

DRAFT

**BOARD AGENDA
BUSINESS MEETING**

CV-S Central School
Cherry Valley, NY

Wednesday, March 19, 2025
7:00 PM In the School Cafeteria

I. OPENING OF MEETING

- A. QUORUM CHECK
- B. CALL TO ORDER
- C. PLEDGE OF ALLEGIANCE
- D. SPECIAL PRESENTATIONS - Community Service, Student Representative, Administration, & Board Committee Reports
- E. ADDITIONS TO AGENDA
- F. CORRESPONDENCE RECEIVED
- G. SUPERINTENDENT'S REPORT
- H. RECOGNITION OF VISITORS

II. PROPOSED EXECUTIVE SESSION SUBJECT TO BOARD APPROVAL

III. CONSENT AGENDA ITEMS – Consider motion to approve consent agenda items to include RESOLUTIONS 1-3-2025 through RESOLUTION 12-3-2025

- A. RESOLUTION 1-3-2025
APPROVAL OF MINUTES – February 12, 2025
- B. RESOLUTION 2-3-2025
ACKNOWLEDGE RECEIPT OF TREASURER'S AND FINANCIAL REPORTS – February 2025
- C. SPECIAL EDUCATION AGREEMENT (AMENDED)
RESOLUTION 3-3-2025
RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby approve the amended special education agreement with Cobleskill-Richmondville Central School from September 5, 2024 through June 27, 2025.
- D. OTSEGO COUNTY DEPARTMENT OF SOCIAL SERVICES
RESOLUTION 4-3-2025
RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby approve the agreement with the Otsego County Department of Social Services as per ATTACHMENT III D.

E. ENGINEER'S SERVICES AGREEMENT

RESOLUTION 5-3-2025

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby approve the agreement with Bernier, Carr & Associates, Engineers, Architects and Land Surveyors, P.C. (BCA) for Wastewater Treatment Plant Improvements BCA Project Number: 2024-114 dated March 4, 2025, as per ATTACHMENT III E.

F. AUTHORIZED REPRESENTATIVE FOR EPG APPLICATION

RESOLUTION 6-3-2025

RESOLVED that the Superintendent shall be designated as an Authorized Representative to act on behalf of the School District in regard to the Environmental Facilities Corporation Engineering Planning Grant (EPG) application. RESOLVED, that this Resolution shall take effect immediately.

G. AUDIT SERVICES

RESOLUTION 7-3-2025

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby approve the agreement with The Bonadio Group to provide independent audit services, June 30, 2025 through June 30, 2027, as per ATTACHMENT III G.

H. PERSONNEL

RESOLUTION 8-3-2025

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby accept the resignation of Matthew Coria, Building Maintenance Mechanic, effective February 13, 2025.

RESOLUTION 9-3-2025

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby accept the resignation of Robin Horne as the Modified Boys and Girls Track Coach effective February 28, 2025.

RESOLUTION 10-3-2025

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby accept the resignation of Sara Valenta, Licensed Teacher Assistant, effective March 11, 2025.

RESOLUTION 11-3-2025

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby appoint Michael Oldick to a position as a Building Maintenance Mechanic for a probationary period effective March 17, 2025 through September 17, 2025.

RESOLUTION 12-3-2025

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District, upon the recommendation of the Superintendent, does hereby appoint the following Extracurricular assignments for the 2024-2025 school year: SAT Prep - Jordan Rhodes and Terri Santillan Weight Room Monitor - Jodi Mravlja

IV. NEW BUSINESS

V. OLD BUSINESS

A. POLICY REVIEW

RESOLUTION 13-3-2025

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District does hereby conduct a second reading of Policies, Regulation and Exhibit 0111 Sexual Harassment Grievances Under Title IX (policy and exhibit), 1120-R School District Records Regulation, 2245 Ex Officio Student Member of the Board, and 8113 Extreme Heat Condition Days.

RESOLUTION 14-3-2025

RESOLVED, that the Board of Education of the Cherry Valley-Springfield Central School District does hereby direct the District Clerk to transmit to NYSSBA updated Policies, Regulation and Exhibit 0111 Sexual Harassment Grievances Under Title IX (policy and exhibit), 1120-R School District Records Regulation, 2245 Ex Officio Student Member of the Board, and 8113 Extreme Heat Condition Days to the New York State School Boards Association by March 31, 2025.

VI. PROPOSED EXECUTIVE SESSION SUBJECT TO BOARD APPROVAL

- Matters leading to the employment of particular individual(s)
- Employment history of particular individual(s) or corporation(s)

VII. ADJOURNMENT

AGREEMENT

THIS AGREEMENT (this "Agreement") is made January 1, 2025, by and between **OTSEGO COUNTY**, by and through **OTSEGO COUNTY DEPARTMENT OF SOCIAL SERVICES ("DSS" or "DEPARTMENT")**, a municipal corporation, having its office and principal place of business located at 197 Main Street, Cooperstown, New York (collectively, the "COUNTY"), and **CHERRY VALLEY SPRINGFIELD CENTRAL SCHOOL**, having its office at 597 County Highway 54 Cherry Valley, NY 13320 ("CONTRACTOR"). The COUNTY and CONTRACTOR are sometimes referenced to in this Agreement individually as a "party" or collectively as the "parties."

WITNESSETH:

WHEREAS, the COUNTY desires to obtain services in connection with Cherry Valley Springfield School; and

WHEREAS, the CONTRACTOR desires to provide such services for the compensation and on the terms herein provided.

NOW, THEREFORE, in consideration of the mutual promises, terms and obligations hereinafter made, as well as other good and valuable consideration, the COUNTY and the CONTRACTOR mutually agree and obligate themselves as follows:

1. **PURPOSE.** To enter into a written contract setting forth the terms and obligations of each of the parties for providing services as described herein and according to a fee schedule as hereafter set forth.
2. **GOODS AND/OR SERVICES TO BE PERFORMED.** The COUNTY shall acquire, from the CONTRACTOR, certain goods and/or services, the same to be in accordance with the terms and conditions of Exhibit "A," attached hereto and made a part hereof.
3. **TERM.** The term of this contract shall commence January 1, 2025 and shall continue until December 31, 2025.
4. **PRICE.** See Exhibit "A," attached hereto and made a part hereof.

5. **STANDARD PROVISIONS.**

- A. **AGENCY/INDEPENDENT CONTRACTOR.** CONTRACTOR is an independent contractor. Neither CONTRACTOR nor CONTRACTOR'S officers, employees, agents or servants shall hold themselves out as, or claim to be, officers, employees, agents or servants of the COUNTY.

This Agreement in no way establishes an agency relationship between the CONTRACTOR and COUNTY. Each party shall maintain its independence and its separate identity. Each party shall have exclusive control of its management, employees, staff, policies and assets. Neither party assumes any liability for the acts of the other party.

- B. **ASSIGNMENT OR TRANSFER.** The CONTRACTOR shall not assign, transfer, convey, sublet, or otherwise dispose of this Agreement or the CONTRACTOR'S right, title or interest in this Agreement or the CONTRACTOR'S power to execute this Agreement, to any other person or entity without prior express written approval by the COUNTY. The terms of this Agreement shall be binding upon the successors, heirs and assigns of the parties hereto, in the event of approved assignment, or other approved transfer of CONTRACTOR'S rights or obligations under this Agreement.

- C. **MODIFICATION.** There shall be no oral modifications of this Agreement and any modification or amendment of the terms of this Agreement shall not be binding unless executed in writing by the parties hereto. The terms of this written Agreement contain the entire understanding between the parties and supersede any oral representations previously made.

- D. **GOVERNING LAW.** The terms of this Agreement shall be governed and interpreted pursuant to the laws of the State of New York. The goods and/or services provided shall comply with all Federal, State and local statutes, rules and regulations.

- E. **RENEWAL.** (If applicable) This Agreement may not be renewed without the prior approval of the CONTRACTOR and by resolution or committee approval as required of the Board of Representatives of the COUNTY OF OTSEGO, unless specifically provided for herein by authorizing resolution.

- F. **HOLD HARMLESS, DEFENSE, AND INDEMNIFICATION.** The CONTRACTOR agrees to indemnify, defend and hold harmless to the fullest extent permitted by law the COUNTY, its officers, agents and employees and representatives in connection with this Agreement from and against any and all loss or expense that may arise by reason of liability for damage, injury or death or for invasion of personal or property rights of every name and nature including but not limited to: (i) claims of property damage; (ii) claims of personal injury to CONTRACTOR if self employed, CONTRACTOR'S employees, agents or subcontractors; (iii) claims of personal injury to third parties and (iv) reasonable attorneys' fees, whether incurred as the result of a third party claim or to enforce this Agreement, arising out of or resulting directly or indirectly from the performance of the work or the enforcement of this Agreement irrespective of whether there is a breach of a statutory obligation or rule of apportioned liability; and whether casual or continuing trespass or nuisance, and any other claim for damages arising at law or equity alleged to have been caused or sustained in whole or in part by or because of misfeasance, omission of duty, negligence or wrongful act on the part of the CONTRACTOR, its employees or agents. CONTRACTOR further covenants and agrees to obtain the necessary insurance as required by the

General Obligations Law of the State of New York and this Agreement to effectuate this hold harmless clause, and shall name the COUNTY as an additional insured on all applicable insurance and indemnification. (See also "Insurance" section 8).

G. **EXECUTORY CLAUSE.** This Agreement shall be deemed executory only to the extent of the funds appropriated and available for the purpose of this Agreement, and no liability on account thereof shall be incurred by the COUNTY beyond the amount of such funds. It is understood that neither this Agreement nor any representation by any public employee or officer create any legal or moral obligation to request, appropriate or make available monies for the purpose of this Agreement. The COUNTY shall promptly notify CONTRACTOR in writing when no funds have been appropriated or when appropriated funds have been exhausted for the CONTRACTOR'S services under this Agreement.

H. **INSURANCE.** CONTRACTOR shall purchase and maintain insurance of the types and coverage set forth below, written on an occurrence basis, reasonably acceptable to the COUNTY and which will provide primary liability coverage to CONTRACTOR AND WITH THE COUNTY NAMED AS AN ADDITIONAL INSURED ON A PRIMARY AND NON-CONTRIBUTING BASIS for claims which may arise out of or result from CONTRACTOR'S operations under the Agreement, including without limitation (i) claims because of bodily injury, occupational sickness or disease, or death, whether to CONTRACTOR if self-employed, CONTRACTOR'S employees or others whether or not under a Worker's Compensation or other similar act or law for the benefit of employees; and (ii) claims because of injury to or destruction of tangible property, including loss of use resulting therefrom.

All policies shall be written so that the COUNTY will be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment. Certificates of insurance from the carrier, or their authorized agent, with the appropriate additional insured endorsement attached showing the COUNTY as an additional insured and stating the limits of liability; expiration dates which are acceptable to the COUNTY shall be filed with and accepted by the COUNTY before operations are begun. The intent is that this insurance, with the COUNTY being named as an additional insured, is to be primary over and above the COUNTY'S own general liability coverage.

CONTRACTOR agrees to obtain and maintain General Liability Insurance including Comprehensive Form, Premises-Operations, Products/Completed Operations, Blanket Broad Form Contractual, Independent Contractors, and Broad Form Property Damage Coverage with minimum limits of not less than one million dollars (\$1,000,000.00) Combined Single Limit for Bodily Injury and Property Damage.

CONTRACTOR also agrees to obtain and maintain Automobile Liability Insurance for owned, hired or non-owned vehicles with minimum limits of not less than one million dollars (\$1,000,000.00) Combined Single Limit for Bodily Injury and Property Damage.

In addition, the CONTRACTOR shall obtain and maintain Professional Liability Insurance with minimum limits of not less than one million dollars (\$1,000,000.00).

Also, the CONTRACTOR shall obtain and maintain Umbrella Insurance with minimum limits of not less than one million dollars (\$1,000,000.00).

CONTRACTOR further agrees to comply with the requirements of the New York State Worker's Compensation Board regarding proof of compliance with the New York State Worker's Compensation Law. The New York State Worker's Compensation Board requires the COUNTY to obtain from CONTRACTORS proof of Worker's Compensation insurance coverage, Self-Insurance or exemption from the requirement of obtaining Worker's Compensation insurance coverage. Proof must be submitted to the COUNTY on forms specified by the Worker's Compensation Board and that are stamped as received by the Worker's Compensation Board.

I. **TERMINATION.** (For Service Agreements Only) This Agreement may be terminated by the COUNTY upon 60 days notice at any time, and on 30 days notice in the event of default in performance by the CONTRACTOR.

J. **COOPERATION BETWEEN PARTIES.** Each of the parties hereto agree to cooperate with each other to expeditiously complete the terms of this Agreement and to conduct their operations in a relationship of trust and confidence, one with the other.

K. **NON-DISCRIMINATION.** The CONTRACTOR expressly agrees:

- i. that in the hiring of employees for the performance of work under this Agreement or any sub agreement hereunder, no CONTRACTOR, subcontractor, nor any person acting on behalf of such CONTRACTOR or subcontractor, shall by reason of race, creed, color, sex, age, physical disability 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; and
- ii. that no CONTRACTOR, subcontractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, sex, age, physical disability or national origin; and

- iii. that there may be deducted from the amount payable to the CONTRACTOR by the COUNTY under this Agreement 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 this Agreement; and
- iv. that this Agreement may be canceled or terminated by the COUNTY, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of this section of the Agreement.

CONTRACTOR shall comply with all rules and regulations of the Americans with Disabilities Act (ADA), and if applicable, all terms of the bid or RFP documents.

- L. **AGREEMENT DOCUMENTS.** The Agreement Documents shall consist of the following (including their attachments and exhibits):

This Agreement including Exhibit A, Certificate(s) of Insurance and HIPAA (if required)

This Agreement, together with the above-named documents, which said other Documents are as fully a part of the Agreement as if attached or herein repeated, forms the Agreement between the parties. In the event that any provision of any attachment or other component made a part hereof is inconsistent with these terms, then these terms shall govern except as otherwise specifically stated.

The COUNTY will be provided a reasonable number of copies of such of the documents prepared by the CONTRACTOR as the COUNTY deems appropriate. The cost of such copies shall be borne by the CONTRACTOR.

- M. **PROGRESS REPORTS** (for service agreements only). The CONTRACTOR shall issue progress reports to the COUNTY as the COUNTY may direct and shall immediately inform the COUNTY in writing of any cause for delay in the performance of its obligations under this Agreement.

- N. **CONFLICTS OF INTEREST.** At the time CONTRACTOR submits a bid, or if no bid is submitted, prior to performing any services under this Agreement, CONTRACTOR shall deliver to COUNTY'S Department of Law, the attached affidavit certifying that CONTRACTOR has no interest and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services to COUNTY. The affidavit shall further state that in rendering services to COUNTY no persons having any such interest shall be employed by CONTRACTOR. CONTRACTOR assumes full responsibility for knowing whether CONTRACTOR'S officers, employees, agents, or servants have any such interest and for certifying the absence of such conflict to COUNTY.

During the course of performing services for COUNTY, CONTRACTOR shall disclose immediately to COUNTY, by affidavit, every known or apparent conflict of interest and every ostensible or potential conflict of interest of CONTRACTOR, CONTRACTOR'S officers, CONTRACTOR'S employees, CONTRACTOR'S agents, and CONTRACTOR'S servants. The duty to disclose is a continuing duty. Such disclosure is a material obligation of this Agreement and CONTRACTOR'S failure to comply with these provisions affords COUNTY the right to pursue any and all remedies for breach of Agreement.

In the event of an apparent or actual conflict of interest during the course of performance, CONTRACTOR shall suspend all work and services, and COUNTY'S payments to CONTRACTOR shall be suspended pending final approval by COUNTY or COUNTY'S Board of Ethics. If the conflict cannot be resolved to the satisfaction of COUNTY, COUNTY may terminate the Agreement by written notice. Nothing herein shall be construed as limiting or waiving COUNTY'S right to pursue damages or other remedies.

A conflict of interest includes any circumstance which might influence or appear to influence the judgment of CONTRACTOR, and CONTRACTOR shall disclose the same. CONTRACTOR shall disclose further the acceptance of compensation, monetary or otherwise, from more than one (1) payor or party for services on the same project or related project. CONTRACTOR shall disclose further the direct or indirect solicitation or acceptance of financial or other consideration from parties other than COUNTY for work on the project to which this Agreement pertains. If applicable, CONTRACTOR shall disclose further the direct or indirect acquisition of any interest in the real estate which is the subject of the project, or in the immediate vicinity thereof. A conflict of interest of CONTRACTOR'S servants shall be deemed a conflict of interest of CONTRACTOR, giving rise to the duty to disclose.

CONTRACTOR shall not disclose any data, facts or information concerning services performed for COUNTY or obtained while performing such services, except as authorized by COUNTY in writing or as may be required by law.

- O. **PRIVILEGED INFORMATION.** Nothing contained in this Agreement shall require CONTRACTOR to share the protected health information or other privileged information with the COUNTY.

- P. **AUTHORITY.** The individuals who have executed this Agreement on behalf of the respective parties expressly represent and warrant that they are authorized to sign on behalf of such entities for the purpose of duly binding such entities to this Agreement.

IN WITNESS WHEREOF, each of the parties hereto has caused this agreement to be executed as of the day and year first above

written.

DIGITAL SIGNATURE PAGE

County Attorney-
County Attorney

Digitally signed by County Attorney-
County Attorney
Date: 2025.02.26 19:18:46 GMT
Reason: County Attorney approval
Location: Cooperstown, NY 13326

Exhibit

A

EXHIBIT "A"
SERVICES TO BE PROVIDED

DEFINITION

- A. Child welfare services shall mean services for children and their families which are supportive and rehabilitative that are provided to:
1. avert an impairment or disruption of a family which will or could result in the placement of a child in foster care or other out-of-home placement
 2. enable a child who has been placed in foster care or resource/relative to return to his/her family at an earlier time than would otherwise be possible
 3. reduce the likelihood that a child who has been discharged from foster care or resource/relative would return to such care
 4. monitor and/or investigate child protective allegations or indications to enhance safety and reduce risk
- B. Case Management Services shall mean assessing the need for, providing and arranging for services for children and families, and coordinating and evaluating the provision of these services.

SERVICES TO BE PROVIDED

- A. The COUNTY agrees to provide to the CONTRACTOR one (1) caseworker for purposes of establishing and maintaining an on-site office at the CONTRACTOR's school district to provide child welfare services to children and their families residing in the Cherry Valley – Springfield Central School District. The specific caseworker assigned to the district shall be mutually agreeable to the CONTRACTOR and the COUNTY. The CONTRACTOR or the COUNTY shall notify the other party should a reassignment be necessary, and a collaborative effort between the CONTRACTOR and the COUNTY to determine a new, mutually agreeable caseworker will occur. The caseworker shall generally be present four (4) working days per week at the CONTRACTOR's school district and be available one (1) working day per week at a COUNTY office for purposes of supervision, case processing, court, and other required administrative activities. The COUNTY and the CONTRACTOR will establish the specific day that the caseworker(s) will be present at the COUNTY and any change in the established schedule will be made with mutual consent of both parties. A change in the actual number of days the caseworker(s) shall be present at the COUNTY can be made with mutual approval of the CONTRACTOR and the COUNTY for necessary caseworker activities (i.e. Court hearings, family service plans, etc.). In addition to such duties as are required of a caseworker, the caseworker shall provide the following services to the CONTRACTOR:
1. The caseworker will perform any and all tasks required of a Department of Social Services child welfare caseworker.
 2. The caseworker shall be a participating member of the CONTRACTOR's Student Intervention Team if requested and shall receive referrals on student's who are at-risk of school dropout, evidencing severe behavioral problems and/or management problems, or are presenting symptoms consistent with abuse or neglect. The caseworker will accept referrals in accordance with child welfare intake processes and eligibility determinations.

