GOMMISSIONER OF HUMAN RESOURCES

Deviewed By
Office of Town Attorney

Meeting of July 10, 2018

RESOLUTION P-12-18

WHEREAS, The 2018 Budget, adopted October 24, 2017 established the titles and salaries of officers and employees of the Town of Oyster Bay pursuant to Section 27 of Town Law, and other Local Laws relating to the establishment of Town Departments, and Rules and Regulations governing appointments, etc., of employees; and

WHEREAS, The adoption of said 2018 Budget, on October 24, 2017, was by a Resolution of the Town Board; and

WHEREAS, Resolution #P1063, dated December 12, 1972, provides a procedure for the amendment of the Resolution establishing grades, salaries and titles as required and requested by Department Heads,

NOW, THEREFORE, BE IT RESOLVED, That the Budget as adopted be and hereby is amended to reflect the approved additions and deletions as indicated by the attached.

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino Aye
Councilman Muscarella Aye
Councilman Macagnone Aye
Councilwoman Alesia Aye
Councilwoman Johnson Aye
Councilman Imbroto Absent
Councilman Hand Aye

cc:

Supervisor Town Attorney Comptroller Human Resources Payroll Meeting of July 10, 2018

Resolution No. TF-12-2018

RESOLVED, That the Comptroller be and he hereby is directed to Transfer Funds within the various Departments Accounts as indicated:

ITEM NO.	DEPT.		TNUOMA	FRO	M				
052-18	OTA	\$	1,500.00	OTA	Α	1420	44100	000	0000
				TO					
		\$	1,500.00	OTA	A	1420	44800	000	0000
				FROI	M				
053-18	DER		275.00	DER	Α	3510	46100	000	0000
				TO					
			275.00	DER	A	3510	46300	000	0000
				INC	RE2	ASE			
054-18	EXE	11	0,000.00	PAD	В	0001	02555	000	0000
				INC	RE <i>I</i>	ASE			
		11	0,000.00	PAD	В	8020	44800	000	0000

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino	Aye
Councilman Muscarella	Aye
Councilman Macagnone	Aye
Councilwoman Alesia	Aye
Councilwoman Johnson	Aye
Councilman Imbroto	Absent
Councilman Hand	Aye

cc:

Supervisor Town Attorney Comptroller

Environmental Resources

JR.

Town of Oyster Bay Inter-Departmental Memo

TO

MEMORANDUM DOCKET

FROM

OFFICE OF THE TOWN ATTORNEY

DATE

June 27, 2018

SUBJECT:

TRANSFER OF FUNDS

Town Board authorization is hereby requested to transfer funds between the following accounts:

FROM:

OTA A 1420 44110 000 0000 (Legal Fees)

\$1,500.00

TO:

OTA A 1420 44800 000 0000 (Professional Services)

\$1,500.00

Justification: To cover costs for Westlaw services.

JOSEPH NOCELLA

Matthew M. Rozea
Deputy Town Attorney

MMR:mek

Cc: Town Attorney (w/ 7 copies)





TOWN OF OYSTER BAY Inter-Departmental Memo

June 28, 2018

TO:

Memorandum Docket

FROM:

Neil O. Bergin, Commissioner, Department of Environmental Resources

SUBJECT:

Transfer of Funds

The Department of Environmental Resources requests the Town Board approval to transfer the following funds:

From:

DER A 3510 46100 000 0000

Animal Shelter Equipment Maintenance

\$275

To:

DER A 3510 46300 000 0000

Animal Shelter

Building, Property Maintenance \$275

This transfer is necessary for the payment of the repair of the freezer at the Animal Shelter.

Commissioner of Environmental Resources

NOB/bp

Copy: Town Attorney - w/ 7 copies Steven Ballas, Comptroller



Town of Oyster Bay **Inter-Departmental Memo**

July 2, 2018

To:

Memorandum Docket

From:

Robert Darienzo, Director of Finance

Subject:

Transfer of Funds

In order to provide funds for professional services in the Department of Planning & Development, the following transfer of funds is hereby requested:

Increase:

PAD B 0001 02555 000 0000 Building and Alteration Permits \$110,000.00

Increase:

PAD B 8020 44800 000 0000 Professional Services \$110,000.00

Thank you.

Robert Darienzo Director of Finance

RD/rd

cc: Town Attorney (with 7 copies)
Word/Documents/Docket/TOF 2018 planning



WHEREAS, Richard W. Lenz, P.E., Commissioner, Department of Public Works/Highway, by memorandum dated June 14, 2018, stated that the Department of Public Works approved the specifications for Contract No. DP18-176, Sodium Hypochlorite Storage Improvements at Marjorie R. Post and Syosset-Woodbury Community Parks and requested that the Division of Purchasing, Department of General Services, proceed with setting a date for receiving bids for said Contract, and the Division of Engineering, Department of Public Works, be authorized and directed to proceed with the bid and construction Phases of the above said Contract,

NOW, THEREFORE, BE IT RESOLVED, That the requests as hereinabove set forth are hereby accepted and approved, and the Division of Purchasing, Department of General Services is hereby authorized and directed to proceed with setting a date for receiving bids for Contract No. DP18-176, and that the Division of Engineering, Department of Public Works is hereby authorized and directed to proceed with the bid and construction Phases of Contract No. DP18-176.

-#-

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino Aye
Councilman Muscarella Aye
Councilman Macagnone Nay
Councilwoman Alesia Abstain
Councilwoman Johnson Aye
Councilman Imbroto Absent
Councilman Hand Aye

cc:

Supervisor Town Attorney Comptroller Public Works Parks General Services

General Service. Town Clerk TOWN OF OYSTER BAY

INTER-DEPARTMENTAL MEMO

June 14, 2018

TO:

MEMORANDUM DOCKET

FROM:

RICHARD W. LENZ, P.E., COMMISSIONER

DEPARTMENT OF PUBLIC WORKS/HIGHWAY

SUBJECT:

ACCEPTANCE OF THE DESIGN & REQUEST TO ENTER BID &

CONSTRUCTION PHASES

SODIUM HYPOCHLORITE STORAGE IMPROVEMENTS AT MARJORIE

POST AND SYOSSET-WOODBURY COMMUNITY PARKS

CONTRACT NO. DP18-176

The Department of Public Works is performing engineering services relative to the abovementioned contract.

The design has been completed, and the Commissioner of Public Works has approved the plans and specifications. The estimated construction time for completion of this subject contract is 120 days.

It is hereby requested that the Town Board authorize by Resolution that the Division of Purchasing, by copy of this memorandum, shall proceed with setting a bid date for receiving bids for this contract. They are requested to contact Sunita Chakraborti, Project Manager, at extension 5725 to establish a bid date.

COMMISSIONER

DEPARTMENT OF PUBLIC WORKS/HIGHWAY

cc: Town Attorney (w/7 copies) Steven C. Ballas, Comptroller Eric Tuman, Commissioner/General Services Joseph G. Pinto, Commissioner/Parks

DP18-176 - Sodium Hypchiorite MP & SW Parks_permission to bid

Reviewed By
Office of Town Attorney

WHEREAS, Maureen A. Fitzgerald, Commissioner, Department of Community and Youth Services, by memorandum dated June 14, 2018, has requested Town Board approval to employ the services of the performers in the table attached to, and made a part of, said memorandum, for the 2018–2019 Distinguished Artists Concert Series, for the dates and at the various libraries indicated; and

WHEREAS, the Town and the host library will each pay \$350 for each performance, for a total not to exceed \$3,150.00 for the 2018 portion of the Concert Series; and

WHEREAS, funds for these fees are available in Account CYS A 7020 47660 000 0000:

NOW, THEREFORE, BE IT RESOLVED, that the Town Board hereby approves the request as hereinabove set forth to employ the services of the performers, for the dates, locations and fees as stated in said memorandum and the attached list; and be it further

RESOLVED, that the Comptroller is hereby authorized and directed to make payment for each performer at a fee of \$350.00, upon presentation of a duly certified claim, after audit, with funds for said payment to be drawn from Account No. CYS A 7020 47660 000 0000.

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino Aye
Councilman Muscarella Aye
Councilman Macagnone Aye
Councilwoman Alesia Aye
Councilwoman Johnson Aye
Councilman Imbroto Absent
Councilman Hand Aye

cc: Supervisor
Town Attorney
Comptroller

Community & Youth Services

4-5



TOWN OF OYSTER BAY

Inter-Departmental Memorandum

June 14, 2018

TO:

Memorandum Docket

FROM:

Maureen A. Fitzgerald, Commissioner

Department of Community and Youth Services

SUBJECT:

2018-2019 Distinguished Artists Concert Series

The Department of Community & Youth Services is requesting Town Board authorization to employ the services of the following performers for the dates and locations in accordance with the attached table. This program is co-sponsored by the libraries noted.

Both the Town and the individual library will each pay \$350 toward the noted performance. The Town's responsibility will not exceed **\$3,150** for the **2018** portion of the Concert Series.

In accordance with Guideline 5, Section b. of the Town Procurement Policy, the procurement of these musicians and artists is exempt from the solicitation, written proposal or quotation requirements of the policy.

Funds for these fees are available in Account CYS A 7020 47660 000 0000, Special Events.

Therefore, it is respectfully requested that the Town Board authorize the Town to enter into agreements as negotiated and attached and further authorize the Supervisor and/or his designee to execute said agreements.

