER	LM Roadway 70	HP5700CH	Collector	Philips RFS-30W ILED	29	Philips RFS-30W ILED	29	
9453678106	19	SC2	60012491	2	ALBANY-SHAKER	LM Roadway 70	HP5700CH	Collector	Philips RFS-30W ILED	29	Philips RFS-30W ILED	29	
9453678106	20	SC2	60012492	1	ALBANY-SHAKER	LM Roadway 70	HP5700CH	Collector	Philips RFS-30W ILED	29	Philips RFS-30W ILED	29	
9453678106	21	SC2	60012490	1	ALBANY-SHAKER	LM Roadway 150	HP5150CH	Collector	Philips RFM-BOW4BLD	81	Philips RFS-30W ILED	81	
9453678106	24	SC2	60012485	1	ALBANY-SHAKER	LM Roadway 150	HP5150CH	Collector	Philips RFM-BOW4BLD	81	Philips RFS-30W ILED	81	
9453678106	25	SC2	60012486	1	ALBANY-SHAKER	LM Roadway 175	MV175CH	Collector	Philips RFS-30W ILED	38	Philips RFS-30W ILED	38	
9453678106	26	SC2	60012487	1	ALBANY-SHAKER	LM Roadway 175	MV175CH	Collector	Philips RFS-30W ILED	38	Philips RFS-30W ILED	38	
9453678106	28	SC2	60012488	1	ALBANY-SHAKER	LM Roadway 150	HP5150CH	Collector	Philips RFM-BOW4BLD	81	Philips RFS-30W ILED	81	
9453678106	1	SC2	60012476	1	ALBANY-SHAKER	LM Contemporary 70	HP5700CPT	Collector	Philips TVPR-S3-S-16-G1-S-3W	29	Philips TVPR-S3-S-16-G1-S-3W	29	
9453678106	10	SC2	60012739	1	ALBANY-SHAKER	LM Contemporary 70	HP5700CPT	Collector	Philips TVPR-S3-S-16-G1-S-3W	29	Philips TVPR-S3-S-16-G1-S-3W	29	
9453678106	11	SC2	60012480	1	ALBANY-SHAKER								

Account #	Pole #	Rate	Location ID	Str Seq	Street Name	Street Suffix	Bill Code Title	Existing WES Code	Roadway Classifications	Preliminary Luminaire Design	LED Wattage	Proposed Luminaire Design	LED Wattage
9453662102	2-1/2	SC2	52337214	1	LAWSON LAKE	RD	LL Roadway LED-D	LEDCH	N/A	LAI - Leave as Is	96	LAI - Leave as Is	96
9453662102	3	SC2	5129012	1	LAWSON LAKE	RD	LL Roadway LED-D	LEDCH	N/A	LAI - Leave as Is	96	LAI - Leave as Is	96
9453662102	46-A	SC2	40152207	1	LAWSON LAKE	RD	LL Roadway LED-D	LEDCH	N/A	LAI - Leave as Is	96	LAI - Leave as Is	96
9453662102	46-B	SC2	9390204	1	LAWSON LAKE	RD	LL Roadway LED-D	LEDCH	N/A	LAI - Leave as Is	96	LAI - Leave as Is	96
9453662102	46-1	SC2	79969190	1	LAWSON LAKE	RD	LL Roadway LED-D	LEDCH	N/A	LAI - Leave as Is	96	LAI - Leave as Is	96
3993882100	4	SC2	60018884	1	MARTIN	RD	LM Roadway 150	HPS150CH	N/A	Philips: RFM-80W48LED	81	Philips: RFM-80W48LED	81
3993882100	5	SC2	60018884	2	MARTIN	RD	LM Roadway 150	HPS150CH	N/A	Philips: RFM-80W48LED	81	Philips: RFM-80W48LED	81
3993882100	5	SC2	60018883	1	MARTIN	RD	LM Roadway 150	HPS150CH	N/A	Philips: RFM-80W48LED	81	Philips: RFM-80W48LED	81
3993882100	5	SC2	60018883	2	MARTIN	RD	LM Roadway 150	HPS150CH	N/A	Philips: RFM-80W48LED	81	Philips: RFM-80W48LED	81
3993882100	6	SC2	60018882	1	MARTIN	RD	LM Roadway 150	HPS150CH	N/A	Philips: RFM-80W48LED	81	Philips: RFM-80W48LED	81
3993882100	6	SC2	60018882	2	MARTIN	RD	LM Roadway 150	HPS150CH	N/A	Philips: RFM-80W48LED	81	Philips: RFM-80W48LED	81
3993882100	10	SC2	60018878	1	MARTIN	RD	LM Contemporary 100	HPS100CPT	N/A	Philips: TVPR-S3-S-16-G1-7-3W	38	Philips: TVPR-S3-S-16-G1-7-3W	38
3993882100	7	SC2	60018881	1	MARTIN	RD	LM Contemporary 100	HPS100CPT	N/A	Philips: TVPR-S3-S-16-G1-7-3W	38	Philips: TVPR-S3-S-16-G1-7-3W	38
3993882100	8	SC2	60018880	1	MARTIN	RD	LM Contemporary 100	HPS100CPT	N/A	Philips: TVPR-S3-S-16-G1-7-3W	38	Philips: TVPR-S3-S-16-G1-7-3W	38
3993882100	9	SC2	60018879	1	MARTIN	RD	LM Contemporary 70	HPS70CPT	N/A	Philips: TVPR-S3-S-16-G1-5-3W	29	Philips: TVPR-S3-S-16-G1-7-3W	38
3993882100	4	SC2	60018871	1	SHERIFF OFFICE	LM	Roadway 150	HPS150CH	N/A	Philips: RFM-80W48LED	81	Philips: RFM-80W48LED	81
3993882100	5	SC2	60018872	1	SHERIFF OFFICE	LM	Roadway 150	HPS150CH	N/A	Philips: RFM-80W48LED	81	Philips: RFM-80W48LED	81
3993882100	7	SC2	60018874	1	SHERIFF OFFICE	LM	Roadway 150	HPS150CH	N/A	Philips: RFM-80W48LED	81	Philips: RFM-80W48LED	81
3993882100	8	SC2	60018875	1	SHERIFF OFFICE	LM	Roadway 150	HPS150CH	N/A	Philips: RFM-80W48LED	81	Philips: RFM-80W48LED	81
3993882100	1	SC2	60018877	1	SHERIFF OFFICE	LM	Roadway 100	HPS100CH	N/A	Philips: RFS-35W16LED	38	Philips: RFS-35W16LED	38
3993882100	3	SC2	60018876	1	SHERIFF OFFICE	LM	Roadway 100	HPS100CH	N/A	Philips: RFS-35W16LED	38	Philips: RFS-35W16LED	38
5853663121	x	SC1	N/A	1	Washington	Ave	LMFootlightH250	HPS250FL	N/A	Philips: CSFM-48L-700-G1-A33	106	Philips: CSFM-48L-700-G1-A33	106
5853663121	x	SC1	N/A	1	Washington	Ave	LMFootlightH250	HPS250FL	N/A	Philips: CSFM-48L-700-G1-A33	106	Philips: CSFM-48L-700-G1-A33	106
5853663121	x	SC1	N/A	1	Washington	Ave	LMFootlightH250	HPS250FL	N/A	Philips: CSFM-48L-700-G1-A33	106	Philips: CSFM-48L-700-G1-A33	106
5853663121	x	SC1	N/A	1	Washington	Ave	LMFootlightH250	HPS250FL	N/A	Philips: CSFM-48L-700-G1-A33	106	Philips: CSFM-48L-700-G1-A33	106
5853663121	x	SC1	N/A	1	Washington	Ave	LMFootlightH250	HPS250FL	N/A	Philips: CSFM-48L-700-G1-A33	106	Philips: CSFM-48L-700-G1-A33	106
5853663121	x	SC1	N/A	1	Washington	Ave	LMFootlightH250	HPS250FL	N/A	Philips: CSFM-48L-700-G1-A33	106	Philips: CSFM-48L-700-G1-A33	106
Total Luminaires:								105					

RESOLUTION NO. 494**AUTHORIZING A CUSTOMER PROJECT COMMITMENT AGREEMENT
WITH THE NEW YORK POWER AUTHORITY REGARDING THE
STREETLIGHT CONVERSION PROJECT**

Introduced: 12/21/20

By Public Works Committee, Messrs. Bruschi, O'Brien, Peter, Miller, Cleary,
Reinhardt and Grimm:

WHEREAS, By Resolution No. 126 for 2019, this Honorable Body authorized a five-year Energy Services Program Master Cost Recovery Agreement with the New York Power Authority (NYPA) as a preliminary action necessary for the implementation of an aggregated streetlight conversion program and the associated purchase of streetlights and the installation of LED lighting in Albany County, and

WHEREAS, By Resolution No. 259 for 2019, this Honorable Body authorized an agreement with the NYPA regarding an authorization to proceed with the development phase of this project, and

WHEREAS, The County Executive has requested authorization to enter into an initial Customer Project Commitment with the NYPA for the purchase and conversion of approximately 105 County-owned streetlights throughout Albany County from high-intensity discharge to new energy efficient LED streetlights in the amount of \$272,774, and

WHEREAS, The County Executive has indicated that this project will reduce County maintenance and operating expenses, improve visibility and safety of roadways, and decrease greenhouse gas emissions by 29.3 metric tons per year, and

WHEREAS, The County Executive has further requested authorization to enter into discussions with the NYPA regarding a long-term financing agreement for the project, now, therefore be it

RESOLVED, By the Albany County Legislature that the County Executive is authorized to enter into the initial Customer Project Commitment with the NYPA for the purchase and conversion of approximately 105 County-owned streetlights throughout Albany County to new energy efficient LED streetlights in the amount of \$272,774 and, be it further

RESOLVED, That the County Executive is further authorized to enter into discussions with NYPA regarding a long-term financing agreement for the project and, be it further

RESOLVED, That the County Attorney is authorized to approve said agreement as to form and content, and, be it further

RESOLVED, That the Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials.