3. The caseworker, in addition to determining eligibility for and providing child welfare services, will act as liaison between the CONTRACTOR and the COUNTY.
4. The caseworker will carry no more than twelve (12) cases on an on-going basis, and up to fifteen (15) on a short-term basis.
5. The caseworker will work seven (7) hours during a normal workday. These hours, however, may be reappointed during a day, or over several days if work demands so indicate not to exceed thirty-five (35) hours per week except during July and August when work hours shall not exceed thirty (30) hours. Work hours shall be prioritized as much as possible to meet the needs of the CONTRACTOR.
6. The CONTRACTOR may refer students who are at-risk of school dropout, evidencing severe behavioral and/or management problems or are presenting symptoms consistent with regard to abuse or neglect. All CONTRACTOR referrals shall be accepted by the COUNTY and processed in accordance with intake and assessment guidelines. The COUNTY shall develop a plan for each referral and authorize services consistent with each assessment and plan including signed releases of information by parents and/or legal custodians as needed to obtain and/or share information between the COUNTY and the CONTRACTOR or other service providers.
7. Services shall be provided in accordance with the initial and/or comprehensive service plan of the uniform case record for each individual case. The COUNTY will provide the CONTRACTOR with appropriate and necessary background information as allowable. The COUNTY will further transmit on a COUNTY form the specific reasons for providing services, the services to be provided and the time frames for delivery of such services consistent with regulations. The COUNTY records shall conform to standards established by the Department and New York State Office of Children and Family Services (OCFS). The COUNTY shall maintain program and statistical records and produce program narrative and statistical data at various times to be available to the COUNTY and the New York State OCFS.
8. The caseworker shall provide services to the students of the Cherry Valley – Springfield Central School district; however, should the caseload be under its maximum, the caseworker may occasionally serve students and families outside of the Cherry Valley – Springfield Central School district.
9. The caseworker shall participate in necessary training per state mandates and the COUNTY's policies as part of the caseworker's workday(s), and these days may exceed the aforementioned time needed in the COUNTY's office.

EXHIBIT "A-1"

Semi-Annual Performance Outcomes

Due to the Commissioner's Secretary by
July 15, 2025 for January 2025 – June 2025 and
January 15, 2026 for July 2025 – December 2025

(To be maintained by Otsego County Dept of Social Services)

- 1. Of the total number of referrals made by the school district, 60% will be opened for intervention services.**
- 2. Of the total number of referrals made by the school district regarding abuse/maltreatment, 75% will not result in foster care placements.**
- 3. Of the total number of PINS referrals made to the Department of Social Services by the school and/or the Probation Department for a child in the school district, 75% will not result in foster care placements.**

EXHIBIT "B"

PAYMENT

Payment will be based on actual costs associated with running the program, calculated as follows: the CONTRACTOR shall reimburse the COUNTY for the local percentage cost (currently 17%) of the salary, fringe benefits and mileage expenses of the Caseworker appointed to each position. The salary and fringe benefits are subject to increase based on union labor negotiations. Local percentage is subject to change based on State and Federal reimbursements.

The CONTRACTOR will be billed quarterly and shall make payment within 30 days of billing. In no event shall the CONTRACTOR's liability exceed the local percentage of salary, benefits, and mileage costs.

This Agreement may be terminated by the CONTRACTOR or the COUNTY upon 60 days notice at any time, and on 30 days notice in the event of default in performance by the COUNTY or if Federal or State reimbursement shall be terminated or is not allowed.

RESOLUTION NO. 30-20250102

RESOLUTION - AUTHORIZING THE OTSEGO COUNTY COMMISSIONER
OF SOCIAL SERVICES TO CONTRACT WITH AN AREA
SCHOOL DISTRICT FOR CHILD WELFARE SERVICES

MARTINI, B'ASILE, BLISS, BROCKWAY, MENDEZ

WHEREAS, the Otsego County Department of Social Services has determined that the interests of the students and their families located in the Otsego County school districts will be best served by providing child welfare services within school districts staffed by the Otsego County Department of Social Services caseworker(s); and

WHEREAS, the administration of certain school districts have proposed to contract with the County for the services of caseworker(s) to perform child welfare services for the students and their families within their respective school districts; and

WHEREAS, in addition to reimbursing the County in full for the local share of the salary of caseworker(s), the administration of the participating school district has proposed to pay for the overhead and other benefits and costs of maintaining such position(s); and

WHEREAS, it is in the best interest of the County of Otsego to contract for position(s) with the school district listed below; now, therefore, be it

RESOLVED, that the Otsego County Commissioner of Social Services is hereby authorized to contract with the following school district for the 2025 calendar year:

for child welfare services, to be furnished by Otsego County, with a caseworker located in the above-listed district, with an estimated 17% of the salary, benefits, costs and other additional overhead necessary for the operation of the child welfare services program being paid for by the school district; and be it further

RESOLVED, that the funding for this contract is included in the 2025 Social Services Administration Budget (A6010) at line 510010 Personal Service and shall be contained in a similar line for subsequent years, utilizing an estimated 58% Federal funds, 25% State funds, and 17% School District funds.

Carol D. Mabey
Clerk of the Board of Representatives
Otsego County, New York



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
2/5/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER NBT Insurance Agency LLC 66 South Broad Street Norwich NY 13815	CONTACT NAME:	
	PHONE (A/C, No, Ext): 1-800-965-6264	FAX (A/C, No):
INSURED Cherry Valley Springfield Central School 597 Co Hwy 54 Cherry Valley NY 13320	E-MAIL ADDRESS: lisa.mccall@nbtinsurance.com	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: New York Schools Insurance Reciprocal	
	INSURER B:	
	INSURER C:	
	INSURER D:	
INSURER E:		
INSURER F:		

COVERAGES	CERTIFICATE NUMBER: 1721092956	REVISION NUMBER:
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.		

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		SSPCVS001	7/1/2024	7/1/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y		CAPCVS001	7/1/2024	7/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$	Y		ECLCVS001	7/1/2024	7/1/2025	EACH OCCURRENCE \$ 6,000,000 AGGREGATE \$ 12,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N	N / A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) RE: Preschool Contract
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CERTIFICATE HOLDER Otsego County 197 Main St Cooperstown NY 13326	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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**Workers'
Compensation
Board**

KATHY HOCHUL
GOVERNOR

CLARISSA M. RODRIGUEZ
CHAIR

EXECUTIVE DIRECTOR
STEVEN M. SCOTTI

NOTICE OF COMPLIANCE
AS SELF INSURER UNDER THE NEW YORK STATE
WORKERS' COMPENSATION LAW

Name: Cherry Valley Springfield Central School District
WCB #: W812135
Tax ID #: 16-1308659
Qual Date: 7/1/1991

The above-named employer has secured compensation to its employees as a self-insurer in the following manner:

Pursuant to Section 50, subdivisions 3 and 4 of the Workers' Compensation Law. (County, city, village, town, school district, fire district or other political subdivision)

The status of the self-insurer was effective as noted above and remains in full force.

Status Confirmed By
Lauren Montgomery
WC Examiner
12/3/2024



**Workers'
Compensation
Board**

**Certificate of Attestation of Exemption
from New York State Workers' Compensation and/or
Disability and Paid Family Leave Benefits Insurance Coverage**

****This form cannot be used to waive the workers' compensation rights or obligations of any party.****

The applicant may use this Certificate of Attestation of Exemption **ONLY** to show a government entity that New York State specific workers' compensation and/or disability and paid family leave benefits insurance is not required. The applicant may **NOT** use this form to show another business or that business's insurance carrier that such insurance is not required. Please provide this form to the government entity from which you are requesting a permit, license or contract. This Certificate will not be accepted by government officials one year after the date printed on the form.

**In the Application of
(Legal Entity Name and Address):**

Cherry Valley Springfield Central School
597 County Highway 54
Cherry Valley, NY 13320-2100
PHONE: 607-264-9332 FEIN: XXXXX8659

**Business Applying For:
OTHER: It is not listed**

From: NY Farm to School Grant Program

Workers' Compensation Exemption Statement:

The applicant is NOT applying for a workers' compensation certificate of attestation of exemption and will show a separate certificate of NYS workers' compensation insurance coverage.

Disability and Paid Family Leave Benefits Exemption Statement:

The above named business is certifying that it is **NOT REQUIRED TO OBTAIN NEW YORK STATE STATUTORY
DISABILITY AND PAID FAMILY LEAVE BENEFITS INSURANCE COVERAGE** for the following reason:

The applicant is a Federal Agency or is engaged in maritime or railroad enterprises and falls under the jurisdiction of the federal government.

I, Denise L. Wist, am the Treasurer with the above-named legal entity. I affirm that due to my position with the above-named business I have the knowledge, information and authority to make this Certificate of Attestation of Exemption. I hereby affirm that the statements made herein are true, that I have not made any materially false statements and I make this Certificate of Attestation of Exemption under the penalties of perjury. I further affirm that I understand that any false statement, representation or concealment will subject me to felony criminal prosecution, including jail and civil liability in accordance with the Workers' Compensation Law and all other New York State laws. By submitting this Certificate of Attestation of Exemption to the government entity listed above I also hereby affirm that if circumstances change so that workers' compensation insurance and/or disability and paid family leave benefits coverage is required, the above-named legal entity will immediately acquire appropriate New York State specific workers' compensation insurance and/or disability and paid family leave benefits coverage and also immediately furnish proof of that coverage on forms approved by the Chair of the Workers' Compensation Board to the government entity listed above.

**SIGN
HERE**

Signature:

Date: 12/12/24

Exemption Certificate Number

2024-091706

Received

December 12, 2024

NYS Workers' Compensation Board

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this "BAA"), is entered into on January 1, 2025, by and between **OTSEGO COUNTY**, a political subdivision of the State of New York, with offices at 197 Main Street, Cooperstown, New York, 13326 ("County"), and **CHERRY VALLEY SPRINGFIELD CENTRAL SCHOOL**, with offices at 597 County Highway 54 Cherry Valley, NY 13320, ("Business Associate").

WHEREAS County and Business Associate are parties to one or more agreements pursuant to which Business Associate has agreed to provide certain services on County's behalf ("Agreement"); and

WHEREAS County and Business Associate desire to execute this BAA to comply with the Privacy, Security, Breach Notification and Enforcement Rules at 45 Code of Federal Regulations ("C.F.R.") Parts 160-64 including the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (collectively "HIPAA"), that are applicable to business associates, along with any guidance and/or regulations issued to date by the Department of Health and Human Services ("DHHS"); and

WHEREAS, County and Business Associate desire to incorporate into this BAA any regulations issued with respect to HIPAA that relate to the obligations of business associates, and Business Associate recognizes and agrees that it is obligated by law to meet the applicable provisions of HIPAA.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

1. Definitions.

1. The terms "Covered Entity," "Electronic Protected Health Information," "Protected Health Information," "Standard," "Trading Partner Agreement," and "Transaction" have the meanings set out in 45 C.F.R. § 160.103. The term "Standard Transaction" has the meaning set out in 45 C.F.R. § 162.103. The term "Required by Law" has the meaning set out in 45 C.F.R. § 164.103. The terms "Health Care Operations," "Payment," "Research," and "Treatment" have the meanings set out in 45 C.F.R. § 164.501. The term "Limited Data Set" has the meaning set out in 45 C.F.R. § 164.514(e). The term "use" means, with respect to Protected Health Information, utilization, employment, examination, analysis or application within Business Associate. The terms "disclose" and "disclosure" mean, with respect to Protected Health Information, release, transfer, providing access to or divulging to a person or entity not within Business Associate. For purposes of this Business Associate Agreement, County's Protected Health Information encompasses County's Electronic Protected Health Information. Any other capitalized terms not identified here shall have the meaning as set forth in HIPAA.

2. Privacy of Protected Health Information.

- a. **Permitted Uses and Disclosures.** Business Associate is permitted to use and disclose Protected Health Information that it creates or receives on County's behalf or receives from County (or another business associate of County) and to request Protected Health Information on County's behalf (collectively, "County's Protected Health Information") only as follows:
 - i. *Functions and Activities on County's Behalf* To perform functions, activities, services, and operations on behalf of County, consistent with the Privacy Rule and

the HITECH Act, as specified in the Agreement.

- ii. *Business Associate's Operations.* For Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities, provided that, with respect to disclosure of County's Protected Health Information, either:
 - A. The disclosure is Required by Law; or
 - B. Business Associate obtains reasonable assurance, evidenced by written contract, from any person or entity to which Business Associate will disclose County's Protected Health Information that the person or entity will:
 - Hold County's Protected Health Information in confidence and use or further disclose County's Protected Health Information only for the purpose for which Business Associate disclosed County's Protected Health Information to the person or entity or as Required by Law; and
 - Promptly notify Business Associate (who will in turn notify County in accordance with Section 4(a) of this BAA) of any instance of which the person or entity becomes aware in which the confidentiality of County's Protected Health Information was breached.
- b. **Minimum Necessary and Limited Data Set** Business Associate's use, disclosure or request of Protected Health Information shall utilize a Limited Data Set if practicable. Otherwise, Business Associate will, in its performance of the functions, activities, services, and operations specified in Section 1(a) above, make reasonable efforts to use, to disclose, and to request of a Covered Entity only the minimum amount of County's Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that Business Associate will not be obligated to comply with this minimum necessary limitation with respect to:
 - i. Disclosure to or request by a health care provider for Treatment;
 - ii. Use for or disclosure to an individual who is the subject of County's Protected Health Information, or that individual's personal representative;
 - iii. Use or disclosure made pursuant to an authorization compliant with 45 C.F.R. § 164.508 that is signed by an individual who is the subject of County's Protected Health Information to be used or disclosed, or by that individual's personal representative;
 - iv. Disclosure to DHHS in accordance with Section 5(a) of this BAA;
 - v. Use or disclosure that is Required by Law; or
 - vi. Any other use or disclosure that is excepted from the minimum necessary limitation as specified in 45 C.F.R. § 164.502(b)(2).
- c. **Prohibition on Unauthorized Use or Disclosure.** Business Associate will neither use nor disclose County's Protected Health Information, except as permitted or required by this BAA or in writing by County or as Required by Law. This BAA does not authorize Business Associate to use or disclose County's Protected Health Information in a manner that will violate the 45 C.F.R. Part 164, Subpart E "Privacy of Individually Identifiable Health Information" ("Privacy Rule") if done by the County, except as set forth in Section 1 (a)(ii) of this BAA.
- d. **Information Safeguards.**
 - i. *Privacy of County's Protected Health Information* Business Associate will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of County's Protected Health Information. The safeguards must reasonably protect County's Protected Health Information from any intentional or unintentional use or disclosure in violation of

the Privacy Rule, 45 C.F.R. Part 164, Subpart E and this BAA, and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this BAA.

- ii. ***Security of County's Electronic Protected Health Information*** Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on County's behalf as required by the Security Rule, 45 C.F.R. Part 164, Subpart C and as required by HIPAA.

Business Associate also shall develop and implement policies and procedures and meet the Security Rule documentation requirements as required by HIPAA.

- e. **Subcontractors and Agents.** Business Associate will require any of its subcontractors and agents, to which Business Associate is permitted by this Business Associate Agreement or in writing by County to disclose County's Protected Health Information, to provide reasonable assurance, evidenced by written contract, that such subcontractor or agent will comply with the same privacy and security safeguard obligations with respect to County's Protected Health Information that are applicable to Business Associate under this BAA.

3. **Compliance with Transaction Standards.** If Business Associate conducts in whole or part electronic Transactions on behalf of County for which DHHS has established Standards, Business Associate will comply, and will require any subcontractor or agent it involves with the conduct of such Transactions to comply, with each applicable requirement of the Transaction Rule, 45 C.F.R. Part 162. Business Associate will not enter into, or permit its subcontractors or agents to enter into, any Trading Partner Agreement in connection with the conduct of Standard Transactions on behalf of Organization that:

- a. Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
- b. Adds any data element or segment to the maximum defined data set;
- c. Uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or
- d. Changes the meaning or intent of the Standard Transaction's implementation specification.

4. **Individual Rights.**

- a. **Access.** Business Associate will, within 10 calendar days following County's request, make available to County or, at County's direction, to an individual (or the individual's personal representative) for inspection and obtaining copies of County's Protected Health Information about the individual that is in Business Associate's custody or control, so that County may meet its access obligations under 45 C.F.R. § 164.524 and, where applicable under HIPAA. Business Associate shall make such information available in an electronic format where directed by County.
- b. **Amendment.** Business Associate will, upon receipt of written notice from County, promptly amend or permit County access to amend any portion of County's Protected Health Information, so that County may meet its amendment obligations under 45 C.F.R. § 164.526.
- c. **Disclosure Accounting.** So that County may meet its disclosure accounting obligations under 45 C.F.R. § 164.528:
 - i. ***Disclosures Subject to Accounting.*** Business Associate will record the information specified in Section 3(c)(iii) below ("Disclosure Information") for each disclosure of

County's Protected Health Information, not excepted from disclosure accounting as specified in Section 3(c)(ii) below, that Business Associate makes to County or to a third party.

- ii. *Disclosures Not Subject to Accounting.* Business Associate will not be obligated to record Disclosure Information or otherwise account for the following disclosures of County's Protected Health Information:
 - A. That occurred before April 14, 2003;
 - B. For Treatment, Payment or Health Care Operations activities (except where such recording or accounting is required by HIPAA, and as of the effective dates for this provision of HIPAA);
 - C. To an individual who is the subject of County's Protected Health Information disclosed, or to that individual's personal representative;
 - D. Pursuant to an authorization compliant with 45 C.F.R. § 164.508 that is signed by an individual who is the subject of County's Protected Health Information disclosed, or by that individual's personal representative;
 - E. For notification of and to persons involved in the care or payment related to the health care of an individual who is the subject of County's Protected Health Information disclosed and for disaster relief;
 - F. To law enforcement officials or correctional institutions in accordance with 45 C.F.R. § 164.512(k)(5);
 - G. For national security or intelligence purposes in accordance with 45 C.F.R. § 164.512(k)(2);
 - H. In a Limited Data Set;
 - I. Incident to a use or disclosure that Business Associate is otherwise permitted to make by this Business Associate Agreement; and
 - J. Otherwise excepted from disclosure accounting as specified in 45 C.F.R. § 164.528.
- iii. *Disclosure Information.* With respect to any disclosure by Business Associate of County's Protected Health Information that is not excepted from disclosure accounting by Section 3(c)(ii) above, Business Associate will record the following Disclosure Information as applicable to the type of accountable disclosure made:
 - A. *Availability of Disclosure Information.* Unless otherwise provided under HIPAA, Business Associate will maintain the Disclosure Information for at least 6 years following the date of the accountable disclosure to which the Disclosure Information relates. Business Associate will make the Disclosure Information available to County within 10 days following County's request for such Disclosure Information to comply with an individual's request for disclosure accounting. In addition, where Business Associate is contacted directly by an individual based on information provided to the individual by County and where so required by HIPAA and/or any accompanying regulations, Business Associate shall make such Disclosure Information available directly to the individual.
 - B. *Disclosure Information Generally.* Except for repetitive disclosures of County's Protected Health Information as specified in Section 3(c)(iii)(B) below and for disclosures for large Research studies as specified in Section 3(c)(iii)(C) below, the Disclosure Information that Business Associate must record for each accountable disclosure is (i) the disclosure date, (ii) the name and (if known) address of the entity to which Business Associate made the disclosure, (iii) a brief description of County's Protected Health Information

disclosed, and (iv) a brief statement of the purpose of the disclosure.

