

County of Albany

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



Meeting Agenda

Monday, February 8, 2021

7:00 PM

Held Remotely

County Legislature

Call to Order**Roll Call****Proclamations****PREVIOUS BUSINESS**

- 384.** AN ACT PERTAINING TO THE ALBANY COUNTY PLANNING BOARD AND CONSIDERATION OF CRITICAL VIEWSHEDS OF THE HELDERBERG ESCARPMENT

Sponsors: Perlee, Plotsky, Simpson, Smith, Miller, Reinhardt, Efekoro, Fein, Lockart, Tunny and A. Joyce

CURRENT BUSINESS:

- 8.** 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

Sponsors: Public Works Committee

- 9.** AMENDING RESOLUTION NO. 58 FOR 2016 REGARDING THE RENOVATION AND REHABILITATION OF THE SHAKER SITE BUILDINGS

Sponsors: Public Works Committee

- 10.** AUTHORIZING AN AGREEMENT WITH INTERNATIONAL DIOXIDE, INC. REGARDING ODOR CONTROL FOR THE WATER PURIFICATION DISTRICT

Sponsors: Public Works Committee

- 11.** AUTHORIZING AGREEMENTS WITH NATIONAL GRID REGARDING THE PURCHASE OF COUNTY OWNED STREETLIGHTS AND AMENDING THE 2021 ALBANY COUNTY BUDGET

Sponsors: Public Works Committee, Beston, O'Brien, Cleary, Fein, Peter, Reinhardt, Burgdorf, Perlee and Bruschi

12. 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

Sponsors: Public Works Committee

13. AUTHORIZING AN AGREEMENT WITH TRINITY ALLIANCE OF THE CAPITAL REGION, INC. REGARDING THE PROVISION OF FAMILY AND NEIGHBORHOOD RESOURCE CENTER SERVICES

Sponsors: Social Services Committee

14. AUTHORIZING AN AGREEMENT AND AMENDING THE 2021 DEPARTMENT FOR CHILDREN, YOUTH AND FAMILIES BUDGET: REDLICH HORWITZ FOUNDATION GRANT

Sponsors: Social Services Committee

15. AUTHORIZING THE SUBMISSION OF A SUPERVISION AND TREATMENT SERVICES FOR JUVENILES PROGRAM PLAN TO THE NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES

Sponsors: Social Services Committee

16. AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES REGARDING CHILD ABUSE AND SUBSTANCE ABUSE DISORDERS

Sponsors: Social Services Committee

17. AMENDING THE 2021 DEPARTMENT FOR CHILDREN, YOUTH AND FAMILIES BUDGET: GRANT FUNDING

Sponsors: Social Services Committee

18. AUTHORIZING AGREEMENTS REGARDING THE CHILDREN'S ADVOCACY CENTER

Sponsors: Social Services Committee

19. AUTHORIZING AN AGREEMENT WITH THE NEW YORK STATE DEPARTMENT OF HEALTH REGARDING REIMBURSEMENT FOR ADMINISTRATIVE COSTS PERTAINING TO THE EARLY INTERVENTION PROGRAM

Sponsors: Social Services Committee

20. AMENDING RESOLUTION NO. 16 FOR 2020 REGARDING THE PROVISION OF KIOSKS FOR SNAP BENEFIT APPLICANTS AND RECIPIENTS

Sponsors: Social Services Committee

21. AUTHORIZING AGREEMENTS WITH PROVIDERS OF HOME ESTABLISHMENT FURNISHINGS

Sponsors: Social Services Committee

22. AUTHORIZING SUBMISSION OF A GRANT APPLICATION AND AN AGREEMENT WITH THE UNITED STATES DEPARTMENT OF TREASURY REGARDING RENTAL ASSISTANCE DURING COVID-19 AND AMENDING THE 2021 DEPARTMENT OF SOCIAL SERVICES BUDGET

Sponsors: Social Services Committee, Audit and Finance Committee, A. Joyce, Fein, Simpson, McLaughlin and Domalewicz

23. APPROVING THE DESIGNATION OF THE ALBANY COUNTY SOIL AND WATER CONSERVATION DISTRICT TO ADMINISTER THE NATIONAL GRID 10,000 TREES AND GROWING PROGRAM FOR ALBANY COUNTY

Sponsors: Conservation, Sustainability and Green Initiatives Committee, Reinhardt, Efekoro, Fein, Miller, Plotsky, Simpson, Lockart and Tunny

24. AUTHORIZING AGREEMENTS REGARDING THE EXPANDED IN-HOME SERVICES FOR THE ELDERLY PROGRAM

Sponsors: Elder Care Committee

25. AUTHORIZING AN AGREEMENT WITH THE NEW YORK STATE INDUSTRIES FOR THE DISABLED REGARDING ANCILLARY LAUNDRY SERVICES FOR ELIGIBLE INDIVIDUALS IN THE EXPANDED IN-HOME SERVICES FOR THE ELDERLY PROGRAM

Sponsors: Elder Care Committee

26. AUTHORIZING AN AGREEMENT WITH BIO-REFERENCE LABORATORIES, INC. REGARDING COVID-19 TESTING

Sponsors: Elder Care Committee

27. AUTHORIZING AN AGREEMENT WITH COMPREHENSIVE HEALTHCARE SOLUTIONS REGARDING BILLING AND DEBT COLLECTION SERVICES

Sponsors: Elder Care Committee

28. AUTHORIZING AN AGREEMENT WITH CDPHP REGARDING A DONATION TO SHAKER PLACE REHABILITATION AND NURSING CENTER AND AMENDING THE 2021 DEPARTMENT OF RESIDENTIAL HEALTH CARE FACILITIES BUDGET

Sponsors: Elder Care Committee

29. AUTHORIZING AN AGREEMENT WITH THE NEW YORK STATE OFFICE OF VICTIM SERVICES REGARDING THE VICTIM AND WITNESS ASSISTANCE PROGRAM GRANT

Sponsors: Law Committee

30. AUTHORIZING AN AGREEMENT WITH THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES REGARDING RAPE CRISIS SERVICES AND PREVENTION PROGRAMMING

Sponsors: Law Committee

31. AUTHORIZING AN AGREEMENT WITH THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES AND AN INTERDEPARTMENTAL AGREEMENT REGARDING THE STOP VIOLENCE AGAINST WOMEN ACT GRANT

Sponsors: Law Committee

32. AUTHORIZING AN AGREEMENT WITH ELLIS HOSPITAL REGARDING MORGUE AND LABORATORY SERVICES

Sponsors: Health Committee

33. AUTHORIZING THE RENEWAL OF A CONTRACT FOR RE-ENTRY SERVICES WITH THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES

Sponsors: Health Committee

34. AUTHORIZING AN AGREEMENT WITH THE HOMELESS AND TRAVELERS AID SOCIETY REGARDING CASE MANAGEMENT SERVICES FOR THE COUNTY RE-ENTRY PROGRAM

Sponsors: Health Committee

35. AUTHORIZING AN AGREEMENT WITH INFORMATION MANAGEMENT ASSOCIATES REGARDING PATIENT AND BILLING SOFTWARE AT THE DEPARTMENT OF MENTAL HEALTH

Sponsors: Health Committee

36. AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE NEW YORK STATE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES REGARDING THE EXPLOSIVE DETECTION CANINE TEAM PROGRAM

Sponsors: Public Safety Committee

37. AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE NEW YORK STATE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES REGARDING THE TECHNICAL RESCUE AND URBAN SEARCH AND RESCUE GRANT PROGRAM

Sponsors: Public Safety Committee

38. AUTHORIZING AN AGREEMENT WITH CENTRAL SQUARE TECHNOLOGIES REGARDING THE REPLACEMENT OF E911 COMPUTERS WITHIN ALBANY COUNTY

Sponsors: Public Safety Committee

39. AUTHORIZING AN AGREEMENT WITH TECHNICAL BUILDING SERVICES FOR THE PUBLIC SAFETY BUILDING IN CLARKSVILLE

Sponsors: Public Safety Committee

40. AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE NEW YORK STATE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES REGARDING THE FY2019 CYBER SECURITY GRANT FOR THE ALBANY COUNTY SHERIFF'S OFFICE

Sponsors: Public Safety Committee

41. AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE NEW YORK STATE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES REGARDING THE FY2019 CYBER SECURITY GRANT FOR THE ALBANY COUNTY DIVISION OF INFORMATION SERVICES

Sponsors: Public Safety Committee

42. CONFIRMING THE APPOINTMENT OF A MEMBER TO THE ALBANY COUNTY AIRPORT AUTHORITY

Sponsors: Personnel Committee

43. AUTHORIZING THE OFFICES OF THE PUBLIC DEFENDER AND ALTERNATE PUBLIC DEFENDER TO CONSIDER OUT-OF-COUNTY APPLICANTS FOR THE POSITIONS OF ASSISTANT ALBANY COUNTY PUBLIC DEFENDER AND ASSISTANT ALTERNATE ALBANY COUNTY PUBLIC DEFENDER

Sponsors: Personnel Committee

44. AMENDING THE 2021 SHERIFF'S OFFICE BUDGET REGARDING THE NEW YORK STATE DEPARTMENT OF HOMELAND SECURITY AND EMERGENCY SERVICES STATEWIDE INTEROPERABILITY COMMUNICATIONS GRANT

Sponsors: Audit and Finance Committee

45. AUTHORIZING THE REFUND OF REAL PROPERTY TAXES IN THE TOWN OF COLONIE

Sponsors: Audit and Finance Committee

46. AMOUNT LEVIED FOR UNPAID WATER AND SEWER CHARGES IN THE CITY OF COHOES

Sponsors: Audit and Finance Committee

47. AMOUNTS LEVIED FOR OTHER CHARGES FOR THE CITY OF COHOES

Sponsors: Audit and Finance Committee

48. AUTHORIZING THE LEVY UPON THE CITY OF COHOES PROPERTY OF THE AMOUNT NEEDED FOR VARIOUS PURPOSES

Sponsors: Audit and Finance Committee

49. AUTHORIZING THE CONVEYANCE OF 76 THIRD STREET (TAX MAP NO. 65.74-3-7) AND 89 THIRD STREET (TAX MAP NO. 65.74-2-7) IN THE CITY OF ALBANY