Adopted by unanimous vote – 12/21/20

Mr. R. Joyce abstained.

State of New York
County of Albany

This is to certify that I, the undersigned, Clerk of the Albany County Legislature, have compared the foregoing copy of the resolution and/or local law with the original resolution and/or local law now on file in the office, and which was passed by the Legislature of said County on the 21st day of December, 2020, a majority of all members elected to the Legislature voting in favor thereof, and that the same is a correct and true transcript of such original resolution and/or local law and the whole thereof.



IN WITNESS THEREOF, I have hereunto set my hand and the official seal of the County Legislature this 22nd day of December, 2020.

A handwritten signature in cursive script, reading "Nicole Chambers", is written over a horizontal line.

Clerk, Albany County Legislature



**NY Power
Authority**

SEND YOUR INVOICE TO:

NEW YORK POWER AUTHORITY
Attn: ACCOUNTS PAYABLE
PO BOX 437
WHITE PLAINS, NY 10602
(914) 681-6200

APInvoices@nypa.gov

Page 1 of 4

PURCHASE ORDER

PO number : [REDACTED] Date : [REDACTED]
Contact Person : ASHISH PATEL
Telephone : 914-681-6391 Fax : 914-681-6783
E-Mail Address : Ashish.Patel@nypa.gov

Your Reference : [REDACTED]

Delivery Point:

NEW YORK POWER AUTHORITY - WPO
123 MAIN STREET
WHITE PLAINS NY 10601

Valid From	11/09/2020
Valid To	11/08/2021
Delivery date	11/13/2020

Deliv. terms: DDP DEST. FRGHT INCL IN PRICE

Payt. terms: NET DUE WITHIN 30 DAYS

Currency: USD

THIS PO HAS BEEN CREATED TO ASSIGN A PO NUMBER TO THE [REDACTED] FOR THE PURCHASE OF EXISTING STREET LIGHTINNG ASSETS FROM THE UTILITY, AS SET FOR IN LINE ITEM 0001 BELOW.

CONTACT:

[REDACTED]@[REDACTED].COM

NYPA PROJECT MANAGER:
CHARLES HERMANN
CHARLES.HARMENN@NYPA.GOV
914-390-8208

THE TOTAL NOT TO EXCEED AMOUNT OF THIS PO IS \$[REDACTED].00

[REDACTED] MUST E-SIGN THIS POR WITHIN FIVE (5) BUSINESS DAYS. FAILURE TO SIGN WITHIN FIVE (5) BUSINESS DAY MAY RESULT IN DELAYED INVOICE PAYMENTS.

**SEND YOUR INVOICE TO:**

NEW YORK POWER AUTHORITY
Attn: ACCOUNTS PAYABLE
PO BOX 437
WHITE PLAINS, NY 10602
(914) 681-6200
APIInvoices@nypa.gov

Page 2 of 4

PO number/date

/ 11/09/2020

NEW YORK POWER AUTHORITY
123 MAIN STREET
WHITE PLAINS, NY 10601
ASHISH PATEL / STRATEGIC BUYER - I
ASHISH.PATEL@NYPA.GOV

Item	Order Qty.	Unit	Unit Price	Extended Price
00001		EACH	1	

Funding for the purchase of existing street lighting assests from the utility.

Total Purchase Order Value USD .00

PO # MUST APPEAR ON ALL DOCUMENTS, PACKING SLIPS, INVOICES AND CORRESPONDENCE

INVOICING INSTRUCTIONS:

- A. Invoices for compensation shall be submitted in accordance with the payment terms stated in the Purchase Order or Purchase Order Release.
- B. Invoices shall be payable by the Authority in accordance with the provisions of its Prompt Payment Policy. Invoices shall be subject to post-audit by the Authority and adjustment, if necessary. Such adjustment shall be applied against the invoices next received after the amount of the adjustment has been determined. Where time charges are a basis for compensation, no payment will be made by the Authority for time charges which cannot be supported by applicable time card information and/or other records relating to the actual time Contractor's personnel were engaged in providing the Services (Work). Invoices for reimbursable costs, if any are required to be paid hereunder, shall be supported by relevant documentation.
- C. Electronic submission of invoices are preferred. However, paper invoices are accepted as a secondary method.

PO number/date

/ 11/09/2020

D. In order to be paid electronically with Automated Clearing House (ACH) The Authority requires 2 Documents;

1. The Contractor is requested to provide on company letterhead, signed by a financial official within ten (10) days of execution of this Contract with the following required information:

- . Bank Name
- . Bank Account Name
- . Bank ABA No.
- . Bank Account No.
- . Remittance Address
- . Accounts Receivable Department email, phone and fax

2. In addition, The Authority requires a letter from the supplier's bank showing the following:

- . Bank Name
- . Bank Account Name
- . Bank ABA No.
- . Bank Account No.
- . Bank Representative's name and contact information

Send your Request Directly to the attention of SRM@nypa.gov while cc'ing the current NYPA employee you received the document from.

Note: It is very important to provide ACH Bank Instructions not Wire Transfer Bank Instructions.

E. A proper invoice shall adhere to the following requirements:

- . The Purchase Order (PO) number. PO numbers usually start with "4500" or "4300" and are followed by six additional digits (i.e., 4500123456 or 4300123456)
- . Each invoice line item that corresponds to the specific PO line item number in the Contract Document
- . Written in English, clear, legible and in U.S. currency
- . Invoice must be billed to New York Power Authority
- . Subject Line must include Vendor name, Purchase Order Number
- . Purchase Order must be valid or invoice will be rejected; do not indicate outdated PO #



**NY Power
Authority**

SEND YOUR INVOICE TO:

NEW YORK POWER AUTHORITY
Attn: ACCOUNTS PAYABLE
PO BOX 437
WHITE PLAINS, NY 10602
(914) 681-6200

Page 4 of 4

APIInvoices@nypa.gov



PO number/date

 / 11/09/2020

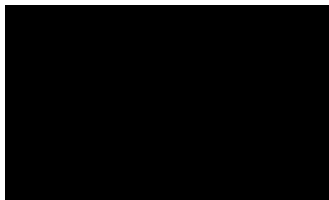
- . All submissions must be in PDF format only
- . Each invoice including all related back-up must be submitted as a Single PDF document
- . Multiple Invoices may be sent as individual PDF attachments to one email
- . PDF Invoice: only black / white; do not submit any in color
- . Freight over \$100 must include a copy of the freight bill along with the invoice
- . Do not send statements or inquiries to the automated inbox; only PDF invoices

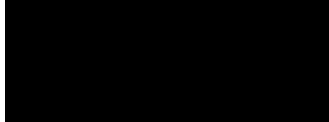
Signature: 
Donna Keough (Nov 12, 2020 10:22 EST)

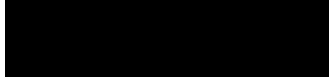
Email: donna.keough@nypa.gov

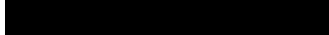
Title: Manager Procurement

Company: New York Power Authority

Signature: 

Email: 

Title: 

Company: 

NYPA Authorized Signature and Date

Vendor Acknowledgement Signature and Date

Acceptance of this order shall constitute
acceptance of terms and conditions which
follow and any attachments hereto.

APPROPRIATIONS					
ACCOUNT NO.				RESOLUTION DESCRIPTION	INCREASE DECREASE UNIT COST
A9	5110	44012	10000	Streetlight Purchase Program	150,000.00 0.00
				TOTAL APPROPRIATIONS	150,000.00 0.00
ESTIMATED REVENUES					
ACCOUNT NO.				RESOLUTION DESCRIPTION	DECREASE INCREASE UNIT COST
A3	5110	03074		NYPA Streetlight Purchase Program	0.00 150,000.00
				TOTAL ESTIMATED REVENUES	0.00 150,000.00
				GRAND TOTALS	150,000.00 150,000.00

Sheet1

DEPARTMENT NAME
Maintenance Roads Buildings

DEPARTMENT NAME
Maintenance Roads Buildings

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information			
Name of Action or Project: Customer Project Commitment agreement with NY Power Authority to purchase streetlights from National Grid			
Project Location (describe, and attach a location map): Albany County Roadways and facilities			
Brief Description of Proposed Action: Niagara Mohawk Power Corporation d/b/a/ National Grid ("National Grid") and the County of Albany have entered into an Agreement for the Purchase and Sale of Street Lights. Under the terms of the Agreement, National Grid agreed to transfer ownership of the street lighting facilities, including luminaries, lamps, mast arms, the associated wiring, electrical connections and appurtenances, used to provide municipal lighting service to Albany County. The transfer of ownership does not involve any new construction, changes in land use, or changes in the service provided to the public. Pursuant to Public Service Law Section 70, National Grid is required to notify the New York State Public Service Commission of the transfer. Project locations include Albany County Highway G, Albany Shaker Rd., DPW, Everett Rd., Albany County Sheriff, Fishermans Park, Fuller Rd., Lawson Lake Rd., Martin Rd., and Washington Ave.			
Name of Applicant or Sponsor: Albany County Executive		Telephone: 518-447-7040 E-Mail: county_executive@albanycountyny.gov	
Address: 112 State St. Room 1200			
City/PO: Albany		State: NY	Zip Code: 12207
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.		NO ☒	YES ☐
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: NY Power Authority		NO ☐	YES ☒
3. a. Total acreage of the site of the proposed action? _____ acres b. Total acreage to be physically disturbed? _____ 0 acres c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres			
4. Check all land uses that occur on, are adjoining or near the proposed action: ☒ Urban ☐ Rural (non-agriculture) ☐ Industrial ☒ Commercial ☒ Residential (suburban) ☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other(Specify): ☐ Parkland			