Business Associate further shall provide any additional information to the extent required by HIPAA and any accompanying regulations.

- C. *Disclosure Information for Repetitive Disclosures.* For repetitive disclosures of County's Protected Health Information that Business Associate makes for a single purpose to the same person or entity (including County), the Disclosure Information that Business Associate must record is either the Disclosure Information specified in Section 3(c)(iii)(A) above for each accountable disclosure, or (i) the Disclosure Information specified in Section 3(c)(iii)(A) above for the first of the repetitive accountable disclosures, (ii) the frequency, periodicity, or number of the repetitive accountable disclosures, and (iii) the date of the last of the repetitive accountable disclosures.
- D. *Disclosure Information for Large Research Activities.* For disclosures of County's Protected Health Information that Business Associate makes for particular Research involving 50 or more individuals and for which an Institutional Review Board or Privacy Board has waived authorization during the period covered by an individual's disclosure accounting request, the Disclosure Information that Business Associate must record is (i) the name of the Research protocol or activity, (ii) a plain language description of the Research protocol or activity, including its purpose and criteria for selecting particular records, (iii) a brief description of the type of County's Protected Health Information disclosed for the Research, (iv) the dates or periods during which Business Associate made or may have made these disclosures, including the date of the last disclosure that Business Associate made during the period covered by an individual's disclosure accounting request, (v) the name, address, and telephone number of the Research sponsor and of the researcher to whom Business Associate made these disclosures, and (vi) a statement that County's Protected Health Information relating to an individual requesting the disclosure accounting may or may not have been disclosed for a particular Research protocol or activity.

- d. **Restriction Agreements and Confidential Communications.** Business Associate will comply with any agreement that County makes that either (i) restricts use or disclosure of County's Protected Health Information pursuant to 45 C.F.R. § 164.522(a), or (ii) requires confidential communication about County's Protected Health Information pursuant to 45 C.F.R. § 164.522(b), provided that County notifies Business Associate in writing of the restriction or confidential communication obligations that Business Associate must follow. County will promptly notify Business Associate in writing of the termination or alteration of any such restriction agreement or confidential communication requirement.

5. **Privacy Breach and Security Incidents.**

a. **Reporting.**

- i. *Privacy Breach.* Business Associate will report to County any use or disclosure of County's Protected Health Information not permitted by this Business Associate Agreement or in writing by County. In addition, Business Associate will report, following discovery and without unreasonable delay, but in no event later than 48 hours following discovery, any "Breach" of "Unsecured Protected Health Information" as these terms are defined by HIPAA and any implementing regulations. This obligation to report shall include any unauthorized acquisition, access, use, or disclosure, even where Business Associate has determined that

such unauthorized acquisition, access, use, or disclosure does not compromise the security or privacy of such information, unless such acquisition, access, use or disclosure is excluded from the definition of breach in 45 C.F.R. 164.402(2).

Business Associate shall cooperate with County in investigating the Breach and in meeting the County's obligations under HIPAA and any other security breach notification laws.

- ii. Any such report shall include the identification (if known) of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. Business Associate will make the report to County's Privacy Officer not more than 5 business days after Business Associate learns of such non-permitted use or disclosure. Business Associate's report will at least:
 - A. Identify the nature of the non-permitted access, use or disclosure, including the date of the Breach and the date of discovery of the Breach;
 - B. Identify County's Protected Health Information accessed, used or disclosed as part of the Breach (e.g., full name, social security number, date of birth, etc.);
 - C. Identify who made the non-permitted access, use or disclosure and who received the non-permitted disclosure;
 - D. Identify what corrective action Business Associate took or will take to prevent further non-permitted access, uses or disclosures;
 - E. Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted access, use or disclosure; and
 - F. Provide such other information, including a written report, as County may reasonably request.
- iii. *Security Incidents.* Business Associate will report to County any attempted or successful (A) unauthorized access, use, disclosure, modification, or destruction of County's Electronic Protected Health Information or (B) interference with Business Associate's system operations in Business Associate's information systems, of which Business Associate becomes aware. If any such security incident resulted in a disclosure of County's Protected Health Information not permitted by this Business Associate Agreement, Business Associate will make the report in accordance with Section 4(a)(i) above.

b. Term and Termination of Agreement

- i. *Term.* This BAA shall be coterminous with the Agreement.
- ii. *Right to Terminate for Breach.* County may terminate the Agreement if it determines, in its sole discretion, that Business Associate has breached any provision of this BAA and upon written notice to Business Associate of the breach, Business Associate fails to cure the breach within a reasonable period of time established at the discretion of the County not to exceed 30 days without the express, written consent of the County. County may exercise this right to terminate the Agreement by providing Business Associate written notice of termination, stating the failure to cure the breach of this BAA that provides the basis for the termination. Any such termination will be effective immediately or at such other date specified in County's notice of termination. If for any reason County determines that Business Associate has breached the terms of this BAA and such breach has not been cured, but County determines that termination of the Agreement is not feasible, County may report such breach to the U.S. Department of Health and Human Services.

- iii. Business Associate may terminate the Agreement if it determines, after reasonable consultation with County, that County has breached any material provision of this BAA and upon written notice to County of the breach, County fails to cure the breach within 30 days after receipt of the notice or such additional period of time as the parties mutually agree. Business Associate may exercise this right to terminate the Agreement by providing County written notice of termination, stating the failure to cure the breach of this BAA that provides the basis for the termination. Any such termination will be effective upon such reasonable date as the parties mutually agree. If Business Associate reasonably determines that County has breached the terms of this BAA and such breach has not been cured, but Business Associate and County mutually determine that termination of the Agreement is not feasible, Business Associate may report such breach to the U.S. Department of Health and Human Services.
- iv. *Obligations on Termination.*
 - A. Return or Destruction of County's Protected Health Information as Feasible. Upon termination or other conclusion of the Agreement, Business Associate will, if feasible, return to County or destroy all of County's Protected Health Information in whatever form or medium, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of County's Protected Health Information. Business Associate will require any subcontractor or agent, to which Business Associate has disclosed County's Protected Health Information as permitted by Section 1(e) of this BAA, to, if feasible, return to Business Associate (so that Business Associate may return it to County) or destroy all of County's Protected Health Information in whatever form or medium received from Business Associate, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of County's Protected Health Information, and certify on oath to Business Associate that all such information has been returned or destroyed. Business Associate will complete these obligations as promptly as possible, but not later than 60 days following the effective date of the termination or other conclusion of the Agreement.
 - B. Procedure When Return or Destruction Is Not Feasible. Business Associate will identify any of County's Protected Health Information, including any that Business Associate has disclosed to subcontractors or agents as permitted by Section 1(e) of this BAA, that cannot feasibly be returned to County or destroyed and explain why return or destruction is infeasible. Where County agrees that such return or destruction is infeasible, Business Associate will limit its further use or disclosure of such information to those purposes that make return or destruction of such information infeasible. If County does not agree, subparagraph A above shall apply. Business Associate will, by its written contract with any subcontractor or agent to which Business Associate discloses County's Protected Health Information as permitted by Section 1(e) of this BAA, require such subcontractor or agent to limit its further use or disclosure of County's Protected Health Information that such subcontractor or agent cannot feasibly return or destroy to those purposes that make the return or destruction of such information infeasible. Business Associate will complete these obligations as promptly as possible, but not later than 60

days following the effective date of the termination or other conclusion of the Agreement.

C. **Continuing Privacy and Security Obligation.** Business Associate's obligation to protect the privacy and safeguard the security of County's Protected Health Information as specified in this BAA will be continuous and survive termination or other conclusion of the Agreement and this BAA.

D. **Other Obligations and Rights.** Business Associate's other obligations and rights and County's obligations and rights upon termination or other conclusion of the Agreement will be those specified in the Agreement.

c. **Defense and Indemnification.** Business Associate will defend, indemnify and hold harmless County and any County department, affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs as well as notification and credit monitoring costs, arising out of or in connection with any non-permitted use or disclosure of County's Protected Health Information or other breach of this BAA by Business Associate or any subcontractor or agent under Business Associate's control.

i. *Right to Tender or Undertake Defense.* If County is named a party in any judicial, administrative or other proceeding arising out of or in connection with any non-permitted use or disclosure of County's Protected Health Information or other breach of this BAA by Business Associate or any subcontractor or agent under Business Associate's control, County will have the option at any time either (A) to tender its defense to Business Associate, in which case Business Associate will provide qualified attorneys, consultants, and other appropriate professionals to represent County's interests at Business Associate's expense, or (B) undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represent its interests, in which case Business Associate will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants, and other professionals.

ii. *Right to Control Resolution.* County will have the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of actions, liabilities or damages against it, notwithstanding that County may have tendered its defense to Business Associate. Any such resolution will not relieve Business Associate of its obligation to indemnify County under this Section 4(c).

iii. *Survival.* The defense and indemnification obligations provided herein shall survive the expiration or termination of this Agreement, whether occasioned by this Agreement's expiration or earlier termination.

6. **General Provisions.**

a. **Inspection of Internal Practices, Books, and Records.** Business Associate will make its internal practices, books, and records relating to its use and disclosure of County's Protected Health Information available to County and to DHHS to determine County's compliance with the Privacy Rule, 45 C.F.R. Part 164, Subpart E, and the Security Rule.

b. **Amendment to Agreement.** Upon the compliance date of any final regulation or amendment to final regulation promulgated by DHHS that affects Business Associate's use or disclosure of County's Protected Health Information or Standard Transactions, the Agreement and this BAA will automatically amend such that the obligations imposed on Business Associate remain in compliance with the final regulation or amendment to final regulation. Any other amendment or waiver of this BAA shall require a separate writing executed by the parties that expressly modifies or waives a specific provision(s)

of, this BAA.

- c. **Compliance.** To the extent that the Business Associate is to carry out a covered entity's obligation under HIPAA, the Business Associate shall comply with the requirements applicable to carrying out the obligation.
7. **Conflicts.** The terms and conditions of this BAA will override and control any conflicting term or condition of the Agreement. All non-conflicting terms and conditions of the Agreement remain in full force and effect.
8. **No Third Party Beneficiaries.** County and Business Associate agree that there are no intended third party beneficiaries under, or other parties to, this BAA.
9. **Governing Law; Jurisdiction; Venue.** This BAA will be governed by and construed in accordance with the laws of the State of New York. Any action brought under this Business Associate Agreement will be brought in a court of competent jurisdiction venued in the County of Otsego, State of New York.
10. **Miscellaneous.**
 - a. **Amendment.** County and Business Associate agree to take such action as is necessary to amend this BAA from time to time as is necessary for compliance with the requirements of HIPAA and any other applicable law.
 - b. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.

IN WITNESS WHEREOF, the County and Business Associate have executed this BAA.

DIGITAL SIGNATURE PAGE

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of March 04, 2025 ("Effective Date") between
Cherry Valley – Springfield Central School District ("Owner") and
PO Box 485, 597 Co. Hwy. 54 Cherry Valley, New York 13320
Bernier, Carr & Associates, Engineers, Architects and Land Surveyors, P.C. ("Engineer").
15 Public Square, Watertown, New York 13601 (BCA)

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
Wastewater Treatment Plant Improvements BCA Project Number: 2024-114 ("Project")
Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:
Study and Report; Design, Bidding, Construction, and Post-Construction Phase Services

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer's services;

2. the presence at the Site of any Constituent of Concern; or
3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required **within** in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, **as its sole remedy**, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. **Invoices must include a breakdown of services provided.** Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within ~~30~~ **60** days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within ~~30~~ **60** days after receipt of Engineer's invoice, then:

1. amounts due Engineer will be increased at the rate of **0.5%** per month (or the maximum rate of interest permitted by law, if less) from said **sixtieth** day; and
 2. Engineer may, after giving **thirty** days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

- G. ~~The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.~~
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all

other necessary Construction Phase administrative, engineering, and professional services. ~~Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.~~

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; ~~(3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and~~ (3) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer ~~shall~~ **may** jointly develop such protocols.

- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against **Owner**, Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss **to the extent** covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least **30** days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain

such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

1. *By Owner:* Owner may suspend the Project ~~for up to 90 days~~ upon seven days written notice to Engineer. **If the project is suspended by the Owner for more than 30 days and is then resumed, the Engineer's compensation may be equitably adjusted, as mutually agreed, using Exhibit K, Amendment to Owner Engineer Agreement, to provide for expenses incurred in the interruption and resumption of Engineer's services.**
2. *By Engineer:* Engineer may, after giving **thirty** days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) ~~Engineer shall have no liability to Owner on account of such termination.~~
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same,

then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement **through the date of termination** and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.

~~2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close out costs, using methods and rates for Additional Services as set forth in Exhibit C.~~

~~3. Rates for Additional Services as set forth in Exhibit C.~~

6.07 *Controlling Law*

A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall **immediately** notify (1) Owner **in writing** and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have

the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.

- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. ~~Environmental Indemnification: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorney's fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.~~
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual,

shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:

1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.

11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.

22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.

- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. ~~Exhibit F, Construction Cost Limit.~~ **Not Used**
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. ~~Exhibit J, Special Provisions.~~ **Not Used**
- K. Exhibit K, Amendment to Owner-Engineer Agreement.
- L. **Exhibit L, NYS Environmental Facilities Corporation "Guidance for Mandatory State Financial Assistance Terms and Conditions"; Effective Date October 1, 2023.**

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: Cherry Valley – Springfield Central School District

By: _____
Print name: _____
Title: _____
Date Signed: _____

Address for Owner's receipt of notices:

Designated Representative (Paragraph 8.03.A):
Title: _____
Phone Number: _____
E-Mail Address: _____

Engineer: Bernier, Carr & Associates, Engineers, Architects and Land Surveyors, P.C.

By: **Casey D. Dickinson, PE**
Digitally signed by Casey D. Dickinson, PE
Date: 2025.03.05 11:39:28-05'00'
Print name: Casey D. Dickinson, P.E.
Title: Principal / Engineer
Date Signed: March 05, 2025

Engineer License or Firm's Certificate No. (if required):
095942
State of: New York

Address for Engineer's receipt of notices:

15 Public Square
Watertown, New York 13601
Designated Representative (Paragraph 8.03.A):
Casey D. Dickinson, P.E.
Title: Principal / Engineer
Phone Number: (315) 782-8130 ext. 279
E-Mail Address: cdickinson@thebcgroup.com

This is **EXHIBIT A**, consisting of 17 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **March 04, 2025**.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
 - a. ~~If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions: **N/A**~~
 - b. **If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.**
 - c. ~~If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify [] *[insert specific number]* alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.~~
2. Identify potential **reasonable** solution(s) to meet Owner's Project requirements, as needed.
3. Study and evaluate the **reasonable** potential solution(s) to meet Owner's Project requirements.
4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the

study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.

6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.
8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.
9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."
11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
14. Perform or provide the following other Study and Report Phase tasks or deliverables:
 - a. **Assist the Owner with coordinating subsurface investigations efforts, and sampling and testing of existing sand bed media.**
 - b. **Assist the Owner with completing the NY State Environmental Quality Review (SEQR) process following acceptance of the Report.**

Exhibit A – Engineer's Services

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- c. Assist the Owner with determining the recommended Project's eligibility for funding through relevant state and federal funding programs such as NYS Water Infrastructure Improvement Act, the NYS Clean Water State Revolving Fund, the Water Quality Improvement Project Program, USDA Rural Development, and others.
15. Furnish **three (3)** review copies of the Report and any other Study and Report Phase deliverables to Owner within **three-hundred and sixty five (365)** days of the Effective Date and review it with Owner. Within **seven (7)** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 16. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish **three (3)** copies of the revised Report and any other Study and Report Phase deliverables to the Owner within **seven (7)** days of receipt of Owner's comments.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

~~A1.02 Preliminary Design Phase~~

- ~~A. After acceptance by Owner of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:~~
- ~~B. tion (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:~~
- ~~C. ion (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:~~
 - ~~1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.~~
 - ~~2. -descriptions of the Project.~~

3. ~~In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.~~
4. ~~Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.~~
5. ~~Visit the Site as needed to prepare the Preliminary Design Phase documents.~~
6. ~~Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.~~
7. ~~Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.~~
8. ~~Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.~~
9. ~~Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.~~
10. ~~Perform or provide the following other Preliminary Design Phase tasks or deliverables:~~
N/A
11. ~~Furnish **three (3)** review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within **To Be Determined (TBD)** days of authorization to proceed with this phase, and review them with Owner. Within **thirty (30)** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.~~

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- ~~12. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner three (3) copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within thirty (30) days after receipt of Owner's comments.~~

~~D. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.~~

~~A1.03 — Final Design Phase~~

~~A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:~~

- ~~1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.~~
- ~~2. performed and furnished by Contractor.~~
- ~~3. Visit the Site as needed to assist in preparing the final Drawings and Specifications.~~
- ~~4. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.~~
- ~~5. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.~~
- ~~6. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.~~
- ~~7. r during the Construction Phase and Post Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.~~
- ~~8. hall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.~~

- ~~9. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.~~
 - ~~10. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.~~
 - ~~11. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.~~
 - ~~12. Perform or provide the following other Final Design Phase tasks or deliverables: N/A~~
 - ~~13. Furnish for review by Owner, its legal counsel, and other advisors, **three (3)** copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within **To Be Determined (TBD)** days of authorization to proceed with the Final Design Phase, and review them with Owner. Within **thirty (30)** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.~~
 - ~~14. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit **three (3)** final copies of such documents to Owner within **thirty (30)** days after receipt of Owner's comments and instructions.~~
- ~~B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables **and all final design phase deliverables have been accepted by Owner.**~~
- ~~C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.~~
- ~~D. quence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.~~

Exhibit A – Engineer's Services

~~E. contracts is to proceed concurrently.~~

~~F. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is **one (1)**. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.~~

~~A1.04 Bidding or Negotiating Phase~~

~~A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:~~

- ~~1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.~~
- ~~2. ng-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.~~
- ~~3. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.~~
- ~~4. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.~~
- ~~5. Consult with Owner as to the qualifications of prospective contractors.~~
- ~~6. Consult with Owner as to the qualifications of sub-contractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.~~
- ~~7. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.~~
- ~~8. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.~~

Exhibit A – Engineer's Services

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9. ~~If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.~~
 10. ~~Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables: **Upon award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications.**~~
- B. ~~The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).~~

~~A1.05 Construction Phase~~

~~A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:~~

1. ~~*General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.~~
2. ~~*Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.~~
3. ~~*Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.~~
4. ~~*Pre-Construction Conference:* Participate in **and chair** a pre-construction conference prior to commencement of Work at the Site.~~
5. ~~*Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with~~

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~~Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.~~

6. ~~7.~~
7. ~~Original Documents: If requested by Owner to do so, Maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.~~
8. ~~Schedules: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.~~
9. ~~Baselines and Benchmarks: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.~~
10. ~~Visits to Site and Observation of Construction: In connection with observations of Contractor's Work while it is in progress:~~
 - a. ~~Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.~~
 - b. ~~the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.~~
 - c. ~~the progress of the Work.~~
 - d. ~~The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the~~