Maureen A. Fitzgerald

Commissioner

MAF:SAB:dj Attachments

cc: Town Attorney (+7 copies)



Pertormance	Check Payable 10:	Date/11me	Library
Mambo Loco	Wayne Burgess 128th Street, Bayville, NY 11709	Sunday, October 7, 2018 2:00 PM	Locust Valley Library
Something Special Big Band	Something Special Big Band 127 Pollok Place, Hicksville, NY 11801	Sunday, October 14, 2018 2:00 PM	Bethpage Public Library
The Hambones	John Kouri 142 Main Street, #3C, Mineola, NY 11501	Sunday, October 21, 2018 2:00 PM	Jericho Public Library
The Guthrie Brothers	Joseph B. Guthrie 210 Summit Avenue, Ramsey, NJ 07446	Sunday, October 28, 2018 2:00 PM	Locust Valley Library
New Vintage Orchestra	Lewis Music 278 Jericho Tumpike, Mineola, NY 11746	Sunday, November 4, 2018 2:30 PM	Farmingdale Public Library
Washington Square Winds	Elyssa Tannenbaum 820 West End Avenue, #2C, New York, NY 10025	Sunday, November 11, 2018 2:00 PM	Jericho Public Library
Gene Casey & The Lone Sharks	Gene Casey PO Box 794, Greenport, NY 11944	Sunday, November 18, 2018 2:00 PM	Bethpage Public Library
River of Dreams	John Cozolino 1 Old Town Road, Beacon, NY 12508	Sunday, December 9, 2018 2:30 PM	Farmingdale Public Library
Sasha Papernik & Her Band	Anna Papernik 116 Pinehurst Avenue, #A31, New York, NY 10033	Sunday, December 16, 2018 1:00 PM	Syosset Public Library
Halley and an all shapes of the state of the	The second secon		
4-17-17-17-17-17-17-17-17-17-17-17-17-17-			

Contract number: 092-2018

Contract

This Contract, made by and between the Town of Oyster Bay's Department of Community and Youth Services, located at 977 Hicksville Road, Massapequa, New York 11758 (hereinafter referred to as "TOWN") and Wayne Burgess, located at 12 8th Street, Brooklyn, New York 11709 (hereinafter referred to as "CONTRACTOR") in consideration of mutual interests provided for hereby, the parties herein agree as follows:

Performance by:	Mambo Loco		
Date:	October 7, 2018		•
Time:	2:00PM (a 75-90 m	inute performance is required)	
Location:	Locust Valley Libra	ry, 170 Buckram Road, Locust	Valley, NY
Contact:	Kathy Jones (516)	671-1837	•
Amount:	\$350.00		
sum of Three hu incapacitated from CONTRACTOR sh	ndred and fifty doll n rendering a pe all not receive any o	s, the TOWN agrees to pay C lars. If CONTRACTOR fails erformance through sicknes compensation. Payment for th invoice and the claim form pro	to appear, or is s or otherwise, le above services
•		WAYNE BURGESS	
		CONTRACTOR	
		DATE:	, 2018
		TOWN OF OYSTER BAY	
		COMMISSIONER	
		DATE:	-2018

WHEREAS, Maureen A. Fitzgerald, Commissioner, Department of Community and Youth Services, by memorandum dated June 21, 2018, requested Town Board authorization to employ a performer to provide entertainment for GAP Program participants at a total cost of \$300.00, as follows:

Timothy Aldridge 38 Constable Lane Levittown, New York 11756 Performance Date: July 17, 2018

Location: Syosset-Woodbury Community Center

TOTAL Fee: \$300.00

NOW, THEREFORE, BE IT RESOLVED, That the request as hereinabove set forth is accepted and approved, and the Supervisor, or his designee, is authorized to execute an agreement with the aforementioned performer for the aforementioned date and location for the purpose of providing entertainment to GAP Program participants at a total cost of \$300.00, to be paid by Friends of the Community Services Dept., Inc.

#

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino	Aye
Councilman Muscarella	Aye
Councilman Macagnone	Aye
Councilwoman Alesia	Aye
Councilwoman Johnson	Aye
Councilman Imbroto	Absent
Councilman Hand	Aye

cc: Supervisor
Town Attorney

Comptroller

Community & Youth Services

446

TOWN OF OYSTER BAY

Inter-Departmental Memorandum

June 21, 2018

TO:

Memorandum Docket

FROM:

Maureen A. Fitzgerald, Commissioner

Department of Community and Youth Services

SUBJECT:

Services for GAP

The Department of Community & Youth Services requests Town Board authorization to employ the services of Timothy Aldridge, located at 38 Constable Lane, Levittown, NY 11756. Timothy Aldridge will be providing entertainment for the GAP Program participants. The performance is on Tuesday, July 17, 2018 at Syosset-Woodbury Community Center. The cost for this performance is \$300.00. This performance will be paid by Friends of the Community Services Dept., Inc.

Therefore, it is respectfully requested that the Town Board authorize the Town to enter into an agreement as negotiated and attached and further authorize the Supervisor and/or his designee to execute said agreement.

Maureen A. Fitzgerald

Commissioner

MAF:jd Attachment

cc: Town Attorney (+7 copies)



Contract No.: 094-2018

Contract

This Contract, made by and between the Town of Oyster Bay's Department of Community and Youth Services, located at 977 Hicksville Road, Massapequa, New York 11758 (hereinafter referred to as "TOWN") and Timothy Aldridge, located at 38 Constable Lane, Levittown, New York 11756 (hereinafter referred to as "CONTRACTOR") in consideration of mutual interests provided for hereby, the parties herein agree as follows:

Performance by:

Timothy Aldridge

Date:

July 17, 2018

Location:

Syosset-Woodbury Community Center

Amount:

\$300.00

In consideration of these services, the TOWN agrees to pay CONTRACTOR the sum of Three hundred dollars. If CONTRACTOR fails to appear, or is incapacitated from rendering a performance through sickness or otherwise, CONTRACTOR shall not receive any compensation. Payment for the above services shall be made upon submission of your invoice and the claim form provided by TOWN.

TIMOTHY ALDRIDGE	
CONTRACTOR	.
——→ DATE:	, 2018
TOWN OF OYSTER BAY	
COMMISSIONER	
DATE:	, 2018



WHEREAS, Joseph Nocella, Town Attorney, and Matthew M. Rozea, Deputy Town Attorney, by memorandum dated June 19, 2018, have advised that on September 10, 2018, a trial is scheduled to begin in the Nassau County District Court in the code enforcement case entitled *The People of the State of New York v. Darren Thomas*; and

WHEREAS, Mr. Thomas has commenced several actions and proceedings against the Town relative to the Nassau County District Court proceeding, including a federal civil rights action, all of which have been handled by Christopher Kendric, Esq., who was retained through the Town's Public Officials Liability insurance policy; and

WHEREAS, in order to protect the Town's interests in the federal civil action, it is the opinion of the Office of the Town Attorney that Mr. Kendric should be directly retained in order to assist at the Nassau County District Court trial, given his extensive familiarity with all of the facts and issues involved in these matters, because a favorable outcome at trial will limit the scope of issues to be tried in the federal civil action; and

WHEREAS, by the aforementioned memorandum, it is the Office of the Town Attorney's recommendation and request that the Procurement Policy be waived in view of Mr. Kendric's prior handling of the actions and proceedings commenced by Mr. Thomas, which involved conducting depositions of many of the individuals who are reasonably expected to testify at the Nassau County District Court trial; and

WHEREAS, funds for said representation are in an amount not to exceed \$25,000.00 are available in Account No. OTA A 1420 44110 000 0000,

NOW, THEREFORE, BE IT RESOLVED, That the request and recommendations as hereinabove set forth are accepted and approved, and the Town Board hereby waives the Procurement Policy and authorizes, from March 30, 2018, the retention of the Kendric Law Group, P.C., 1225 Franklin Avenue, Suite 450, Garden City, New York in connection with *The People of the State of New York v. Darren Thomas*, and be it further

RESOLVED, That the Office of the Comptroller is hereby authorized and directed to make payment, in an amount not to exceed \$25,000.00, for expenses incurred (including disbursements) in connection with the legal services to be rendered hereunder, with funds to be drawn from Account No. OTA A 1420 44110 000 0000, upon submission of a duly certified claim, after audit.

-#-

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino Aye
Councilman Muscarella Aye
Councilman Macagnone Recused
Councilwoman Alesia Aye
Councilwoman Johnson Aye
Councilman Imbroto Absent
Councilman Hand Aye

cc: Supervisor
Town Attorney
Comptroller



Town of Oyster Bay Inter-Departmental Memo

FROM Office of the Town Attorney

: Memorandum Docket

DATE June 19, 2018

TO

SUBJECT: Retention of Counsel

In 2009, the Town of Oyster Bay commenced a code enforcement proceeding against the owner of an unlawful apartment located in Hicksville, New York. The owner, Darren Thomas, through his counsel, nearly immediately attacked the prosecution as one of selective prosecution. Ultimately, the Nassau County District Court denied Mr. Thomas' arguments, and set the case down for trial.

However, Mr. Thomas' attorney then commenced two separate actions. The first matter was commenced on December 8, 2011 in Nassau County Supreme Court, which sought an order preventing the Nassau County District Court trial from moving forward. commenced on December 15, 2011, was brought in the United States District Court for the Eastern District of New York, arguing that Mr. Thomas' civil rights were violated by the Town's prosecution. After exhausting his appeals and other litigation options, Mr. Thomas' attorney commenced a habeas corpus proceeding in the United States District Court for the Eastern District of New York on January 5, 2018. These matters have been handled by Christopher Kendric, Esq., who was retained through the Town's Public Officials Liability insurance policy.

Although the federal civil rights case is presently stayed pending the disposition of the code enforcement matter, the scope of issues to be decided in the federal case will be significantly narrowed if the Town prevails at the Nassau County District Court trial. Therefore, in order to assure the best possible outcome, this Office attempted early on to have Mr. Kendric assigned to the District Court trial given his familiarity with the facts and his handling of the three related matters. Despite those efforts, the insurance carrier denied coverage for the district court trial, which is now scheduled to begin on September 10, 2018.

It is this Office's opinion that Mr. Kendric should nevertheless be retained by the Town to assist at the Nassau County District Court trial. Mr. Kendric has an extensive understanding of the facts and law pertaining to this case, all of which will best protect the Town's interests during the District Court trial and throughout the federal action. Relatedly, by retaining Mr. Kendric, the Town will benefit from the knowledge developed over his handling of the actions commenced by Mr. Thomas, especially in view of the fact that Mr. Kendric already conducted depositions of many of the individuals who are reasonably expected to testify at the Nassau County District Court trial.

Accordingly, this Office requests (i) that the Town Board waive the Town's Procurement Policy in view of the particularized and unique nature and history of this matter, (ii) authorize the

retention of Mr. Kendric for purposes of the Nassau County District Court matter, and (iii) authorize payment in an amount not to exceed \$25,000.00 to the Kendric Law Group, P.C., 1225 Franklin Avenue, Suite 450, Garden City, New York. Funds for said payment are available in Account No. OTA A 1420 44110 000 0000.