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	☐	☐	☒
b. Consistent with the adopted comprehensive plan?	☐	☐	☒
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	☐	☒	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?	NO	YES	
If Yes, identify: _____	☒	☐	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	☒	☐	
b. Are public transportation services available at or near the site of the proposed action?	☐	☒	
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	☐	☒	
9. Does the proposed action meet or exceed the state energy code requirements?	NO	YES	
If the proposed action will exceed requirements, describe design features and technologies: Equipment will be updated with LED to meet state energy code requirements	☐	☒	
10. Will the proposed action connect to an existing public/private water supply?	NO	YES	
If No, describe method for providing potable water: _____	☒	☐	
11. Will the proposed action connect to existing wastewater utilities?	NO	YES	
If No, describe method for providing wastewater treatment: _____	☒	☐	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?	NO	YES	
	☐	☒	
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	☐	☒	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	☐	☒	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	☒	☐	
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____			

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: ☐ Shoreline ☐ Forest ☐ Agricultural/grasslands ☐ Early mid-successional ☐ Wetland ☒ Urban ☒ Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	☐	☒
16. Is the project site located in the 100-year flood plan?	NO	YES
	☒	☐
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	NO	YES
	☒	☐
	☐	☐
	☐	☐
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO	YES
	☒	☐
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO	YES
	☒	☐
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO	YES
	☒	☐
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor/name: <u>Daniel P. McCoy</u> Date: _____ Signature: _____ Title: <u>County Executive</u>		

Project:

Date:

Short Environmental Assessment Form

Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept “Have my responses been reasonable considering the scale and context of the proposed action?”

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	☒	☐
2. Will the proposed action result in a change in the use or intensity of use of land?	☒	☐
3. Will the proposed action impair the character or quality of the existing community?	☒	☐
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	☒	☐
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	☒	☐
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	☒	☐
7. Will the proposed action impact existing:	☒	☐
a. public / private water supplies?	☒	☐
b. public / private wastewater treatment utilities?	☒	☐
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	☒	☐
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	☒	☐
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	☒	☐
11. Will the proposed action create a hazard to environmental resources or human health?	☒	☐

Project:

Date:

Short Environmental Assessment Form

Part 3 Determination of Significance

For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

The project does not involve any new construction, changes in land use, or changes in the service provided to the public. The replacement of existing lights with LED will help the county meet public safety and conservation goals.

- ☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
- ☒ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Albany County Legislature

Name of Lead Agency

Andrew Joyce

Date

Chairman

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from Responsible Officer)

PRINT FORM



DANIEL P. MCCOY
COUNTY EXECUTIVE

COUNTY OF ALBANY
OFFICE OF THE EXECUTIVE
112 STATE STREET, ROOM 1200
ALBANY, NEW YORK 12207-2021
(518) 447-7040 - FAX (518) 447-5589
WWW.ALBANYCOUNTY.COM

DANIEL C. LYNCH, ESQ.
DEPUTY COUNTY EXECUTIVE

December 30, 2020

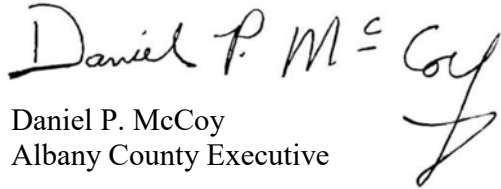
Honorable Andrew Joyce, Chairman
Albany County Legislature
112 State Street, Room 710
Albany, New York 12207

Dear Chairman Joyce:

We are requesting permission to apply to New York State Division of Homeland Security and Emergency Services (DHSES) for the FY2019 Critical Infrastructure Grant for a total of \$32,750. This grant would provide a funding opportunity to increase the physical security of the Times Union Center (TUC) by purchasing and installing fences and gates around the rear entrance of the TUC.

If you should have any questions, please do not hesitate to contact my office.

Sincerely


Daniel P. McCoy
Albany County Executive

cc: Hon. Dennis Feeney, Majority Leader
Hon. Frank Mauriello, Minority Leader
Rebekah Nellis Kennedy, Majority Counsel
Arnis Zilgme, Minority Counsel



County of Albany

Harold L. Joyce
Albany County Office
Building
112 State Street - Albany,
NY 12207

Legislation Text

File #: TMP-2196, **Version:** 1

REQUEST FOR LEGISLATIVE ACTION

Description (e.g., Contract Authorization for Information Services):

Authorization to Apply for the NYS DHSES FY19 Critical Infrastructure Grant

Date: 12/31/2020
Submitted By: Patrick Alderson
Department: County Executive's Office
Title: Policy Analyst
Phone: 518-447-3033
Department Rep.
Attending Meeting: Patrick Alderson

Purpose of Request:

- ☐ Adopting of Local Law
- ☐ Amendment of Prior Legislation
- ☐ Approval/Adoption of Plan/Procedure
- ☐ Bond Approval
- ☐ Budget Amendment
- ☒ Contract Authorization
- ☐ Countywide Services
- ☐ Environmental Impact/SEQR
- ☐ Home Rule Request
- ☐ Property Conveyance
- ☐ Other: (state if not listed) Click or tap here to enter text.

CONCERNING BUDGET AMENDMENTS

Increase/decrease category (choose all that apply):

- ☐ Contractual
- ☐ Equipment
- ☐ Fringe
- ☐ Personnel
- ☐ Personnel Non-Individual

☐ Revenue

Increase Account/Line No.: Click or tap here to enter text.
Source of Funds: Click or tap here to enter text.
Title Change: Click or tap here to enter text.

CONCERNING CONTRACT AUTHORIZATIONS

Type of Contract:

- ☐ Change Order/Contract Amendment
- ☐ Purchase (Equipment/Supplies)
- ☐ Lease (Equipment/Supplies)
- ☐ Requirements
- ☐ Professional Services
- ☐ Education/Training
- ☒ Grant

New

Submission Date Deadline 1/6/2020

- ☐ Settlement of a Claim
- ☐ Release of Liability
- ☐ Other: (state if not listed) Click or tap here to enter text.

Contract Terms/Conditions:

Party (Name/address):

NYS Division of Homeland Security and Emergency Services (DHSES)
1220 Washington Avenue
State Office Campus, Building 7A Suite 710
Albany, NY 12242

Additional Parties (Names/addresses):

Click or tap here to enter text.

Amount/Raise Schedule/Fee: \$32,750
Scope of Services: Grant application to increase physical security measures in the rear of the Times Union Center

Bond Res. No.: Click or tap here to enter text.
Date of Adoption: Click or tap here to enter text.

CONCERNING ALL REQUESTS

Mandated Program/Service: Yes ☐ No ☒
If Mandated Cite Authority: Click or tap here to enter text.

Is there a Fiscal Impact: Yes ☐ No ☒Anticipated in Current Budget: Yes ☐ No ☒**County Budget Accounts:**

Revenue Account and Line: Click or tap here to enter text.

Revenue Amount: Click or tap here to enter text.

Appropriation Account and Line: Click or tap here to enter text.

Appropriation Amount: Click or tap here to enter text.

Source of Funding - (Percentages)

Federal: Click or tap here to enter text.

State: 100%

County: Click or tap here to enter text.

Local: Click or tap here to enter text.

Term

Term: (Start and end date) TBD

Length of Contract: TBD

Impact on Pending Litigation Yes ☐ No ☒

If yes, explain: Click or tap here to enter text.

Previous requests for Identical or Similar Action:

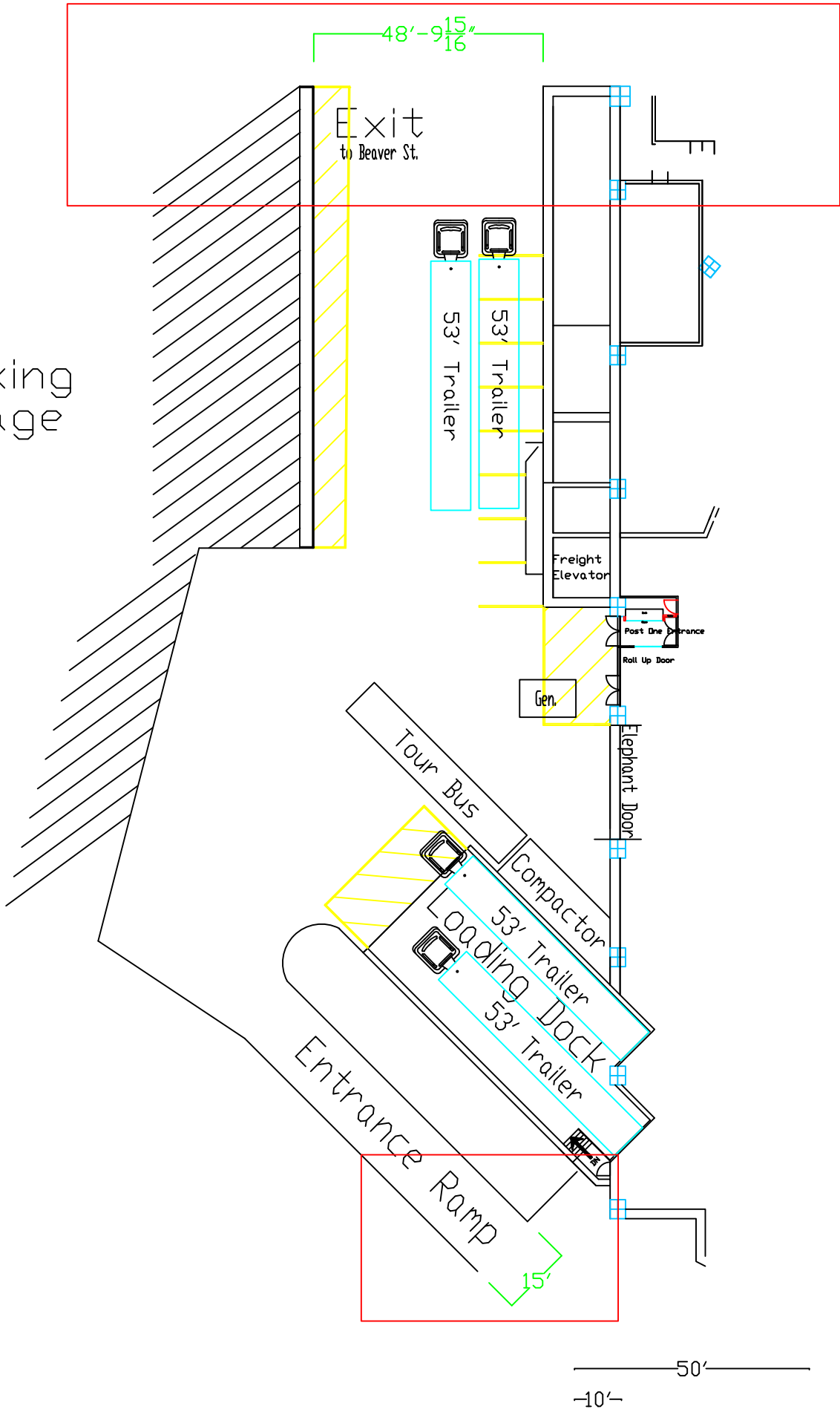
Resolution/Law Number: 198 of 2018

Date of Adoption: 5/14/2018

Justification: (state briefly why legislative action is requested)

This grant would provide a funding opportunity to increase the physical security of the Times Union Center (TUC) by purchasing and installing fences and gates around the rear entrance of the TUC. Currently the rear entrance/loading area lacks any physical security and is accessible to pedestrians and vehicles via two city streets. This would increase security for the TUC, its guests, and staged equipment in the rear of the TUC. If awarded, the grant is 100% funded by NYS with no matching requirement.

Parking
Garage







Homeland Security and Emergency Services

FY2019 Critical Infrastructure Grant Program Request for Applications (RFA)

Application Deadline: January 6, 2021 by 5:00 pm

In order to ensure adequate time to respond, substantive written questions regarding this Request for Applications will be accepted until 12:00 noon on December 30, 2020.

Technical Assistance for E-Grants will not be available after 5:00 pm on **January 6, 2021.**

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I. Introduction

The NYS Division of Homeland Security and Emergency Services (DHSES) is supporting local preparedness capabilities through a total of five competitive grant RFAs for a total of up to \$5,000,000. The final award amount for each of the five programs will be based on the scoring of applications received and at the Division's sole discretion.

The purpose of this Request for Applications (RFA) is to solicit applications for up to \$50,000 in federal FY2019 State Homeland Security Program (SHSP) funding made available by DHSES for critical infrastructure protection. Funding will be awarded competitively based upon the submission of completed and eligible applications.

The FY2019 Critical Infrastructure Grant Program (CIGP) advances a common understanding of risk management. Applicants select a critical infrastructure site¹ or mass gathering/special event site and complete a risk assessment. As a portion of that risk assessment, first responders assess their capability to prevent and protect against attacks on the site. Grant funding is then applied to mitigate vulnerabilities identified in the risk assessment or enhance first responder's capabilities.

The purpose and goals of the Critical Infrastructure Grant Program are:

- To ensure that New York State is providing tools and opportunities in support of the vision and major mission areas of the New York State Homeland Security Strategy. This grant program supports three of the five mission areas: prevention, protection, and mitigation.
- To ensure that major urban areas within New York State have access to a grant program to protect critical infrastructure.
- To ensure that grant dollars are being applied to identified vulnerabilities or gaps in protection efforts.
- To reduce the overall risk to critical infrastructure by:
 - ✓ Maintaining competitive funding to mitigate identified needs.
 - ✓ Fostering a forum for state partnering on local critical infrastructure security, safety, and planning.

The FY2019 CIGP is focused on government owned critical infrastructure sites and government owned mass gathering/special event sites. Please note, federal or state-owned sites are not eligible under this grant program.

Government Owned Critical Infrastructure: Examples of government owned sites include, but are not limited to, government office buildings (city/town halls), emergency services (emergency operations centers, 911 centers, police or fire stations), water systems (water treatment facilities, water distribution, wastewater treatments) or government owned stadiums.

¹ Critical infrastructure, as defined by New York State, means "systems, assets, places or things, whether physical or virtual, so vital to the state that the disruption, incapacitation or destruction of such systems, assets, places or things could jeopardize the health, safety, welfare or security of the state, its residents or its economy."

Government Owned Mass Gathering/Special Event Site: Government property, where events such as, but not limited to, major community festivals, races, concerts, or games are held. These events must be reoccurring (but not necessarily the same event) and located or held on government owned or leased property that has definable geographic boundaries. The event or location must pose special security concerns, such as population surges and other factors that require additional law enforcement or emergency resources.

II. Eligibility

Only specific counties and units of local government within targeted counties are eligible to apply for the FY2019 Critical Infrastructure Grant Program. Units of local governments include: counties, cities, towns, and/or villages. Privately owned and not-for-profit sites are **not** eligible to receive funding under the FY2019 CIGP.

Applicants must be located in New York City or one of the following targeted counties: Albany, Broome, Dutchess, Erie, Herkimer, Livingston, Madison, Monroe, Nassau, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Suffolk, Tioga, Wayne, Westchester, and Yates. These targeted counties are a composition of the State's top seven Metropolitan Statistical Areas (MSAs).

The application must be coordinated with at least two (2) agencies with prevention and/or protection responsibilities at the selected site. These must be law enforcement, fire department, emergency management or public works agencies.

The applying unit of local government may submit up to two applications under the FY2019 CIGP. Two applications are allowable, as long as one is for a government owned critical infrastructure and one for a government owned mass gathering/special event site.

- **Nationwide Cyber Security Review (NCSR) Requirement:** All applicants that receive funding through the FY2019 CIGP will be required to participate in the Nationwide Cyber Security Review (NCSR) as a condition of receiving federal homeland security funding. Details concerning accessing and registering for the NCSR can be found at: <https://www.cisecurity.org/ms-isac/services/ncsr/>. It is advised that you coordinate closely with your Information Security Officer (ISO) to determine if your jurisdiction has already completed this requirement – please note that you are only required to submit once for your specific jurisdiction.

III. FY2019 Critical Infrastructure Grant Program Objectives

DHSES has identified the following objectives for the FY2019 Critical Infrastructure Grant Program:

A. Identify a Government Owned Critical Infrastructure or Mass Gathering/Special Event Site

DHSES recognizes that localities know their communities best. The CIGP was designed to allow for applicants to prioritize and select a **government owned critical infrastructure site** or **fixed government owned site with reoccurring events** for this targeted grant program.

The FY2019 CIGP is limited to government owned critical infrastructure and mass gathering/special event sites. Applicants are responsible for ensuring ownership or leased status of the selected sites.

B. Complete a Risk Assessment and Evaluate the Capabilities of Local First Responders

The CIGP supports the “assess risk” process of the risk management framework of the National Infrastructure Protection Plan (NIPP) by requiring partners to complete a risk assessment at the identified critical infrastructure site or mass gathering/special event site prior to submitting an application. Local first responders must also complete a capability assessment to identify equipment, training, and/or exercise needs to prevent and protect against attacks at the critical infrastructure site. Both the risk and capability assessments must be completed using the template in “Exhibit B.”

All jurisdictions have participated in the County Emergency Preparedness Assessment (CEPA) process and should have a good idea of the risks and capabilities within their jurisdiction and where gaps in capabilities may exist. Leveraging available data from the CEPA may be useful in this section.

C. Reduce Risk and Enhance Capabilities

Based upon the risk and capability assessments, develop a budget detailing how FY2019 CIGP funds will be used to mitigate risks identified through the risk assessment process and/or enhance capabilities identified through the risk management process.

IV. Authorized Program Expenditures

A. Permissible Costs

Grant funding under the FY2019 Critical Infrastructure Grant Program may be used for certain equipment, training, and exercise costs allowable under the State Homeland Security Program (SHSP). Due to the specialized nature of this grant program, applications must mitigate specific vulnerabilities at the selected government owned critical infrastructure or government owned mass gathering/special event sites and enhance first responder capabilities to prevent and protect the selected site. Applicants should refer to “Exhibit A - Allowable Costs Matrix,” for detailed information on allowable costs.

- **Grants Programs Directorate Information Bulletin (IB) 426:** This bulletin is in support of Executive Order 13809 and rescinds restrictions placed on certain

controlled equipment that was previously articulated in 407 and 407a issued by the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA). In addition, IB#426 outlines specific policy and documentation requirements for some equipment which continue to require DHS/FEMA approval. If your agency requests equipment identified as requiring pre-approval and are disapproved, your grant award will decrease by the amount of the disapproved item(s). Please refer to “Exhibit A” for the specific category of equipment.

B. Costs Not Permissible

Organizational, management and administrative, construction, and personnel costs are not allowable under the FY2019 CIGP. Applicants should refer specifically to “Exhibit A” of this RFA to obtain clear guidance on allowable costs under this grant program.