Sponsors: Audit and Finance Committee

50. AUTHORIZING THE CANCELLATION AND CHARGE BACK OF AN UNENFORCEABLE DELINQUENT REAL PROPERTY TAX LIEN ON 46 GOOGAS ROAD IN THE TOWN OF BETHLEHEM

Sponsors: Audit and Finance Committee

51. AUTHORIZING THE CONVEYANCE OF VARIOUS PARCELS OF REAL PROPERTY TO THE ALBANY COUNTY LAND BANK CORPORATION

Sponsors: Audit and Finance Committee

52. AMENDING RESOLUTION NO. 494 FOR 2020 FOR A CUSTOMER PROJECT COMMITMENT AGREEMENT WITH THE NEW YORK POWER AUTHORITY REGARDING THE STREETLIGHT CONVERSION PROJECT

Sponsors: Audit and Finance Committee

53. DESIGNATING FEBRUARY 2021 AS "AFRICAN AMERICAN HISTORY MONTH" IN ALBANY COUNTY

Sponsors: Clay, Chapman, Efekoro, Fein, McLaughlin, Simpson, Willingham, A. Joyce and Feeney

54. AMENDING THE RULES AND REGULATIONS FOR ALBANY COUNTY EMPLOYEES TO RECOGNIZE JUNETEENTH AS A COUNTY HOLIDAY

Sponsors: Clay, Chapman, Efekoro, Fein, McLaughlin, Simpson, Willingham, A. Joyce and Feeney

55. REAPPOINTMENT OF MEMBERS TO THE COMMUNITY SERVICES BOARD AND SUBCOMMITTEES

Sponsors: Feeney

56. AMENDING THE RULES AND REGULATIONS FOR ALBANY COUNTY EMPLOYEES TO PROVIDE PAID LEAVE FOR THE PURPOSES OF RECEIVING A COVID-19 VACCINATION

Sponsors: Lekakis, Ethier, Kuhn and A. Joyce

57. PUBLIC HEARING ON PROPOSED LOCAL LAW NO. "A" FOR 2021: A LOCAL LAW RELATING TO THE PROCEDURES FOR THE ESTABLISHMENT, OPERATION, MODIFICATION, AND DISESTABLISHMENT OF TOURISM IMPROVEMENT DISTRICTS IN ALBANY COUNTY

Sponsors: Efekoro

58. PUBLIC HEARING ON PROPOSED LOCAL LAW NO. "B" FOR 2021: A LOCAL LAW OF THE COUNTY OF ALBANY PROVIDING FOR REDUCTION OF THE REDEMPTION PERIOD TO ONE YEAR FOR RESIDENTIAL PROPERTY LOCATED WITHIN A LOCAL MUNICIPALITY WHICH HAS BEEN DETERMINED BY IT PURSUANT TO NEW YORK STATE REAL PROPERTY TAX LAW SECTION 1111-A (SUBD. 2 (B)) TO BE VACANT AND ABANDONED

Sponsors: Peter and McLaughlin

59. PUBLIC HEARING ON PROPOSED LOCAL LAW NO. "C" FOR 2021 A LOCAL LAW ESTABLISHING A DEMONSTRATION PROGRAM IMPOSING OWNER LIABILITY FOR FAILURE OF AN OPERATOR TO STOP FOR A SCHOOL BUS DISPLAYING A RED VISUAL SIGNAL AND STOP-ARM

Sponsors: Efekoro

LOCAL LAWS:

LOCAL LAW NO. "J" FOR 2020: A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK, LIMITING THIRD-PARTY FOOD DELIVERY SERVICES DURING A DECLARED EMERGENCY

Sponsors: Fein, Peter, Reidy, McLaughlin, Willingham, Plotsky, Efekoro, O'Brien, Reinhardt, Miller, Domalewicz, Cunningham, McLean Lane, Simpson, Ricard, A. Joyce, Lekakis, R. Joyce, Chapman, Cleary and Feeney

LOCAL LAW NO. "A" FOR 2021: A LOCAL LAW RELATING TO THE PROCEDURES FOR THE ESTABLISHMENT, OPERATION, MODIFICATION, AND DISESTABLISHMENT OF TOURISM IMPROVEMENT DISTRICTS IN ALBANY COUNTY

Sponsors: Efekoro

LOCAL LAW NO. "B" FOR 2021: A LOCAL LAW OF THE COUNTY OF ALBANY PROVIDING FOR REDUCTION OF THE REDEMPTION PERIOD TO ONE YEAR FOR RESIDENTIAL PROPERTY LOCATED WITHIN A LOCAL MUNICIPALITY WHICH HAS BEEN DETERMINED BY IT PURSUANT TO NEW YORK STATE REAL PROPERTY TAX LAW SECTION 1111-a (SUBD. 2(B)) TO BE VACANT AND ABANDONED

Sponsors: Peter and McLaughlin

LOCAL LAW NO. "C" FOR 2021: A LOCAL LAW ESTABLISHING A DEMONSTRATION PROGRAM IMPOSING OWNER LIABILITY FOR FAILURE OF AN OPERATOR TO STOP FOR A SCHOOL BUS DISPLAYING A RED VISUAL SIGNAL AND STOP-ARM

Sponsors: Efekoro, Lekakis, Miller and A. Joyce

LOCAL LAW NO. "D" FOR 2021: A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK, THE RESTAURANT PROTECTION LAW, IN RELATION TO THIRD-PARTY DELIVERY SERVICES

Sponsors: Grimm and Mauriello

Adjournment

RESOLUTION NO. 384 FOR 2020

AN ACT PERTAINING TO THE ALBANY COUNTY PLANNING BOARD AND CONSIDERATION OF CRITICAL VIEWSHEDS OF THE HELDERBERG ESCARPMENT

Introduced: 11/9/20

By: Messrs. Perlee, Reinhardt, Ms. Plotsky, Messrs. Simpson, Smith, Miller, Efekoro, Fein, Ms. Lockart, Messrs. Tunny and A. Joyce:

WHEREAS, Albany County, pursuant to Article 11 of its Charter created a County Planning Board, and

WHEREAS, The Board is “advisory to and assist(s) the County Legislature ... on matters related to comprehensive metropolitan, regional, county and municipal planning and in performing the duties and responsibilities conferred upon a county planning board by Article 12-B of the General Municipal Law and on such other related matters as shall be required or requested by the County Legislature.” (Albany County Charter Article 11, § 1103), and

WHEREAS, Albany County contains within its borders a variety of unique scenic and geological features of inestimable value to the County and the quality of life of its citizens, including the famous Helderberg Escarpment, and

WHEREAS, Viewsheds of the Helderberg Escarpment from the Hudson Valley are of great economic, historic and cultural importance to residents and properties within the Towns of Guilderland, New Scotland and Bethlehem in particular, and

WHEREAS, Residents of the aforementioned towns consider viewsheds of the Helderberg Escarpment to be a critical natural asset and wish to guide development to avoid unnecessary impacts upon the views of the escarpment, to the extent possible, and

WHEREAS, The Albany County Planning Board is tasked with bringing “pertinent inter-community and county-wide planning, zoning, site plan and subdivision questions to the attention of neighboring municipalities and agencies having jurisdiction, including protection of community character as regards predominate land uses” (General Municipal Law § 239-L (2) (d)), now, therefore, be it

RESOLVED, That the Albany County Legislature requests that the Albany County Planning Board, as part of its subdivision, site plan, zoning, and other review, pay particular attention to “viewsheds” and “important views” pertaining to the Helderberg Escarpment, and identify and consider adverse impacts upon views

and possible mitigation of those impacts when preparing its comments to each General Municipal Law referring agency, and be it further

RESOLVED, That the Albany County Department of Economic Development, Conservation and Planning is requested to prepare and provide to the Legislature a Scenic Resources Assessment and Viewshed Inventory for the primary public roadway corridors and priority viewsheds within the Towns of Guilderland, New Scotland and Bethlehem, 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

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.

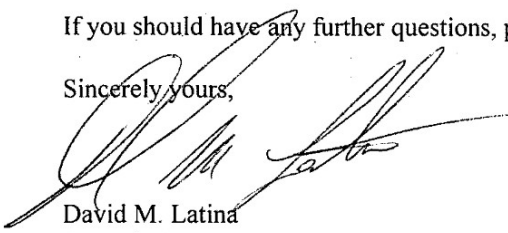
Dear Chairman Joyce:

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

13

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

14

15

16

17

18

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

b - Elevators

c - HVAC

d - Telephone Wiring

e - Security & Alarm Systems

f - Property Maintenance

g - Other (Identify)

	Code	Contractor	Type Work Performed	Building	Contract Amounts for Budget Period	Aid Eligible Percentage	Budget Request
58	A	Alleymor	Pest Control	Court House	\$600	67%	\$402
59	A	Alleymor	Pest Control	Family Court	\$600	79%	\$474
60	A	Alleymor	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.

RESOLUTION NO. 8

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: 2/8/21

By Public Works Committee:

WHEREAS, By Resolution No. 453 for 2018, this Honorable Body authorized a five-year agreement with the New York State 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 a separate one-year contract 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 third year of the aforementioned agreement with the New York State Unified Court System for the provision of custodial services, building maintenance and minor repairs at the aforementioned locations in the amount of \$709,061 for a term commencing April 1, 2020 and ending March 31, 2021, now, therefore be it

RESOLVED, By the Albany County Legislature that the County Executive is authorized to enter into the third year of the aforementioned five-year agreement with New York State Unified Court System for the provision of custodial services, building maintenance and minor repairs at the aforementioned locations in the amount of \$709,061 for a term commencing April 1, 2020 and ending March 31, 2021, 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-C61/20JC-1290000 (Fixed Term Agreement)
Grant Opportunity Type: Non-Competitive

Period From: 12/10/2019 - 12/31/2021
Term Dates: 10/20/19 - 12/09/2021
USPIS: PR0

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

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-C51/26GG-4290000 (Fixed Term Agreement)
 Grant Opportunity Type: Non-Competitive

Period: 12/01/2015 - 12/09/2021
 Term Date: 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: N/A-Compatibility

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
-----------------------	--	--------------------------------	-----------

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

printed on recycled paper

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.