JOSEPH NOCELLA TOWN ATTORNEY

Matthew M. Rozea
Deputy Town Attorney

MMR:mmr Attachment Matter No. 2018-6556

cc: Town Attorney (w 7/copies)



From

Niemczyk, Joseph A

Date 9/30/2014, 4:13:07 PM

To

Matthew M. Rozea; 'Christopher Kendric'

Cc

Subject RE: Darren Thomas v. Town of Oyster Bay AIG Claim: 550-075819

image001.jpg (29 KB <u>HTML</u>)

AIG Claim Information: Insured: Town of Oyster Bay

Claimants: Darren Thomas & Marlene Thomas

AIG Claim No.: 550-075819

Dear Mr. Rozea:

This email will acknowledge receipt of your letter, dated September 26, 2014, and your request for Illinois National Insurance Company to cover the costs of the Town of Oyster Bay's Nassau County District Court code enforcement prosecution of the Claimants, Darren Thomas and Marlene Thomas.

Please be advised that after further consideration, we maintain the position that the costs of defense for the Town's Code Compliance case in Nassau County District Court against Darren Thomas and Marlene Thomas are not covered expenses under the Town's Public Officials and Employment Practices Liability Policy issued by Illinois National Insurance Company.

Pursuant to Defense Provision (a) of the Public Officials and Employment Practices Liability Policy, Illinois National Insurance Company shall, in addition to the Limit of Liability, appoint an attorney and defend any Claim against the Insured alleging a Wrongful Act, even if such Claim is groundless, false or fraudulent; and pay on behalf of the Insured Defense Costs.

'Defense Costs' are defined by the Public Officials and Employment Practices Liability Policy as reasonable and necessary fees, costs, and expenses incurred by Illinois National Insurance Company, or incurred by the Insured with the written consent of Illinois National Insurance Company, (including premiums for any appeal bond, attachment bond, or similar bond but without any obligation to apply for or furnish any such bond) resulting from the investigation, adjustment, defense and appeal of a Claim against any Insured.

As acknowledged in your September 26, 2014 letter, the costs of prosecution of the Darren Thomas and Marlene Thomas are not ordinarily covered by the Public Officials and Employment Practices Liability Policy. The prosecution of Darren Thomas and Marlene Thomas in Nassau County District Court was initiated by the Town of Oyster Bay prior to the time the subject claim was asserted by the Claimants. Therefore, for the subject claim, we continue to advise that any costs incurred for the prosecution of the Claimants are not covered claim expenses.

Please let me know if you have additional questions or concerns.

Thank you.

Regards,

Joe Niemczyk

AIG

Claims Analyst | Financial Lines Financial Lines Claims | AIG Property Casualty

175 Water Street, 6th Floor, New York, NY 10038

Tel +1 212 458 1272 | Fax +1 877 849 0430

joseph.niemczyk@aig.com | www.aig.com

Correspondence Address AIG Financial Lines Claims P.O. Box 25947 Shawnee Mission, KS 66225

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From: Matthew M. Rozea [mailto:mrozea@oysterbay-ny.gov]

Sent: Friday, September 26, 2014 4:42 PM **To:** Niemczyk, Joseph A; 'Christopher Kendric'

Subject: RE: conference call this afternoon at 2:00 p.m. Darren Thomas v. Town of Oyster Bay AIG Claim: 550-075819

Joe:

Please see the attached.

Best,

Matt

Matthew M. Rozea, Esq. Town of Oyster Bay 54 Audrey Avenue Oyster Bay, NY 11771 (516) 624-6150

From: Niemczyk, Joseph A [mailto:Joseph.Niemczyk@aig.com]

Sent: Monday, September 22, 2014 5:52 PM **To:** 'Christopher Kendric'; Matthew M. Rozea

Subject: RE: conference call this afternoon at 2:00 p.m. Darren Thomas v. Town of Oyster Bay AIG Claim: 550-075819

Importance: High

AIG Claim Information: Insured: Town of Oyster Bay: Claimant: Darren and Marlene Thomas:: AIG Claim No.: 550-075819

Dear Christopher & Matthew:

Thank you for today's call.

Pursuant to our discussion, the costs of defense for the Town's Code Compliance case in Nassau County District Court against Darren Thomas are uncovered expenses under the Town's Public Officials and Employment Practices Liability Policy issued by Illinois National Insurance Company (Policy Number 01-481-57-72; Policy Period 01/28/2011 – 01/28/2012).

The Town of Oyster Bay has advised that it would like us to reconsider our position as to coverage for the defense costs of the Code Compliance case. Per your request, please submit a formal, written request for coverage with an explanation as to why these defense costs should be covered and this request for reconsideration will be evaluated.

Should you have any questions or concerns, do not hesitate to contact me.

Illinois National Insurance Company continues to reserve all of its rights under the Public Officials and Employment Practices Liability Policy, at law and in equity, pertaining to this matter.

Thank you.

Regards,

Joe Niemczyk

AIG

Claims Analyst | Financial Lines Financial Lines Claims | AIG Property Casualty

175 Water Street, 6th Floor, New York, NY 10038

Tel +1 212 458 1272 | Fax +1 877 849 0430

joseph.niemczyk@aig.com | www.aig.com

Correspondence Address AIG Financial Lines Claims P.O. Box 25947 Shawnee Mission, KS 66225

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From: Christopher Kendric [mailto:ckendric@goldbergsegalla.com]

Sent: Monday, September 22, 2014 1:20 PM

To: Niemczyk, Joseph A; Matthew M. Rozea (<u>mrozea@oysterbay-ny.gov</u>)

Subject: conference call this afternoon at 2:00 p.m. Darren Thomas v. Town of Oyster Bay AIG Claim: 550-075819

I will host the call.

Dial-in # (800) 346-2923

Participant Code: 620001

http://www.goldbergsegalla.com/sites/default/files/up ES-INT-Chicago.jpg

Christopher Kendric, Esq.

Partner

200 Garden City Plaza, Suite 520 | Garden City, NY 11530 DIRECT 516.281.9816 | FAX 516.281.9801 MOBILE 516.724.4232

ckendric@goldbergsegalla.com

View Profile and vCard | www.GoldbergSegalla.com

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TOWN ATTORNEY LEONARD GENOVA

CHIEF DEPUTY TOWN ATTORNEY FRANK M. SCALERA

SPECIAL COUNSEL
THOMAS M. SABELLICO

Office of the Town Attorney Town of Oyster Bay

> TOWN HALL, OYSTER BAY NY 11771 (516) 624-6150 FAX (516) 624-6196 www.oysterbaytown.com

> > September 26, 2014

DEPUTY TOWN ATTORNEY
MARTIN P. ABRUZZO
JEFFREY H. EHRLICH
FERN S. GOODMAN
FREDERICK E. MEI
JEAN M. RONCALLO
DONNA B. SWANSON
KAREN J. UNDERWOOD

ASSISTANT TOWN ATTORNEY LORRAINE F. HANEY REGAN LALLY MATTHEW M. ROZEA DENNIS P. SHEEHAN

Mr. Joseph Niemczyk Chartis Financial Lines 175 Water Street, 6th Floor New York, New York 10038

> Re: Claimants Darren and Marlene Thomas Your Claim No.: 550-075819

Dear Mr. Niemczyk:

Preliminarily, I thank you again for the time spent on the telephone conference with myself and Christopher Kendric earlier in the week. Our conversation was, as expected, fruitful.

In furtherance of that conference, and at your request, kindly allow this letter to serve as the Town of Oyster Bay's formal request that Chartis/AIG provide coverage under the Public Officials Policy and agree to absorb the reasonable costs associated with Mr. Kendric's handling of the Town's Nassau County District Court code enforcement prosecution of the Claimants. The Town appreciates the fact this is not something which would ordinarily be covered, but we believe that special circumstances exist and should be taken into consideration.

Mr. Thomas and his attorney brought an action under 42 U.S.C. § 1983 action in the United States District Court for the Eastern District of New York. Their attorney's fees to date in that case, which they are attempting to recover under §1988, are said to be close to \$500,000. The scope of that litigation has been considerably narrowed due to defense counsel's efforts, but as discussed, the case is still active pending the outcome of the Nassau County District Court prosecution.

Specifically, Judge Seybert has dismissed without prejudice certain of the claims against the Town and its officials, and has decided to hold in abeyance other claims. A conviction of Mr. Thomas on the code violation charges is likely to dispense with the federal court litigation altogether.

I need not remind you of the costs regularly associated with preparing for and then trying an involved Federal civil rights case to conclusion, nor the fact that if Plaintiff is

awarded ever nominal damages, he will be in a good position to recover back his attorney's fees and costs, with yet more litigation to determine the reasonableness of those fees and costs. In light of those factors, the Town requests that Chartis/AIG agree – on a one-time only basis – to provide coverage for Mr. Kendric to handle the Nassau County District Court prosecution because of his significant trial experience and his familiarity with the case, its history, and Claimants' attorney's unconventional and often unsavory tactics.

Consequently, for purposes of maximizing our chances of prevailing, and from AIG's perspective of minimizing risk, the Town respectfully submits that providing coverage is the most prudent course of action.

I can be reached at the number listed above if you need any further information.

Very truly yours,

LEONARD GENOVA
TOWN ATTORNEY

Matthew M. Rozea Assistant Town Attorney

MMR:mmr



REVIEWED BY Office of Town Attorney

WHEREAS, James Altadonna, Jr., Town Clerk, by memorandum dated June 7, 2018, recommended that the Town Board authorize payment of a refund in the amount of \$20.00 to Michael Marigliano, 20 Millford Drive, Locust Valley, N.Y. 11560, for a second parking permit that he purchased, believing his first permit was lost,

NOW, THEREFORE, BE IT RESOLVED, That the recommendation as hereinabove set forth is accepted, and the Town Board authorizes payment of a refund to Michael Marigliano, in the total amount of \$20.00, and payment of said refund is to be made upon presentation of a duly certified claim therefor, after audit by the Comptroller; and be it further

RESOLVED, That funds for said payment are to be drawn from Account No. HWY ST 0001 01721 000 0000.