V. Application Format and Content

A. Format: Grant applications **MUST** be submitted via the automated E-Grants System operated by DHSES. The system allows an agency to complete an application electronically and submit it over the Internet using a secure portal. If upon reading this RFA you are interested in completing a grant application, and you have not previously been registered to use the DHSES E-Grants system, your agency will need to register and be assigned a user name and password. The Registration Request Form and a detailed tutorial on how to use the E-Grants system is available at: <http://www.dhSES.ny.gov/grants/targeted.cfm>.

B. Required Application Content: The following questions must be addressed in your FY2019 Critical Infrastructure Grant Program application. You must answer these specific grant questions in the “Questions” tab in E-Grants:

1. Site Identification: Applicants must provide the site name of the government owned critical infrastructure site or government owned mass gathering/special event site.
2. Site Selection Questions (for the government owned critical infrastructure site or government owned mass gathering/special event site):
 - Applicants must provide a description of the government owned critical infrastructure site or government owned mass gathering/special event site selected and the critical role it has within the community;
 - Describe the relationship between the selected government owned infrastructure site or government owned mass gathering/special event site and the local first responder community. Be sure to include the criteria used for the selection of the partnering agencies.
 - Explain **in detail** how this site was selected and prioritized over other sites. **In doing so, explain why the site was selected and discuss the other sites that were considered.**

3. Partnering Agencies: The application must be coordinated with at least two (2) agencies with prevention and/or protection responsibilities at the selected site. These must be law enforcement, fire department, emergency management, or public works agencies. **Applicants must describe in detail the coordination efforts between agencies and how these efforts are undertaken, such as, but not limited to, event plan development, and if applicable, describing joint training and/or exercises done at the potential site.**
4. Overall Application Questions: Applicants must summarize how the application meets the overall goals and objectives of the FY2019 CIGP, as well as establish the need for this grant funding.
5. If the application is successful, it must show how the projects implemented will be maintained and sustained at the critical infrastructure location;
6. Given the time constraints for spending down grants funds, please explain how the project will be implemented by August 31, 2022.
7. Risk Assessment and Capability Evaluation: Refer to “Exhibit B” for instructions on completing the Risk Assessment and Capability Evaluation. Attach the completed excel document to your project in E-Grants.

Any jurisdiction awarded funding must comply with the National Environmental Policy Act (NEPA). If you need additional information regarding Environmental and Historic Preservation (EHP) compliance, please visit our website at www.dhSES.ny.gov/grants. Additionally, the Authorized Equipment List (AEL) has been updated to include a notification in the individual equipment under the FEMA Grants Programs column if an EHP review is necessary, which can be found at: <https://www.fema.gov/authorized-equipment-list>

VI. Application Evaluation Criteria

The following multi-tiered criteria will be used by DHSES to evaluate each application and to determine grant awards. DHSES will select a multi-agency review panel to evaluate applications. All grant awards are approved by the Commissioner of DHSES.

A. Tier 1 Criteria

Tier 1 criteria are rated either “yes” or “no” and serve as a baseline review by DHSES to determine if applicants are eligible and have appropriately submitted all the required application materials prior to review by the multi-agency review committee. If any of the answers are “no,” the application will be immediately disqualified without further review and consideration for an award.

1. Was the application submitted on time?

2. Was the application submitted via E-Grants?
3. Was the application complete including the required exhibits? (the **required** Risk Assessment and Capability Evaluation must be attached in E-Grants by the submission due date)
4. Did the application meet the eligibility requirements?
 - a. From a targeted county/NYC.
 - b. From a unit of local government.
 - c. Was coordinated with two or more agencies.
 - d. Selected a government owned critical infrastructure site or a special event site.

B. Tier 2 Criteria

Applications meeting the Tier 1 review set forth above will be reviewed and evaluated competitively using the criteria specified below. Scores per criterion will be totaled to establish a ranked list of eligible applications for consideration of awards. At the sole discretion of DHSES, applicants may be disqualified due to untimely submission of any requested supporting documentation.

Tier 2 Evaluation Criteria	Point Score Range
Overall Application	0-10 points
Identification of Government Owned Critical Infrastructure or Government Owned Mass Gathering/Special Event Site	0-10 points
Risk Assessment and Capability Evaluation	0-50 points
Budget	0-20 points
Risk Score ¹	0-10 points
Sub -Total	100 Points Maximum
Grant Management Performance History ²	0-10 point (Subtracted off the top of final average score)
Total	100 Points Maximum

Applications receiving the highest average score based upon panel review will be selected for recommendation to the Commissioner of DHSES for award. The total scores will be averaged and ranked in order from highest to lowest. The State reserves the right, for the purpose of ensuring the completeness and comparability of proposals, to analyze submissions and make adjustments or normalize submissions in the proposals, including applicants' technical assumptions, and underlying calculations and assumptions used to support the computation of costs, or to apply

¹ DHSES is committed to distributing homeland security funding based upon risk. The Division of Homeland Security and Emergency Services will award each applicant up to 10 points in competitive scoring. Core variables which will be considered in the risk score include, county threat score (0-3 points); population and population density (0-4 points); critical infrastructure (0-1); and mass gatherings (0-2).

² Per the new Code for Federal Regulations (CFR) 2 CFR Part 200, DHSES is required to assess the risk posed by applicants of federal funding passed through DHSES. For previously funded applicants, DHSES will assess how well they have historically managed federal grant funds. This will include reporting compliance, successful award spend-down, and program objective compliance. Once a prospective applicant's final overall average score is determined by the review panel, DHSES may subtract up to 10 points based on its "Grant Management Performance History" criteria.

such other methods, as it deems necessary to make comparisons. In the event of a tie score where one or more applicants may not be fully funded, the applicant with the highest score in the “Overall Application” section will be ranked higher. Proposed budgets will be reviewed, and items deemed inappropriate, unallowable, or inconsistent with project or program activities will be eliminated. Grants in the amount of the budgets, as adjusted, will be made to the highest-ranking applicants until funds are insufficient to fund the next ranking application in full. The State reserves the right, at its discretion, to make amendments and/or alter funding levels of one or more applicants based on any new information discovered that would have originally affected the scoring or to not award funding to any application with a final average score of 60 or less.

VII. Checklist of Required Documents

- Applications must be submitted to DHSES via E-Grants with the required attachments uploaded.
- Completed Risk Assessment and Capability Evaluation (“Exhibit B”) must be submitted as an **attachment** to your project in E-Grants.

VIII. Timeline

DHSES must receive completed grant applications by **5:00 p.m. on January 6, 2021**. Applications received after the due date and time will not be considered. Applications must be submitted via DHSES E-Grants System. Please note that E-Grants Technical Assistance will only be available during business hours on the date the application is due. Furthermore, all written questions must be submitted to DHSES by **12:00 noon on December 30, 2020** to ensure that a timely response is provided to the applicant.

Grant applicants can expect to be notified of award decisions sometime in **late-March 2021**.

IX. Approval and Notification of Awards

The Commissioner of DHSES will provide oversight of the grant review process. The Commissioner will announce the final grant award decisions based on the review panel’s rating of applications and recommendations. DHSES will notify all applicants in writing as to final grant award determinations. Nothing herein requires or prohibits DHSES to approve grant funding for any one applicant, certain applicants, all applicants, or no applicants. Any disbursement of an award is contingent upon entering into a contract with DHSES, as explained in further detail below.

Due to the competitive nature of this grant application, **proposed changes to the scope of the program may not be approved post-award**.

X. Administration of Grant Contracts

DHSES will negotiate and develop a grant contract with the applicant ***or the submitting partner of successful regional partnerships*** based on the contents of the submitted application and intent of the grant program as outlined in this RFA. The grant contract is subject to approval by the NYS Office of the Attorney General and the Office of the State Comptroller before grant funding may actually be disbursed to reimburse project expenses.

The period of performance for contracts supported by FY2019 Critical Infrastructure Grant Program funds will be determined once awards have been approved but cannot extend beyond **August 31, 2022**. Although the contract format may vary, the contract, or RFA, if applicable will include such standard terms and conditions included in DHSES grant contracts available for review on the DHSES website: <http://www.dhSES.ny.gov/grants/forms-egrants.cfm>.

Applicants agree to adhere to all applicable state and federal regulations.

A. Issuing Agency

This RFA is issued by DHSES, which is responsible for the requirements specified herein and for the evaluation of all applications.

B. Filing an Application

Grant applications must be submitted via the automated DHSES E-Grants System. The system allows an agency to complete an application electronically and submit it over the Internet using a secure portal. If, upon reading this RFA, you are interested in completing a grant application and you have not previously been registered to use the DHSES E-Grants system, your agency will need to register and be assigned a username and password. The Registration Request Form can be found at the following Internet address: <http://www.dhSES.ny.gov/grants/forms-egrants.cfm>.

A detailed tutorial on how to use the E-Grants system can also be found at the following Internet address: <http://www.dhSES.ny.gov/grants/targeted.cfm>. It will guide you in a step-by-step process through the E-Grants application submission.