Contract Number: # PRK01-C51726GG-1290000

Page 11 of 25, Master Contract for Grants - Standard Terms and Conditions (August 2014)

- 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.

Contract Number: # PRK01-C51726GG-1290000

Page 12 of 25, Master Contract for Grants - Standard Terms and Conditions (August 2014)

(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.

RESOLUTION NO. 9

AMENDING RESOLUTION NO. 58 FOR 2016 REGARDING THE RENOVATION AND REHABILITATION OF THE SHAKER SITE BUILDINGS

Introduced: 2/8/21

By Public Works Committee:

WHEREAS, By Resolution No. 58 for 2016, this Honorable Body authorized an agreement with the New York State Regional Economic Development Council regarding the administration of the New York State Local Government Efficiency Grant in an amount not to exceed \$500,000 for a term commencing December 10, 2015 and ending December 9, 2020, and

WHEREAS, The Commissioner of the Department of General Services has requested an amendment to the aforementioned agreement to indicate an ending date of December 9, 2021 rather than December 9, 2020, now, therefore be it

RESOLVED, By the Albany County Legislature that Resolution No. 58 for 2016 regarding the administration of the New York State Local Government Efficiency Grant in an amount not to exceed \$500,000 is hereby amended to indicate an ending date of December 9, 2021 rather than December 9, 2020, 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.



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

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

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 Oxidant
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:

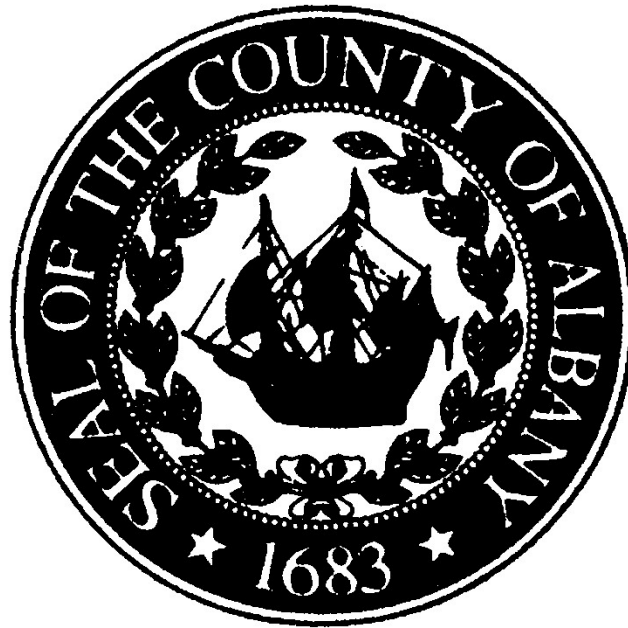
3/24/2020

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.

COUNTY OF ALBANY

REQUEST FOR BIDS ALBANY COUNTY WATER PURIFICATION DISTRICT



**RFB #2020-120
HYDROGEN SULFIDE / ODOR CONTROL OXIDANT**

**ALBANY COUNTY DEPARTMENT OF GENERAL SERVICES
PURCHASING DIVISION
KAREN A. STORM, PURCHASING AGENT
112 STATE STREET, ROOM 1000
ALBANY, NY 12207**

**COUNTY OF ALBANY
DEPARTMENT OF GENERAL SERVICES PURCHASING DIVISION
112 STATE STREET, ROOM 1000, ALBANY, NY 12207
TELEPHONE: 518-447-7140/ FAX: 518-447-5588**

TITLE: HYDROGEN SULFIDE / ODOR CONTROL OXIDANT
RFB NUMBER: 2020-120

Receipt Confirmation Form

Please complete and return this confirmation form as soon as possible:

Karen A. Storm
Purchasing Agent
County of Albany
112 State Street, Room 1000
Albany, NY 12207

**IF YOU PLAN TO SUBMIT A BID, YOU MUST RETURN
THIS FORM TO ENSURE THAT YOU WILL RECEIVE ALL
FURTHER COMMUNICATION REGARDING THIS RFB.**

Company Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Contact Person: _____

Title: _____

Phone Number: _____ Fax Number: _____ E-Mail: _____

If a Bidders/Proposers meeting has been arranged for this Bid, please indicate if you plan to attend:

☐ **Yes** / ☐ **No**

I authorize the County of Albany to send further correspondence that the County deems to be of an urgent nature by the following method:

Courier Collect: _____ Mail _____

COUNTY OF ALBANY
DEPARTMENT OF GENERAL SERVICES
PURCHASING DIVISION
112 STATE STREET, ROOM 1000
ALBANY, NY 12207

NON-BIDDER RESPONSE

RFB #2020-120

The Albany County Department of General Services, Purchasing Division, is interested in the reasons why bidders fail to submit bids. Please indicate your reason(s) by checking all appropriate item(s) below and returning this form to the above address.

- ☐ Could not meet specifications or Scope of Services.
- ☐ Items or materials requested not manufactured by us or not available to our company.
- ☐ Insurance requirements are too restricting.
- ☐ Bond requirements are too restricting.
- ☐ Specifications or Scope of Services not clearly understood or applicable (too vague, too rigid, etc.).
- ☐ Project not suited to firm.
- ☐ Quantities too small.
- ☐ Insufficient time allowed for preparation of bid.
- ☐ Other reasons; please state and define:

Vendor Name: _____

Contact Person: _____

Vendor Address: _____

Vendor Telephone: _____

NOTICE TO BIDDERS -- ALBANY COUNTY
REQUEST FOR BIDS #2020-120

Sealed Bids for Hydrogen Sulfide / Odor Control Oxidant requested by Albany County Water Purification District will be received by the Albany County Purchasing Agent, Room 1000, 112 State Street, Albany, New York 12207 until 11:00 AM, local time on Thursday, November 19, 2020.

Request for Bid (RFB) documents may be obtained at the office of the Albany County Purchasing Agent, as noted above. RFB documents may be available for download from the Empire State Bid System website at <http://www.empirestatebidsystem.com> starting by close of business (4:30 p.m.) on **Thursday, November 5, 2020**.

Karen A. Storm
Purchasing Agent

Dated: Albany, New York
October 29, 2020

PUBLISH ONE DAY – THURSDAY, November 5, 2020 -- THE EVANGELIST
PUBLISH ONE DAY – THURSDAY, November 5, 2020-- THE TIMES UNION

COUNTY OF ALBANY
REQUEST FOR BIDS
GENERAL INSTRUCTIONS TO BIDDERS

BID DISTRIBUTION- *IMPORTANT NOTICE*

The County of Albany officially distributes bidding documents through the Purchasing Division Office or through the Empire State Bid System website at <http://www.empirestatebidsystem.com>. Copies of bidding documents obtained from any other source are not considered official documents. Only those vendors who obtain bidding documents from either the Purchasing Division Office or the Empire State Bid System are guaranteed to receive addendum information, if such information is issued.

If you have obtained this document from a source other than the Albany County Purchasing Division or the Empire State Bid System, it is strongly recommended that you obtain an official copy.

SECTION 1: BID IDENTIFICATION

- 1.1 Title: **HYDROGEN SULFIDE / ODOR CONTROL OXIDANT**
- 1.2 Requesting Department: **ALBANY COUNTY WATER PURIFICATION DISTRICT**
- 1.3 Bid Number: **2020-120**

SECTION 2: PURPOSE

- 2.1 The intent of these specifications is to furnish information to responsible bidders for the purpose of obtaining bids for **Hydrogen Sulfide / Odor Control Oxidant** as requested by **Albany County Water Purification District**.
- 2.2 Minority Business Enterprises (MBE's) and Women Business Enterprises (WBE's) are encouraged to apply.

SECTION 3: BIDDING DOCUMENTS

- 3.1 Complete sets of the Bidding Documents may be obtained or examined as stated in the Notice to Bidders.
- 3.2 Complete sets of Bidding Documents must be used in preparing bids. The County does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

SECTION 4: SUBMISSION OF BIDS

- 4.1 Bids and any other required documents must be submitted, sealed in an opaque envelope, plainly marked with the name and number of the bid and the name and address of the bidder and accompanied by the required documents. Bids must be received no later than **11:00 A.M. ON THURSDAY, NOVEMBER 19, 2020**, at the following address:

Karen A. Storm
Albany County Purchasing Agent
112 State Street, **Room 1000**
Albany, NY 12207

- 4.2 All bids received after the time stated in the “Notice to Bidders”, or the bid submission deadline as modified by formal addendum consistent with Section 14 of this Request for Bids, may not be considered and will be returned to the bidder. The bidder assumes the risk of any delay in the mail or in the handling of the mail by employees of Albany County. Whether sent by mail or by means of personal delivery, the bidder assumes responsibility for having his bid deposited on time at the place specified.
- 4.3 Albany County reserves the right to reject any or all bids in whole or in part, to waive any and all informalities, and to disregard all non-conforming, non-responsive or conditional bids.

SECTION 5: TERM OF BID

- 5.1 The term of the bid shall run from **January 1, 2021 through December 31, 2022**
- 5.2 At the end of the initial bid period, upon mutual agreement of the County and the Contractor, the bid may be renewed for one (1) additional year. If extended, the same terms, conditions and pricing will remain in effect for a period not to exceed twelve (12) months.

SECTION 6: BID SECURITY

- 6.1 Each bid must be accompanied by a bid bond or certified check in the amount of **FIVE THOUSAND AND 11/100 DOLLARS (\$5,000.00)** drawn upon a national or state bank or trust company, to the order of the Director of Finance, Albany County. If bid is accepted, the successful Bidder will enter into a contract for the same and will execute such further security as many be required for the performance of the contract. **BID SECURITY SHALL BE INCLUDED WITH BID AT TIME OF BID OPENING; FAILURE TO DO SO MAY CAUSE REJECTION OF THE BID AS MATERIALLY INCOMPLETE.**
- 6.2 The Bid Security of the successful Bidder will be retained until such Bidder has executed the contract and furnished the required Contract Security, whereupon it will be returned. If the successful Bidder fails to execute and deliver the contract and furnish the required Contract Security within fifteen (15) days from the Notice of Award, the County may annul the Notice of Award and the Bid Security of that Bidder will be forfeited.
- 6.3 Bid security of other bidders will be returned within seven (7) days after the award of contract to the successful bidder.