~~Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.~~

~~e. ce with the Construction Contract Documents.~~

- ~~11. **Defective Work: Reject Work Recommend to Owner that Contractor's work be rejected while it is in progress** if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.~~
- ~~12. **Compatibility with Design Concept:** If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.~~
- ~~13. **Clarifications and Interpretations:** Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.~~
- ~~14. **Contract Documents.**~~
- ~~15. **Non-reviewable Matters:** If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.~~
- ~~16. **Will not provide a decision or interpretation.**~~

17. ~~ion or interpretation.~~
18. ~~Field Orders:~~ Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
19. ~~Change Orders and Work Change Directives:~~ Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
20. ~~Differing Site Conditions:~~ Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
21. ~~Shop Drawings, Samples, and Other Submittals:~~ Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
22. ~~ty precautions and programs incident thereto.~~ Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
23. ~~y precautions and programs incident thereto.~~ Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
24. ~~Substitutes and "Or equal":~~ Evaluate and determine the acceptability of substitute or "or equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
25. ~~Inspections and Tests:~~
 - a. ~~Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.~~
 - b. ~~er shall be entitled to rely on the results of such inspections and tests.~~
 - c. ~~r shall be entitled to rely on the results of such inspections and tests.~~

- d. ~~As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.~~
 - e. ~~Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.~~
26. *Change Proposals and Claims:* ~~(a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.~~
27. *Applications for Payment:* ~~Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:~~
- a. ~~Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).~~
 - b. ~~h payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).~~
 - c. ~~yment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).~~
 - d. ~~By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended~~

~~to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.~~

~~e. — t should be paid.~~

- ~~28. **Contractor's Completion Documents:** Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages. **Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings and furnish such Record Drawings to Owner.**~~
- ~~29. **Substantial Completion:** Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.~~
- ~~30. **ining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.**~~
- ~~31. **Other Tasks:** Perform or provide the following other Construction Phase tasks or deliverables: **N/A**~~
- ~~32. **Final Notice of Acceptability of the Work:** Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final~~

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payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement

33. ~~Standards for Certain Construction Phase Decisions:~~ Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

~~B. Duration of Construction Phase:~~ The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

~~C. compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.~~

~~D. Limitation of Responsibilities: Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.~~

~~A1.06 — Post Construction Phase~~

~~A. Upon written authorization from Owner during the Post Construction Phase, Engineer shall:~~

- ~~1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.~~
- ~~2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.~~

3. ~~any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.~~
4. ~~Perform or provide the following other Post Construction Phase tasks or deliverables:~~
N/A

~~B. The Post Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.~~

PART 2—ADDITIONAL SERVICES

A2.01—Additional Services Requiring Owner's Written Authorization

~~A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.~~

1. ~~Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.~~
2. ~~Impact of the Project.~~
3. ~~impact of the Project.~~
4. ~~Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.~~
5. ~~Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.~~
6. ~~o the Effective Date or are due to any other causes beyond Engineer's control.~~
7. ~~Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2, but only if the Owner's request is made after completion of the Study and Report Phase.~~

- ~~8. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.~~
- ~~9. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.~~
- ~~10. Undertaking investigations and studies including, but not limited to:~~
 - ~~a. detailed consideration of operations, maintenance, and overhead expenses;~~
 - ~~b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;~~
 - ~~c. preparation of appraisals;~~
 - ~~d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;~~
 - ~~e. detailed quantity surveys of materials, equipment, and labor; and~~
 - ~~f. audits or inventories required in connection with construction performed or furnished by Owner.~~
- ~~11. Furnishing services of Consultants for other than Basic Services.~~
- ~~12. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.~~
- ~~13. Providing the following services:~~
 - ~~a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.~~
 - ~~b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.~~
- ~~14. Services during out of town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).~~
- ~~15. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.~~
- ~~16. Preparing additional bidding-related documents (or requests for proposals or other~~

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- ~~17. construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.~~
- ~~18. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.~~
- ~~19. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.~~
- ~~20. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.~~
- 21. Preparing Record Drawings, and furnishing such Record Drawings to Owner.**
- ~~22. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.~~
- ~~23. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.~~
- ~~24. Preparation of operation, maintenance, and staffing manuals.~~
- ~~25. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).~~
- ~~26. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.~~
- ~~27. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.~~
- ~~28. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.~~
- ~~29. Overtime work requiring higher than regular rates.~~
- ~~30. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.~~
- ~~31. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.~~

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32. ~~Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).~~
33. ~~Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.~~
34. ~~Field Surveys – Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.~~
35. ~~hen at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.~~
36. ~~at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.~~

A2.02 ~~Additional Services Not Requiring Owner's Written Authorization~~

~~A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.~~

1. ~~Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.~~
2. ~~Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equals" items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.~~
3. ~~Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.~~
4. ~~Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or~~

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~~acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.~~

- ~~5. tion of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.~~
- ~~6. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.~~
- ~~7. -Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.~~
- ~~8. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.~~
- ~~9. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.~~
- ~~10. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.~~

This is **EXHIBIT B**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 04, 2025.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.

3. Utility and topographic mapping and surveys.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. **The Owner shall pay the contractor(s) any amounts due under the Construction Contract.**

- U. Perform or provide the following: **Sampling and Testing of the Existing Sand Bed Media; Subsurface Investigations at and adjacent to the Project Site; Influent and Effluent Sampling and Testing; and Access to the Existing Aeration Tank and related piping.**

This is **EXHIBIT C**, consisting of 6 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 04, 2025.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. A Lump Sum amount of **\$23,900.00** based on the following estimated distribution of compensation:

a. Study and Report Phase	\$ 23,900.00
b. Preliminary Design Phase	\$ N/A
c. Final Design Phase	\$ N/A
d. Bidding and Negotiating Phase	\$ N/A
e. Construction Phase	\$ N/A
f. Post-Construction Phase	\$ N/A

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.

3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.

4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses **up to a limit of \$1,000.00** (see Appendix 1 for rates or charges): **transportation (including mileage), lodging, and subsistence incidental thereto other than to the project; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants’ charges. In addition, if authorized**

in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.

5. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period. **Reimbursable Expenses associated with Basic Services will be billed in accordance with Paragraph C2.05.B.**
- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding **twelve (12)** months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted **with concurrence of the Owner.**

COMPENSATION PACKET RPR-2:
Resident Project Representative – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

~~C2.04 Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment~~

~~A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:~~

- ~~1. Resident Project Representative Services: For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be **To Be Determined (TBD) \$ TBD** based upon full time RPR services on an eight-hour workday, Monday through Friday, over a **five (5) day per week** construction schedule.~~

~~B. Compensation for Reimbursable Expenses:~~

- ~~1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.~~
- ~~2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: **transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.**~~
- ~~3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of **1.15**.~~
- ~~4. The Reimbursable Expenses Schedule will be adjusted annually (as of **January 1st**) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred upon by the Owner.**~~

~~C. Other Provisions Concerning Payment Under this Paragraph C2.04:~~

Exhibit C – Compensation Packet RPR-2: Resident Project Representative Services –
Standard Hourly Rates Method of Payment.

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1. ~~Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, these charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.15.~~
2. ~~*Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.~~
3. ~~*Estimated Compensation Amounts:*~~
 - a. ~~Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.~~
 - b. ~~When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.~~
 - c. ~~rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.~~
 - d. ~~rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.~~
4. ~~To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at no cost.~~

**COMPENSATION PACKET AS-1:
Additional Services—Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05—Compensation for Additional Services—Standard Hourly Rates Method of Payment

~~A.—Owner shall pay Engineer for Additional Services, if any, as follows:~~

- ~~1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.~~
- ~~2. *rmmed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.*~~
- ~~3. *the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.*~~

~~B.—Compensation For Reimbursable Expenses:~~

- ~~1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.~~
- ~~2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: **transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.**~~
- ~~3. **ts' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.**~~
- ~~4. **e expenses incurred for the use of highly specialized equipment.**~~
- ~~5. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer,~~

Exhibit C – Compensation Packet AS-1: Additional Services –
Standard Hourly Rates Method of Payment.

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plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of **1.15**.

6. The Reimbursable Expenses Schedule will be adjusted annually (as of **January 1st**) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner.**

C. ~~Other Provisions Concerning Payment for Additional Services:~~

1. ~~Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of **1.15**.~~
2. ~~**Factors:** The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.~~
3. ~~To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at **no cost**.~~

D. ~~Summary of Additional Services:~~

<u>Description of Service</u>	<u>Amount</u>	<u>Basis of Payment</u>
a. Reimbursable Expenses	\$1,000.00	Expenses
b. To Be Determined (TBD)		
c. TBD		
d. TBD		
e. TBD		
Total Additional Services: \$1,000.00		

This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 04, 2025.

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

- Travel by auto (per mile) per IRS Standard
Rate Schedule
- Travel by Field Truck/Survey Vehicle (per mile) per IRS Standard
Rate Schedule x 1.25
- Travel by Air Actual Cost
- Expenses Direct Cost + 10%

This is **Appendix 2 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 04, 2025.

Standard Hourly Rates Schedule

A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. Schedule:

Hourly rates for services performed on or after the date of the Agreement are:

HOURLY RATE SCHEDULE

Senior Principal	\$ 170.00 per hour
Principal	\$ 160.00 per hour
Associate Principal.....	\$ 155.00 per hour
Senior Engineer / Associate	\$ 150.00 per hour
Engineer	\$ 130.00 per hour
Senior Project Manager.....	\$ 115.00 per hour
Project Manager	\$ 105.00 per hour
Junior Engineer 3	\$ 95.00 per hour
Junior Engineer 2	\$ 90.00 per hour
Junior Engineer 1	\$ 85.00 per hour
Sr. Design Drafter	\$ 100.00 per hour
Drafter.....	\$ 85.00 per hour
Project Assistant	\$ 80.00 per hour
Resident Engineer.....	\$ 125.00 per hour
Senior Field Representative	\$ 105.00 per hour
Field Representative.....	\$ 95.00 per hour
Intern	\$ 50.00 per hour
Field Survey Crew (2-man, NYS prevailing rate)	\$ 260.00 per hour
Field Survey Crew (2-man, regular rate).....	\$ 200.00 per hour
UAV Pilot.....	\$ 150.00 per hour
Sr. Geospatial Technician	\$ 105.00 per hour
Survey / Geospatial / GPS Technician	\$ 95.00 per hour
Geospatial Field Assistant	\$ 90.00 per hour
Administration	\$ 75.00 per hour

Exhibit C – Appendix 2: Standard Hourly Rates Schedule.

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This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **March 04, 2025**.

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 – SERVICES OF ENGINEER

D1.01 – Resident Project Representative

~~A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. Full time Resident Project Representation is required unless requested in writing by the Owner.~~

~~B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.~~

~~C. graph A1.05, of this Agreement are applicable.~~

~~D. The duties and responsibilities of the RPR are as follows:~~

- ~~1. **General:** RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.~~
- ~~2. **Schedules:** Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.~~
- ~~3. **Conferences and Meetings:** Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project related meetings~~

Exhibit D - Resident Project Representative.

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~~(but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.~~

4. ~~*Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.~~
5. ~~*Liaison:*~~
 - a. ~~Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.~~
 - b. ~~Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on Site operations.~~
 - c. ~~Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.~~
6. ~~*Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.~~
7. ~~ctor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.~~
8. ~~eer's clarifications, interpretations, and decisions to Contractor.~~
9. ~~*Shop Drawings and Samples:*~~
 - a. ~~Record date of receipt of Samples and Contractor approved Shop Drawings.~~
 - b. ~~Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.~~
 - c. ~~Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.~~
10. ~~*Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.~~
11. ~~*Review of Work; Defective Work:*~~

Exhibit D - Resident Project Representative.

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- a. ~~Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.~~
- b. ~~Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work.; and~~
- c. ~~concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work.; and~~
- d. ~~Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.~~

12. *Inspections, Tests, and System Start-ups:*

- a. ~~Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.~~
- b. ~~Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.~~
- c. ~~Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.~~
- d. ~~Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.~~
- e. ~~Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.~~

13. *Records:*

- a. ~~Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.~~
- b. ~~Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed~~

~~conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.~~

- ~~e. diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.~~
- ~~d. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.~~
- ~~e. gress or Site conditions.~~
- ~~f. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.~~
- ~~g. Maintain records for use in preparing Project documentation.~~
- ~~h. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.~~

14. *Reports:*

- ~~a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.~~
- ~~b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.~~
- ~~c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.~~
- ~~d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.~~

15. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

16. ~~Certificates, Operation and Maintenance Manuals:~~ During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

17. ~~Completion:~~

- a. ~~Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.~~
- b. ~~Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.~~
- c. ~~Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).~~

E. ~~Resident Project Representative shall not:~~

- 1. ~~Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or equal" items).~~
- 2. ~~Exceed limitations of Engineer's authority as set forth in this Agreement.~~
- 3. ~~Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.~~
- 4. ~~Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.~~
- 5. ~~Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.~~
- 6. ~~Participate in specialized field or laboratory tests or inspections conducted off site by others except as specifically authorized by Engineer.~~
- 7. ~~Accept Shop Drawing or Sample submittals from anyone other than Contractor.~~
- 8. ~~Authorize Owner to occupy the Project in whole or in part.~~



NOTICE OF ACCEPTABILITY OF WORK

PROJECT: Wastewater Treatment Plant Improvements
(BCA Project No. 2024-114)

OWNER: Cherry Valley – Springfield Central School District

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER: Bernier, Carr & Associates, Engineers, Architects and Land Surveyors, P.C.

NOTICE DATE:

To: Cherry Valley – Springfield Central School District
Owner

And To: _____
Contractor

From: Bernier, Carr & Associates, Engineers, Architects and Land Surveyors, P.C.
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated March 04, 2025, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 04, 2025.

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 Insurance

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
 - 1) Bodily injury, each accident: \$ 1,000,000
 - 2) Bodily injury by disease, each employee: \$ 1,000,000
 - 3) Bodily injury/disease, aggregate: \$ 1,000,000
- c. General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$ 1,000,000
 - 2) General Aggregate: \$ 2,000,000
- d. Excess or Umbrella Liability --
 - 1) Per Occurrence: \$ 5,000,000
 - 2) General Aggregate: \$ 5,000,000
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
\$ 1,000,000
- f. Professional Liability --
 - 1) Each Claim Made \$ 2,000,000
 - 2) Annual Aggregate \$ 1,000,000
- g. Other (specify): \$ N/A

2. By Owner:

- a. Workers' Compensation: Statutory

Exhibit G – Insurance.

b. Employer's Liability --

- | | |
|--|--------------|
| 1) Bodily injury, Each Accident | \$ 1,000,000 |
| 2) Bodily injury by Disease, Each Employee | \$ 1,000,000 |
| 3) Bodily injury/Disease, Aggregate | \$ 1,000,000 |

c. General Liability --

- | | |
|---|--------------|
| 1) General Aggregate: | \$ 2,000,000 |
| 2) Each Occurrence (Bodily Injury and Property Damage): | \$ 1,000,000 |

d. Excess Umbrella Liability

- | | |
|-----------------------|--------------|
| 1) Per Occurrence: | \$ 5,000,000 |
| 2) General Aggregate: | \$ 5,000,000 |

e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):

\$ 1,000,000

f. Other (specify): \$ N/A

B. Additional Insureds:

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:

- | | |
|----|---|
| a. | Bernier, Carr & Associates, Engineers, Architects & Land Surveyors,
P.C. |
| | Engineer |
| b. | N/A |
| | Engineer's Consultant |
| c. | N/A |
| | Engineer's Consultant |
| d. | N/A |
| | [other] |

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

Exhibit G – Insurance.

This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 04, 2025

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by the American Arbitration Association. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 04, 2025.

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. Limitation of Engineer's Liability

- ~~1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by Engineer under this Agreement.~~
- ~~2. *ed to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by Engineer under this Agreement.*~~
- ~~3. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, including but not limited to:-~~

B. Indemnification of Engineer by Owner

- ~~1. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any~~

negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 04, 2025.

AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement: March 04, 2025

Owner: Cherry Valley – Springfield Central School District

Engineer: Bernier, Carr & Associates, Engineers, Architects and Land Surveyors, P.C.

Project: Wastewater Treatment Plant Improvements BCA Project No. 2024-114

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- ☐ Additional Services to be performed by Engineer
- ☐ Modifications to services of Engineer
- ☐ Modifications to responsibilities of Owner
- ☐ Modifications of payment to Engineer
- ☐ Modifications to time(s) for rendering services
- ☐ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	\$ <u>24,900.00</u>
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

Exhibit I - Limitations on Liability.

**EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.
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and American Society of Civil Engineers. All rights reserved.**

Page 1

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER: Cherry Valley – Springfield Central
School District

ENGINEER: Bernier, Carr & Associates, Engineers,
Architects and Land Surveyors, P.C.

By: _____
Print
name: _____

By: _____
Print
name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____



**Environmental
Facilities Corporation**

KATHY HOCHUL
Governor

MAUREEN A. COLEMAN
President and CEO

Guidance for Mandatory State Financial Assistance Terms and Conditions

For Contracts Funded with New York State Financial Assistance Only

Effective October 1, 2023

**New York State Environmental Facilities Corporation
625 Broadway, Albany, NY 12207-2997
P: (518) 402-6924
www.efc.ny.gov**

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INTRODUCTION

The New York State Environmental Facilities Corporation (“EFC”) implements various State financial assistance programs, including but not limited to the Water Infrastructure Improvement (“WIIA”) Grant program and the Intermunicipal Grant (“IMG”) program.

This Guidance provides a brief description of State program requirements for Contracts and Subcontracts funded by State financial assistance and materials to assist entities in complying with these requirements. Contracts that do not meet the required conditions may not be eligible, in whole or in-part, for financing.

The Guidance Materials are for informational purposes only and are not intended to be used as contractual language. Please do not incorporate the Guidance Materials into any Contracts or Subcontracts.

PROGRAM REQUIREMENTS SUMMARY

The following requirements apply to projects funded with State financial assistance only:

- Participation of Minority- and Women-Owned Business Enterprises (“MWBE”) and Equal Employment Opportunities (“EEO”) pursuant to New York State Executive Law, Article 15-A and New York Code of Rules and Regulations, Title 5 (5 NYCRR) Parts 140-145 (Regulations of the Commissioner of Economic Development);
- Participation of Service-Disabled Veteran-Owned Business Enterprises (“SDVOB”) pursuant to New York State Veteran’s Services Law Article 3;
- Applicable State and/or local prevailing wage requirements; and,
- Requirements regarding suspension and debarment pursuant to State Labor Law § 220-b and State Executive Law § 316.

EFC or its authorized representatives, and other governmental entities as applicable, reserve the right to conduct occasional site inspections to verify compliance with State financial assistance program requirements and review recipients monitoring of requirements.

This document is not intended to be inclusive of all applicable legal requirements and there may be other legal requirements that need to be included in a particular Contract or Subcontract that are not set forth here. Accordingly, EFC recommends that Recipients, Contractors, Subcontractors, and any other involved entities consult their legal counsel for advice on compliance with all applicable laws, including but not limited to local laws. This document is not intended to be legal advice.

Refer to the EFC website at www.efc.ny.gov for the latest version of the Mandatory State Financial Assistance Terms and Conditions to ensure that the most recent forms and contract language are being used.

GUIDANCE MATERIALS

COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

Broker means a firm that does not itself perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.

Construction means the process by which a contractor or subcontractor builds, alters, repairs, remodels, improves or demolishes infrastructure.

Contract means an agreement between a Recipient and a Contractor.

Contractor means all bidders, prime contractors, non-construction service providers, and consultants as hereinafter defined, unless specifically referred to otherwise.

Manufacturer means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.

MBO is designated and employed by the Recipient as a Minority Business or Compliance Officer responsible for MWBE/DBE/SDVOB/EEO reporting and compliance.