-#-

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino Aye
Councilman Muscarella Aye
Councilman Macagnone Aye
Councilwoman Alesia Aye
Councilwoman Johnson Aye
Councilman Imbroto Absent
Councilman Hand Aye

cc: Supervisor
Town Attorney
Comptroller
Town Clerk

448

TOWN OF OYSTER BAY INTER-DEPARTMENTAL MEMO

June 7, 2018

TO:

MEMORANDUM DOCKET

FROM:

HON. JAMES ALTADONNA JR., TOWN CLERK

SUBJECT:

REFUND OF PARKING PERMIT FEE

Town Board authorization is requested to refund \$20.00 to Michael Marigliano, 20 Millford Drive, Locust Valley, New York 11560 for parking permits he purchased.

Mr. Marigliano thought his request for parking permits were lost in the mail so he came into the office to purchase them in person. Due to a clerical error these permits were issued again. He has returned the permits to us and is requesting a refund of \$20.00.

This refund is to be appropriated from Account No. HWY ST 0001 01721 000 0000.

HON. JAMES ALTADONNA JR.

TOWN CLERK

JA

cc: Town Attorney (+7 Copies)

Attachment



MARIGLIAND 20 MILLFORD DRIVE LOCUST VALLEY NY 11560

Dear sir

Dear requesting a refund of \$20 - owed to me for
duplicate parting decals easied to me by your office
On 3/16/18 if hand delivered to your office a chich
in the amount of \$0 - (# 3473) for my two decals.

Receiving nothing in the mail by 5/16/18 Detarried to
your office and was advised to mute a second 20 Check (#3494) after which I was issued the two decals.

On 5/19/18 I received in the moul parking dead
51826; on 5/2, preceived in the moul parking dead
51827, both of which I amrefactivity as I have no
near for from decals for two cass. I further learned
that both my checks had been cashed at the
some fine on 5/18/18.

How could that he?
Enclosed please fined back up to support my claim.
Please expedite my refund
thank you.

Yours Ludy 111 Mong Carrie

CHAPTER 233 OR RULES AND REGULATIONS PURSUANT THERETO. IN TOWN ORDINANCE MOTOR VEHICLES AND TRAFFIC, IS AVAILABLE IN PERMITTED PARKING AREAS DESCRIBED HEREINAFTER DESCRIBED, AND THAT I MAKE APPLICATION FORTH, THAT I AM THE OWNER OF THE MOTOR VEHICLE FOR A PERMIT TO PARK SUCH MOTOR VEHICLE WHEN SPACE HEREBY CERTIFY THAT I RESIDE AT THE ADDRESS SET

PARKING AREA OF THE TOWN. SUCH MOTOR VEHICLE IS PARKED IN ANY PERMITTED MOTOR VEHICLE OR ITS EQUIPMENT, OCCURRING WHILE LIABLE FOR ANY LOSS OF, OR DAMAGE TO, THE DESCRIBED AGREE THAT THE TOWN OF OYSTER BAY SHALL NOT BE

SIGNATURE OF APPLICANT

FOR OFFICE USE ONLY

DATE ISSUED PERMIT NO. _

ISSUED BY ____

CASH CHECK REG. SUBMITTED UTILITY SUBMITTED

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Village Stanta





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MOTOR VEHICLE OR ITS EQUIPMENT, OCCURRING WHILE SUCH MOTOR VEHICLE IS PARKED IN ANY PERMITTED AGREE THAT THE TOWN OF OYSTER BAY SHALL NOT BE LIABLE FOR ANY LOSS OF, OR DAMAGE TO, THE DESCRIBED PARKING AREA OF THE TOWN.

SIGNATURE OF APPLICANT

CT UTILITY SUBMITTED CHECK | REG. SUBMITTED FOR OFFICE USE ONLY PERMIT NO. DATE ISSUED . □ CASH

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ISSUED BY

CHANGES ONLY

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PLEASE SIGN REVERSE SIDE ON BOTTOM OF PAGE WHERE INDICATED





05/22/18

Account:

135000198

Name:

MICHAEL MARIGLIANO

OR HENRIETTA MARIGLIANO

Address:

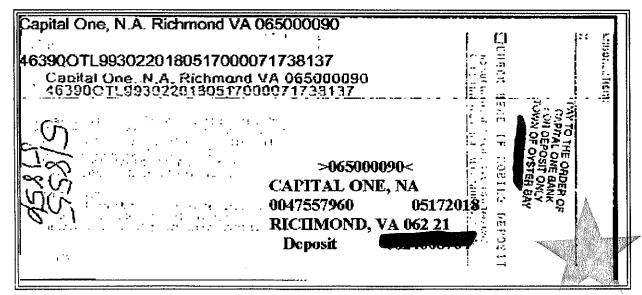
20 MILLFORD DR

LOCUST VALLEY, NY 115601225

The image shown below represents an official copy of the original document as processed by our institution

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05/22/18

Account:

135000198

Name:

MICHAEL MARIGLIANO

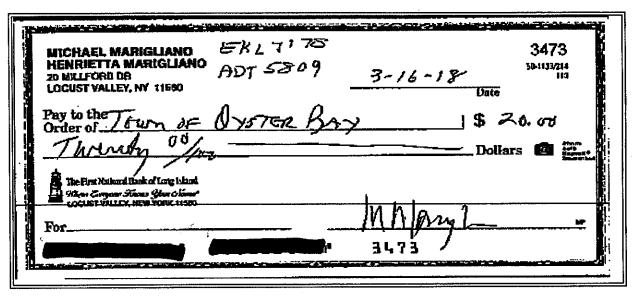
OR HENRIETTA MARIGLIANO

Address:

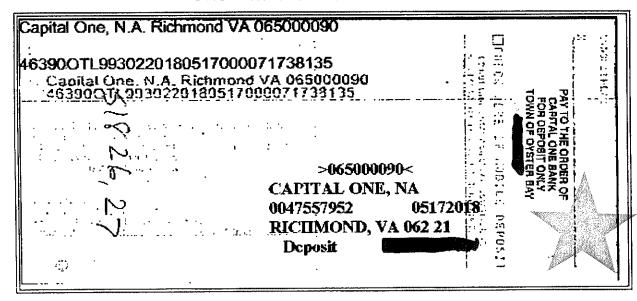
20 MILLFORD DR

LOCUST VALLEY, NY 115601225

The image shown below represents an official copy of the original document as processed by our institution



3473 05/18/18 10081520 20.00



Reviewed By
Office of Town Attorney

WHEREAS, James Altadonna, Jr., Town Clerk, by memorandum dated June 7, 2018, recommended that the Town Board authorize payment of a refund in the amount of \$100.00 to Hongqi Yu, 407 White Birch Lane, Jericho, N.Y. 11753, for a parking permit she purchased with the intent of commuting to work, which is no longer needed,

NOW, THEREFORE, BE IT RESOLVED, That the recommendation as hereinabove set forth is accepted, and the Town Board authorizes payment of a refund to Hongqi Yu, in the total amount of \$100.00, and payment of said refund is to be made upon presentation of a duly certified claim therefor, after audit by the Comptroller; and be it further

RESOLVED, That funds for said payment are to be drawn from Account No. HWY ST 0001 01721 000 0000.

-#-

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino	Aye
Councilman Muscarella	Aye
Councilman Macagnone	Aye
Councilwoman Alesia	Aye
Councilwoman Johnson	Aye
Councilman Imbroto	Absent
Councilman Hand	Aye

cc: Supervisor
Town Attorney
Comptroller
Town Clerk

TOWN OF OYSTER BAY INTER-DEPARTMENTAL MEMO

June 7, 2018

TO:

MEMORANDUM DOCKET

FROM:

HON. JAMES ALTADONNA JR., TOWN CLERK

SUBJECT:

REFUND OF PARKING PERMIT FEE

Town Board authorization is requested to refund \$100.00 to Hongqi Yu, 407 White Birch Lane, Jericho, New York 11753 for a parking permit she purchased.

Ms. Yu requested a parking permit intending to use it on a regular basis, however, she lost her job and will no longer need the commuter parking permit. She has returned the permit to us and is requesting a refund of \$100.00.

This refund is to be appropriated from Account No. HWY ST 0001 01721 000 0000.

HON. JAMES ALTADONNA JR.

TOWN CLERK

JΑ

cc: Town Attorney (+7 Copies)

Attachment



Hongqi Yu All For Kids Development 407 White Birch Ln, Jericho, NY 11753

May 17, 2018

Office of the Town Clerk 54 Audrey Avenue Oyster Bay, NY 11771

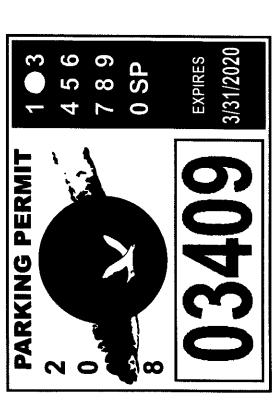
To whom it may concern,

I am writing this letter to request a refund for parking permit. I got laid off and I don't need to take train daily. Hence, I don't need parking permit anymore. I called to cancel my parking permit application but I got parking permit later on. Please issue me the refund at your earliest convenience.

Thank you in advance for your assistance and time. Please feel free to contact me at 914-202-5331 if you need any further information.

Yours

Hongqi Yu



Keep this document to s low to the police and courts.