SECTION 7: QUALIFICATION OF BIDDER

- 7.1 No formal written Bidder Qualification questionnaire is being requested for this bid.

7.2 All bidders shall submit the Vendor Responsibility Questionnaire (Attachment “C”) as part of the bid.

7.3 In addition, Albany County may make such investigations it deems necessary to determine the ability of the Bidder to perform the work. The bidder shall furnish to the County, within five (5) days of a request, all such information and data for this purpose as may be requested. The County reserves the right to reject any bid if the information submitted by, or investigation of, a bidder fails to satisfy the County that such bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional bids will not be accepted.

SECTION 8: SECTION NOT IN USE.

SECTION 9: DISQUALIFICATION

9.1 The County reserves the right to refuse to issue Bidding Documents to a prospective bidder should such bidder be in default for any of the following reasons:

- (a) Failure to comply with any pre-qualification regulations of the County, if such regulations are cited, or otherwise included, in the Bidding Documents as a requirement for bidding.
- (b) Bidder’s failure to pay, or satisfactorily settle, all bills due for labor and materials on former contracts in force (with the Owner) at the time the County issues the Bidding Documents to a prospective bidder.
- (c) Bidder’s default under previous contracts with the County.
- (d) Bidder’s unsatisfactory work on previous contracts with the County.

9.2 Bids received from bidders who have previously failed to complete contracts within the time required, or who have previously performed similar work in an unsatisfactory manner, may be rejected. A bid may be rejected if the bidder cannot show that it has the necessary ability, plant and equipment to commence the work at the time prescribed and thereafter to perform and complete the work at the rate or within the time specified. A bid may be rejected if the bidder is already obligated for the performance of other work which would delay the commencement, performance or completion of the work.

9.3 Albany County reserves the right to reject any bid if the information submitted by, or investigation of, such bidder fails to satisfy the County that such bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein.

9.4 Bids will be considered irregular and shall be subject to rejection for the following reasons:

- (a) If the bid is on a form other than that furnished by Albany County, or, if the Albany County’s form is altered, or, if any part of the bidding documents is detached.

(b) If there are unauthorized additions, conditional or alternate pay items, or irregularities of any kind which make the bid incomplete, indefinite, or otherwise ambiguous.

(c) If the bid is not accompanied by the bid security specified by the Albany County.

SECTION 10: SECTION NOT IN USE.

SECTION 11: NON-COLLUSIVE BIDDING CERTIFICATE

11.1 All bidders bidding under the provisions of the specifications are subject to the provisions of Section 103 of the General Municipal Law of the State of New York. A signed Non-Collusive Bidding Certificate (Attachment "A") is required to be submitted with each bid on the form provided by the County.

SECTION 12: BID FORM

12.1 The Bid Form is attached hereto; additional copies may be obtained from the County.

12.2 Bids must be made on the Bid Form provided by the County. The Bid Form must be completed in ink or by typewriter. The Bid Form must also be signed by an authorized representative of the bidder.

12.3 Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign on behalf of the corporation) and the corporate seal must be affixed by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

12.4 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature. The official address of the partnership must be shown below the signature.

12.5 All names must be printed or typed below the signature.

12.6 The bid must contain an acknowledgment of receipt of all Addenda (the number of which will be filled in on the Bid Form).

12.7 The address to which communications regarding the bid are to be directed must be included on the Bid Form.

SECTION 13: EQUIVALENT GOODS

13.1 Manufacturers name brands are listed to indicate minimum requirements and bidding may be on brands listed, (if specified), or equivalent. Specifications shall be furnished by bidder to support equivalency. In the event of any claim by any unsuccessful bidder concerning or relating to the issue of "equal or better" or "or equal", the successful bidder agrees, that his

own cost and expense, to defend such claim or claims and agrees to hold the County of Albany free and harmless from any and all claims for loss or damage arising out of this transaction for any reasons.

- 13.2 Requests for substitution must be reviewed and approved by the County prior to receipt of bids. Vendors wishing to quote a substitute product shall complete and return the "Request for Substitution Approval" form, along with complete specifications and manufacturer's descriptive literature, by **FRIDAY NOVEMBER 13, 2020** to the Albany County Purchasing Division. Requests shall be submitted to the Albany County Purchasing Agent, 112 State Street, Room #1000, Albany, NY 12207, or via fax to 95180 447-5588.

SECTION 14: SPECIFICATION CLARIFICATION

- 14.1 All inquiries with respect to this Request for Bids must be directed to the Albany County Purchasing Agent as follows:

Karen A. Storm
Albany County Purchasing Agent
112 State Street, **Room 1000**
Albany, NY 12207
Telephone: (518) 447-7140
Facsimile: (518) 447-5588
Email: Karen.storm@albanycountyny.gov

- 14.2 All questions about the meaning or intent of the specifications must be submitted to the aforementioned designated person in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded as having received the bidding documents. Questions received less than four (4) days prior to the date of submission of bids will not be answered. The County will be bound only by responses given by formal written Addenda.

SECTION 15: BID EVALUATION

- 15.1 Bids shall remain valid until:

- (a) the execution of a contract by Albany County; or
- (b) the award of a purchase order by Albany County; or
- (c) as otherwise rejected by Albany County.

- 15.2 Bids received will be evaluated by Albany County and will be based, as a minimum, upon the following criteria:

- (a) Lowest total bid cost and projected timetable for completion of services and/or delivery of goods described herein;

(b) Completeness of the bid; and

(c) Bidder's demonstrated capabilities and professional qualifications.

15.3 The County reserves the right to award this contract on a per item or aggregate basis, whichever is most beneficial to the County of Albany. Bidders need not submit bids for all items listed to be eligible for an award of this contract.

15.4 The County reserves the right to purchase items pursuant to General Municipal Law 103 from New York State Contracts, other County, political subdivision or district contracts, or other Governmental Agency or New York State Preferred Sources within its discretion.

SECTION 16: MODIFICATION AND WITHDRAWAL OF BIDS

16.1 Bids may be modified or withdrawn at any time prior to the opening of bids by an appropriate document duly executed (in the manner that a bid must be executed) and delivered to the place where bids are to be submitted.

16.2 If, prior to awarding of the contract or within three days after opening, whichever period is shorter, any bidder files a duly signed written notice with the County and promptly thereafter demonstrates to the reasonable satisfaction of the County that there was a material and substantial mistake in the preparation of its bid, that bidder may withdraw its bid and the bid security will be returned.

SECTION 17: AWARD OF BID

17.1 After the award has been approved by the proper County governing authority, the successful bidder will be issued a Notice of Award. A Notice of contract award shall not be binding upon the County until the contract has been fully executed by both parties.

The following documents shall be incorporated, to the extent deemed appropriate in the sole discretion of the County, within the contract between Albany County and the apparent successful Bidder: the successful Bidder's bid, this Request for Bids and any written Addenda issued by Albany County in response to inquiries of prospective bidders as set forth in Section 12.2 hereof.

17.2 No successful bidder to whom a contract or purchase order is let, granted or awarded, shall assign, transfer, convey, sublet, or otherwise dispose of same, or of its right, title, and interest herein, including the performance of the contract or purchase order or the right to receive monies due or to become due, or of its power to execute the contract or purchase order without the prior written consent of the Albany County Purchasing Agent. In the event the contractor shall without prior written consent assign, transfer, convey, sublet or otherwise dispose of the contract or purchase order or of its right, title and interest therein, including the performance of this contract or purchase order, or the right to receive monies due or to become due, or its power to execute such contract or purchase order to any other person or corporations, or upon receipt by Albany County of an attachment against the Successful Bidder, the County of

Albany shall be relieved and discharged from any and all liability and obligation growing out of such contract or purchase order to such contractor, and the person or corporation to which such contract or purchase order shall have been assigned, its assignees, transferees or sub lessees shall forfeit and lose all monies theretofore assigned under the contract or purchase order, except so much as may be required to pay its employees.

SECTION 18: PERFORMANCE BOND

18.1 A separate Performance Bond in a form satisfactory to the Albany County Purchasing Agent and the Albany County Attorney, or its cash equivalent, equal to **FOUR HUNDRED THOUSAND AND 00/100 DOLLARS (\$400,000.00)** is required of the successful Bidder. The successful Bidder to whom the contract is awarded shall within seven (7) days after the date of notification of the acceptance of its bid, provide security as required by the contract in a form acceptable by the County.

In the case of its failure to do so, or in case of its failure to give further security as herein prescribed, the successful Bidder will be considered as having abandoned the same and the certified check or other bid security accompanying its bid shall be forfeited to the County of Albany.

SECTION 19: INSURANCE REQUIREMENTS

19.1 The successful Bidder will be required to procure and maintain at its own expense the following insurance coverage:

- (a) **Workers' Compensation and Employers Liability Insurance:** A policy or policies providing protection for employees in the event of job-related injuries.
- (b) **Automobile Liability Insurance:** A policy or policies with the limits of not less than \$500,000 combined for each accident because of bodily injury sickness or disease, sustained by any person, caused by accident, and arising out of the ownership, maintenance or use of any automobile for damage because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of any automobile.
- (c) **General Liability Insurance:** A policy or policies of comprehensive all-risk insurance with limits of not less than:

Liability For:	Combined Single Limit
Property Damage	\$1,000,000
Bodily Injury	\$1,000,000
Personal Injury	\$1,000,000

19.2 Each policy of insurance required shall be of form and content satisfactory to the Albany County Attorney.

(a) Albany County shall be named as an additional named insured on all liability, policies.
The bid number must appear on policy.

(b) The policy shall not be changed or canceled until the expiration of thirty (30) days after written notice to Albany County. It shall be automatically renewed upon expiration and continued in force unless Albany County is given at least thirty (30) days written notice to the contrary.

19.3 No work shall be commenced under the contract or purchase order until the successful Bidder has delivered to the County Purchasing Agent or his designee proof of issuance of all policies of insurance required by the contract to be procured by the successful Bidder. If at any time, any of said policies shall expire or become unsatisfactory to the County, the successful Bidder shall promptly obtain a new policy and submit proof of insurance of the same to the County for approval. Upon failure of the successful Bidder to furnish, deliver and maintain such insurance as above provided, the contract or purchase order may, at the election of the County, be forthwith declared suspended, discontinued or terminated. Failure of the successful Bidder to procure and maintain any required insurance shall not relieve the successful Bidder from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the successful Bidder concerning indemnification.