Non-Construction Provider means any individual or business enterprise that provides one or more of the following: legal, engineering, financial advisory, technical, or other professional services, supplies, commodities, equipment, materials, or travel.

Recipient means the party, other than EFC, to a grant agreement with EFC through which funds for the payment of amounts due thereunder are being paid in whole or in part. Responsible through Grant Agreement (GA) to comply with EFC requirements.

State means the State of New York.

Subcontract means an agreement between a Contractor and a Subcontractor.

Subcontractor means any individual or business enterprise that has an agreement, purchase order, or any other contractual arrangement with a Contractor.

Supplier means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

APPLICABILITY OF PROGRAM REQUIREMENTS

This table contains a breakdown of the applicable program requirements based on contract type and its value. For further details pertaining to each requirement, refer to the section identified in the heading. The relevant section number is the same in both Part 2 and Part 3 of this document.

Type of Contract	MWBE Section 1	SDVOB Section 2	EEO Section 1	Suspension & Debarment Section 3
Construction				
All				X
If greater than:				
\$100,000	X	X	X	X
Non-Construction Provider				
All				X
If greater than:				
\$25,000	X	X	X	X

SECTION 1

GUIDANCE FOR THE REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR WOMEN AND MINORITY GROUP MEMBERS

I. Business Participation Opportunities for MWBEs

A. Contract Goals

The goals provided in the Terms & Conditions Section 1(III)(A) are effective as of October 1, 2022. MWBE participation goals for a contract will be based on the goals in place at the time of the execution date of each respective contract, unless otherwise specified.

Please contact the MBO if you have any questions about the applicable MWBE participation goals for your contract.

B. Good Faith Efforts

The Contractor must make good faith efforts to develop an adequate MWBE Utilization Plan and must continue such good faith efforts to meet applicable MWBE participation goals. The Contractor shall maintain documentation of good faith efforts to solicit participation of MWBE firms for SRF-funded projects. If a Contractor is unable to meet contract MWBE participation goals, and submits a Request for Waiver, documentation of such good faith efforts must accompany the request. See Terms & Conditions, Section 1(III)(C). The Contractor should also continue good faith efforts to seek opportunities for MWBE participation during the life of the contract even if proposed goals have been achieved.

When MWBE and SDVOB goals both apply to a contract, good faith efforts should be sought simultaneously so that both types of certified firms have an equal opportunity to participate on the contract.

Examples of documentation of good faith efforts are set forth below:

- Information on the scope of work related to the contract, such as a copy of the schedule of values from the bid submission, and specific steps taken to reasonably structure the scope of work to break out tasks or equipment needs for the purpose of providing opportunities for subcontracting with, or obtaining supplies or services from, MBEs or WBEs.
- Printed screenshots of the directory of Certified Minority- and Women- Owned Business Enterprises ("MWBE directory") on Empire State Development's (ESD) website for certified MWBEs that provide the services or equipment necessary for the contract. Contact the MBO for assistance in performing a proper search including identifying a sufficient number of solicitations to show that good faith effort was made.
- Copies of timely solicitations and documentation (e.g., emails) that the Contractor offered relevant plans, specifications, or other related materials to MBE and WBE firms on ESD's MWBE directory to participate in the work, with the responses.
- A log prepared by the Contractor in a sortable spreadsheet documenting the Contractor's solicitation of MBEs and WBEs for participation as Subcontractors or Suppliers pursuant to a contract. The log should consist of the list of MBE and WBE firms solicited, their contact information, the type of work they were solicited to perform (or equipment to provide), how the solicitation was made (fax, phone, email) and the contact information, the contact's name and the outcome. If a bid was received, the bid price should also be included in the log.

See sample log at www.efc.ny.gov/mwbe-forms

If no response was received to an initial solicitation, at least one follow-up solicitation should be made in a different format than the first, e.g. email followed by phone call. Any winning bids received from non-MWBE firms for the same areas MWBEs were solicited should also be tracked on the log.

- Copies of any advertisements of sufficient duration to effectively seek participation of certified MBE and WBEs timely published in appropriate general circulation, trade and MWBE oriented publications, together with listing and dates of publication of such advertisements. EFC recommends the use of the NYS Contract Reporter that is free to all Contractors - <https://www.nyscr.ny.gov> .
- Documents demonstrating that insufficient MBEs or WBEs are reasonably available to perform the work.
- A written demonstration that the Contractor offered to make up any inability to meet the project MWBE participation goals in other Contracts and/or agreements performed by the Contractor on another SRF funded project.
- The date of pre-bid, pre-award, or other public meetings scheduled by the Recipient, if any, and the contact information of any MBEs and WBEs who attended and are capable of performing work on the project.
- Any other information or documentation that demonstrates the Contractor conducted good faith efforts to provide opportunities for MWBE participation in their work. For instance, Prime Contractors and MBOs should develop a list of MWBE firms that have expressed interest in working on SRF-funded projects.

EFC and/or the MBO reserves the right to request additional information and/or documentation to support the adequacy of the MWBE Utilization Plan and/or waiver request.

C. Review of the MWBE Utilization Plan

The MBO will evaluate a completed MWBE Utilization Plan. If the MBO finds the Utilization Plan sufficient, including necessary supporting documentation, it will be forwarded to EFC for review. If the MBO finds the Utilization Plan insufficient, the MBO will work with the Contractor to address deficiencies before submitting to EFC for review. A written notice of acceptance or deficiency will be issued by EFC within 20 business days of receipt of the completed Utilization Plan. Upon receipt of a notice of deficiency from either the MBO or EFC, the Contractor shall respond with a written remedy to such notice within seven (7) business days of receipt.

D. Eligibility for MWBE Participation Credit

1. To receive MWBE participation credit, Contractors or Subcontractors performing work that have been identified in an approved MWBE Utilization Plan must be certified as an MBE or WBE by ESD.
 - a. A Contractor, who is a certified MBE or WBE, will be credited for up to 100% of the category of their certification. However, good faith efforts to seek participation in the other category are also required.
2. Prime Contractors may include second or lower tier Subcontractors (Subcontractors hired by Subcontractors) on their MWBE Utilization Plan.
3. Commercially Useful Function

Credit for MWBE participation shall be granted only for MWBE firms performing a commercially useful business function according to custom and practice in the industry. An MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation.

- a. "Commercially useful functions" normally include:
 - i. Providing technical assistance to a purchaser prior to a purchase, during installation, and after the supplies or equipment are placed in service;
 - ii. Manufacturing or being the first tier below the manufacturer of supplies or equipment;
 - iii. Providing functions other than merely accepting and referring requests for supplies or equipment to another party for direct shipment to a Contractor; or,

- iv. Being responsible for ordering, negotiating price, and determining quality and quantity of materials and supplies.
- b. For construction Contracts or Subcontracts, the following rules apply when calculating MWBE utilization:
 - i. The portion of a Contract or Subcontract with an MWBE serving as a manufacturer that shall be deemed to represent the commercially useful function performed by the MWBE shall be 100% of the total value of the Contract or Subcontract.
 - ii. the portion of a Contract or Subcontract with an MWBE serving as a Supplier (as denoted by a NAICS code beginning with 423 or 424, or a NIGP code that does not begin with the number 9), and so designated in ESD's Directory, that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the Contract or Subcontract.
 - iii. the portion of a Contract or Subcontract with an MWBE serving as a Broker (as denoted by NAICS code 425120) that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.
- c. For Non-Construction Provider Contracts or Subcontracts, the following rules apply when calculating MWBE utilization:
 - i. the portion of a Contract or Subcontract with an MWBE serving as a Broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract. Any firms that are listed as Brokers or manufacturers' representatives (NAICS code 425120) and not specifically as Suppliers fall in this category.
- d. No credit will be granted for MWBEs that do not perform a commercially useful function.

E. Requests for Waiver

1. If the Contractor's application of good faith efforts does not result in the utilization of MWBE firms to achieve the aforementioned goals or a specialty equipment/service waiver is requested, the Contractor may request a full or partial waiver of MWBE participation goals by completing a Request for Waiver form, attaching appropriate documentation of good faith efforts, and submitting same to the MBO. When the MBO deems the documentation acceptable, the MBO will submit the documentation to EFC for final review. See also Terms & Conditions, Section 1(III)(C). Even if an MWBE waiver is granted, EEO information must still be submitted.
2. The MBO and EFC will review each waiver request based on the good faith effort criteria presented above and the documentation submitted with the waiver request. EFC will not issue any automatic waivers from MWBE responsibilities.
3. In cases where EFC accepts a full or partial waiver of MWBE participation goals, the waiver request will be posted to EFC's website.
4. The Contractor may request a specialty equipment/service exclusion from the MBO in cases where:
 - a. equipment is made by only one non-MWBE manufacturer;
 - b. the technical specifications call for equipment that is not available through an MWBE Supplier;
 - c. the equipment is constructed on site by specially trained non-MWBE labor;
 - d. the service is not available through an MWBE (such as work done by National Grid);

- e. the service is proprietary in nature (such as use of certain computer software necessary for control systems); or,
- f. the service cannot be subcontracted (such as litigation services).

If the contract includes specialty equipment or services, and documentation is submitted demonstrating that there are no MWBE firms capable of completing this portion of the contract, the specialty amount of the contract may be deducted from the total contract amount to determine the MWBE Eligible Amount and the goals will be applied to the MWBE Eligible Amount. This determination is made at the discretion of EFC.

Example:

\$2,000,000 - \$500,000 = \$1,500,000
 Total Contract Value - Specialty equipment/service = MWBE Eligible Amount
 The MWBE goal is applied to the MWBE Eligible Amount.

A request for a specialty equipment/service deduction can be indicated by completing a Request for Waiver form and submitting it to the MBO. The request must include a copy of the page from the contract where the equipment/ service is described, an ESD search result for the manufacturer or manufacturer's representative, an email or screenshot of the manufacturer's website showing the manufacturer's representatives (if manufactured item), and documentation of the cost of each item. For Construction Contracts, the schedule of values or bid tabulation sheet should also be submitted. Additional documentation may be requested by the MBO or EFC.

II. Subcontractor's Responsibilities

A. Subcontractors should:

1. Maintain their MWBE certifications and notify the Contractor and MBO of any change in their certification status.
2. Notify the Contractor of any MWBE Subcontractors they hire so they may be included on the Contractor's Utilization Plan.
3. Respond promptly to solicitation requests by completing and submitting bid information in a timely manner.
4. Maintain business records that should include, but not be limited to, Contracts/agreements, records of receipts, correspondence, purchase orders, and canceled checks.
5. Ensure that a required EEO Policy Statement and applicable MWBE requirements are included in each Subcontract.
6. Notify the MBO when contract problems arise, such as non-payment for services or when the Subcontractor is not employed as described in the MWBE Utilization Plan.

III. Summary of EEO and MWBE Forms

A. Forms to be Submitted Prior to Contract Execution

1. EEO Policy Statement

To be submitted by the Contractor to the Recipient's MBO prior to Contract execution. This form is attached hereto as Attachment 1. See Terms & Conditions, Section 1(II).

2. MWBE Utilization Plan

To be submitted by the Contractor to the MBO after the bid opening, but in no case more than ten (10) business days after the Contractor receives notice from the Recipient that the Contractor has submitted a low bid. For Contracts that are not bid, it is to be submitted prior to the Contract execution date. This form is attached hereto as Attachment 2. See Terms & Conditions, Section 1(III)(B).

B. Forms to be Submitted During the Term of the Contract

1. Request for Partial or Total Waiver

If applicable, to be submitted by the Contractor to the MBO at any time during the term of the Contract, but not later than prior to the submission of a request for final payment on

the Contract. This form is attached hereto as Attachment 3. See Terms & Conditions, Section 1(III)(C).

2. **Monthly MWBE-SDVOB Contractor Compliance Report (“Monthly MWBE-SDVOB Report”)**

To be submitted by the Contractor to the MBO by the third business day following the end of each month over the term of the Contract. This form is attached hereto as Attachment 4. See Terms & Conditions, Section 1(III)(D).

IV. Protests/Complaints

Contractors or Subcontractors who have any concerns, issues, or complaints regarding the implementation of the SRF MWBE & EEO Program or wish to protest should do so in writing to the MBO and EFC. The MBO, in consultation with EFC, will review the circumstances described in the submission, investigate, if warranted, and determine whether action is required. If the Contractor or Subcontractor believes the issue has not been resolved to their satisfaction, they may appeal in writing to EFC for consideration.

V. Waste, Fraud and Abuse

Subcontractors, Contractors, or Recipients who know of or suspect any instances of waste, fraud, or abuse within the MWBE & EEO Program should notify the MBO and EFC immediately. Additionally, suspected fraud activity should be reported to the USEPA – Office of Inspector General Hotline at (888) 546-8740, the New York State Office of Inspector General at (800) 367-4448, or the ESD Compliance Office at (212) 803-3266.

SECTION 2 GUIDANCE FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES (“SDVOB”) PARTICIPATION OPPORTUNITIES

I. SDVOB Participation Opportunities

A. Contract Goals

The goals provided in the Terms & Conditions Section 2(II)(A) are effective as of October 1, 2022. The SDVOB participation goal for a contract will be based on the goal in place at the time of the execution date of each respective contract, unless otherwise specified. Following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or <https://online.ogs.ny.gov/SDVOB/search> to discuss additional methods of maximizing participation by SDVOBs on the Contract.

B. Good Faith Efforts

The Contractor must make good faith efforts to develop an adequate SDVOB Utilization Plan and must continue such good faith efforts in order to meet applicable SDVOB participation goal. The Contractor shall maintain documentation of good faith efforts to solicit participation of SDVOB firms for State financial assistance projects. If a Contractor is unable to meet the contract SDVOB participation goal, and submits a Request for Waiver, documentation of such good faith efforts must accompany the request. See Terms & Conditions, Section 2(IV).

When MWBE and SDVOB goals both apply to a contract, good faith efforts should be sought simultaneously so that both types of certified firms have an equal opportunity to participate on the contract.

The Contractor should also continue good faith efforts to seek opportunities for SDVOB participation during the life of the contract even if proposed goals have been achieved.

Examples of documentation of good faith efforts are set forth below:

- Information on the scope of work related to the contract, such as a copy of the schedule of values from the bid submission, and specific steps taken to reasonably structure the scope of work to break out tasks or equipment needs for the purpose of providing opportunities for subcontracting with, or obtaining supplies or services from SDVOBs.
- A list of vendors from the directory of Certified SDVOBs on Office of General Services (OGS) website that provide the services or equipment necessary for the contract. Contact the MBO for assistance in performing a proper search including identifying a sufficient number of solicitations to show that good faith effort was made.
- Copies of timely solicitations and documentation (e.g., emails) that the Contractor offered relevant plans, specifications, or other related materials to SDVOB firms in OGS's Certified SDVOB directory to participate in the work, with the responses.
- A log prepared by the Contractor in a sortable spreadsheet documenting the Contractor's solicitation of SDVOBs for participation as Subcontractors or Suppliers pursuant to a contract. The log should consist of the list of SDVOB firms solicited, their contact information, the type of work they were solicited to perform (or equipment to provide), how the solicitation was made (fax, phone, email) and the contact information, the contact's name and the outcome. If a bid was received, the bid price should also be included in the log.

See sample log on www.efc.ny.gov/mwbe-forms

If no response was received to an initial solicitation, at least one follow-up solicitation should be made in a different format than the first (e.g., email followed by phone call). Any bids received from non-SDVOB firms for the same areas SDVOBs were solicited should also be tracked on the log.

- Copies of any advertisements of sufficient duration to effectively seek participation of certified SDVOBs timely published in appropriate general circulation, trade publications, together with listing and dates of publication of such advertisements. EFC recommends the use of the NYS Contract Reporter that is free to all Contractors - <https://www.nyscr.ny.gov/>. A log should be kept of the responses to the ads, similar to the log for SDVOB firm solicitation and should include the non-SDVOB firms that responded and the bid prices. Any negotiations should be documented in the log.
- Documents demonstrating that insufficient SDVOBs are reasonably available to perform the work.
- A written demonstration that the Contractor offered to make up any inability to meet the project SDVOB participation goal in other contracts and/or agreements performed by the Contractor on another State financial assistance project.
- The date of pre-bid, pre-award, or other public meetings scheduled by the Recipient, if any, and the contact information of any SDVOBs who attended and are capable of performing work on the project.
- Any other information or documentation that demonstrates the Contractor conducted good faith efforts to provide opportunities for SDVOB participation in their work. For instance, Prime Contractors and MBOs should develop a list of SDVOB firms that have expressed interest in working on State financial assistance projects.

EFC and/or the MBO reserves the right to request additional information and/or documentation to support the adequacy of the SDVOB Utilization Plan.

C. Review of the SDVOB Utilization Plan

The MBO will evaluate a completed SDVOB Utilization Plan. If the MBO finds the Utilization Plan sufficient, including necessary supporting documentation, it will be forwarded to EFC for review. If the MBO finds the Utilization Plan insufficient, the MBO will work with the Contractor to address deficiencies before submitting to EFC for review. A written notice of acceptance or deficiency will be issued by EFC within 20 business days of receipt of the completed Utilization Plan. Upon receipt of a notice of deficiency from either the MBO or EFC, the Contractor shall respond with a written remedy to such notice within seven (7) business days of receipt.

D. Eligibility for SDVOB Participation Credit

1. To receive SDVOB participation credit, Contractors or Subcontractors performing work that have been identified in an approved SDVOB Utilization Plan must be certified as an SDVOB by the OGS Division of Service-Disabled Veterans' Business Development.
2. Prime Contractors may include second or lower tier Subcontractors (Subcontractors hired by Subcontractors) on their SDVOB Utilization Plan.
3. Commercially Useful Function
Credit for SDVOB participation shall be granted only for SDVOB firms performing a commercially useful business function according to custom and practice in the industry. An SDVOB does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation.
 - a. "Commercially useful functions" normally include:
 - i. Providing technical assistance to a purchaser prior to a purchase, during installation, and after the supplies or equipment are placed in service;
 - ii. Manufacturing or being the first tier below the manufacturer of supplies or equipment;
 - iii. Providing functions other than merely accepting and referring requests for supplies or equipment to another party for direct shipment to a Contractor; or,
 - iv. Being responsible for ordering, negotiating price, and determining quality and quantity of materials and supplies.
4. A Contractor or subcontractor who is certified as both an SDVOB and MWBE may receive participation credit under both programs for its work on a contract or subcontract.

E. Requests for Waiver

1. If the Contractor's application of good faith efforts does not result in the utilization of SDVOB firms to achieve the aforementioned goals or a specialty equipment/service waiver is requested, the Contractor may request a full or partial waiver of SDVOB participation goals by completing a Request for Waiver form, attaching appropriate documentation of good faith efforts, and submitting same to the MBO. When the MBO deems the documentation acceptable, the MBO will submit the documentation to EFC for final review. See also Terms & Conditions, Section 2(IV).
2. The MBO and EFC will review each waiver request based on the good faith effort criteria presented above and the documentation submitted with the waiver request. EFC will not issue any automatic waivers from SDVOB responsibilities.
3. In cases where EFC accepts a full or partial waiver of SDVOB participation goals, the waiver request will be posted to EFC's website.
4. The Contractor may request a specialty equipment/service exclusion from the MBO in cases where:
 - a. equipment is made by only one non-SDVOB manufacturer;
 - b. the technical specifications call for equipment that is not available through an SDVOB Supplier;
 - c. the equipment is constructed on site by specially trained non-SDVOB labor;
 - d. the service is not available through an SDVOB (such as work done by National Grid);
 - e. the service is proprietary in nature (such as use of certain computer software necessary for control systems); or,
 - f. the service cannot be subcontracted (such as litigation services).