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NYS LICENSE PLATE/YEAR HYU9632/2018

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STATE ___N¥

CITY Jericho

STREET 407 WHITEBIRCH LA

NAME YU HONGOL

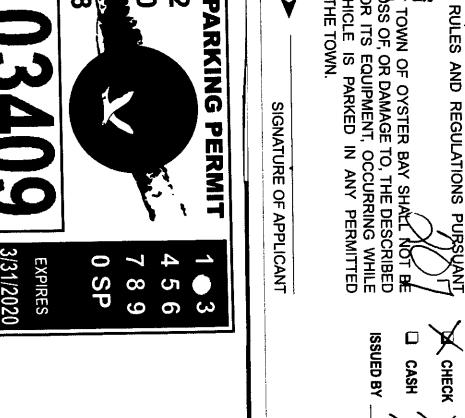
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PARKING AREA OF THE TOWN. SUCH MOTÓR VEHICLE IS PARKED IN ANY PERMITTED MOTOR VEHICLE OR ITS EQUIPMENT, OCCURRING WHILE LIABLE FOR ANY LOSS OF, OR DAMAGE TO, THE DESCRIBED AGREE THAT THE TOWN OF OYSTER BAY SHALL NOT

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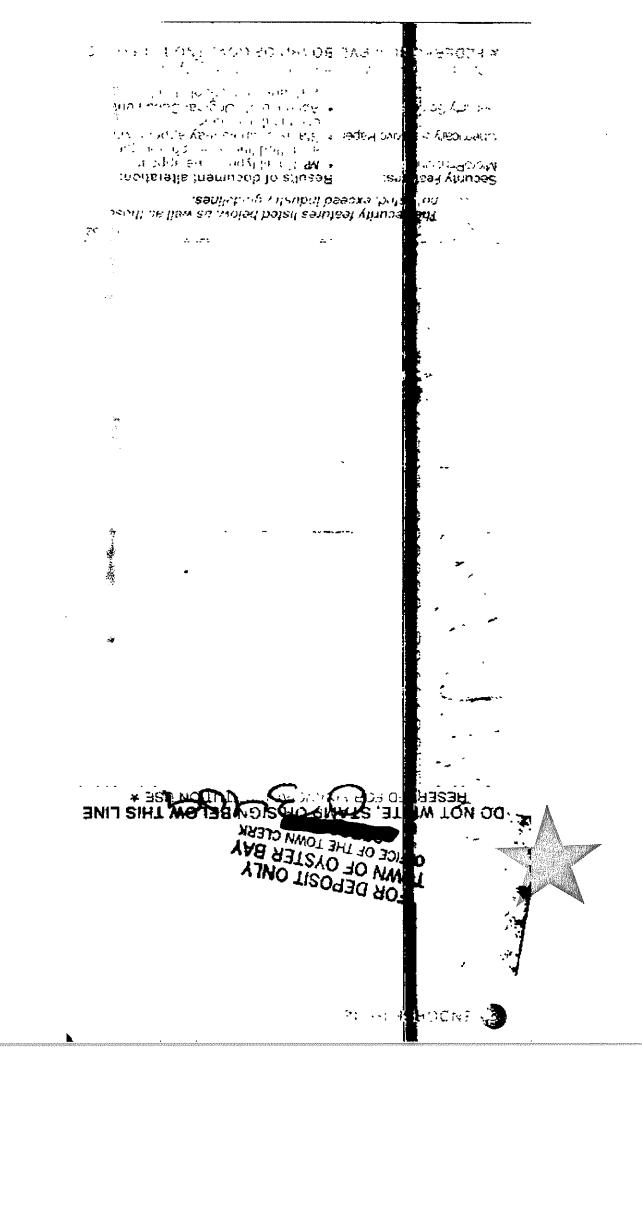
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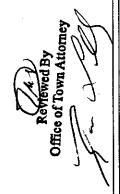
PAY TO THE ORDER OF

THASE TO

MEMO Parking JPMorgan Chase Bank, N.A. www.Chase.com

3





WHEREAS, James Altadonna, Jr., Town Clerk, by memorandum dated June 7, 2018, recommended that the Town Board authorize payment of a refund in the amount of \$200.00 to Carla Carapazza, 70 Alhambra Road, Massapequa, N.Y. 11758, for two parking permits which she has returned, unused, because she is moving,

NOW, THEREFORE, BE IT RESOLVED, That the recommendation as hereinabove set forth is accepted, and the Town Board authorizes payment of a refund to Carla Carapazza, in the total amount of \$200.00, and payment of said refund is to be made upon presentation of a duly certified claim therefor, after audit by the Comptroller; and be it further

RESOLVED, That funds for said payment are to be drawn from Account No. HWY ST $0001\ 01721\ 000\ 0000$.

-#-

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino Aye
Councilman Muscarella Aye
Councilman Macagnone Aye
Councilwoman Alesia Aye
Councilwoman Johnson Aye
Councilman Imbroto Absent
Councilman Hand Aye

cc: Supervisor
Town Attorney
Comptroller
Town Clerk





TOWN OF OYSTER BAY INTER-DEPARTMENTAL MEMO

June 7, 2018

TO:

MEMORANDUM DOCKET

FROM:

HON. JAMES ALTADONNA JR., TOWN CLERK

SUBJECT:

REFUND OF PARKING PERMIT FEE

Town Board authorization is requested to refund \$200.00 to Carla Carapazza, 70 Alhambra Road, Massapequa, New York 11758 for parking permits she purchased.

Ms. Carla Carapazza requested parking permits intending to use them on a regular basis, however, she is moving. She has returned the permits to us and is requesting a refund of \$200.00.

This refund is to be appropriated from Account No. HWY ST 0001 01721 000 0000.

HON. JAMES ALTADONNA JR.

TOWN CLERK

JA

cc: Town Attorney (+7 Copies)

Attachment



05/17/2018

To whom it may concern,

I was issued two parking permits for the Massapegua train station. However, I am moving and would like a refund attetded are the two checks, (first and back) and both un-used parking stickers. Thankyou.

Sonathan Acquarira.

New 31 MANSFIELD FDINE MASS PK 11762 516 6720400



MR. & MRS. J. ACQUAVIVA

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70 ALHAMBRA RD MASSAPEQUA, NY 11758-6605

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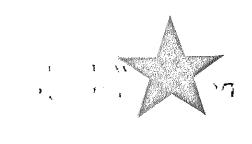
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MR. & MRS. J. ACQUAVIVA

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□ CASH

☐ REG. SUBMITTED

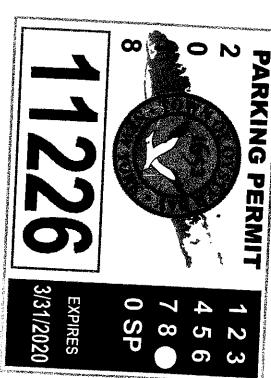
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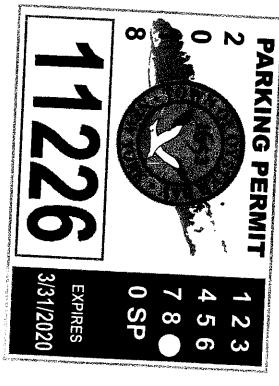
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NAME JONATHAN ACQUAVIVA

STREET 70 ALHAMBRA ROAD

CITY MASSAPEQUASTATE NY

11758

NYS LICENSE PLATE/YEAR GEA9279/2015

MAKE CHEVR BODY TYPE/COLOR SB/BK

FEE 100.00 PERMIT TYPE

PHONE NUMBER (516) 795-2957

CHANGES ONLY

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FOR A PERMIT TO PARK SUCH MOTOR VEHICLE WHEN SPACE FORTH, THAT I AM THE OWNER OF THE MOTOR VEHICLE HEREINAFTER DESCRIBED, AND THAT I MAKE APPLICATION IN TOWN ORDINANCE MOTOR VEHICLES AND TRAFFIC, CHAPTER 233 OR RULES AND REGULATIONS PURSUANT S AVAILABLE IN PERMITTED PARKING AREAS DESCRIBED HEREBY CERTIFY THAT I RESIDE AT THE ADDRESS SEI THERETO

LIABLE FOR ANY LOSS OF, OR DAMAGE TO, THE DESCRIBED MOTOR VEHICLE OR ITS EQUIPMENT, OCCURRING WHILE AGREE THAT THE TOWN OF OYSTER BAY SHALL NOT BE SUCH MOTOR VEHICLE IS PARKED IN ANY PERMITTED PARKING AREA OF THE TOWN,

ISSUED BY

☐ UTILITY SUBMITTED

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DATE ISSUED

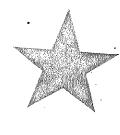
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FOR OFFICE USE ONLY

PARKING PERMI 6



SIGNATURE OF APPLICANT



CHANGES ONLY

PHONE NUMBER (516) 672-0400

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PERMIT TYPE

MAKE BMW

BODY TYPE/COLOR SUBN/BK

CITY MASSAPEQUASTATE NY

ZIP 11758

NYS LICENSE PLATE/YEAR GMX7954/2017

STREET 70 ALHAMBRA RD

NAME CARLA CARAPAZZA

Reviewed By
Office of Town Attorney

WHEREAS, Richard W. Lenz, P.E., Commissioner, Department of Public Works/Highway, by memorandum dated June 21, 2108, has advised that the Department of Public Works is underway with the expansion of Ellsworth W. Allen Town Park, under contract No. DP17-167: and

WHEREAS, Commissioner Lenz has advised that three (3) recovery wells located within the Park development area must be modified so that the recovery wells are flush with the ground surface: and

WHEREAS, the groundwater treatment facility within which the wells are located, is presently managed by AMO Environmental Decisions, Inc., ("AMO") in accordance with a United States Environmental Protection Agency Administrative order; and

WHEREAS, at the request of the Department of Public Works, AMO has submitted a letter proposal dated June 12, 2108, pursuant to which AMO would utilize P.W. Grosser Consulting, Inc., ("PWG") to develop a work plan and to provide construction oversight, and Delta Geophysics and Delta Well and Pump to perform the work, all at a total cost of \$35,825.00: and

WHEREAS, AMO, as the water treatment facility manager, is considered to be a sole source provider with respect to work to be performed at the facility; and

WHEREAS, Commissioner Lenz recommends and requests that the Town Board authorize payment to AMO in an amount not to exceed \$35,825.00 for the modification of the aforementioned recovery wells pursuant to work plans to be developed by PWG and with such work to be performed by Delta Geophysics and Delta Well and Pump,

NOW THEREFORE BE IT RESOLVED that the recommendation and request as hereinabove set forth is accepted and approved and the Comptroller is hereby directed to make payment to AMO in an amount not to exceed \$35,825.00 with funds to be drawn from acct No. PKS H 7197 20000 1209 001, after submission of a claim form and after audit by the office of the Comptroller.