SECTION 20: INDEMNIFICATION

20.1 The successful Bidder shall defend, indemnify and save harmless the County, its employees and agents, from and against all claims, damages, losses and expenses (including, without limitation, reasonable attorneys' fees) arising out of, or in consequence of, any negligent or intentional act or omission of the successful Bidder, its employees or agents, to the extent of its or their responsibility for such claims, damages, losses and expenses.

SECTION 21: REMEDY FOR BREACH

21.1 In the event of a breach by CONTRACTOR, CONTRACTOR shall pay to the COUNTY all direct and consequential damages caused by such breach, including, but not limited to, all sums expended by the COUNTY to procure a substitute contractor to satisfactorily complete the contract work, together with the COUNTY's own costs incurred in procuring a substitute contractor.

SECTION 22: DELIVERY AND PAYMENT

22.1 All bid prices shall include freight and shall be quoted F.O.B. destination.

22.2 Albany County operates a formal Purchase Order System. Under **NO** circumstances will the vendor or contractor be paid without a purchase order. Contractor shall deliver only the items specified on the purchase order. Any Contractor who delivers items which are not ordered, or who duplicates or overships items, does so entirely at his own expense. Such shipments will be at no cost or responsibility to Albany County.

22.3 All deliveries shall be made within ten (10) business days of vendor's receipt of purchase order, unless otherwise specified in this Request for Bids, or as otherwise agreed upon between the vendor and the Purchasing Division.

22.4 Prior to payment, the items furnished and or work performed will be inspected by the Purchasing Agent or his designee to determine their conformity to specification. No payment will be made for items or work not meeting specification.

22.5 ALBANY COUNTY IS NOT SUBJECT TO FEDERAL, STATE OR LOCAL TAXES.

SECTION 23: CASH DISCOUNT

23.1 Cash discounts may be offered by a bidder for prompt payment of bills, but such cash discounts will not be taken into consideration in determining the low bidder.

23.2 For purposes of any applicable cash discount, the payment date shall be calculated from the receipt of invoice or final acceptance of the goods, whichever is later.

SECTION 24: EXTENSION OF BIDS TO ALL POLITICAL SUBDIVISIONS AND AUTHORIZED DISTRICTS LOCATED IN THE STATE OF NEW YORK

24.1 It is the intent of this Request For Bids that all political subdivisions, and districts located in the State of New York, be entitled to make purchases of materials, equipment or supplies from the resulting the bid award.

24.2 No officer, board or agency of a county, town, village, or school district shall make any purchase through the County when bids have been received for such purchase by such officer, board or agency, unless such purchase may be made upon the same terms, conditions and specifications at a lower price through the County.

24.3 All purchases shall be subject to audit and inspection by the other political subdivisions for which the purchase was made.

24.4 All orders will be placed by the participating entities. Each participating entity shall be billed by and make payment directly to the successful Bidder.

24.5 Upon request, participating entities must furnish the successful Bidder with the proper tax exemption certificates or documentation of tax exempt status. (Purchase orders should have this information and be retained for documenting the tax exempt sale.)

24.6 The sole responsibility in regard to performance of the bid, or any obligation, covenant, condition or term thereunder by the successful Bidder and the participating entities will be borne and is expressly assumed by the successful Bidder and the participating entities and not by Albany County. In the event of a failure or breach in performance of any such bid by a participating entity or the successful Bidder, Albany County, specifically and expressly disclaims any and all liability for such defective performance or breach, or failure of either

party to perform in accordance with its obligations, covenants and the terms and conditions of this Albany County centralized bid.

SECTION 25: MACBRIDE PRINCIPLES

- 25.1 Contractor/Proposer hereby represents that said contractor/proposer is in compliance with the MacBride Principles of Fair Employment as set forth in Albany County Local Law No. [3] for 1993, in that said contractor/proposer 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 Principles, and shall permit independent monitoring of their compliance with such principles. In the event of a violation of this stipulation, the County reserves all rights to take remedial measures as authorized under section 4 of Local Law No. [3] in 1993, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the contract/proposer in default and/or seeking debarment or suspension of the contractor/proposer.
- 25.2 In the case of a contract which must be let by competitive sealed bidding, whenever the lowest bidder has not agreed to stipulate to the conditions set forth in this section, and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer the contract to the County Legislature, which shall determine whether the lowest bidder is responsible. In making such determination, the County Legislature may consider, as a factor bearing on responsibility, whether the lowest bidder discriminates in employment in Northern Ireland.
- 25.3 As used in this section, the term “contract” shall not include contracts with government and non-profit organizations, contracts awarded pursuant to an emergency procurement procedure or contracts, resolutions, indentures, declarations of trust or other instruments of authorizing or relating to the authorization, issuance, award, sale or purchase or bonds, certificates of indebtedness, notes or other fiscal obligations of the County, provided that the policies of this section shall be considered when selecting managing underwriters in connection with such activities.
- 25.4 The provisions of this section shall not apply to contracts for which the County receive funds administered by the United States Department of Transportation, except to the extent Congress has directed that the Department of Transportation not withhold funds from states and localities that choose to implement selective purchasing policies based on agreement to comply with the MacBride Principles, or to the extent that such funds are not otherwise withheld by the Department of Transportation.

SECTION 26: SECTION NOT IN USE.

SECTION 27: SECTION NOT IN USE

SECTION 28: SECTION NOT IN USE

SECTION 29: ANTI DISCRIMINATION CLAUSE

29.1 Pursuant to Section 220-E of the NYS Labor Law, regarding provisions in contracts prohibiting discrimination on account of race, creed, color or national origin in employment of citizens upon public works, the Contractor agrees: (a) That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, disability, gender, marital status, military status, sexual orientation or national origin discriminate against any citizen of the state of New York who is qualified and available to perform the work to which the employment relates; (b) That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, disability, gender, marital status, military status, sexual orientation or national origin; (c) That there may be deducted from the amount payable to the contractor by the state or municipality under this contract a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract; (d) That this contract may be cancelled or terminated by the state or municipality, and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract; and (e) The aforesaid provisions of this section covering every contract for or on behalf of the state or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the state of New York.

SECTION 30: SECTION NOT IN USE.

SECTION 31: INTERPRETATION

31.1 In the event of any discrepancy, disagreement or ambiguity among the documents which comprise this RFB, and/or, the Agreement (between the County and the successful bidder/proposer) and its incorporated documents, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity: 1) the Agreement; 2) the RFB; 3) the Contractor's bid.

SECTION 32: NON APPROPRIATIONS CLAUSE

32.1 Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur in the event no funds or insufficient funds are appropriated and budgeted by or are otherwise unavailable to the County for payment under this Agreement. The County will immediately notify the Contractor of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the County of any kind whatsoever, except as to those portions herein agreed upon for which funds shall have been appropriated and budgeted.

SECTION 33: IRANIAN ENERGY SECTOR DIVESTMENT

33.1 Contractor/Proposer hereby represents that said Contractor/Proposer is in compliance with New York State General Municipal Law Section 103-g entitled “Iranian Energy Sector Divestment”, in that said Contractor/Proposer has not:

- (a) Provided goods or services of \$20 Million or more in the energy sector of Iran including but not limited to the provision of oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran; or
- (b) Acted as a financial institution and extended \$20 Million or more in credit to another person for forty-five days or more, if that person’s intent was to use the credit to provide goods or services in the energy sector in Iran.

33.2 Any Contractor/Proposer who has undertaken any of the above and is identified on a list created pursuant to Section 165-a (3)(b) of the New York State Finance Law as a person engaging in investment activities in Iran, shall not be deemed a responsible bidder pursuant to Section 103 of the New York State General Municipal Law.

33.3 Except as otherwise specifically provided herein, every Contractor/Proposer submitting a bid/proposal in response to this Request for Bids/Request for Proposals must certify and affirm the following under penalties of perjury:

- (a) “By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder is not on the list created pursuant to NYS Finance Law Section 165-a (3)(b).”

Albany County will accept this statement electronically in accordance with the provisions of Section 103 of the General Municipal Law.

33.4 Except as otherwise specifically provided herein, any Bid/Proposal that is submitted without having complied with subdivision (a) above, shall not be considered for award. In any case where the Bidder/Proposer cannot make the certification as set forth in subdivision (a) above, the Bidder/Proposer shall so state and shall furnish with the bid a signed statement setting forth in detail the reasons therefor. The County reserves its rights, in accordance with General Municipal Law Section 103-g to award the Bid/Proposal to any Bidder/Proposer who cannot make the certification, on a case-by-case basis under the following circumstances:

- (1) The investment activities in Iran were made before April 12, 2012, the investment activities in Iran have not been expanded or renewed after April 12, 2012, and the Bidder/Proposer has adopted, publicized and is implementing a formal plan to cease

the investment activities in Iran and to refrain from engaging in any new investments in Iran; or

- (2) The County of Albany has made a determination that the goods or services are necessary for the County to perform its functions and that, absent such an exemption, the County of Albany would be unable to obtain the goods or services for which the Bid/Proposal is offered. Such determination shall be made by the County in writing and shall be a public document.

Request for Bids
Hydrogen Sulfide/ Odor Control Oxidant for Sewage Sludge Dewatering
Albany County Water Purification District
RFB-2020-120
Specifications and Contract Conditions

1.0 General

- 1.1 Albany County Water Purification District owns and operates two (2) wastewater treatment plants designated the North Plant, located on 1 Canal Road, Menands, NY 12204 and the South Plant located on Church Street, Port of Albany, Albany NY 12201. Both of the District facilities have sewage sludge dewatering operations, which include belt filter presses and multiple hearth incineration. The District requires a chemical as specified herein, which shall be pumped into the combined sludge lines prior to dewatering to oxidize sulfides to maintain an atmosphere less than ten (10) PPM hydrogen sulfide in compliance with NYSDOL exposure limits.