If the contract includes specialty equipment or services, and documentation is submitted demonstrating that there are no SDVOB firms capable of completing this portion of the

contract, the specialty amount of the contract may be deducted from the total contract amount to determine the SDVOB Eligible Amount and the goals will be applied to the SDVOB Eligible Amount. This determination is made at the discretion of EFC.

Example:
\$2,000,000 - \$500,000 = \$1,500,000
Total Contract Value - Specialty equipment/service = SDVOB Eligible Amount
The SDVOB goal is applied to the SDVOB Eligible Amount.

A request for a specialty equipment/service deduction can be indicated by completing a Request for Waiver form and submitting it to the MBO. The request must include a copy of the page from the contract where the equipment/service is described and the cost of each item. For Construction Contracts, the schedule of values or bid tabulation sheet should also be submitted. Additional documentation may be requested by the MBO or EFC.

II. Subcontractor's Responsibilities

- A. Subcontractors should:
1. Maintain their SDVOB certification and notify the Contractor and MBO of any change in their certification status.
 2. Notify the Contractor of any SDVOB Subcontractors they hire so they may be included on the Contractor's Utilization Plan.
 3. Respond promptly to solicitation requests by completing and submitting bid information in a timely manner.
 4. Maintain business records that should include, but not be limited to, contracts/agreements, records of receipts, correspondence, purchase orders, and canceled checks.
 5. Notify the MBO when contract problems arise, such as non-payment for services or when the Subcontractor is not employed as described in the SDVOB Utilization Plan.

III. Summary of SDVOB Forms

- A. Forms to be Submitted Prior to Contract Execution
1. **SDVOB Utilization Plan**
To be submitted by the Contractor to the MBO after the bid opening, but in no case more than ten (10) business days after the Contractor receives notice from the Recipient that the Contractor has submitted a low bid. For Contracts that are not bid, it is to be submitted prior to the Contract execution date. This form is attached hereto as Attachment 5. See Terms & Conditions, Section 2(III).
- B. Forms to be Submitted During the Term of the Contract
1. **Request for Partial or Total Waiver**
If applicable, to be submitted by the Contractor to the MBO at any time during the term of the Contract, but prior to the submission of a request for final payment on the Contract. This form is attached hereto as Attachment 6. See Terms & Conditions, Section 2(IV).
 2. **Monthly SDVOB Contractor Compliance Report ("Monthly MWBE-SDVOB Report")**
To be submitted by the Contractor to the MBO by the third business day following the end of each month over the term of the Contract. This form is attached hereto as Attachment 4. See Terms & Conditions, Section 2(V).

IV. Protests/Complaints

Contractors or Subcontractors who have any concerns, issues, or complaints regarding the implementation of any EFC State financial assistance SDVOB Program, or wish to protest should do so in writing to the MBO and EFC. The MBO, in consultation with EFC, will review the circumstances described in the submission, investigate, if warranted, and determine whether action is required. If the Contractor or Subcontractor believes the issue has not been resolved to their satisfaction, they may appeal in writing to EFC for consideration.

V. Waste, Fraud and Abuse

Subcontractors, Contractors, or Recipients who know of or suspect any instances of waste, fraud, or abuse within the SDVOB Program should notify the MBO and EFC immediately. Additionally, suspected fraud activity should be reported to the New York State Office of Inspector General at (800) 367-4448.

SECTION 3 GUIDANCE FOR REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT

A list of contractors and subcontractors deemed ineligible to submit a bid on or be awarded a public contract or subcontract, pursuant to Article 8 of the State Labor Law, is available on the New York State Department of Labor's website at <http://labor.ny.gov/workerprotection/publicwork/PDFs/debarred.pdf>. A list of contractors deemed ineligible to submit a bid is maintained by Empire State Development's Division of Minority and Women's Business Development.

SECTION 4 GUIDANCE FOR APPLICABLE LABOR STANDARDS

Contractors and Subcontractors working under a public works contract are subject to labor standards under State Labor Law, including but not limited to prevailing wage requirements, and may be subject to additional labor requirements under applicable local laws. When preparing the bid for a State Financial Assistance project, the Contractor, and any Subcontractors, must use the higher of the applicable prevailing State or local wage rates paid to each trade.

SECTION 5 GUIDANCE FOR CONSTRUCTION SIGNS

The requirements of this section apply to all EFC projects.

All projects are expected to post a construction sign, the Recipient may determine the party required to provide the sign. Sample construction sign specifications can be found at www.efc.ny.gov for standard signage.

SECTION 6

SUMMARY OF CONTRACTOR REQUIREMENTS FOR STATE FINANCIAL ASSISTANCE PROJECTS

Forms can be found as attachments to this document or online at www.efc.ny.gov
Forms should be submitted electronically via email or through EFC's [dropbox](#)

To be submitted with the bid:

- ☐ [EEO Policy Statement](#)

Guidance Section
[Section 1](#)

To be submitted prior to or upon Contract award or execution:

- ☐ Executed Subcontracts, agreements, and purchase orders
- ☐ [EEO Policy Statement](#) (when the contract is not bid)
- ☐ [MWBE Utilization Plan](#) and/or [Waiver Request](#)
- ☐ [SDVOB Utilization Plan](#) and/or [Waiver Request](#)

[Section 1](#)

[Section 1](#)

[Section 2](#)

Tasks for Construction start:

- ☐ Ensure that all Subcontracts contain correct Required EFC Terms & Conditions
- ☐ [Ensure Construction Sign is Posted](#)
- ☐ Pay the higher of applicable prevailing state or local wages including benefits

[Section 5](#)

[Section 3](#)

Ongoing documentation & tasks:

- ☐ Submit Monthly MWBE-SDVOB Reports to MBO
- ☐ Maintain proof of payments for MWBE Subcontractors
- ☐ Maintain proof of payments for SDVOB Subcontractors

[Sections 1&2](#)

[Section 1](#)

[Section 2](#)

Attachments (Required Forms)

Attachment 1 – EEO Policy Statement



Environmental Facilities Corporation

New York State Environmental Facilities Corporation EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT NEW YORK STATE FINANCIAL ASSISTANCE PROGRAMS

I, _____, am the authorized representative of _____.
Name of Representative Name of Contractor/Service Provider
I hereby certify that _____ will abide by the equal employment
Name of Contractor/Service Provider
opportunity (EEO) policy statement provisions outlined below.

- (i) The Contractor will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Contracts relating to Water Grant projects.
- (ii) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract relating to this Water Grant project, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- (iii) The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- (iv) The Contractor shall comply with the provisions of the Human Rights Law (Article 15 of the Executive Law), including those relating to non-discrimination on the basis of prior criminal conviction and prior arrest, and with all other State and federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status.
- (v) The Contractor will include the provisions of subdivisions (i) through (iv) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

X

Contractor/Service Provider Representative

Attachment 2 – MWBE Utilization Plan



Environmental Facilities Corporation

NYS Environmental Facilities Corporation Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan

Instructions for Contractors & Service Providers:

Contractors and Service Providers must complete Sections 2 and 3. **Submit the completed, signed (electronic signature box checked and dated) form to the Recipient's Minority Business Officer (MBO) no later than the date of contract execution.** Incomplete forms will be found deficient. If more than 10 subcontractors are used, additional pages for Section 3 can be found on EFC's website.

If the prime contract is being performed by the parties to a Joint Venture, Teaming Agreement, or Mentor-Protégé Agreement that includes a certified MWBE, please contact EFC for assistance.

MWBE firms must be certified by the NYS Empire State Development Corporation (ESD) in order to be counted towards satisfaction of MWBE participation goals. The utilization of certified MWBEs for non-commercially useful functions may not be counted towards utilization of certified MWBEs in the Utilization Plan. Please note whether a firm is serving as a broker or supplier on the contract. A broker is denoted by NAICS code 425120 and is designated as a broker in [ESD's MWBE Directory](#). A supplier is denoted by a NAICS code beginning with 423 or 424, or a NIGP code that does not begin with the number 9 and is designated as a supplier in ESD's MWBE Directory. If a firm is serving as a broker, please additionally provide the percentage of the broker's commission on the contract.

See the [Mandatory Terms and Conditions](#) or consult your designated MBO for further guidance.

Instructions for Minority Business Officers (MBO):

The MBO must complete Section 1. Email the completed, signed (electronic signature box checked and dated) form to your EFC Program Compliance Specialist.

The subject heading of the email to the EFC Program Compliance Specialist should follow the format "UP, Project Number, Contractor." EFC will review the Utilization Plan and email the MBO an acceptance or denial.

NYS Environmental Facilities Corporation
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan

SECTION 1: MUNICIPAL INFORMATION					
Recipient/Municipality:			County:		
Project No.:	GIGP No.:	Contract ID:		Registration No. (NYC only):	
Minority Business Officer:		Email:		Phone #:	
Address of MBO:					
Electronic Signature of MBO: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief.					Date:

SECTION 2: PRIME CONTRACTOR / SERVICE PROVIDER INFORMATION					
Firm Name:			Contract Type: <input type="checkbox"/> Construction <input type="checkbox"/> Other Services		
Prime Firm is Certified as: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> N/A <input type="checkbox"/> Other: If certified, please include Prime information in Section 3. If dual certified, you must select either MBE <u>or</u> WBE.					
Address:		Phone #:		Fed. Employer ID #:	
Description of Work:			Email:		
Award Date:	Start Date:	Completion Date:	MWBE GOAL Total		PROPOSED MWBE Participation
Total Contract Amount: \$ MWBE Eligible Contract Amount: \$ (MWBE Goals are applied to this amount and includes all change orders, amendments, & specialty waivers)			Total: % \$		Total: % \$

**NYS Environmental Facilities Corporation
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan**

SECTION 3: MWBE SUBCONTRACTOR INFORMATION			
This Submittal is: <input type="checkbox"/> The First/Original Utilization Plan <input type="checkbox"/> Revised Utilization Plan #:			
NYS Certified M/WBE Subcontractor Info		Contract Amount:	For EFC Use:
Business Name:	Fed. Employer ID#:		
Address:	Phone #:		
Scope of Work:	Email:		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	Start Date:		
Select Only One: <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:		
Full Contract Amount: \$			
Business Name:	Fed. Employer ID#:		
Address:	Phone #:		
Scope of Work:	Email:		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	Start Date:		
Select Only One: <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:		
Full Contract Amount: \$			
Business Name:	Fed. Employer ID#:		
Address:	Phone #:		
Scope of Work:	Email:		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	Start Date:		
Select Only One: <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:		
Full Contract Amount: \$			
Business Name:	Fed. Employer ID#:		
Address:	Phone #:		
Scope of Work:	Email:		
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	Start Date:		
Select Only One: <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:		
Full Contract Amount: \$			

**NYS Environmental Facilities Corporation
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan**

SECTION 3: M/WBE SUBCONTRACTOR INFORMATION continued			
Business Name:		Fed. Employer ID#:	
Address:		Phone #:	
Scope of Work:		Email:	
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:		Start Date:	
Select Only One: <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		Completion Date:	
Full Contract Amount: \$			
Business Name:		Fed. Employer ID#:	
Address:		Phone #:	
Scope of Work:		Email:	
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:		Start Date:	
Select Only One: <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		Completion Date:	
Full Contract Amount: \$			
Business Name:		Fed. Employer ID#:	
Address:		Phone #:	
Scope of Work:		Email:	
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:		Start Date:	
Select Only One: <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		Completion Date:	
Full Contract Amount: \$			
Business Name:		Fed. Employer ID#:	
Address:		Phone #:	
Scope of Work:		Email:	
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:		Start Date:	
Select Only One: <input type="checkbox"/> Broker % ____ <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		Completion Date:	
Full Contract Amount: \$			
SIGNATURE			
Electronic Signature of Contractor: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and that all MWBE subcontractors will perform a commercially useful function. Name (Please Type):			Date:

Attachment 3 – MWBE Waiver Request Form



Environmental Facilities Corporation

New York State Environmental Facilities Corporation Minority & Women Owned Business Enterprise (MWBE) Waiver Request Form

Instructions for Contractors & Service Providers:

Contractors and Service Providers must complete Sections 2, 3, and 4. **Submit the completed, signed (electronic signature box checked and dated) form to the Recipient's Minority Business Officer (MBO).** Incomplete forms will be found deficient.

See the EFC [Mandatory Terms and Conditions](#) or consult the MBO for further guidance.

Instructions for MBO:

The MBO must complete Section 1. **Email the completed, signed (electronic signature box checked and dated) form to your EFC Program Compliance Specialist.** The subject heading of the email to the EFC Program Compliance Specialist should follow the format "Waiver Request, Project Number, Contractor." EFC will review and email an acceptance or denial to the MBO.

If a partial MWBE waiver is requested, an [MWBE Utilization Plan](#) must also be submitted for the amount of proposed MWBE participation.

SECTION 1: MUNICIPAL INFORMATION			
Recipient/Municipality:		County:	
Project No.:	GIGP No.:	Contract ID:	Registration No. (NYC only):
Minority Business Officer (MBO):		Email:	Phone #:
Address of MBO:			
Signature of MBO:			Date:
<input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief.			

SECTION 2: PRIME CONTRACTOR / SERVICE PROVIDER INFORMATION			
Firm Name:		Contract Type: <input type="checkbox"/> Construction <input type="checkbox"/> Other Services	
Prime Firm is Certified as: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> N/A <input type="checkbox"/> Other:			
Address:		Phone #:	Fed. Employer ID #:
Contact Information of Firm Representative Authorized to Discuss Waiver Request:			
Name:		Title:	Phone #: Email:
Description of Work:		EFC MWBE GOAL Total	
Award Date:	Start Date:	Completion Date:	Total: % \$
Total Contract Amount: \$			
MWBE Eligible Contract Amount: \$ (MWBE Goals are applied to this amount and includes all change orders, amendments, & waivers)			

**New York State Environmental Facilities Corporation
Minority & Women Owned Business Enterprise (MWBE) Waiver Request Form**

SECTION 3: TYPE OF MWBE WAIVER REQUESTED

1. ☐ **Full Waiver** (No MWBE participation)
2. ☐ **Partial Waiver** (Less than the MWBE goals; indicate below the proposed MWBE participation)

PROPOSED MWBE Participation

Total: % \$
3. ☐ **Specialty Equipment/Services Exclusion** (Must be of SIGNIFICANT cost – attach list of cost and type of equipment and supporting documentation outlined below)

SECTION 4: SUPPORTING DOCUMENTATION

Provide the following documentation as evidence of good faith efforts to meet the MWBE goals set forth and in support of the waiver application. Specialty Equipment Exclusion requests must be accompanied by the documentation requested in items 8 – 12, as listed below. Specialty Services Exclusion requests must be accompanied by the documentation requested in item 13, as listed below.

1. A brief letter of explanation setting forth your basis for requesting a partial or total waiver and detailing the good faith efforts that were made.
2. A scope of work that shows what subcontracting opportunities are in the contract. This could be an engineering proposal, schedule of values, or other similar documents.
3. Screenshots of search results for each task (using commodity codes) from Empire State Development Corporation's (ESD) MWBE Directory of all certified MWBEs that were solicited for this contract. Each search should be saved as an individual file.
4. A log of solicitation results in Excel format, consisting of the list of MWBE firms solicited for the contract and the outcome of the solicitations. The log should be broken out into separate areas for each task that is solicited (e.g., trucking, materials, electricians), including date, persons communicated with and outcome. The log should show that each MWBE firm was contacted twice by two different methods if first contact was unsuccessful (e.g., email and phone), and the final outcome of the solicitation.
5. List of the general circulation, trade association, and MWBE oriented publications and dates of publication soliciting for certified MWBE participation as a subcontractor/supplier and copies of such solicitations.
6. Description of the negotiations between the contractor and certified MWBEs for the purposes of complying with the MWBE goals of this contract.
7. Any other information deemed relevant to the request.

EFC and the MBO reserve the right to request additional information and/or documentation.

**New York State Environmental Facilities Corporation
Minority & Women Owned Business Enterprise (MWBE) Waiver Request Form**

Documentation for Requests for Specialty Equipment Exclusions:

8. A letter of explanation containing information about the equipment, why the equipment is specialty and why no MWBE firms could be utilized to provide the equipment.
9. Copies of the appropriate pages of the technical specification related to the equipment showing the choices for manufacturers or other information that limits the choice of vendor.
10. Letter, email, or screenshot of website from the manufacturer listing their distributors in NYS and the locations.
11. Screenshots of ESD's MWBE Directory searches for the manufacturer and distributor showing that they are not found in the Directory.
12. An invoice or executed purchase order showing the value of the equipment.

Documentation for Requests for Specialty Service Exclusions:

13. A letter of explanation containing information about the scope of work and why no MWBE firms could be subcontracted to provide that service.

SIGNATURE

Electronic Signature of Contractor:

☐ I certify that the information submitted herein is true, accurate and complete to the best of my knowledge.

Name: (Please Type):

Date:

Attachment 4 – Monthly MWBE-SDVOB Contractor Compliance Report



Environmental Facilities Corporation

New York State Environmental Facilities Corporation Monthly Minority- & Women- Owned Business Enterprise (MWBE) Contractor Compliance Report ("Monthly MWBE-SDVOB Report")

Instructions:

- Contractors are to complete the report in Word version and email to the Recipient's Minority Business Officer ("MBO") on a monthly basis.
- If you require additional pages, you may find them on [EFC's website](#).
- All** MWBE Subcontractors for this contract **MUST** be listed on the form regardless of whether they were paid this month.
- Please save Report as "MReport – (Project No). – (Municipality) – (Firm Name) – (Date)" and send the Word version of this document.
- Proofs of payment in the amounts shown below must be transmitted to the MBO with the report.