-#-

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino	Aye
Councilman Muscarella	Aye
Councilman Macagnone	Aye
Councilwoman Alesia	Aye
Councilwoman Johnson	Aye
Councilman Imbroto	Absent
Councilman Hand	Aye

cc: Supervisor
Town Attorney
Comptroller
Public Works
Parks

TOWN OF OYSTER BAY

INTER-DEPARTMENTAL MEMO

JUNE 21, 2018

TO

MEMORANDUM DOCKET

FROM

RICHARD W.LENZ, P.E., COMMISSIONER

DEPARTMENT OF PUBLIC WORKS/HIGHWAY

SUBJECT:

MODIFICATION OF EXISTING LIBERTY INDUSTRIAL FINISHING SITE

GROUNDWATER RECOVERY WELLS

EXPANSION OF ELLSWORTH W. ALLEN TOWN PARK

CONTRACT NO. DP17-167

ACCOUNT NO. PKS H 7197 20000 1209 001

PROJECT ID NO. 1209TWNA-30

The Department of Public Works ("DPW") is underway with the Expansion of Ellsworth W. Allen Town Park, South Farmingdale. At the Project site, an active groundwater treatment facility is remediating both on-site and off-site groundwater contamination. This facility is managed by AMO Environmental Decisions, Inc. ("AMO") on behalf of the Liberty Industrial Finishing Qualified Settlement Trust in accordance with an Administrative Order with the United States Environmental Protection Agency. An easement is in place for the siting of this facility on Town property.

As shown on the attached map, there are three Recovery Wells that are located within the development area for the expansion project. These recovery wells extend above-grade, and must be modified to be flush with the ground surface as to not interfere with the expansion project. DPW has contacted AMO to have these wells modified utilizing their own contractor.

AMO has submitted the attached letter dated June 12, 2018 proposing to utilize P.W. Grosser Consulting, Inc. ("PWG"), to develop the workplan and provide construction oversight. PWG intends to utilize Delta Geophysics, and Delta Well and Pump to perform the work. The total cost of the necessary engineering and construction costs is \$35,825.00. Please note that the repairs noted in the AMO letter are outside the scope of this work, and is being addressed by the Office of the Town Attorney.

DPW has reviewed this proposal recommends that the Town Board authorize payment to AMO Environmental Decisions, Inc. in the amount of \$35,825.00 for the modification of recovery wells in the development area of the Expansion of Ellsworth W. Allen Town Park, utilizing Account No. PKS H 7197 20000 1209 001.

RICHARD W. LENZ, P.E. COMMISSIONER

DEPARTMENT OF PUBLIC WORKS/HIGHWAY

RWL/JCT/MR/ll

Attachments

Office of the Town Attorney (w/7copies)

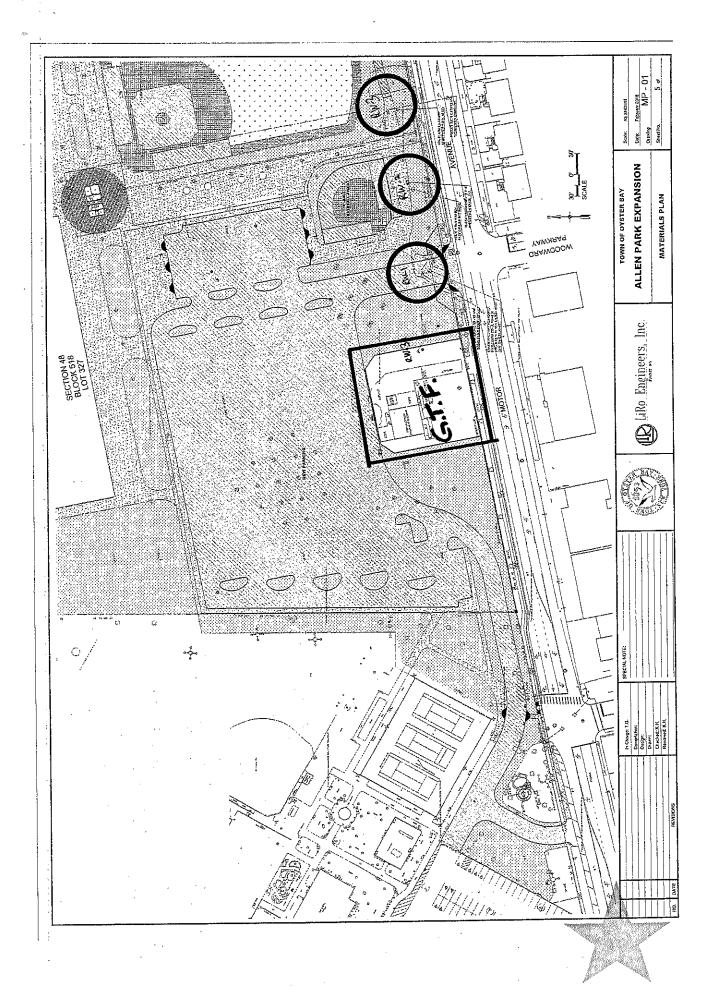
Steven Ballas, Comptroller

Joseph Pinto, Commissioner/Parks

Daniel Haas, Division of Engineering

DP17-167 DOCKET PAYMENT TO AMO FOR RECOVERY WELL MODS





PO Box 410 4327 Point Pleasant Pike Danboro, PA 18972

215-230-8282 215-230-8283 (Phone) (Fax)

www.amoed.com

AMO Environmental

A Decisions

Geologists
Hydrogeologists
GIS Analysts
Environmental Scientists

Earth & Environmental Resource Management Consultants

June 12, 2018

Matt Russo Town of Oyster Bay Department of Public Works 150 Miller Place Syosset, New York 11791

Subject:

Recovery Well Modification to Accommodate Park Construction Activities Liberty Industrial Finishing Superfund Site

Dear Mr. Russo:

AMO Environmental Decisions, Inc. (AMO) provides project coordination activities and groundwater treatment system operation and maintenance, and groundwater quality monitoring services for the Liberty Industrial Finishing Qualified Settlement Trust in accordance with an Administrative Order with the U.S. Environmental Protection Agency. P.W. Grosser Consulting (PWG) supports AMO with these activities. Enclosed is a work scope and cost estimate prepared PWG to perform modifications to the existing recovery wells at the Liberty Industrial Finishing Superfund Site. I understand that this work is necessary to accommodate the planned park construction to be performed by the Town of Oyster Bay (TOB). Per our previous discussions, the TOB will pay for PWG services to perform this work.

Also, I previously submitted an invoice to the TOB (January 10, 2018 letter submitted to Rich Lenz) for reimbursement (invoice from PW Grosser dated December 5, 2017 (Invoice No: AMO1701.0-1) in the amount of \$12,424.49). This invoice covers repairs to site related infrastructure that were necessary due to damages caused by the TOB clearing and grubbing actives performed during the fall of 2017. The damages were reported to John Caruso of the Department of Public Works wherein the Town of Oyster Bay acknowledged responsibility and agreed to pay for the damages. To date the Liberty Industrial Finishing Site Trust has not received payment.

Please submit a check in the amount of \$12,424.49 to:

Liberty Industrial Finishing Site Trust c/o de maximis, inc. 450 Montbrook Lane Knoxville, TN 37919 Attn: Mr. Tom Dorsey

Please contact me (267-249-0417) with questions.

Respectfully,

AMO Environmental Decisions

Ralph T. Golia, P.G.

Project Coordinator for the LIFS

Y:\RTG\Liberty\ROD Implementation\TOB park development related work\ltr to TOB - recovery well modification

P.W. GROSSER CONSULTING



June 12, 2018

Mr. Ralph Golia AMO Environmental Decisions P.O. Box 410 4327 Point Pleasant Pike Danboro, PA 18916 rgolia@amoed.com

RE:

Recovery Well Modification Liberty Industrial Finishing 55 Motor Avenue, Farmingdale, New York 181 P338

Dear Mr. Golia,

P.W. Grosser Consulting, Inc. (PWGC) is pleased to provide you with this proposal to modify existing wellhead elevations and to provide field oversight at Liberty Industrial Finishing located at 55 Motor Avenue, Farmingdale in support of the Allen Park expansion. PWGC understands that the Allen Park expansion includes the construction of softball and baseball fields, a t-ball field, a multi-purpose field for sports teams, a pedestrian/bicycle pathway, bathrooms and a parking area. Wellhead elevations within in the proposed expansion area will need to be modified to subgrade elevation prior to the proposed development.

PWGC is a civil/environmental engineering firm which specializes in civil engineering, water resources, geology/hydrogeology, and environmental consulting. Our firm has been catering to the needs of a diverse clientele for over 25 years and has a reputation for professionalism, quality service and responsiveness. We have performed oversight of well installations across the five boroughs of New York City and Long Island for municipal, commercial, institutional and residential projects. For your project, PWGC proposes to provide the following scope of work:

SCOPE OF SERVICES

TASK 1A – GEOPHYSICAL SURVEY

To verify the presence of underground utilities and other underground anomalies, PWGC will retain Delta Geophysics to perform a geophysical survey at the property. The geophysical survey will encompass the areas of the proposed work. The geophysical survey will include the use of electro-magnetic (EM) equipment and ground-penetrating radar (GPR). The task duration is anticipated to be one (1) day. Delta Geophysics estimates that the cost to complete this task is \$2,065, inclusive of applicable taxes, to be billed as a reimbursable expense.

TASK 1B - WELLHEAD MODIFICATION

PWGC will retain Delta Well and Pump (Delta Well) to provide well modification services. Delta Well will contact 811 to conduct a geophysical survey and buried utilities will be marked out prior to performing work. Three (3) recovery wells (RW-1, RW-2 and RW-3) and associated electrical services will be modified from above grade elevation to subgrade elevation. Work will include relocating each well's electric junction box. Each subgrade wellhead will be in a locking, water-tight manhole, dimensions 45-inch diameter by 24-inch deep, with a 44-inch composite cover rated for H-20 truck loads. Site restoration at RW1 will consist of an asphalt cold patch with tar

P.W. Grosser Consulting, Inc • P.W. Grosser Consulting Engineer & Hydrogeologist, PC 630 Johnson Avenue, Suite 7 • Bohemia, NY 11716
PH 631.589.6353 • FX 631.589.8705 • www.pwgrosser.com
New York, NY • Syracuse, NY • Seattle, WA • Shelton, CT



joint sealing. Site restoration at RW2 and RW3 will consist of raking and seeding around each manhole installation. An on-site water supply is will be made available by the client for Delta Well's use as required.