C. Reservation of Rights

The issuance of this RFA and the submission of a response or the acceptance of such response by DHSES does not obligate DHSES in any manner. DHSES reserves the right to:

1. Reject any and all applications received in response to this RFA;
2. Withdraw the RFA at any time at DHSES' sole discretion;
3. Make an award under the RFA in whole or in part;
4. Disqualify any applicant whose conduct and/or application fails to conform to the requirements of the RFA;
5. Seek clarifications and revisions of the applications;
6. Use application information obtained through site visits, management interviews and the State's investigation of an applicant's qualifications,

- experience, ability or financial standing, and any material or information submitted by the applicant in response to DHSES' request for clarifying information in the course of evaluation and/or selection under the RFA;
7. Prior to the application opening, amend the RFA specifications to correct errors or oversights, or to supply additional information, as it becomes available;
 8. Prior to the application opening, direct applicants to submit application modifications addressing subsequent RFA amendments;
 9. Change any of the scheduled dates;
 10. Eliminate any mandatory, non-material specifications that cannot be complied with by all the prospective applicants;
 11. Waive any requirements that are not material;
 12. Negotiate with successful applicants within the scope of the RFA in the best interests of the State;
 13. Conduct contract negotiations with the next responsible applicant, should DHSES be unsuccessful in negotiating with the selected applicant;
 14. Utilize any and all ideas submitted in the applications received;
 15. Unless otherwise specified in the RFA, every offer is firm and not revocable for a period of 60 days from the application opening; and,
 16. Communicate with any applicant at any time during the application process to clarify responses and /or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an applicant's proposal and/or to determine an applicant's compliance with the requirements of this RFA.
 17. Award grants based on geographic or regional considerations to serve the best interests of the State.
 18. Terminate, renew, amend or renegotiate contracts with applicants at the discretion of DHSES.
 19. Periodically monitor the applicant's performance in all areas mentioned above, in addition to the activities in the contract.
 20. Revoke funds awarded to an applicant, or enforce any available sanction against any applicant, who materially alters the activities or is in material noncompliance under the grant award, or who does not implement an approved project within 60 days of the final contract approval.
 21. Applicants funded through this program agree to provide DHSES, upon request at any time during the life of the grant contract, such cooperation and information deemed necessary by DHSES to ascertain: (1) the nature and extent of any threats or hazards that may pose a risk to the applicant; and (2) the status of any corresponding applicant or applicant plans, capabilities, or other resources for preventing, protecting against, mitigating, responding to, and recovering from such threats or hazards.
 22. Require applicants to attend and participate in any DHSES-sponsored conferences, training, workshops or meetings (excluding those identified by DHSES as voluntary) that may be conducted, by and at the request of DHSES, during the life of the grant contract.

23. In its sole discretion, reserves the sole discretion to increase or decrease the total funding available for this program at any time, resulting in more or fewer applications funded under this RFA.

DHSES may exercise the foregoing rights at any time without notice and without liability to any responding applicant or any other party for its expenses incurred in preparation of responses hereto or otherwise. All costs associated with responding to this RFA will be at the sole cost and expense of the applicant.

D. Term of the Contract

Any resulting contract or agreement for more than \$50,000 from this RFA will be effective only upon approval by both the NYS Office of the Attorney General and State Comptroller. Any resulting contract for \$50,000 and under from this RFA will be effective upon signature of both parties. For grants valued at \$10,000 or less, a Purchase Order invoking a "Letter of Agreement" between DHSES and the successful applicant will be issued.

E. Payment and Reporting Requirements of Grant Awardees

1. Standard Cost Reimbursement Contract

Each successful applicant must enter into a standard cost reimbursement contract with DHSES. Such contract will include this Request for Applications, the successful applicant's proposal, any attachments or exhibits and the standard clauses required by the NYS Attorney General for all State contracts (available upon request). The contract will be subject to approval by the Attorney General and State Comptroller. Although the contract format may vary, the contract will include such clauses, information, and rights and responsibilities as can be found on the DHSES website, including:

- APPENDIX A-1 Agency Specific Clauses or a Letter of Agreement (Depending upon Funding Amount)
- APPENDIX B - Budget
- APPENDIX C - Payment and Reporting Schedule
- APPENDIX D - Workplan/Special Conditions

For purposes of this RFA, these terms and conditions are incorporated by reference and the applicant must agree to the inclusion of all of these terms and conditions in any resulting grant contracts as part of the application submission. Copies of the standard terms and conditions included in DHSES grant contracts are available for review on the DHSES website at <http://www.dhSES.ny.gov/grants/forms-egrants.cfm>. Payments will be made subject to proper documentation and compliance with reimbursement procedures and all other contractual requirements.

2. Compliance with State and Federal Laws and Regulations, Including Procurement and Audit Requirements

2 CFR Part 200

Applicants (also referred to herein as “Subrecipients”) are responsible to become familiar with and comply with all state and federal laws and regulations applicable to these funds. Applicants are required to consult with the DHSES standard contract language (referenced above) for more information on specific requirements. Additionally, applicants must comply with all the requirements in 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). Applicants are required to understand and adhere to all federal requirements. You may access 2 CFR Part 200 at:

<https://www.ecfr.gov/cgi-bin/text-idx?SID=1c9afe07b881b32365c2f4ce1db64860&mc=true&node=pt2.1.200&rgn=div5>

Procurements

Additionally, applicants must follow and comply with all procurement procedures under General Municipal Law 5A and 2 CFR Part 200, Subpart D (see 2 CFR §§200.317-.326), and/or any other state or federal regulations applicable to these funds and will be subject to monitoring by DHSES to ensure compliance.

Single Audit

For audits of fiscal years beginning on or after December 26, 2014, applicants that expend \$750,000 or more from all Federal funding sources during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with the requirements of U.S. Government Accountability Office’s (GAO) Government Auditing Standards, located at <http://www.gao.gov/govaud/ybk01.htm>, and the requirements of Subpart F of 2 CFR Part 200 located at: <http://www.ecfr.gov/cgi-bin/text-idx?node=sp2.1.200.f>.

Conflict of Interest

Pursuant to 2 CFR §200.112, in order to eliminate and reduce the impact of conflicts of interest in the sub-award process, applicants must follow their own policies and procedures regarding the elimination or reduction of conflicts of interest when making sub-awards. Applicants are also required to follow any applicable state, local, or Tribal statutes or regulations governing conflicts of interest in the making of sub-awards.

The applicant must disclose to the respective Contract Representative, in writing, any real or potential conflict of interest as defined by the Federal, state, local, or Tribal statutes or regulations or their own existing policies, which may arise during the administration of the Federal award within five days of learning of the conflict of interest. Similarly, applicants must disclose any real or potential conflict of interest to the pass-through entity (State) as required

by the applicant's conflict of interest policies, or any applicable state, local, or Tribal statutes or regulations.

Conflicts of interest may arise during the process of DHS/FEMA making a Federal award in situations where an employee, officer, or agent, any members of his or her immediate family, his or her partner has a close personal relationship, a business relationship, or a professional relationship, with an applicant, sub-applicant, recipient, subrecipient, or DHS/FEMA employees.

Additionally, applicants must disclose, in writing to the Federal Awarding Agency or to the pass-through entity (State) all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in § 200.338. Remedies for noncompliance, including suspension or debarment. (See also 2 CFR part 180 and 31 U.S.C. 3321).

Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms

Pursuant to New York State Executive Law Article 15-A, the New York State Division of Homeland Security and Emergency Services recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business enterprises and the employment of minority group members and women in the performance of New York State Division of Homeland Security and Emergency Services contracts. Minority and women-owned business enterprises can be readily identified on the directory of certified businesses at:
<https://ny.newnycontracts.com/>.

All qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Consistent with 2 CFR §200.321, non-Federal contracting entities must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

For purposes of this solicitation, applicants and subcontractors are hereby notified the State of New York has set an overall goal of **30% for MWBE participation** or more, **15% for Minority-Owned Business Enterprises** ("MBE") participation and **15% for Women-Owned Business Enterprises** ("WBE") participation, based on the current availability of qualified MBEs and WBEs for your project needs.

An applicant on any contract resulting from this procurement ("Contract") must incorporate the affirmative steps above into its grant management policies and procedures.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the applicant and subrecipients will 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 Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Sexual Harassment Prevention

Applicants must submit a certification with their bid stating that applicant has a policy addressing sexual harassment prevention and that applicant provides sexual harassment training to all its employees on an annual basis that meets the Department of Labor's model policy and training standards. Bids that do not contain this certification will not be considered for awards; provided, however, that if applicant cannot make the certification, the applicant may provide a statement with its bids detailing the reasons why the certification cannot be made.

Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economics of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at <https://online.ogs.ny.gov/SDVOB/search>

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 of applicable federal laws and regulations including 2 CFR Part 200, State Finance Law, General Municipal Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State Law. Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated public procurements.

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

For purposes of this solicitation, applicants and subrecipients are hereby notified the State of New York has set an overall goal of 6% for SDVOB participation or more.

Contractor will report on actual participation by each SDVOB during the term of the contract to the contracting agency/authority according to policies and procedures set by the contracting agency/authority.

Worker's Compensation and Disability Benefits Insurance Coverage

Applicants must provide evidence of appropriate workers' compensation and disability insurance coverage, or proof of a legal exemption, prior to being awarded a contract. Failure to do so will result in the rejection of the application.

3. Iran Divestment Act

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

By submitting a proposal in response to this RFA, or by assuming the responsibility of a Contract awarded hereunder, the applicant (or any assignee) certifies that once the

prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

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

During the term of the Contract, should DHSES receive information that a person is in violation of the above-referenced certification, DHSES will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then DHSES shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default. DHSES reserves the right to reject any bid or request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

4. Vendor Responsibility

State Finance Law §163(9)(f) requires a State Agency to make a determination that an applicant is responsible prior to awarding that applicant a State contract which may be based on numerous factors, including, but not limited to the applicants: (1) financial and organizational capacity; (2) legal authority to do business in this State; (3) integrity of the owners, officers, principals, members, and contract managers; and (4) past performance of the applicant on prior government contracts. Thereafter, applicants shall at all times during the Contract term remain responsible. The applicant agrees, if requested by the Commissioner of DHSES, or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. DHSES requires that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System, see the VendRep System Instructions available at: http://www.osc.state.ny.us/vendrep/info_vrsystem.htm or go directly to the VendRep system online at <https://onlineservices.osc.state.ny.us/Enrollment/login?0>. Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at ITServiceDesk@osc.state.ny.us. Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website http://www.osc.state.ny.us/vendrep/forms_vendor.htm or may contact the Office of the State Comptroller's Help Desk for a copy of the paper form. Applicants will also be required to complete and submit a Vendor Responsibility Questionnaire prior to contracting.

a) Suspension of Work for Non-Responsibility:

The Commissioner of DHSES or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, when he or she discovers information that calls into question the responsibility of the applicant. In the event of such suspension, the applicant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of DHSES or his or her designee issues a written notice authorizing the resumption of performance under the Contract.

b) Termination for Non-Responsibility:

Upon written notice to the applicant, and a reasonable opportunity to be heard by appropriate DHSES officials or staff, the Contract may be terminated by the Commissioner of DHSES or his or her designee at the applicant's expense where the applicant is determined by the Commissioner of DHSES or his or her designee to be non-responsible. In such event, the Commissioner of DHSES or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue legal or equitable remedies for breach. Applicants shall at all times during the Contract term remain responsible. The applicant agrees, if requested by the Commissioner of DHSES, or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

F. Satisfactory Progress

Satisfactory progress toward implementation includes but is not limited to; executing contracts and submitting payment requests in a timely fashion, retaining consultants, completing plans, designs, reports, or other tasks identified in the work program within the time allocated for their completion. DHSES may recapture awarded funds if satisfactory progress is not being made on the implementation of a grant project.