Municipality:		County:		Contract ID:		Month:	Year:
Project No.:				Registration No. (NYC only):			
Prime Contractor/Service Provider:				Award Date:		Start Date:	
						Date all MWBE / SDVOB subs paid in full:	
Signature of Contractor: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief. Date:							
Last Month's Contract Amt: \$ Revised Contract Amt: \$ Change Order Amt: \$	MWBE Eligible Amt: \$ (Goals are applied to this amount and includes eligible change orders, amendments & waivers)		EFC MWBE Goals			Total Paid to Prime	
			MBE: % MBE Amt: \$ WBE: % WBE Amt: \$ Total: % Total Amt: \$			Total Paid this Month: \$	
	SDVOB Eligible Amount \$		EFC SDVOB Goals			Total Paid to Date: \$	
			SDVOB 6 % SDVOB Amt: \$				
NYS Certified MWBE / SDVOB Contractor & Subcontractor		Please Specify Any Revisions this Month.		Subcontractor Total Amount		Payments this Month	Previous Payments
				Original	Revised		
Name: Fed. Employer ID#: Choose all that apply: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> DSDVBD Control #: MWBE Only - Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A		<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					

New York State Environmental Facilities Corporation
Monthly Minority- & Women- Owned Business Enterprise (MWBE) Contractor Compliance Report
("Monthly MWBE-SDVOB Report")

NYS Certified MWBE / SDVOB Contractor & Subcontractor	Please Specify Any Revisions this Month.	Subcontractor Contract Amount		Payments this Month	Previous Payments	Total Payments Made to Date
		Original	Revised			
Name: Fed. Employer ID#: Choose all that apply: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> DSDVBD Control #: MWBE Only - Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: Choose all that apply: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> DSDVBD Control #: MWBE Only - Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: Choose all that apply: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> DSDVBD Control #: MWBE Only - Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: Choose all that apply: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> DSDVBD Control #: MWBE Only - Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: Choose all that apply: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> DSDVBD Control #: MWBE Only - Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					

New York State Environmental Facilities Corporation
Monthly Minority- & Women- Owned Business Enterprise (MWBE) Contractor Compliance Report
("Monthly MWBE-SDVOB Report")

NYS Certified M/WBE / SDVOB Contractor & Subcontractor	Please Specify Any Revisions this Month.	Subcontractor Total Amount		Payments this Month	Previous Payments	Total Payments Made to Date
		Original	Revised			
Name: Fed. Employer ID#: <u>Choose all that apply:</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> DSDVBD Control #: <u>MWBE Only - Select Only One:</u> <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: <u>Choose all that apply:</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> DSDVBD Control #: <u>MWBE Only - Select Only One:</u> <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: <u>Choose all that apply:</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> DSDVBD Control #: <u>MWBE Only - Select Only One:</u> <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: <u>Choose all that apply:</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> DSDVBD Control #: <u>MWBE Only - Select Only One:</u> <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: <u>Choose all that apply:</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> DSDVBD Control #: <u>MWBE Only - Select Only One:</u> <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					

New York State Environmental Facilities Corporation
Monthly Minority- & Women- Owned Business Enterprise (MWBE) Contractor Compliance Report
("Monthly MWBE-SDVOB Report")

NYS Certified M/WBE / SDVOB Contractor & Subcontractor	Please Specify Any Revisions this Month.	Subcontractor Total Amount		Payments this Month	Previous Payments	Total Payments Made to Date
		Original	Revised			
Name: Fed. Employer ID#: Choose all that apply: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> DSDVBD Control #: MWBE Only - Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: Choose all that apply: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> DSDVBD Control #: MWBE Only - Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: Choose all that apply: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> DSDVBD Control #: MWBE Only - Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Name: Fed. Employer ID#: Choose all that apply: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> DSDVBD Control #: MWBE Only - Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	<input type="checkbox"/> Subcontractor is REMOVED <input type="checkbox"/> NEW Subcontractor <input type="checkbox"/> Subcontract Amt. INCREASED <input type="checkbox"/> Subcontract Amt. DECREASED					
Additional Pages can be found at www.efc.ny.gov/mwbe-forms TOTAL						
Please explain any revisions and note the scope of work that new subcontractors will be providing. Please note that change orders over \$25K may require that good faith efforts be made to obtain additional participation:						

Attachment 5 – SDVOB Utilization Plan



Environmental Facilities Corporation

NYS Environmental Facilities Corporation
Service-Disabled Veteran-Owned Business (SDVOB) Utilization Plan

Instructions for Contractors & Service Providers:

Contractors and Service Providers must complete Sections 2 and 3. **Submit the completed, signed (electronic signature box checked and dated) form in Microsoft Word format to the Recipient's designated Minority Business Officer (MBO) no later than the date of contract execution.** Incomplete forms will be found deficient. If more than 10 subcontractors are used, additional pages for Section 3 can be found on EFC's website.

If the prime contract is being performed by the parties to a Joint Venture, Teaming Agreement, or Mentor-Protégé Agreement that includes a certified SDVOB, please contact EFC for assistance.

The utilization of certified SDVOBs for non-commercially useful functions may not be counted towards utilization of certified SDVOBs in the Utilization Plan. SDVOB firms must be certified by NYS Office of General Services in order to be counted towards satisfaction of SDVOB participation goals.

See the SFA Mandatory Terms and Conditions or consult your designated MBO for further guidance.

Instructions for Minority Business Officers (MBO):

The MBO must complete Section 1. **Email the completed, signed (electronic signature box checked and dated) form in Microsoft Word format to your EFC Program Compliance Specialist.**

The subject heading of the e-mail to the EFC Program Compliance Specialist should follow the format "UP, Project Number, Contractor." EFC will review the Utilization Plan and email the MBO an acceptance or denial.

**NYS Environmental Facilities Corporation
Service-Disabled Veteran-Owned Business (SDVOB) Utilization Plan**

SECTION 1: MUNICIPAL INFORMATION					
Recipient/Municipality:			County:		
Project No.:	GIGP No.:	Contract ID:	Registration No. (NYC only):		
Minority Business Officer:		Email:	Phone #:		
Address of MBO:					
Electronic Signature of MBO: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief.					Date:

SECTION 2: PRIME CONTRACTOR / SERVICE PROVIDER INFORMATION				
Firm Name:			Contract Type: <input type="checkbox"/> Construction <input type="checkbox"/> Other Services	
Prime Firm is Certified as: <input type="checkbox"/> SDVOB If certified, please include Prime information in Section 3.				
Address:		Phone #:	Fed. Employer ID #:	
Description of Work:			Email:	
Award Date:	Start Date:	Completion Date:	SDVOB GOAL Total	PROPOSED SDVOB Participation
Total Contract Amount: \$ SDVOB Eligible Contract Amount: \$ (Goals are applied to this amount and includes all change orders, amendments, & waivers)			Total: 6% \$	Total: % \$

**NYS Environmental Facilities Corporation
Service-Disabled Veteran-Owned Business (SDVOB) Utilization Plan**

SECTION 3: SDVOB SUBCONTRACTOR INFORMATION			
This Submittal is: <input type="checkbox"/> The First/Original Utilization Plan <input type="checkbox"/> Revised Utilization Plan #:			
NYS Certified SDVOB Subcontractor Info		Participation: SDVOB (\$)	For EFC Use:
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		

**NYS Environmental Facilities Corporation
Service-Disabled Veteran-Owned Business (SDVOB) Utilization Plan**

SECTION 3: SDVOB SUBCONTRACTOR INFORMATION continued			
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		
Name:	Fed. Employer ID#:		
Address:	DSDVBD Control #:		
Scope of Work:	Phone #:		
Full Subcontract Amount: \$	Email:		
Start Date:	Completion Date:		

SIGNATURE	
Electronic Signature of Contractor: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and that all SDVOB subcontractors will perform a commercially useful function. Name (Please Type):	Date:

Attachment 6 – SDVOB Waiver Request Form



Environmental Facilities Corporation

NYS Environmental Facilities Corporation Service-Disabled Veteran Owned Business (SDVOB) Waiver Request Form

Instructions for Contractors & Service Providers:

Contractors and Service Providers must complete Sections 2, 3, and 4. **Submit the completed, signed (electronic signature box checked and dated) form in Microsoft Word format to the Recipient's designated Minority Business Officer (MBO).** Incomplete forms will be found deficient.

See the SFA [Mandatory Terms and Conditions](#) or consult your designated MBO for further guidance.

Instructions for Minority Business Officers (MBO):

The MBO must complete Section 1. **Email the completed, signed (electronic signature box checked and dated) form in Microsoft Word format to your EFC Program Compliance Specialist.** The subject heading of the e-mail to the EFC Program Compliance Specialist should follow the format "Waiver Request, Project Number, Contractor." EFC will review and email an acceptance or denial to the MBO.

If a partial SDVOB waiver is requested, an [SDVOB Utilization Plan](#) must also be submitted for the amount of proposed SDVOB participation.

SECTION 1: MUNICIPAL INFORMATION			
Recipient/Municipality:		County:	
Project No.:	GIGP No.:	Contract ID:	Registration No. (NYC only):
Minority Business Officer (MBO):		Email:	Phone #:
Address of MBO:			
Signature of MBO: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief.			Date:

SECTION 2: PRIME CONTRACTOR / SERVICE PROVIDER INFORMATION			
Firm Name:		Contract Type: <input type="checkbox"/> Construction <input type="checkbox"/> Other Services	
Address:		Phone #:	Fed. Employer ID #:
Contact Information of Firm Representative Authorized to Discuss Waiver Request:			
Name:		Title:	Phone #: E-mail:
Description of Work:		EFC SDVOB GOAL Total	
Award Date:	Start Date:	Completion Date:	
Total Contract Amount: \$		Total: 6 % \$	
SDVOB Eligible Contract Amount: \$			
(SDVOB Goals are applied to this amount and includes all change orders, amendments, & waivers)			

**NYS Environmental Facilities Corporation
Service-Disabled Veteran Owned Business (SDVOB) Waiver Request Form**

SECTION 3: TYPE OF SDVOB WAIVER REQUESTED

1. ☐ **Full Waiver** (No SDVOB participation)
2. ☐ **Partial Waiver** (Less than the SDVOB goal; indicate below the proposed SDVOB participation)

PROPOSED SDVOB Participation

Total: % \$
3. ☐ **Specialty Equipment/Services Exclusion** (Must be of SIGNIFICANT cost – attach list of cost and type of equipment and supporting documentation outlined below)

SECTION 4: SUPPORTING DOCUMENTATION

Provide the following documentation as evidence of good faith efforts to meet the SDVOB goals set forth and in support of the waiver application. Specialty Equipment Exclusion requests must be accompanied by the documentation requested in items 8 – 12, as listed below. Specialty Services Exclusion requests must be accompanied by the documentation requested in item 13, as listed below.

1. A brief letter of explanation setting forth your basis for requesting a partial or total waiver and detailing the good faith efforts that were made.
2. A scope of work that shows what subcontracting opportunities are in the contract. This could be an engineering proposal, schedule of values, or other similar documents.
3. Screenshots of search results for each task (using commodity codes) from the Office of General Services (OGS) [SDVOB Directory](#) of all certified SDVOBs that were solicited for this contract. Each search should be saved as an individual file.
4. A [log of solicitation results in Excel format](#), consisting of the list of SDVOB firms solicited for the contract and the outcome of the solicitations. The log should be broken out into separate areas for each task that is solicited (e.g., trucking, materials, electricians), including date, persons communicated with and outcome. The log should show that each SDVOB firm was contacted twice by two different methods if first contact was unsuccessful (e.g., email and phone), and the final outcome of the solicitation.
5. List of the general circulation, trade association, and SDVOB oriented publications and dates of publication soliciting for certified SDVOB participation as a subcontractor/supplier and copies of such solicitations.
6. Description of the negotiations between the contractor and certified SDVOBs for the purposes of complying with the SDVOB goals of this contract.
7. Any other information deemed relevant to the request.

**NYS Environmental Facilities Corporation
Service-Disabled Veteran Owned Business (SDVOB) Waiver Request Form**

EFC and the MBO reserve the right to request additional information and/or documentation.

Documentation for Requests for Specialty Equipment Exclusions:

8. A letter of explanation containing information about the equipment, why the equipment is specialty and why no SDVOB firms could be utilized to provide the equipment.
9. Copies of the appropriate pages of the technical specification related to the equipment showing the choices for manufacturers or other information that limits the choice of vendor.
10. Letter, email, or screenshot of website from the manufacturer listing their distributors in NYS and the locations.
11. Screenshots of OGS's SDVOB Directory searches for the manufacturer and distributor showing that they are not found in the Directory.
12. An invoice or executed purchase order showing the value of the equipment.

Documentation for Requests for Specialty Service Exclusions:

13. A letter of explanation containing information about the scope of work and why no SDVOB firms could be subcontracted to provide that service.

SIGNATURE

Electronic Signature of Contractor:

☐ I certify that the information submitted herein is true, accurate and complete to the best of my knowledge.

Name: (Please Type):

Date:

Cherry Valley-Springfield Central School District

COST-Proposal to Provide Independent Audit Services

February 21, 2025

Submitted to:

Laura Carson, District Clerk
Cherry Valley-Springfield Central School District
PO Box 485
Cherry Valley, New York 13320

Submitted by:

Gregg H. Evans, CPA, Partner
Bonadio & Co., LLP
432 North Franklin Street
Suite 60
Syracuse, New York 13204
www.bonadio.com
gevans@bonadio.com

THE BONADIO GROUP

Accounting, Consulting & More

February 18, 2025

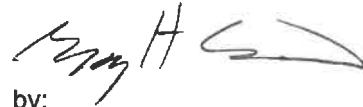
Laura Carson, District Clerk
Cherry Valley-Springfield Central School District
PO Box 485
Cherry Valley, New York 13320

Gregg H. Evans, CPA is entitled to represent Bonadio & Co., LLP, and empowered to submit the proposal, and authorized to sign a contract with Cherry Valley-Springfield Central School District.

Our commitment to the District

We are committed to our School Districts throughout New York State and understand the budget constraints that present each district with many difficult choices. We believe Bonadio represents the District's best combination of price and value.

BONADIO & CO., LLP



by:
Gregg H. Evans CPA
Partner

432 North Franklin Street, #60
Syracuse, NY 13204
p (315) 476-4004
f (315) 254-2384

www.bonadio.com

Fees for Additional Services

Fees for additional services will be negotiated with you prior to commencement of work. You will never be billed for any work you have not already authorized.

Many times we will work with our clients to negotiate fixed fee engagements that result in blended hourly rates for services performed, which provides you with a certainty of cost. In our experience, each project is unique and must be priced accordingly to ensure the fairest price for you and for us.

Out-of-Pocket Expenses Included in the Total All-Inclusive Maximum Price

Based on our extensive experience with you, you know very well, that we do not charge our clients separately for out-of-pocket expenses: telephone conversations or office overhead items such as travel, copies, faxes, or administrative support. Therefore, expenses, to the extent incurred, are included in our fees. We do not charge for travel time-related to the audit engagement.

Manner of Payment

It is understood that progress payments will be made on the basis of hours of work completed in accordance with the project cost proposal. Interim billings shall cover a period of not less than a calendar month. The engagement will be billed monthly during the course of the engagement.

Unlimited Phone Support

In order to properly serve our clients, we need to know what the issues affecting them are. We realize, however, that clients are sometimes hesitant to call us as they have been “nickeled and dimed” with fees for phone calls by other firms. To encourage regular contact with our clients, we offer unlimited phone support throughout the year. Because we will provide ongoing access to the accounting, auditing, and business advice you need on a fixed-price basis, you will not be inhibited from seeking timely advice by fear of the meter endlessly running. We want to offer you access to the accumulated wisdom of the firm through CPAs with substantial experience who can help you achieve your goals.

While the fixed fee audit entitles the District to unlimited consultation with us, if your question or issue requires additional research and/or analysis beyond the phone conversation, this additional work will be subject to an additional price negotiation prior to the additional services being performed. In our experience, our clients are knowledgeable about those situations that would constitute an additional service and are prepared to have that discussion.

Standard Contract

Our standard contract takes the form of an engagement letter which is provided prior to the commencement of work.

SCHEDULE OF AUDIT QUOTATIONS

AS PROPOSED

	June 30, 2025	June 30, 2026	June 30, 2027
Audit of general purpose financial statements, and All other services not separately listed below.	\$20,500	\$21,500	\$22,500
Single Audit	2,500	2,500	2,500
Audit of Extra-classroom Activity Fund	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>
TOTAL ALL-INCLUSIVE MAXIMUM PRICE	\$25,000	\$26,000	\$27,000

SEXUAL HARASSMENT GRIEVANCES UNDER TITLE IX

(X) Required

- ☐ Local
☒ Notice

Under federal regulations implementing Title IX, sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. A district employee conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Federal Title IX regulations only address complaints of discrimination or harassment occurring against a person in the United States.

If contacted by a person alleging sexual harassment under Title IX, the Title IX Coordinator will explain the process for filing a formal complaint, which initiates an investigation into the Title IX sexual harassment allegations.

If any district employee is notified of alleged sexual harassment, they must inform the Title IX Coordinator.

Complaints of discrimination on the basis of sex under federal Title IX regulations are addressed in the manner provided by policy 0100, Non-Discrimination and Equal Opportunity. If alleged discrimination or sexual harassment is not covered by Title IX regulations, it may be covered by state laws, addressed in district policies 0100, Non-Discrimination and Equal Opportunity; 0110.2, Sexual Harassment in the Workplace; 0115, Student Harassment and Bullying Prevention and Intervention; and 5300, Code of Conduct.

Supportive Measures

Once the district has notice of sexual harassment or allegations of sexual harassment, the Title IX Coordinator will promptly contact the complainant of sexual harassment under Title IX and discuss the availability of supportive measures regardless of whether the complainant chooses to file a formal complaint under Title IX or not. Potential supportive measures offered to both complainants and respondents include:

- Counseling,
- Extensions of deadlines or other course-related adjustments,
- Modifications of work or class schedules,
- Campus escort services,
- Mutual restrictions on contact between the parties,
- Changes in work locations,
- Leaves of absence,

- Increased security and monitoring of certain areas.

The Title IX coordinator will discuss and determine the complainant's wishes with respect to supportive measures.

Formal Complaints

A formal complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment under Title IX against an individual and requesting that the district investigate the allegation of sexual harassment under Title IX. The formal complaint must be a written document but need not be in any specific form. At the time a formal complaint is filed, the complainant must be participating or attempting to participate in the district's education program or activity.

The formal complaint investigation and process will only be triggered when the complainant files a formal complaint of sexual harassment under Title IX.

The district will investigate the complaint and make determinations regarding a complaint's allegations using a preponderance of evidence standard.

The Title IX Coordinator, investigator, decision-maker or facilitator of an informal resolution process, if applicable, must not have a conflict of interest or bias for or against complainants or respondents. All individuals with conflicts of interest or bias must recuse themselves.

The roles of Title IX Coordinator, investigator, and decision-maker will be held by different persons.

District Responsibilities

Throughout the Title IX process the district will, among other things:

- Treat complainants and respondents equitably.
- Perform an objective evaluation of all available evidence.
- Presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- Ensure that no information protected by a legal privilege such as the attorney-client privilege may be used for any purpose or be sought through disclosure unless the person holding the privilege has waived such privilege.

Timeframes

- *Written notice of a formal complaint to known parties will be given approximately three (3) school days.*
- *Investigations of complaints will begin approximately five (5) school days following receipt of a complaint.*
- *Determinations will be made approximately sixty (60) calendar days following starting an investigation.*
- *Informal resolution will begin approximately five (5) school days following acceptance of both parties in writing, and will conclude in approximately fifteen (15) school days thereafter, if not sooner.*

The district has established reasonably prompt approximate time frames for the conclusion of the grievance process and informal resolution process, unless delayed or extended. The time frames for appeals are set forth in the section below on Appeals.

The district has also established a process that allows for a temporary delay or limited extension of timeframes for good cause with notice to the parties that includes the reason for the delay.

- Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

- The Title IX Coordinator will evaluate the need for or a request for an extension of timeframes and make a prompt determination to either extend the timeframes, or take or recommend other action to be able to meet the timeframes.
- If an extension is needed and/or granted, the Title IX Coordinator will notify the parties in writing of the reason(s) for the delay, and the estimated date the stages in the timeframe will be complete.

Notice

Upon receipt of a formal complaint of sexual harassment under Title IX, the district will provide written notice to the complainant and respondent(s) in sufficient time to allow the parties who are known to prepare a response before an initial interview.

The notice to the complainant and respondent will include, among other items:

- Information regarding the grievance process and the informal resolution process.
- The conduct allegedly constituting sexual harassment under Title IX, and if known, the identities of the parties involved in the incident, as well as the date and location of the alleged incident.
- A statement that the respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- Notification that the parties may inspect and review evidence.
- Policies regarding knowingly making false statements or submitting false information during the grievance process.
- Notification that after commencing an investigation of a formal complaint, the district may decide to also investigate allegations that were not included in the initial notice to the parties. In that case, the district will provide notice of the additional allegations to the parties.