Lead time on manholes is seven (7) to ten (10) business days after order. The task duration is anticipated to be five (5), 8-hour workdays.

Delta Well estimates that the cost to complete this task is \$28,660.00, inclusive of applicable taxes. This cost is based upon the estimated duration of this task.

TASK 2 - FIELD OVERSIGHT

PWGC will provide field oversight and continuous observation of Delta Geophysics' and Delta Well's efforts throughout the project's duration. PWGC estimates that the cost to complete this task is \$5,100.00. Effort will be billed hourly in accordance with the attached rate schedule, and additional labor will continue to be billed at an hourly rate should the project exceed the anticipated duration time, unless otherwise agreed upon.

TOTAL FEE

The total fee proposed for this project is \$35,825.00.

ASSUMPTIONS AND EXCLUSIONS

Site surveys, detailed engineering design, filing for permits, meetings with regulatory agencies, preparation of additional technical documents, etc., will be considered additional services and invoiced at hourly rates of reimbursement in accordance with the attached rate schedule. Services provided by PWGC will be conducted as per the enclosed terms and conditions.

Should you find this proposal acceptable kindly sign below where indicated and return a copy to our office. Work will commence upon receipt of this signed agreement. Please call if you have any questions or would like to discuss the project further.

Very truly yours,

P.W. Grosser Consulting,

Kaitlyn Crosby Project Hydro/ES Regina Bykov, P.G. Project Engineer





CLIENT	AMO Environmental Decisions, Mr. Ralph Golia	
PROJECT SITE	55 Motor Avenue, Farmingdale	
PWGC LP#	18LP388	
I acknowledge proposal, and t	that I am an authorized company representat that I assume personal responsibility for paym	ive, that I have full responsibility to execute this ent of P.W. Grosser Consulting services.
Approved by		Date
;	Signature	Dete
Name, Compa	ny	Date
Please indicate	e where invoices should be sent for processin	g:
Name		
Address		
Email	Mary Mary Mary Mary Mary Mary Mary Mary	





CLIENT	AMO Environmental Decisions, Mr. Ralph Golia
PROJECT SITE	55 Motor Avenue, Farmingdale
PWGC LP#	18LP388

2018 PWGC RATE S	CHEDULE
Category	Hourly
PRINCIPALS	
Senior Principals	\$320.00 - \$375.00
Principals	\$260.00 - \$275.00
PROJECT MANAGEMENT	
Senior Project Manager	\$165.00 - \$215.00
Project Manager	\$120.00 - \$165.00
HYDROGEOLOGIST/ENVIRONMENTAL S	CIENTIST (HYDRO/ES)
Senior Hydro/ES	\$95.00 - \$145.00
Project Hydro/ES	\$85.00 - \$95.00
Project Coordinator	\$80.00 - \$90.00
Field Hydro/ES	\$80.00
ENGINEERING	
Project Engineer/Branch Manager	\$200.00
Senior Engineer	\$135.00 - \$140.00
Project Engineer	\$110.00 - \$155.00
Staff Engineer	\$100.00 - \$105.00
OTHER SERVICES	
IT Services	\$105.00
GIS/CADD Services	\$80.00
Administrative Services	\$100.00



WHEREAS, the Town Board adopted Resolution No. 310-2018 on May 8, 2018, which authorized PW Grosser Consulting Engineers, P.C. to perform engineering services pursuant to Contract HRZ18-178, Highway Requirements Contract for Demolition of Zombie Houses and Other Abandoned Structures; and

WHEREAS, Richard W. Lenz, P.E., Commissioner, Department of Public Works/Highway, by memorandum dated June 25, 2018, stated that the Department of Public Works approved the specifications for Contract No. HRZ18-178, a requirements contract with a duration of one year with extension options, and requested that the Division of Purchasing, Department of General Services, proceed with setting a date for receiving bids for said Contract, and the Division of Engineering, Department of Public Works, be authorized and directed to proceed with the Bid phase of the above said Contract,

NOW, THEREFORE, BE IT RESOLVED, That the requests as hereinabove set forth are hereby accepted and approved, and the Division of Purchasing, Department of General Services is hereby authorized and directed to proceed with setting a date for receiving bids for Contract No. HRZ18-178, and that the Division of Engineering, Department of Public Works is hereby authorized and directed to proceed with the bid phase of Contract No. HRZ18-178.

#

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino Aye
Councilman Muscarella Aye
Councilman Macagnone Nay
Councilwoman Alesia Abstain
Councilwoman Johnson Aye
Councilman Imbroto Absent
Councilman Hand Aye

cc: Supervisor
Town Attorney
Comptroller
Public Works
Highway
General Services
Town Clerk



10

TOWN OF OYSTER BAY

INTER-DEPARTMENTAL MEMO

June 25, 2018

TO

MEMORANDUM DOCKET

FROM

RICHARD W.LENZ, P.E., COMMISSIONER

DEPARTMENT OF PUBLIC WORKS/HIGHWAY

SUBJECT

ACCEPTANCE OF THE DESIGN & REQUEST TO ENTER BID &

CONSTRUCTION PHASES

HIGHWAY REQUIREMENTS CONTRACT FOR DEMOLITION OF ZOMBIE

HOUSES AND OTHER ABANDONDED STRUCTURES

CONTRACT NO. HRZ18-178

Town Board Resolution No. 310-2018 authorized PW Grosser Consulting Engineers, P. C. to perform engineering services relative to the above-mentioned contract.

The contract documents have been completed and the Commissioner of Public Works has approved the specifications. This contract is a requirements contract and is available for one year with extension options.

It is hereby requested that the Town Board authorize by Resolution that the Division of Purchasing, by copy of this memorandum, shall proceed with setting a bid date for receiving bids for this contract. They are requested to contact the Division of Engineering to establish a bid date.

RICHARD W. LENZ, P.E. COMMISSIONER

DEPARTMENT OF PUBLIC WORKS/HIGHWAY

RWL/JCI/MR/jc

Attachment

Office of the Town Attorney (w/7copies)
Steven Ballas, Comptroller
Eric Tuman, Commissioner/General Services
John P. Bishop, Deputy Commissioner/Highway

HRZ18-178 DOCKET PERMISSION TO BID ZOMBIE HOMES



WHEREAS, by Resolution No. 862-2017, adopted on December 12, 2017, the Town Board authorized and directed PW Grosser Consulting Engineers, P.C. to perform On-Call Engineering Services in connection with Contract No. PWC23-18, for a two (2) year period, from January 1, 2018 through December 31, 2019; and

WHEREAS, PW Grosser Consulting Engineers, P.C., by letter dated March 8, 2018, described the scope of work to be performed, in an amount not to exceed \$23,000.00, in connection with providing On-Call Engineering Services related to the preparation of specifications and bid assistance for the stabilization and/or demolition of "Zombie" houses and other abandoned structures throughout the Town of Oyster Bay; and

WHEREAS, Richard W. Lenz, P.E., Commissioner, Departments of Public Works and Highways, by memorandum dated April 18, 2018, requested Town Board authorization for PW Grosser Consulting Engineers, P.C. to provide the aforesaid On-Call Engineering Services under Contract No. PWC23-18 relative to the preparation of specifications and bid assistance for the stabilization and/or demolition of "Zombie" houses and other abandoned structures throughout the Town of Oyster Bay, and requested that the Comptroller be directed to issue an encumbrance order in an amount not to exceed \$23,000.00 for this purpose; and

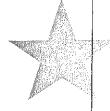
WHEREAS, funds in the amount of \$23,000.00 to satisfy said engineering costs are available in Account No. HWY H 5197 20000 000 1503 008/1503HWYDB-08,

NOW, THEREFORE, BE IT RESOLVED, that the requests as hereinabove set forth are accepted and approved, and PW Grosser Consulting Engineers, P.C. is hereby authorized to proceed to provide the aforementioned services in connection with Contract No. PWC23-18, On-Call Engineering Services Relative to Environmental Engineering, and the Comptroller is hereby authorized and directed to issue an encumbrance order in an amount not to exceed \$23,000.00, with funds to be drawn from Account No. HWY H 5197 20000 000 1503 008/1503HWYDB-08.

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino Councilman Muscarella	Aye Aye
Councilman Macagnone Councilwoman Alesia Councilwoman Johnson	Absent Nay Aye
Councilman Imbroto Councilman Hand	Aye Aye

Town Attorney Comptroller Public Works Highway



WHEREAS, Richard W. Lenz, P.E., Commissioner, Department of Public Works/Highway, by memoranda dated April 6, 2018 and April 19, 2018, advised that, in connection with Contract No. H18-171-P5, Flood Diversion and Control Projects for Massapequa and Massapequa Park, Project 5, Philadelphia Avenue Area, the Department of Public Works issued a request for proposals for professional services; and

WHEREAS, in response to the request for proposals, three (3) responses were timely received, which were evaluated in accordance with the provisions of the Town's Procurement Policy; and

WHEREAS, following due consideration of the responses, the Department of Public Works selected Lockwood, Kessler & Bartlett, Inc., to provide services under Contract No. H18-171-P5, which selection has been reviewed and approved by the Governor's Office of Storm Recovery; and

WHEREAS, Commissioner Lenz requested that the Supervisor, or his designee, be authorized to execute the approved consultant agreement with Lockwood, Kessler & Bartlett, Inc. for Contract No. H18-171-P5; and

WHEREAS, Commissioner Lenz has requested that the Town Board authorize Lockwood, Kessler & Bartlett, Inc. to perform engineering services under Contract No. H18-171-P5 in an amount not to exceed \$427,300.00, with funds to be drawn from Account No. IGA H 1997 20000 000 1303 001; and

WHEREAS, the funding of this project is being provided by the Governor's Office of Storm Recovery and is without cost to the Town; and

WHEREAS, the Governor's Office of Storm Recovery has given final approval to the required consultant agreement with Lockwood, Kessler & Bartlett, Inc.,

NOW, THEREFORE, BE IT RESOLVED, That the requests as hereinabove set forth are accepted and approved, and Lockwood, Kessler & Bartlett, Inc. is authorized to perform engineering services under Contract No. H18-171-P5, in an amount not to exceed \$427,300.00, with funds to be drawn from Account No. IGA H 1997 20000 000 1303 001, and be it further

RESOLVED, That the Supervisor, or his designee, is authorized to execute the consultant agreement for Contract No. H18-171-P5 with Lockwood, Kessler & Bartlett, Inc.