2.0 Commodity Specifications

- 2.1 Chemicals required for the odor control program shall be provided by the Supplier. Any product lost as a result of leakage or metering pump malfunction resulting in overdosing, will be replaced at Supplier's expense. Supplier shall provide a Certificate of Analysis stating that the chemical complies with the product specifications with each chemical delivery. Supplier shall provide a certificate of weight for each shipment. Supplier shall comply with all federal, state, and local regulations regarding product labeling, packaging, and safety, including providing Safety Data Sheets (SDS).
- 2.2 The hydrogen sulfide/odor control chemical shall be a separate or mixed oxidant type, and shall react immediately with the Hydrogen Sulfide/odor causing compounds, and shall suppress return of the odors in the dewatered sludge and supernatant from the belt filter press.

2.3 Approved Product/ General Specifications:

Vulcan VX-456 (U.S. Patent # 5,984,993)

Physical Properties:

Appearance	Clear slightly yellow liquid
Odor	Slight Chlorine odor
Density	10.67 lbs./gallon @ 25°C
Specific Gravity	1.28 @ 25°C
Freezing Point	Minus 29°C
Insoluble	<0.03% by weight (anhydrous basis)

Chemical Properties:

SPC1

Family	Corrosive liquid
Concentration	>26.0% active ingredients
Ammonia	<0.1% as NH ₃
PH	>12

International Dioxide, Inc. Endimal DW

Physical Properties:

Appearance	Pale Yellow, Clear Liquid
Specific Gravity	1.18-1.21 @ 20°C
Stability	Shelf Life Exceeds One Year
Solubility	Completely Miscible with Water

Specifications

Chlorine Dioxide(ClO ₂)	15.0%
Alkalinity(as CaCO ₃)	<2.2%
pH	9.6 +/- 0.2

USP Technologies USP-OC31

Physical Properties:

Appearance	Clear colorless to cloudy liquid
Specific Gravity	1.33 @ 20°C
Stability	Shelf Life Exceeds One Year
Solubility	Completely Miscible with Water

Specifications

Concentration	25-35% active ingredients
pH	> 10

HYPROX 270

Physical Properties:

Appearance	Colorless, clear
Specific Gravity	1.10 @ 20°C
Stability	Decomposition < 1% per year
Solubility	Miscible

Specifications

Concentration	27 % Hydrogen peroxide
pH	< 3 @ 20°C

3.0 Product Substitutions

- 3.1 Any vendor wishing to submit a bid on a substitute product must pre-qualify the product with the District. Bids submitted for products which are not pre-approved by the District will not be considered.

3.2 Pre-Qualification Process:

Vendor shall notify the County of its wish to submit a substitute product for qualification by completing the attached Proposed Alternative Product Submission form and returning to the address or fax number as follows by **Friday, November 13, 2020 4:30 p.m.:**

Karen A. Storm
Albany County Purchasing Agent
112 State Street, Room #1000
Albany, NY 12207
Fax: (518) 447-5588

At no charge to the County, vendor shall provide sufficient product and pumping equipment to complete a full day trial. All trials shall be completed and the list of qualified products will be distributed to all bidders prior to bid opening. At the District's discretion, the bid opening date may be extended to allow sufficient time to complete trials.

4.0 Chemical Feed System

- 4.1 In addition to quantities of the specified chemical, the vendor shall provide and manage all chemical deliveries and chemical feed systems operations for the life of the service agreement to meet the established goals of the odor control program as described below. Management shall include adjustment and control of the metering pumps to optimize chemical usage for H₂S control, with the County's prior approval of dosing changes. Dosage profiles are to be developed by Supplier through frequent liquid and vapor in order to optimize chemical use. Unique profiles shall be developed to adjust for seasonal variation and sulfide loading. The system components shall be provided, installed and maintained by the vendor at **no cost to the Albany County Water Purification District for the entire term of the contract.**
- 4.2 The chemical supplier shall provide all necessary services to maintain the equipment in proper working order and provide all parts and components necessary to maintain the equipment. Supplier shall provide a 24 hour toll free hotline phone number, or other contact number in case of an emergency. Supplier shall respond to and repair any equipment failures at each chemical application site within 24 hours. Supplier is required to have at least one local technician within 30 minutes of each site to respond to any issue that may occur. **Each bidder shall provide a description of service that will be provided with the response to the request for bid.**

System Components:

Pumps:

Electronic metering pumps to provide chemical feed. All wetted parts shall be chemically compatible to the chemical provided (stainless steel, Teflon, ceramic or PVC). The pumps provided shall have an output range suitable for the minimum and maximum range of the demand of the feed chemical and a discharge pressure of 100psi. The pumps shall be skid mounted and have controls that provide local output control.

Tanks:

Storage tanks shall be provided at both plants and shall be compatible to the chemical provided with no titanium or carbon based pigments (Phillips resin or equivalent). The tanks shall be provided with a 2" schedule 80 fill line, a 24" combined man way, and vent. Tanks shall be rated for a minimum of 11-lbs./gallon densities. Tanks shall be double walled; insulated and are to be provided with interstitial space monitoring. Suggested tank capacities are:

Capacity North Plant	Three (3) 1,000 Gallon Tanks
Capacity South Plant	One (1) 2,500 Gallon Tank

Monitoring:

In order to ensure that the County's odor control objectives are met; Supplier shall install devices to monitor and collect atmospheric hydrogen sulfide data. Hydrogen sulfide gas (H₂S) data loggers shall be provided by the supplier. Instruments shall be calibrated in the manner prescribed by the instrument vendor. Instruments shall be maintained in accordance with manufacturer's recommendations.

Chemical Feed Pump Controls:

The vendor shall provide local control systems designed to manage feed dosage based on demand, located at the pumps. The system shall provide at a minimum:

- Tank Level – monitoring for inventory monitoring, scheduling deliveries, and usage verification.
- Dosage Control – Must have ability to boost chemical feed rate by 20% for 30 minutes on an as needed basis to handle spikes in hydrogen sulfide. Must provide an indication that feed rate increase has been activated.
- Real Time Alarms – Must have the ability to monitor leak detection in the pump enclosure and the tank secondary containment in addition to high tank level and low tank level.
- Flow Detection – Each system shall be equipped with a pressure sensor to measure the system or pumping pressure. If there is not pumping pressure, there is no chemical flow. The control system needs to be able to monitor the pressure.

Pipes, Valves and Fittings:

All materials shall be compatible with the proposed chemical. Vented ball valves are required to prevent internal pressure buildup, and pressure relief valves shall be located anywhere chemical has the potential to be trapped. Each system shall be designed with anti-siphon, check valves and a pressure gauge.

Dilution/Make-up Water:

Dilution water, if needed, shall be piped from the District's existing plant water system and include appropriate valving and regulators to maintain a consistent volume and pressure of plant water supply.

Spill Response:

Supplier is required to have a detailed spill response plan for each chemical feed site that can be accessed by the District personnel in the event of a spill or leak.

5.0 Reporting

5.1 Supplier shall provide monthly and annual reports as described below:

5.1.1 Monthly

Monthly reports shall provide graphic representation of the H₂S levels at monitoring locations on a daily basis throughout the month with a summary of the target levels and whether they were met. The report shall also provide descriptions of system performance, chemical usage, key observations, and any problems. Reports shall also provide information on seasonal trends in both H₂S and chemical feed and recommendations for changes in the dosing rate at each chemical application point. Reports shall provide a summary of the budget through the end of the month.

5.1.2 Annual

The annual report shall be a summary of the monthly reports for the year and shall also include a summary of chemical usage at each location on a monthly basis. In addition to the information in the monthly report, the annual report shall include the following:

- Annual program budget report
- Recommendations for the following contract period regarding projected chemical use-rates and proposed special projects.

6.0 Product Evaluation/Award

6.1 All pre-approved qualified bidders will be field trialed by District personnel. Each bidder will supply a sufficient quantity of their product for an eight (8) hour trial.

All trials will be run on the same day if possible, with sludge from the same holding tank at a constant pumping rate under steady state operation to the same belt press. The trial requires complete oxidation of Hydrogen Sulfide with the location of air sampling determined by the District (District meters shall be used). The steady state operation of belt press and proper dosing of oxidant shall be determined by the District.

Trials shall be run approximately one (1) week after bid opening (contact Tyler Masick- Supt. of Operations at 518-447-1610 to schedule). Bidders shall submit a per pound price of qualified product that will be run in field performance trials.

The Bid shall be awarded based on the most efficient and effective performance as calculated as pounds of oxidant per dry ton, times the bid oxidant per pound price.

Each manufacturer shall have a representative on site to witness the oxidant trial on the trial date to be determined by the District.

All oxidant trial results will be calculated in pounds of oxidant used per dry ton of sludge cake. The District laboratory personnel will perform all sample analysis. Four (4) cake samples and four (4) filtrate samples will be taken during each trial, (every two (2) hours) and averaged. The results of the cake percent solids and filtrate samples may be a factor in determining bid award.

7.0 Contract Period

7.1 The contract period shall run from January 1, 2021 to December 31, 2022.

7.2 The District reserves the right to extend the contract for an additional year upon mutual consent of both parties. If extended, the same terms, conditions and pricing will remain in effect for a period not to exceed twelve (12) months.

8.0 Payment

8.1 Payment will be made after each delivery upon submission of a completed county claim form. Separate claim forms must be submitted for each plant. Payments will be made on the weight of product delivered.

9.0 Cancellation

9.1 The District reserves the right to cancel the contract if operating experience provides that the chemical is incompatible with the District's equipment or causes operating problems.

Failure to respond within three (3) working days of technical assistance request can be sufficient grounds to cancel the contract.

10.0 Bid Price

10.1 The unit price shall include the cost of the product on a per pound basis, including freight charges and any other charges connected with delivery.

11.0 Quality Control

11.1 The Water Purification District is presently using International Dioxide Endimal DW. Historical dosages will be the basis of quality control and any investigation of deviation of dosing requirements. These dosages are available in the District's Annual

Report of the Board of Commissioners and any increase above the five (5) year average shall be grounds for the investigation.

12.0 Emergency Response

12.1 If a chemical emergency should occur involving the vendors chemical and, or feed equipment the Albany County Water Purification District shall notify the vendor immediately. The vendor shall take immediate actions by providing advisement and or site visit to resolve the emergency.