Informal Resolution

In lieu of resolving a formal complaint through the district's Title IX grievance procedures, at any time prior to reaching a determination of responsibility, the parties may instead elect to participate in a district-facilitated informal resolution process such as mediation, which does not involve a full investigation and determination. The district will obtain the parties' voluntary written consent to the informal resolution process. Informal resolution is not available to resolve a complaint that includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or when such a process would conflict with Federal, State, or local law.

The district will provide the parties with a written notice of:

- The allegations.
- The requirements of the informal resolution process.
- That at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the formal complaint grievance process.
- Any consequences that result from participation in informal resolution, including records that will be maintained or could be shared.

Investigations

Upon receipt of a formal complaint of sexual harassment under Title IX, the Title IX Coordinator will assign an investigator. The assigned harassment investigator will:

- Gather additional information through interviews of the complainant, respondent, and witnesses and synthesize the information in a report.
- The investigator has the discretion to determine the relevance of any witness or other evidence and may exclude information in preparing the investigation report if the information is irrelevant, immaterial, or more prejudicial than informative.

- Produce a written report that contains the relevant information and facts learned during the investigation, and may include direct observations and reasonable inferences drawn from the facts and any consistencies or inconsistencies between the various sources of information. The investigator may exclude statements of personal opinion by witnesses and statements as to general reputation for any character trait, including honesty. The investigator will not make a finding or recommended finding of responsibility. The investigator's report will include credibility assessments based on their experience with the complainant, respondent, and witnesses, as well as the evidence provided.
- The investigator's written report will be provided to both parties and their representatives, if any.

During the formal complaints process, the parties will have an equal opportunity to:

- Present witnesses and to gather and present relevant evidence.
- Have others present during any grievance proceeding, including the representative of their choice who may be, but is not required to be, an attorney.
- Inspect and review all evidence obtained as part of the investigation that is directly related to the allegations in the complaint, and respond to the evidence prior to the conclusion of the investigation. Parties must be given at least ten (10) calendar days to submit a written response that the investigator will consider prior to completing the investigative report.

Dismissal

The district must dismiss a formal complaint when the conduct alleged in the formal complaint of sexual harassment under Title IX:

- Would not constitute sexual harassment under Title IX even if proved;
- Did not occur in the district's education program or activity; or
- Did not occur against a person in the United States.

Such a dismissal does not preclude action under another provision of the district's code of conduct, or another policy adopted pursuant to state law.

The district may dismiss a formal complaint when:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint or any of its allegations;
- The respondent is no longer enrolled or employed by the district; or
- Specific circumstances prevent the district from gathering enough evidence to reach a determination on the formal complaint or its allegations.

If a complaint is dismissed, the decision-maker will send written notice of the dismissal and reason(s) therefor simultaneously to the parties

Questions

Prior to issuing a written determination, the decision-maker(s) will afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

Determinations

Following the question-and-answer process and upon receipt of the investigative report, the decision-maker will issue a written determination. The decision-maker's written determination will address:

- The allegations,
- The procedural steps taken in the case at hand,
- The findings of fact,
- The applicability of code of conduct and local rules to the facts, and
- The result with corresponding rationale for each addressed allegation, including a determination of responsibility, disciplinary sanctions, and whether remedies to restore or preserve access will be provided.

Disciplinary Sanctions and Remedies

If the district determines responsibility for sexual harassment, if the decision is not appealed, or if the appeal is dismissed, the district will impose disciplinary sanctions, which may include:

- *Student respondents: consequences may include warning, reprimand, detention, in-school suspension, and suspension from school, to be imposed consistent with the district's Code of Conduct and applicable law;*
- *Employee respondents: consequences may include warning, reprimand, mandatory counseling, re-assignment, demotion, suspension, and termination, to be imposed consistent with all applicable contractual and statutory rights;*
- *Volunteer respondents: consequences may include warning, reprimand, loss of volunteer assignments, and removal from future volunteer opportunities; and*
- *Vendor respondents: consequences may include warning, removal from school property, denial of future access to school property, and denial of future business with the district.*
- *Other individuals: consequences may include warning, removal from school property, and denial of future access to school property.*

The Title IX Coordinator will facilitate the transfer of information and determinations from the Title IX complaint process to the appropriate administrator, to aid in the imposition of disciplinary consequences.

The district may also provide or facilitate remedies, which may include:

- *Training of entire departments, classes, or groups;*
- *Peer support groups;*
- *Letters of apology;*
- *Separation of the parties;*
- *Additional supervision or mentoring for the respondent; and*
- *Restitution and restoration.*

Appeals

Following a decision-maker's written determination, either party may appeal the written determination or dismissal of the complaint.

An appeal must be submitted to the Title IX Coordinator within seven (7) calendar days of receipt of the determination or dismissal (as applicable) and must identify all information a party wishes to have considered on appeal. Any appeal statement will be shared with the other party, who will have two (2) calendar days to submit a response to the Title IX Coordinator. The appeal and any response will be considered by a decision-maker other than the decision-maker who issued the determination or dismissal that is being appealed.

Grounds for an appeal are limited to the following:

- Procedural irregularity that affected the outcome of the matter; and/or

- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
- The Title IX Coordinator, investigator(s), or any decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; and/or
- The sanction is inappropriate.

A decision responding to the written appeal will be issued to the parties and the Title IX Coordinator within thirty (30) calendar days.

Cross-ref:

0100, Non-Discrimination and Equal Opportunity

0110.2, Sexual Harassment in the Workplace

0115, Student Harassment and Bullying Prevention and Intervention

5300, Code of Conduct

Ref:

20 USC §§1681 et seq.

34 CFR Part 106

Adoption Date: **March 19, 2025**

SEXUAL HARASSMENT GRIEVANCES UNDER TITLE IX EXHIBIT - DEFINITIONS

Definitions of the following terms are based on the federal regulations implementing Title IX (34 CFR Part 106):

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the district investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the district with which the formal complaint is filed.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Retaliation means intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX regulations.

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity; or
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment, or deter sexual harassment.

Adoption date: **March 19, 2025**

SCHOOL DISTRICT RECORDS REGULATION

The following comprises the rules and regulations relating to the inspection and production of school district records:

I. Designation of Officers

1. The Records Access Officer will be the District Clerk, who will:
 - receive requests for records of the Board of Education and make such records available for inspection or copying when such requests are granted;
 - ensure that district information that is not permitted to be released is not released (see section IV. Records Exempted from Public Access, below); and
 - compile and maintain a detailed current list by subject matter, of all records in the possession of the Board, whether or not available to the public.
2. The Superintendent of Schools, with the Board's approval, will designate a Records Management Officer for the district. The Records Management Officer will develop and oversee a program for the orderly and efficient management of district records, including maintenance of information security as it pertains to release of district records. The Records Management Officer will ensure proper documentation of the destruction of records, in accordance with the schedule.

II. Definition of Records

1. A record is defined as any information kept, held, filed, produced or reproduced by, with or for the district in any physical form whatsoever, including but not limited to reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or disks, rules, regulations or codes.
2. The Records Access Officer will have the responsibility for compiling and maintaining the following records:
 - a. a record of the final vote of each member of the Board on any proceeding or matter on which the member votes;
 - b. a record setting forth the name, school or office address, title and salary of every officer or employee of the district; and
 - c. a reasonably detailed current list by subject matter of all records in possession of the district, whether or not available for public inspection and copying.
3. No record for which there is a pending request for access may be destroyed. However, nothing in these regulations will require the district to prepare any record not possessed or maintained by it except the records specified in II(2), above.

III. Access to Records

1. Time and place records may be inspected: Records may be requested from, and inspected or copied at, the Office of the Records Access Officer, at the District Office during the hours of 8:30-4:30 on any business day on which the district offices are open. Records may also be requested via e-mail at the following address: lcarrson@cvscsd.org.
2. Fees: The fee for documents up to 9 x 14 inches is 25 cents per page. For documents larger than 9 x 14 inches, tape or cassette records, computer printouts, or other records, the cost will be based on the actual cost of reproduction or program utilized. Fees are subject to periodic review and change. However, no fee will be charged for records sent via e-mail, the search for

or inspection of records, certification of documents, or copies of documents which have been printed or reproduced for distribution to the public. No fee will be charged if an identical record has been prepared within the past six (6) months and an electronic copy is available, except for the actual cost of a storage device if one is provided in complying with the request. The number of such copies given to any one organization or individual may be limited, in the discretion of the Records Access Officer. In determining the actual cost of reproducing a record, the district may only include: (1) the hourly salary of the lowest paid employee with the necessary skill required to prepare a copy of the record, but only where at least two hours is required, (2) the actual cost of any storage devices or media provided in complying with the request, and (3) the actual cost to the district of engaging an outside service needed to prepare a copy of the record if the district's equipment is not able to prepare a copy. The district will inform the person making the request of the estimated cost, if more than two hours of employee time would be needed, or if it would be necessary to retain an outside service.

3. Procedures: Requests to inspect or secure copies of records must be submitted in writing, either in person, by mail or via e-mail, to the Records Access Officer. [Forms are provided (1120-E.1-2) for written and e-mail requests, but are not required.]
4. All requests for information will be responded to within five business days of receipt of the request. If the request cannot be fulfilled within five business days, the Records Access Officer will acknowledge receipt of the request and provide the approximate date when the request will be granted or denied.
5. If a request cannot be granted within 20 business days from the date of acknowledgement of the request, the district must state in writing both the reason the request cannot be granted within 20 business days, and a date certain within a reasonable period when it will be granted depending on the circumstances of the request.
6. Denial of Access: When a request for access to a public record is denied, the Records Access Officer will indicate in writing the reasons for such denial, and the right to appeal.
7. Appeal: An applicant denied access to a public record may file an appeal by delivering a copy of the request and a copy of the denial to the Superintendent within 30 days after the denial from which such appeal is taken.
8. The applicant and the New York State Committee on Open Government will be informed of the Superintendent's determination in writing within 10 business days of receipt of an appeal. The Superintendent will transmit to the Committee on Open Government photocopies of all appeals and determinations.

IV. Records Exempted from Public Access

The provisions of this regulation relating to information available for public inspection and copying do not apply to records that:

1. are specifically exempted from disclosure by state and/or federal statute;
2. if disclosed would constitute an unwarranted invasion of personal privacy;
3. if disclosed would impair present or imminent contract awards or collective bargaining negotiations;
4. are trade secrets, or are submitted to the Board by a commercial enterprise (e.g., a for-profit business entity) and which if disclosed would cause substantial injury to the competitive position of that enterprise;
5. are compiled for law enforcement purposes and which, if disclosed, would:
 - a. interfere with law enforcement investigations or judicial proceedings (except that if the district is not conducting the investigation, it must receive confirmation from the agency conducting the investigation that disclosure would interfere with an ongoing investigation);
 - b. deprive a person of a right to a fair trial or impartial adjudication;
 - c. identify a confidential source or disclose confidential techniques or procedures, except routine techniques or procedures; or
 - d. reveal criminal investigative techniques or procedures, except routine techniques and procedures;
6. which if disclosed would endanger the life or safety of any person;

7. which are interagency or intra-agency communications, except to the extent that such materials consist of:
 - a. statistical or factual tabulations or data;
 - b. instructions to staff which affect the public;
 - c. final Board policy determinations; or
 - d. external audits, including but not limited to audits performed by the comptroller and the federal government;
8. which are examination questions or answers that are requested prior to the final administration of such questions;
9. which if disclosed would jeopardize the district's capacity to guarantee the security of its information technology assets (which encompasses both the system and the infrastructure).

V. Prevention of Unwarranted Invasion of Privacy

To prevent an unwarranted invasion of personal privacy, the Records Access Officer may delete identifying details when records are made available. An unwarranted invasion of personal privacy includes but is not limited to:

1. disclosure of confidential personal matters reported to the Board which are not relevant or essential to the ordinary work of the Board;
2. disclosure of employment, medical or credit histories or personal references of applicants for employment, unless the applicant has provided a written release permitting such disclosures;
3. sale or release of lists of names and addresses in the possession of the Board if such lists would be used for private, commercial or fund-raising purposes;
4. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such records are not relevant or essential to the ordinary work of the Board; or
5. disclosure of items involving the medical or personal records of a client or patient in a hospital or medical facility.

Unless otherwise deniable, disclosure is not construed to constitute an unwarranted invasion of privacy when identifying details are deleted, when the person to whom records pertain consents in writing to disclosure, or when upon presenting reasonable proof of identity, a person seeks access to records pertaining to themselves.

Additionally, even if a release of information would be permitted under the state's Freedom of Information Law (FOIL), the district will not use or disclose any student or staff personally identifiable information (PII) unless it benefits students and the district, in conformance with state Education Law §2-d ("§2-d") and state regulations 8 NYCRR Part 121 ("Part 121"). Releases that "benefit students and the district" include:

- improving academic achievement,
- empowering parents and students with information, and
- and/or advancing efficient and effective school operations.

PII for student data is defined in federal regulations 34 CFR §99.3, and PII for teacher and principal data is defined in state Education Law §3012-c(10). The Superintendent, the district's Data Protection Officer, and the district's attorney, if necessary, will assist in determining whether complying with a FOIL request can be done in conformance with §2-d and Part 121.

VI. Listing of Records

Pursuant to Section 87(3)(c) of the Public Officers Law, the district will maintain a reasonably detailed list by subject matter of all records in the possession of the school district, whether or not available under the law. The subject matter list will be detailed enough to allow the category of the information sought to be identified. The district will update the subject matter list annually, and conspicuously show the most recent date on the list. The Superintendent or designee, in consultation with the Records Management Officer, will develop and disseminate department-specific guidance so that staff can implement this policy and regulation.

VII. Litigation-Hold

The Superintendent will designate a "discovery" team, comprised of the school attorney, [insert appropriate title for the director of information systems for the school district], the Records Access and Records Management Officer and other personnel as needed. The discovery team will convene in the event that litigation is commenced to plan to respond to the request for records. The Superintendent, with assistance from the [director of information systems], will ensure that measures are put in place to preserve applicable records.

Adoption Date: **March 19, 2025**

EX OFFICIO STUDENT MEMBER OF THE BOARD

() Required
(X) Local
(X) Notice

The Board of Education believes that it is important to include students' voices in its deliberations. Pursuant to law, the Board will designate at least one ex officio student member of the Board for the purpose of providing regular and direct communication between the Board and the student body.

Good faith actions, mutual respect, and cooperative effort of all parties are essential to a positive and meaningful partnership and bringing about meaningful changes. to the Board believes that an ex officio student member will:

1. provide students with an opportunity to express their voices, take ownership of their education, and impact Board decisions;
2. provide for the Board and students a vehicle through which they may exchange information and learn from one another;
3. provide an opportunity for students to gain experience with governance and leadership;
4. broaden the base of information available to those ultimately responsible for educational decision making; and
5. develop an environment that encourages inclusion, understanding, trust, and respect.

Position of Ex Officio Student Member of the Board

As required by law, the Board will have at least one ex officio student member. Ex officio student member(s) will be entitled to sit with Board members at all public meetings and hearings, participate in other Board activities and responsibilities at the discretion of the Board, but will not be required to participate in mandatory training for elected or appointed Board members. Ex officio student members may request to participate in meetings remotely, and may be excused to leave meetings early, upon the approval of the Board President.

Ex officio student member(s) will NOT: be allowed to vote; be allowed to attend executive sessions or other meetings/hearings not open to the public; or be entitled to receive compensation of any form for participating at Board meeting. Neither will they have the authority to call a special and/or emergency meeting of the Board; be considered a "member" of the Board for the purpose of establishing a quorum for conducting business; or be allowed to see or discuss documents or information regarding individual district personnel, collective bargaining negotiations, individual student records, or any other confidential matters.

Ex officio student member(s) will serve for a term of one (1) year, commencing on July 1 and ending on the succeeding June 30. Attendance at Board meetings is optional for the ex officio student member during July and August.

Specifically, ex officio student members of the Board are expected to:

1. Bring a student perspective to the Board's discussions;
2. Bring student concerns to the Board's attention;
3. Represent the student body on the Board;
4. Report back to the student body on the Board's actions; and
5. Solicit input from students on matters impacting the district, at the direction of the Board.

Qualifications and Selection of the Ex Officio Student Member of the Board

Ex officio student member(s) must have attended high school in the district for at least one year prior to selection.

The ex officio student Board member will be selected by the high school student government. An alternate ex officio student Board member will be selected by the high school student government.

Ref:

Education Law §§1702(3); 1709; 1804(12); 1901(2); 1950(2-c); 2109; 2502(10); 2552; 2553(1-a), (11)

Adoption Date: **March 19, 2025**

EXTREME HEAT CONDITION DAYS

(X) Required

- (x) Local
- (x) Notice

As required by Education Law section 409-n, the Board of Education adopts this policy to address the health and safety of students and employees on extreme heat condition days. "Extreme heat condition days" are defined by law as when occupiable educational and support services spaces are eighty-two degrees Fahrenheit or higher. Under the law, "support services spaces" do not include kitchen areas used in the preparation of food for consumption by students. The law requires room temperature to be measured at a shaded location, three feet above the floor near the center of the room.

Air conditioners, where available, may also be used to keep temperatures from reaching eighty-two degrees, or to lower the temperature once it does. Evaporative cooling techniques may be feasible in some situations.

Actions to be Taken at Eighty-Two Degrees

When the temperature of an occupiable educational or support service space reaches eighty-two degrees Fahrenheit, the district will take actions to relieve heat-related discomfort (consistent with fire and building codes), including but not limited to the following:

1. Turning off the overhead lights;
2. Opening classroom doors and windows to increase circulation;
3. Pulling down shades or blinds;
4. Turning on fans;
5. Turning off unused electronics that produce heat and
6. Providing water breaks.

The Superintendent of Schools, Director of Facilities, and Building Principals will determine which actions to take, when to take them and in what order, and who will take them (consistent with applicable collective bargaining agreements).

On days when the outside temperature is expected to reach at least eighty degrees, the district may take the actions listed above earlier in the day or before school starts, when the temperature is lower. The Superintendent and Director of Facilities will develop strategies to cool the district's occupiable educational and support services spaces during the day. The district will also remind students and their families to dress appropriately for the weather.

This policy does not preclude air conditioning from being used pursuant to an Individualized Education Program, Section 504 Plan, or documented medical needs.

Actions to be Taken at Eighty-Eight Degrees

Students and staff will be removed from educational and support services spaces when the temperature reaches eighty-eight degrees Fahrenheit, when practicable. The Superintendent will direct Building Principals to evacuate the space, including but not limited to the following:

1. Move students and staff to cooler locations; or

2. Close school early and send students and staff home according to the district's early closing protocols.

On days when the outside temperature is expected to be high enough that temperatures in occupiable educational or support service spaces are likely to reach eighty-eight degrees, even with the heat mitigation measures taken, the district may hold classes remotely (in accordance with the board-approved emergency remote instruction plan) or close school entirely (in accordance with required minimum instructional time). The Superintendent is authorized to make this decision. Remote learning may be district-wide, building-level, or for groups of students and staff affected by the extreme heat conditions.

During exams, if the temperature reaches eighty-eight degrees in spaces where exams are being administered, students and staff will be evacuated from the exam room, and testing will resume at a time and place when it is safe to do so. On exam days when the outside temperature is expected to be high enough that the temperatures in spaces where exams are being administered are likely to reach eighty-eight degrees, even with the heat mitigation measures taken, the district will attempt to find alternate locations to administer exams.

Cross-ref:

4765, Online, Distance and Remote Learning

Ref:

Education Law §§409-n; 2801-a

Adoption Date: **March 19, 2025**