G. General Specifications

By submitting the application, the applicant attests that:

1. Applicant has express authority to submit on behalf of the applicant's agency.
2. Submission of an application indicates the applicant's acceptance of all conditions and terms contained in this RFA, including Appendices A-1 and C, and all other terms and conditions of the award contract.
3. The application and any resulting grant, if awarded, must adhere to, and be in full compliance with any, resulting contract(s) and relevant federal and states policies and regulations or be subject to termination.

4. Any not-for-profit subrecipients are required to be prequalified, prior to contract execution, by the State of New York upon application submission through the New York State Grants Gateway (<https://grantsgateway.ny.gov>)
5. If your organization is not currently doing business with NYS, you will need to submit a Substitute W-9 form to obtain a NYS Vendor ID. The form is available on the Office of the State Comptroller website at:
http://www.osc.state.ny.us/vendor_management/forms.htm.
6. Contract Changes - Contracts with applicants/subrecipients may be executed, terminated, renewed, increased, reduced, extended, amended, or renegotiated at the discretion of the Commissioner of DHSES, in light of applicants/subrecipients performance, changes in project conditions, or otherwise.
7. Records – Applicants/subrecipients must keep books, ledgers, receipts, work records, consultant agreements and inventory records pertinent to the project; and in a manner consistent with DHSES contractual provisions and mandated guidelines.
8. Liability - Nothing in the contract between DHSES and the applicant shall impose liability on the State of New York or DHSES for injury incurred during the performance of approved activities or caused by use of equipment purchased with grant funds.
9. Reports - A provider agency shall submit to the DHSES reports in a format and time schedule specified in the grant contract, which shall include a description of the program efforts undertaken during the report period and the current status of the project.
10. Tax Law Section 5-a Certification – In accordance with section 5–a of the Tax Law, subrecipients will be required, prior to the approval of any contract awarded as a result of this RFA, to certify that it and its affiliates, subcontractors, and subcontractors’ affiliates have registered with the New York State Tax Department for the purpose of collection and remittance of sales and use taxes. In order to trigger this certification requirement, a subrecipient or its affiliates, subcontractor, or subcontractors’ affiliates must have made more than \$300,000 in sales of tangible personal property or taxable services to location within New York State and the contract must be valued in excess of \$15,000. Certification will take the form of a completed Tax Form ST-220 (1/05).
11. Standard Contract Provisions - Grant contracts executed as a result of this RFA process will be subject to the standard clauses for New York State Contracts as referenced herein and as located at:
https://online.ogs.ny.gov/purchase/biddocument/23128i_AppendixA.pdf
12. Compliance with Procurement Requirements - The applicant shall certify to DHSES that all applicable federal and contractual procurement procedures were followed and complied with for all procurements.

H. Special Conditions

New York State Emergency Management Certification and Training Program

1. Participation in, and successful completion of, the New York State Emergency Management Certification and Training Program (EMC Training Program) is a mandatory requirement under this Contract and a condition of funding. The EMC Training Program will be made available to, and required for, DHSES-specified

county and city government officials in order to ensure a consistent emergency management preparedness and response strategy across the State. Attendee substitutions, except as expressly approved by DHSES, shall not be permitted or deemed to be in compliance with this requirement.

2. To fulfill the EMC Training Program requirement of the Contract and in order to be eligible for funding under this Contract, applicants must arrange for DHSES-specified applicant employees to receive and acknowledge receipt of EMC Training no later than 180 days after execution of this Contract. Copies of the training certificates for each required participant must be submitted to DHSES upon execution of the Contract, or, in the event that training is scheduled, but not yet complete, the applicant will be required to submit a signed statement indicating the scheduled future dates of attendance, and no later than thirty (30) days after the training is complete, forward such training certificates to DHSES. Continued compliance with the EMC Training Program also requires an annual refresher training of one day per 365 day-cycle from the date of initial training for previously trained individuals if such person remains employed by the applicant and fulfilling the same functions as he or she fulfilled during the initial training. Should a new employee be designated to serve in the DHSES-specified positions, then he or she must come into compliance with the EMC Training Program requirements not later than 180 days after taking office.
3. Applicants must commit to active participation in a DHSES Annual Capabilities Assessment as a condition of funding. Active participation includes making reasonable staff, records, information, and time resources available to DHSES to perform the Annual Capabilities Assessment and meet the objectives and goals of the program. Applicants must be aware that the process of conducting a DHSES Annual Risk Assessment is an ongoing process and requires a continued commitment on the part of the applicant to ensure that it is effective.
4. All applicants funded through this program agree to provide DHSES, upon request at any time during the life of the grant contract, such cooperation and information deemed necessary by DHSES to ascertain: (1) the nature and extent of any threats or hazards that may pose a risk to the recipients or subrecipients; and (2) the status of any corresponding recipients or subrecipients plans, capabilities, or other resources for preventing, protecting against, mitigating, responding to, and recovering from such threats or hazards.
5. Additionally, pursuant to Article 26 of the NYS Executive law, DHSES is authorized to undertake periodic drills and simulations designed to assess and prepare responses to terrorist acts or threats and other natural and man-made disasters. Funded applicants agree to attend and participate in any DHSES-sponsored conferences, training, workshops or meetings (excluding those identified by DHSES as voluntary) that may be conducted, by and at the request of DHSES, during the life of the grant contract.

6. Failure to comply with any of the requirements, as listed above, may result in sanctions up to and including the immediate suspension and/or revocation of the grant award.
7. Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may submit a written request for a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by DHSES that the Bid submitted by the Bidder was not selected for award. An unsuccessful Bidder's written request for a debriefing shall be submitted to DHSES Director of Grants Program Administration. The debriefing shall be scheduled within 10 business days of receipt of the written request by DHSES or as soon as practicable under the circumstances.

XI. Questions

Questions regarding the FY2019 Critical Infrastructure Grant Program should be directed to the following e-mail address Grant.Info@dhses.ny.gov. To the degree possible, each inquiry should cite the RFA section and paragraph to which it refers. Written questions will be accepted until **12:00 noon on December 30, 2020**.

Updates and frequently asked questions will be posted on the NYS Division of Homeland Security and Emergency Services (DHSES) website: <http://www.dhses.ny.gov/grants/targeted.cfm>. Please check the website frequently for updates.

All questions regarding the E-Grants System should be directed to DHSES via e-mail (Grant.Info@dhses.ny.gov) or telephone (866-837-9133). No technical assistance will be available **after 5:00 p.m. on January 6, 2021**.

Exhibit A: Allowable and Unallowable Cost Matrix

Reminder: Allowable costs for the FY2019 Critical Infrastructure Grant Program are more restrictive than the more general State Homeland Security Program (SHSP) because of the specialized nature of this targeted grant program. Accordingly, please refer only to “Exhibit A” of this Request for Applications (RFA) for details on allowable costs.

Allowable Costs

Equipment Categories
CBRNE Operational Search & Rescue Equipment ³
Interoperable Communications Equipment must be P-25 compliant
Detection Equipment
Power
CBRNE Reference Materials
Terrorism Incident Prevention Equipment
Physical Security Enhancement Equipment
Inspection & Screening Systems
CBRNE Logistical Support Equipment
Intervention Equipment
Other Authorized Equipment
Training Costs
Training workshops & conferences
Travel
Supplies
Other Items
Exercise Related Costs
Design, Develop, Conduct & Evaluate an Exercise
Exercise planning workshop
Implementation of HSEEP
Travel
Supplies
Other Items

³ Certain equipment (not all) within this category require DHS/FEMA approval pursuant to Information Bulletin 426.

Unallowable Costs

Training Costs
Overtime & backfill for emergency preparedness & response personnel attending FEMA-sponsored & approved training classes & technical assistance programs
Overtime & backfill expenses for part-time & volunteer emergency response personnel participating in FEMA training
Part-time staff or contractors/consultants (not full-time)
Tuition for Higher Education
Training Props
Exercise Related Costs
Part-time staff or contractors/consultants (not full-time)
Overtime & backfill costs, including expenses for part-time & volunteer emergency response personnel participating in FEMA exercises
Equipment Categories
Personal Protective Equipment
Explosive Device Mitigation & Remediation Equipment
Decontamination Equipment
Medical
CBNRE Incident Response Vehicles
CBRNE Response Watercraft (Requires FEMA approval)
CBRNE Aviation Equipment
Management and Administrative (M&A) Costs
Hiring of full or part-time staff or contractors/consultants to assist with the management of the respective grant program, application requirements, compliance with reporting & data collection requirements
Development of operating plans for information collection & processing necessary to respond to FEMA data calls
Overtime and backfill costs
Travel
Meeting related expenses
Authorized office equipment
Recurring expenses such as those associated with cell phones & faxes during the period of performance of the grant program
Leasing or renting of space for newly hired personnel during the period of performance of the grant program
Construction Related Costs
Construction Costs

Exhibit B: Risk Instructions and Template Assessment and Capability Evaluation

Reminder: The Risk Assessment submitted for the participating site must contain the information outlined in this exhibit including a risk assessment and capability assessment (note: separate tabs for each) in the template. Assessments that do not contain the outlined information contained herein will not be evaluated.