13.0 Safety Training

13.1 After feed equipment is in place and before delivery of product the vendor shall provide safety training to all personnel designated by the Albany County Water Purification District. This training shall include at a minimum an over view of the Material Safety Data Sheet (MSDS), Personal Protective Equipment (PPE), product handling, product clean-up, feed equipment trouble shooting and spill prevention. This training shall be provided to the District on an as needed basis. All training shall meet Federal and State safety regulations.

14.0 Product Quantities

14.1 The Albany County Water Purification District produces approximately 11,000 dry tons of sewage sludge per year between the North and South Plants. The vendor shall provide bulk quantities of product to meet the hydrogen sulfide/odor control demand of both plants dewatering operations.

15.0 Deliveries

15.1 Deliveries may be made any time during the day, however, the supplier shall notify the District at least twelve (12) hours in advance of the expected arrival time. The District will place orders at least three (3) days in advance of required delivery. Bidders shall indicate in the bid if orders require more than three (3) days advance notice for delivery.

COUNTY OF ALBANY

BID FORM

BID IDENTIFICATION:

Title: Hydrogen Sulfide / Odor Control Oxidant
Bid Number: 2020-120

THIS BID IS SUBMITTED TO:

Karen A. Storm, Purchasing Agent
Albany County Department of General Services
Purchasing Division
112 State Street, Room 1000
Albany, NY 12207-2021

1. The undersigned BIDDER proposes and agrees, if this bid is accepted, to accept a Purchase Order for the goods described in the bid form and deliver said goods within the time indicated in this bid.
2. BIDDER accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the Disposition of Bid Security. This Bid may remain open for ninety (90) days after the day of Bid opening. BIDDER will submit the Contract Security and other documents required by the General Instructions to Bidder within fifteen days after the date of OWNER'S Notice of Award.
3. In submitting this Bid, BIDDER represents, as more fully set forth in this Bid, that:
 - (a) BIDDER has examined copies of all the Bid Documents and of the following addenda: (If none, so state)

Date

Number

(receipt of all of which is hereby acknowledged) and also copies of the Notice to Bidders and the Instructions to Bidders;

- (b) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or a corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for himself any advantage over any other Bidder or over the owner.

BF1

4. BIDDER will deliver the goods for the following prices(s): (Attach Bid Proposal)
5. BIDDER agrees to deliver the Goods within the number of calendar days or by the specific date indicated in the Bid.
6. The following documents are attached to and made a condition of this Bid:
 - (a) Non-Collusive Bidding Certificate (Attachment "A")
 - (b) Acknowledgment by Bidder (Attachment "B")
 - (c) Vendor Responsibility Questionnaire (Attachment "C")
 - (d) Iranian Energy Divestment Certification (Attachment "D")
7. Communication concerning this Bid shall be addressed to:

Phone: _____ Fax: _____

E-mail: _____

8. Terms used in this Bid have the meanings assigned to them in the Contract and General Provisions.

COUNTY OF ALBANY

BID FORM

BID IDENTIFICATION:

Title: Hydrogen Sulfide / Odor Control Oxidant
Bid Number: 2020-120

Product

\$

Unit price amount per pound (lb) of OXIDANT

Oxidant Type Designation

Name

or

Letters

No.

COMPANY:

ADDRESS:

CITY, STATE, ZIP:

TELE. NO.:

FAX NO:

FEDERAL TAX ID NO:

REPRESENTATIVE:

SIGNATURE & TITLE:

DATE:

BF3

COUNTY OF ALBANY
REQUEST FOR BIDS #2020-120
HYDROGEN SULFIDE / ODOR CONTROL OXIDANT

PROPOSED ALTERNATIVE PRODUCT SUBMISSION FORM

Indicate the substitute product which you wish to submit for Albany County's consideration:

Attach manufacturer's descriptive literature and return to:

**Albany County Purchasing Division
112 State Street, Room #1000
Albany, NY 12207**

or fax to: (518) 447-5588

Deadline for submission of substitution approval requests is FRIDAY, November 13, 2020 by close of business (4:30 p.m.).

VENDOR: _____

REPRESENTATIVE: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

TEL. NO.: _____

FAX NO.: _____

ATTACHMENT "A"
NON-COLLUSIVE BIDDING CERTIFICATE PURSUANT TO
SECTION 103-D OF THE NEW YORK STATE GENERAL MUNICIPAL LAW

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

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

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

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

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

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customer of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraph "A" above.

B. Any bid hereafter made to any political subdivision of the state or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, local law, and where such bid contains the certification referred to in paragraph "A" of this section, shall be deemed to have been authorized by the Board of Directors of the bidder, and such authorization shall be deemed to include the submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation

Signature

Title

Date

Company Name

ATTACHMENT "B"
ACKNOWLEDGMENT BY BIDDER

If Individual or Individuals:

STATE OF _____)
COUNTY OF _____) SS.:

On this _____ day of _____, 200__, before me personally appeared _____ to me known and known to me to be the same person(s) described in and who executed the within instrument, and he (or they severally) acknowledged to me that he (or they) executed the same.

Notary Public, State of _____

Qualified in _____

Commission Expires _____

If Corporation:

STATE OF _____)
COUNTY OF _____) SS.:

On this _____ day of _____, 200__, before me personally appeared _____ to me known, who, being by me sworn, did say that he resides at (give address) _____; that he is the (give title) _____ of the (name of corporation) _____, the corporation described in and which executed the above instrument; that he knows the seal of the corporation, and that the seal affixed to the instrument is such corporate seal; that it was so affixed by order of the board of directors of the corporation, and that he signed his name thereto by like order.

Notary Public, State of _____

Qualified in _____

Commission Expires _____

If Partnership:

STATE OF _____)
COUNTY OF _____) SS.:

On the _____ day of _____, 200__, before me personally came _____, to me known to be the individual who executed the foregoing, and who, being duly sworn, did depose and say that he / she is a partner of the firm of _____ and that he / she has the authority to sign the same, and acknowledged that he / she executed the same as the act and deed of said partnership.

Notary Public, State of _____

Qualified in _____

Commission Expires _____

**ATTACHMENT “C”
ALBANY COUNTY
VENDOR RESPONSIBILITY QUESTIONNAIRE**

1. VENDOR IS: ☐ PRIME CONTRACTOR			
2. VENDOR’S LEGAL BUSINESS NAME		3. IDENTIFICATION NUMBERS a) FEIN # b) DUNS #	
4. D/B/A – Doing Business As (if applicable) & COUNTY FIELD:		5. WEBSITE ADDRESS (if applicable)	
6. ADDRESS OF PRIMARY PLACE OF BUSINESS/EXECUTIVE OFFICE		7. TELEPHONE NUMBER	8. FAX NUMBER
9. ADDRESS OF PRIMARY PLACE OF BUSINESS/EXECUTIVE OFFICE <i>IN NEW YORK STATE, if different from above</i>		10. TELEPHONE NUMBER	11. FAX NUMBER
12. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE Name Title Telephone Number Fax Number e-mail			
13. LIST ALL OF THE VENDOR’S PRINCIPAL OWNERS.			
a) NAME	TITLE	b) NAME	TITLE
c) NAME	TITLE	d) NAME	TITLE
A DETAILED EXPLANATION IS REQUIRED FOR EACH QUESTION ANSWERED WITH A “YES,” AND MUST BE PROVIDED AS AN ATTACHMENT TO THE COMPLETED QUESTIONNAIRE. YOU MUST PROVIDE ADEQUATE DETAILS OR DOCUMENTS TO AID THE COUNTY IN MAKING A DETERMINATION OF VENDOR RESPONSIBILITY. PLEASE NUMBER EACH RESPONSE TO MATCH THE QUESTION NUMBER.			
14. DOES THE VENDOR USE, OR HAS IT USED IN THE PAST FIVE (5) YEARS, ANY OTHER BUSINESS NAME, FEIN, or D/B/A OTHER THAN THOSE LISTED IN ITEMS 2-4 ABOVE? List all other business name(s), Federal Employer Identification Number(s) or any D/B/A names and the dates that these names or numbers were/are in use. Explain the relationship to the vendor. ☐ Yes ☐ No 			
15. ARE THERE ANY INDIVIDUALS NOW SERVING IN A MANAGERIAL OR CONSULTING CAPACITY TO THE VENDOR, INCLUDING PRINCIPAL OWNERS AND OFFICERS, WHO NOW SERVE OR IN THE PAST ONE (1) YEARS HAVE SERVED AS: a) An elected or appointed public official or officer? <i>List each individual’s name, business title, the name of the organization and position elected or appointed to, and dates of service</i> ☐ Yes ☐ No b) An officer of any political party organization in Albany County, whether paid or unpaid? <i>List each individual’s name, business title or consulting capacity and the official political position held with applicable service dates.</i> ☐ Yes ☐ No			