The application will be scored based upon review of information developed on potential threats, vulnerabilities, and consequences. Please refer to the 2013 National Infrastructure Protection at: <https://www.dhs.gov/national-infrastructure-protection-plan> (pages 15-20) for additional information on risk assessments.

Risk Assessment Methodology

This assessment should be based on the risk management framework methodology and influenced by the nature and magnitude of the threat, the vulnerabilities that relate to that threat, and the consequences that could result from that threat. It should also include personal observations, analysis of documents, interviews, and/or photographic documentation. **For each area below, measurable statistics MUST be included:**

THREAT: For the purpose of calculating risk, the threat of an intentional hazard is generally estimated as the **likelihood of an attack being attempted** by an adversary or, for other hazards, an estimated likelihood that a hazard will manifest itself, that has or indicates the potential to harm life, information, operations, the environment, and or/property. Threat assessment judgments are based upon available intelligence (law enforcement and open source information). The facility should be viewed in terms of whether the nature of public contact required in or resulting from the conduct of business is adversarial, or whether there is a history of adversarial acts committed at the facility, against facility tenants, or against the tenant agencies elsewhere.

VULNERABILITY: For the purpose of calculating risk of an intentional hazard, the common measure of vulnerability is the **likelihood that an attempted attack is successful**. Focus is on physical features or operational attributes that renders an entity open to exploitation or is susceptible to a given hazard.

CONSEQUENCE: For the purpose of calculating risk, the consequence assessment is the effect of an event, incident, or occurrence; **reflects the level, duration, and nature of loss resulting from the incident**. Consequences are divided into four main categories: public health and safety (i.e. loss of life, illness); economic (direct and indirect); psychological; and governance/mission impacts.

**FY2019 Critical Infrastructure Grant Program
Risk Assessment**

Government Owned Critical Infrastructure/ Mass Gathering/ Special Event Site Details	
Type of Government Owned Site: Critical Infrastructure/ Mass Gathering/ Special Event:	
Name of Government Owned Site:	
Physical Address:	
Point of Contact:	
Assessment Completed By and Completion Date:	

Mission	
What is the general purpose of the Government Owned Critical Infrastructure/ Mass Gathering/ Special Event Site? Describe the asset or special event.	
How does the mission of this Government Owned Critical Infrastructure/ Mass Gathering/ Special Event Site contribute to or affect the primary functions of the community?	
How does the mission of this Government Owned Critical Infrastructure/ Mass Gathering/ Special Event Site contribute to or affect the primary functions of the County?	
How does the mission of this Government Owned Critical Infrastructure/ Mass Gathering/ Special Event Site contribute to or affect the primary functions of the State?	

Threat	
1) From the list provided below, select all threats deemed relevant to your facility based on the <u>THREAT</u> component of your risk assessment. Then in the "Narrative" section, please describe why you chose that threat and how it could affect your location and/or the larger community. See the Directions tab for possible factors to consider. Scoring for this section is worth a maximum of 10 points and is based on the completeness and quality of the narrative provided, not the quantity of threat(s) selected.	
(Manmade or Natural)	
Threat	Narrative (Explain your selection here or in an attachment)
☐ Biological Agent Release	
☐ Active Shooter	
☐ Improvised Explosive Device (Man Portable or Vehicle Born IED)	
☐ Improvised Nuclear Device (IND)	
☐ Radiological Dispersal Device (RDD)	
☐ Food Contamination	
☐ HazMat Release	
☐ Radiological Release (Fixed-Site)	
☐ Vehicle-ramming Attack	
☐ Attack on Critical Infrastructure/Critical Infrastructure Failure	
☐ Extreme weather event (e.g. severe winter storm; hurricane; flooding; high winds; etc.)	
☐ Population surges/crowd surges	
☐ Major Fire	
☐ Other (Explain in narrative portion)	

Vulnerability	
2) Please report the findings of the <u>VULNERABILITY</u> component of your risk assessment. Scoring for this section is worth a maximum of 10 points and is based on the completeness and overall quality of the narrative provided (2a-2c).	
2a) Identify and describe specific vulnerabilities that exist given the selected threats.	
2b) Describe all protective measures in place and how they reduce the vulnerabilities identified in 2a.	
2c) Are there written plans in place that address the vulnerabilities identified in 2a? If yes, please describe.	

Consequence	
3) Please report the findings of the <u>CONSEQUENCE</u> component of your risk assessment. Scoring for this section is worth a maximum of 10 points and is based on the completeness and overall quality of the narrative provided (3a-3d).	
3a) Given the selected threat(s) and vulnerabilities, what are the estimated number of fatalities, injuries, and illness, if applicable?	
3b) What is the estimated economic loss in dollars, if applicable?	
3c) Please describe psychological impacts, if applicable.	
3d) Is there a continuity of operations plan or could other similar assets perform the key functions of the selected site? If yes, please briefly describe.	

FY2019 Critical Infrastructure Grant Program
Capability Evaluation

Capability Evaluation

This section addresses the capabilities of the partnering agencies. Applicants should answer the questions below in a narrative format for all partnering agencies. Scoring for this section is worth a maximum of 20 points and is based on the completeness and overall quality of the narrative provided.

Questions : Identify all partnering agencies including name, address, and contact information. In the Narrative section, indicate any combined planning or training with partnering agencies with respect to the selected Government Owned Critical Infrastructure/ Mass Gathering or Special Event Site. Also include estimated response times to the Government Owned Critical Infrastructure/ Mass Gathering or Special Event Site by the partner agencies. Briefly indicate equipment that partnering agencies already own that facilitate protection/response capabilities at the Government Owned Critical Infrastructure/ Mass Gathering or Special Event Site. Briefly indicate equipment that partnering agencies do NOT have that hinder prevention/response capabilities at the Government Owned Critical Infrastructure/ Mass Gathering or Special Event Site. Indicate, as clearly as possible, how the overall capability of partnering agencies will be enhanced by requested goods/services.

Name, Address, and Contact information for 1st Partner Agency:

Name, Address, and Contact information for 2nd Partner Agency:

Narrative (Provide here or in an attachment)

Exhibit C: Examples of Government Owned Critical Infrastructure, Mass Gathering and Special Event Sites

In order to best support the purpose, goals, and objectives of the FY2019 CIGP, applicants should obtain a clear understanding of what government owned critical infrastructure and mass gathering/special event sites can be.

For the purposes of this grant application, government owned critical infrastructure and mass gathering/special event sites can be any asset owned or leased by a government entity where events can occur and draw crowds. Some of these assets can be open to the public for business, commercial transactions, or recreation. Others may not be open to the public and contain highly sensitive materials and equipment.

These assets may not only be physical structures. Applicants should consider the automation elements associated with the operation and protection of government owned critical infrastructure.

Examples include, but are not limited to:

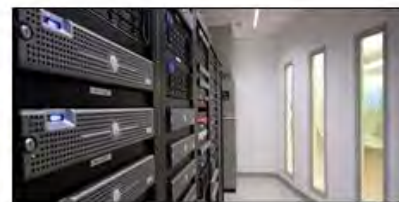
- Seat of government or critical government facilities
- Water treatment facilities
- Government communications infrastructure systems
- Critical emergency services facilities
- Transportation (airports, roadways, maritime)
- Government public health facilities
- Government owned or leased mass gathering sites; **which includes mass gathering/special event sites**
 - Including, but not limited to, parks, sporting venues, performance arts venues, festivals, government owned fairgrounds, and other reoccurring event sites.



Transportation
Greater Binghamton Airport



Municipal Buildings
Poughkeepsie City Hall & City Court



Information Technology
Server rooms, supporting infrastructure



Stadiums, Arenas and other Venues
Ralph Wilson Stadium (owned by Erie County)



Access Control and Security

Exhibit D: Best Practices for Preparing an Effective Grant Application

What to do when you have received the Request for Applications (RFA):

- It is important to start early in preparing your application, highlighting deadlines and/or tasks that must be completed as part of the application process.
- Review all plans, strategies, policies, and documents related to the grant you are applying for to ensure you can appropriately address the goals and objectives pertaining to the nature of the grant opportunity.

What to do when you are completing the application:

- Ensure that the proposed budget is realistic, reasonable, and articulate how your budget will address the objectives of the grant opportunity.
- Review and evaluate the scoring criteria. Pay close attention to the sections that are weighted the most first, as they have a greater impact on your overall score.
- If your grant application requires you to reference goals and/or objectives, make sure the goals and objectives you cite are measurable. Goals should reflect the long-term and global impact of a program or project. Meanwhile, objectives should be specific and measurable building blocks designed to meet your goals.
- Create an evaluation plan that demonstrates how you will assess your proposed projects for effectiveness and/or meeting the objectives of the grant opportunity, even if such a plan is not required.
- Address steps that will be taken to institutionalize, sustain, or enhance the capabilities or proposed project being developed after grant funding has been exhausted.

What to do prior to submitting your application:

- Make sure that you have completed all the required sections of the application. Applicants are strongly recommended to share their completed applications with a colleague to ensure that the application is clearly written and addresses all the objectives of the grant opportunity.