16.	WITHIN THE PAST (5) YEARS, HAS THE VENDOR, ANY INDIVIDUALS SERVING IN MANAGERIAL OR CONSULTING CAPACITY, PRINCIPAL OWNERS, OFFICERS, MAJOR STOCKHOLDER(S) (10% OR MORE OF THE VOTING SHARES FOR PUBLICLY TRADED COMPANIES, 25% OR MORE OF THE SHARES FOR ALL OTHER COMPANIES), AFFILIATE OR ANY PERSON INVOLVED IN THE BIDDING OR CONTRACTING PROCESS:	
a)	1. been suspended, debarred or terminated by a local, state or federal authority in connection with a contract or contracting process; 2. been disqualified for cause as a bidder on any permit, license, concession franchise or lease; 3. entered into an agreement to a voluntary exclusion from bidding/contracting; 4. had a bid rejected on an Albany County contract for failure to comply with the MacBride Fair Employment Principles; 5. had a low bid rejected on a local, state or federal contract for failure to meet statutory affirmative action or M/WBE requirements on a previously held contract; 6. had status as a Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise, de-certified, revoked or forfeited; 7. been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any local, state or federal government contract; 8. been denied an award of a local, state or federal government contract, had a contract suspended or had a contract terminated for non-responsibility; or 9. had a local, state or federal government contract suspended or terminated for cause prior to the completion of the term of the contract.	☐ Yes ☐ No
b)	been indicted, convicted, received a judgment against them or a grant of immunity for any business-related conduct constituting a crime under local, state or federal law including but not limited to, fraud extortion, bribery, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct?	☐ Yes ☐ No
c)	been issued a citation, notice, violation order, or are pending an administrative hearing or proceeding or determination of violations of: 1. federal, state or local health laws, rules or regulations.	☐ Yes ☐ No
17.	IN THE PAST THREE (3) YEARS, HAS THE VENDOR OR ITS AFFILIATES HAD ANY CLAIMS, JUDGMENTS, INJUNCTIONS, LIENS, FINES OR PENALTIES SECURED BY ANY GOVERNMENTAL AGENCY? Indicate if this is applicable to the submitting vendor or affiliate. State whether the situation(s) was a claim, judgment, injunction, lien or other with an explanation. Provide the name(s) and address(es) of the agency, the amount of the original obligation and outstanding balance. If any of these items are open, unsatisfied, indicate the status of each item as "open" or "unsatisfied."	☐ Yes ☐ No
18.	DURING THE PAST THREE (3) YEARS, HAS THE VENDOR FAILED TO: a) file returns or pay any applicable federal, state or city taxes? <i>Identify the taxing jurisdiction, type of tax, liability year(s), and tax liability amount the vendor failed to file/pay and the current status of the liability.</i> b) file returns or pay New York State unemployment insurance? <i>Indicate the years the vendor failed to file/pay the insurance and the current status of the liability.</i> c) Property Tax <i>Indicate the years the vendor failed to file.</i>	☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No
19.	HAVE ANY BANKRUPTCY PROCEEDINGS BEEN INITIATED BY OR AGAINST THE VENDOR OR ITS AFFILIATES I WITHIN THE PAST SEVEN (7) YEARS (WHETHER OR NOT CLOSED) OR IS ANY BANKRUPTCY PROCEEDING PENDING BY OR AGAINST THE VENDOR OR ITS AFFILIATES REGARDLESS OF THE DATE OF FILING? Indicate if this is applicable to the submitting vendor or affiliate. If it is an affiliate, include the affiliate's name and FEIN. Provide the court name, address and docket number. Indicate if the proceedings have been initiated, remain pending or have been closed. If closed, provide the date closed.	☐ Yes ☐ No
20.	IS THE VENDOR CURRENTLY INSOLVENT, OR DOES VENDOR CURRENTLY HAVE REASON TO BELIEVE THAT AN INVOLUNTARY BANKRUPTCY PROCEEDING MAY BE BROUGHT AGAINST IT? Provide financial information to support the vendor's current position, for example, Current Ration, Debt Ration, Age of Accounts Payable, Cash Flow and any documents that will provide the agency with an understanding of the vendor's situation.	☐ Yes ☐ No

21.	IN THE PAST FIVE (5) YEARS, HAS THE VENDOR OR ANY AFFILIATES ¹ :	☐ Yes	☐ No
	a) defaulted or been terminated on, or had its surety called upon to complete, any contract (public or private) awarded;		
Indicate if this is applicable to the submitting vendor or affiliate. Detail the situation(s) that gave rise to the negative action, any corrective action taken by the vendor and the name of the contracting agency.			

¹ “Affiliate” meaning: (a) any entity in which the vendor owns more than 50% of the voting stock; (b) any individual, entity or group of principal owners or officers who own more than 50% of the voting stock of the vendor; or (c) any entity whose voting stock is more than 50% owned by the same individual, entity or group described in clause (b). In addition, if a vendor owns less than 50% of the voting stock of another entity, but directs or has the right to direct such entity’s daily operations, that entity will be an “affiliate” for purposes of this questionnaire.

**ALBANY COUNTY
VENDOR RESPONSIBILITY QUESTIONNAIRE**

FEIN #

State of:)
) ss:
County of:)

CERTIFICATION:

The undersigned: recognizes that this questionnaire is submitted for the express purpose of assisting the County of Albany in making a determination regarding an award of contract or approval of a subcontract; acknowledges that the County may in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein; acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine and/or imprisonment of up to five years under 18 USC Section 1001 and may result in contract termination; and states that the information submitted in this questionnaire and any attached pages is true, accurate and complete.

The undersigned certifies that he/she:

- Has not altered the content of the questions in the questionnaire in any manner;
- Has read and understands all of the items contained in the questionnaire and any pages attached by the submitting vendor;
- Has supplied full and complete responses to each item therein to the best of his/her knowledge, information ad belief;
- Is knowledgeable about the submitting vendor's business and operations;
- Understands that Albany County will rely on the information supplied in the questionnaire when entering into a contract with the vendor;
- Is under duty to notify the Albany County Purchasing Division of any material changes to the vendor's responses.

Name of Business

Signature of Owner _____

Address

Printed Name of Signatory _____

City, State, Zip

Title

Sworn before me this _____ day of _____, 20__;

Notary Public

Printed Name

Signature

Date

Attachment "D"
Certification Pursuant to Section 103-g
Of the New York State
General Municipal Law

- A. By submission of this bid/proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer 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 its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the New York State Finance Law.
- B. A Bid/Proposal shall not be considered for award, nor shall any award be made where the condition set forth in Paragraph A above has not been complied with; provided, however, that in any case the bidder/proposer cannot make the foregoing certification set forth in Paragraph A above, the bidder/proposer shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where Paragraph A above cannot be complied with, the Purchasing Unit to the political subdivision, public department, agency or official thereof to which the bid/proposal is made, or his designee, may award a bid/proposal, on a case by case business under the following circumstances:
1. The investment activities in Iran were made before April 12, 2012, the investment activities in Iran have not been expanded or renewed after April 12, 2012, and the Bidder/Proposer has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran; or
 2. The political subdivision makes a determination that the goods or services are necessary for the political subdivision to perform its functions and that, absent such an exemption, the political subdivision would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

Signature

Title

Date

Company Name

ATTACHMENT "E"

Sheet MS4-1: Bidder/Proposer Certification Statement (to be used with Section 34 Part A – General Contracts)

As a bidder seeking to provide services on behalf of Albany County, I certify under penalty of law that I understand and agree to comply with the terms and conditions of the New York State Pollutant Discharge Elimination System ("SPDES") General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4 Permit) and Albany County Local Law 7 of 2007, and agree to implement any Best Management Practices or corrective actions identified by Albany County or an authorized representative thereof as necessary to maintain compliance. I understand that Albany County must comply with the terms and conditions of the aforementioned MS4 Permit, and that it is unlawful for any person to directly or indirectly cause or contribute to a violation of water quality standards. I am also aware that County Local Law 7 of 2007 prohibits any activities that cause or contribute to a violation of the County's SPDES permit. Further, I understand that any non-compliance by Albany County will not diminish, eliminate or lessen my own liability.

Name of Third Party Entity: _____

Address: _____

Phone Number(s): _____

Description of activities to be performed by your firm or organization within Albany County are related to the Albany County Storm Water Management Program (SWMP) (include any activities that have the potential to generate or prevent pollution and/or affect water quality):

Description of where the work is to be performed within Albany County facilities:

Signature

Printed Name

Title

Date

RESOLUTION NO. 10

AUTHORIZING AN AGREEMENT WITH INTERNATIONAL DIOXIDE, INC. REGARDING ODOR CONTROL FOR THE WATER PURIFICATION DISTRICT

Introduced: 2/8/21

By Public Works Committee:

WHEREAS, The Director of the Water Purification District has requested authorization to enter into an agreement with International Dioxide, Inc. regarding the supply of hydrogen sulfide/odor control oxidant necessary for the operations at the wastewater treatment facilities in an amount not to exceed \$350,000 for the term commencing March 1, 2021 and ending December 31, 2022, with the option for a one year renewal, and

WHEREAS, The Director has indicated that International Dioxide, Inc. will collect a fee of \$0.798 per pound of hydrogen sulfide/odor control oxidant used by the Water Purification District, now, therefore be it

RESOLVED, By the Albany County Legislature that the County Executive is authorized to enter into an agreement with International Dioxide, Inc., North Kingstown, RI 02852 regarding the supply of hydrogen sulfide/odor control oxidant to the wastewater treatment plants in an amount not to exceed \$350,000 for the term commencing January 1, 2021 and ending December 31, 2022, with the option for a one year renewal, 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.



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

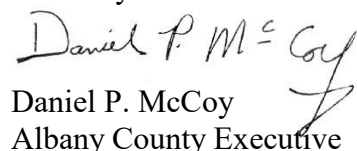
Dear Chairman Joyce:

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 16.1(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 Obligor 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 Obligor, the Obligor shall be entitled to recover, in addition to any other amount recovered by the Obligor, the reasonable attorneys' fees incurred by the Obligor in prosecuting said suit. Principal and Surety further agree that the Obligor 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 Obligor in connection with the Agreement, provided, however, the Obligor 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 Obligor 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 Obligor. 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 Obligor 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 Obligor that, upon receipt of Surety's thirty-day written notice of cancellation as provided above, the Obligor 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 Obligor 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 Obligor shall have the right, but not the obligation, to pursue all legal rights afforded to Obligor 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. Obligor 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)

TABLE OF CONTENTS

ARTICLE/DESCRIPTION	PAGE NO.
1.0 DEFINITIONS	3
2.0 SCOPE OF AGREEMENT	9
3.0 REQUIREMENTS APPLICABLE TO ALL AUTHORIZED ATTACHMENTS	12
4.0 REQUIREMENTS APPLICABLE TO NEW ATTACHMENTS OR EQUIPMENT AND MATERIAL CHANGES TO AUTHORIZED ATTACHMENTS OR EQUIPMENT	21
5.0 UNAUTHORIZED ATTACHMENTS	26
6.0 REMOVAL RIGHTS	27
7.0 FEES, CHARGES AND PAYMENTS	28
8.0 LEGAL REQUIREMENTS	31
9.0 LIMITATION OF LIABILITY	31
10.0 REPRESENTATIONS AND WARRANTIES; COVENANTS	32
11.0 INDEMNITY	34
12.0 EXCLUSION OF WARRANTIES	36
13.0 INSURANCE	37
14.0 ASSIGNMENT OF RIGHTS	39
15.0 TERM OF AGREEMENT	40
16.0 TERMINATION RIGHTS	41
17.0 CONSTRUCTION	43
18.0 NOTICES	45
APPENDIX I	47
APPENDIX II	49
APPENDIX III	64

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.