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino Aye
Councilman Muscarella Aye
Councilman Macagnone Nay
Councilwoman Alesia Abstain
Councilwoman Johnson Aye
Councilman Imbroto Absent
Councilman Hand Aye

cc: Supervisor
Town Attorney
Comptroller
Public Works
Intergovernmental Affairs

TOWN OF OYSTER BAY

INTER-DEPARTMENTAL MEMO

JUNE 25, 2018

MEMORANDUM DOCKET

FROM

RICHARD W.LENZ, P.E., COMMISSIONER DEPARTMENT OF PUBLIC WORKS/HIGHWAY

SUBJECT:

AWARD OF ENGINEERING SERVICES CONTRACT

AND USE OF SUB-CONSULTANTS

FLOOD DIVERSION AND CONTROL PROJECTS FOR

MASSAPEQUA AND MASSAPEQUA PARK PROJECT 5: PHILADELPHIA AVENUE AREA

AS PART OF THE N.Y. RISING COMMUNITY RECONSTRUCTION PROGRAM

CONTRACT NO. H18-171-P5

SUPPLEMENTAL MEMO TO FOLLOW

This project will provide for Flood Diversion and Control Projects in Massapequa and Massapequa Park as described in the Massapequas NY Rising Community Reconstruction (NYRCR) Plan, dated March 2014. This project is funded by and conceived through the New York Rising Community Reconstruction Program of the Governor's Office of Storm Recovery. This sub-project is Project Area 5, which will provide improvements to the Philadelphia Avenue Area, located in the Incorporated Village of Massapequa Park.

In accordance with the requirements of the Governor's Office of Storm Recovery, a project-specific consultant agreement must be executed reflecting the terms of the Request for Proposals and the specific contract requirements of the Governor's Office of Storm Recovery. The specific terms of this Agreement are under final review by the Office of the Town Attorney and the Governor's Office of Storm Recovery. The final Agreement and a formal recommendation of award will be provided by supplemental memorandum.

It is hereby requested that a space be reserved at the Town Board meeting of July 10, 2018 for the Town Board to award Contract No. H18-171-P5, Flood Diversion and Control Projects for Massapequa and Massapequa Park, Project 5: Philadelphia Avenue Area.

COMMISSIONER

DEPARTMENT OF PUBLIC WORKS/HIGHWAY

Office of the Town Attorney (w/7copies)

Steven Ballas, Comptroller

Colin Bell, Deputy Commissioner/IGA Daniel Midgette, Division of Engineering

H18-171-P5 DOCKET AWARD ENG SERVICES RESERVE



454

TOWN OF OYSTER BAY

INTER-DEPARTMENTAL MEMO

JUNE 29, 2018

TO

MEMORANDUM DOCKET

FROM

RICHARD W.LENZ, P.E., COMMISSIONER

DEPARTMENT OF PUBLIC WORKS/HIGHWAY

SUBJECT:

SUPPLEMENTAL MEMO TO DOCKET ITEM NO. 20

DOCKET OF JUNE 26, 2018

AWARD OF ENGINEERING SERVICES CONTRACT

AND USE OF SUB-CONSULTANTS

FLOOD DIVERSION AND CONTROL PROJECTS FOR

MASSAPEQUA AND MASSAPEQUA PARK PROJECT 5: PHILADELPHIA AVENUE AREA

AS PART OF THE N.Y. RISING COMMUNITY RECONSTRUCTION PROGRAM

CONTRACT NO. H18-171-P5

ACCOUNT NO. IGA H 1997 20000 000 1303 001

PROJECT ID NO. 1303TWNA-07

In furtherance to Item No. 20 of the docket of June 26, 2018, this project will provide for Flood Diversion and Control Projects in Massapequa and Massapequa Park as described in the Massapequas NY Rising Community Reconstruction (NYRCR) Plan, dated March 2014. This project is funded by and conceived through the New York Rising Community Reconstruction Program of the Governor's Office of Storm Recovery.

This sub-project is Project Area 5, which will provide improvements to the Philadelphia Avenue Area, located in the Incorporated Village of Massapequa Park.

On March 19, 2018, the Department of Public Works, through the Office of the Town Clerk published a public notice in Newsday, in addition to a posting on the New York State Contract Reporter and the Town of Oyster Bay website, to announce the availability of Request for Proposals documents for this project. On April 13, 2018 the Division of Engineering had received three (3) proposal responses which were reviewed and evaluated by a selection committee based on the technical merits and cost. Related support documentation is on file in the Division of Engineering.

The Commissioner of Public Works, after review of the technical and cost factors associated with these proposals that were determined by the Division of Engineering has approved the selection of the top-ranking firm as Lockwood, Kessler & Bartlett, Inc. The evaluation and selection process was performed in compliance with the requirements of Guideline 9 of the Town of Oyster Bay Procurement Policy. The Governor's Office of Storm Recovery has reviewed and approved the procurement procedure followed by the Town and the selection of Lockwood, Kessler & Bartlett, Inc.

The maximum total fee for engineering services for all phases of the project is \$427,300.00, as detailed in the attached cost proposal submitted by Lockwood, Kessler & Bartlett, Inc. In accordance with the requirements of the Governor's Office of Storm Recovery, engineering services are to be provided on a lump-sum basis.

Funds are available to satisfy engineering services at an amount not to exceed \$427,300.00 in Account No. IGA H 1997 20000 000 1303 001.

Further, to meet the technical requirements of the project and to satisfy the Governor's Office of Storm Recovery requirements for participation of Section 3 and Minority & Women Owned Business Enterprises, the office of Lockwood, Kessler & Bartlett, Inc. request authorization to utilize, as sub-consultants, CSM Engineering, P.C. for construction inspection services, and Gayron deBruin Land Surveying & Engineering for surveying services.

In accordance with the requirements of the Governor's Office of Storm Recovery, a project-specific consultant agreement, attached, must be executed reflecting the terms of the Request for Proposals and the specific contract requirements of the Governor's Office of Storm Recovery. The specific terms of this Agreement are under final review by the Governor's Office of Storm Recovery.

It is hereby requested that the Town Board authorize, by resolution, Lockwood, Kessler & Bartlett, Inc., to perform engineering services relative to Contract No. H18-171-P5, Flood Diversion and Control Projects for Massapequa and Massapequa Park, Project 5: Philadelphia Avenue Area, that CSM Engineering, P.C. and Gayron deBruin Land Surveying & Engineering be authorized as sub-consultants, and that the Town Supervisor, or his designee, be authorized to execute the Consultant Agreement upon final approval by the Governor's Office of Storm Recovery.

RICHARD W. LENZO COMMISSIONER

DEPARTMENT OF PUBLIC WORKS/HIGHWAY

RWL/JCT/MR/lk

Attachments

c: Office of the Town Attorney (w/7copies)
Steven Ballas, Comptroller
Colin Bell, Deputy Commissioner/IGA
Daniel Midgette, Division of Engineering

H18-171-P5 DOCKET AWARD ENG SERVICES SUPP 2



Flood Diversion & Control Projects For Massapequa & Massapequa Park

PROJECT 5

PHILADELPHIA AVENUE AREA (RECHARGE BASIN 4)

TOWN OF OYSTER BAY DEPARTMENT OF PUBLIC WORKS

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										AVG.	FEE
JOB CLASSIFICATION		7	TASK:	S & A S	SSIGN	IED F	IOUR	S		HOURLY	TECHNICAL
:										RATE	LABOR COST
! :	1	2	3	4	5	6 ·	7	8	Total	2018	
Principal In Charge	8	8	8	8		`			32	\$175.00	\$5,600.00
Project Manager	80	96	80	80		8	4		348	\$175.00	\$60,900.00
Engineer	120	160	208	80		80	48		696	\$133.11	\$92,643.27
Drafter	96	96	80	40		16	:		328	\$94.71	\$31,064.88
Sub-Total (Design)				•					1404		\$190,208.15
Resident Engineer								560	560	\$148.83	\$83,344.80
Const. Inspector								1120	1120	\$108.24	\$121,228.80
Sub-Total (Constr. Insp.)									1680		\$204,573.60
TOTAL	304	360	376	208	0	104	52	1680	3084	\$128.01	\$394,781.75

TASK DESCRIPTIONS

- 1 SCHEMATIC DESIGN PHASE (30% SUBMISSION)
- 2 DESIGN DEVELOPMENT PHASE (60% SUSBMISSION)
- 3 ADVANCED DESIGN PHASE (90% SUBMISSION)
- 4 CONSTRUCTION DOCUMENTS PHASE (100% SUBMISSION)
- 5 UNIFORM RELOCATION ACT (URA) ASSISTANCE (I.E. ROW ETAL.)
- 6 PERMITTING
- 7 BIDDING & AWARD ASSITANCE
- 8 CONSTRUCTION ADMIN. & INSPECTION (REVISED TO REFLECT A 7 MONTH CONSTRUCTION PERIOD)

\$40,465.14

\$48,589,46

\$50,663.29

\$29,837.05

\$0.00

\$13,564.01

\$7,089.19 \$204,573.60

SURVEY BASE MAPPING: GAYRON de BRUIN, LLP (WBE)

\$32,500.00

Technical Assumptions

1) The project scope does not include investigating or developing alternatives involving crossing the LIRR and Sunrise Highway.

2) ROW acquisitions or easements will not be required.

	Prope	sed F	ee:		
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Staffing Table (Revised 06-15-18) MANPOWER COST ESTIMATE



CONSULTANT AGREEMENT

ENGINEERING, DESIGN & CONSTRUCTION MANAGEMENT SERVICES FOR FLOOD DIVERSION AND CONTROL PROJECTS IN MASSAPEQUA AND MASSAPEQUA PARK AS DEFINED IN THE NY RISING COMMUNITY RECONSTRUCTION (NYRCR) PLAN, CDBG-DR MASSAPEQUAS

PROJECT #5 : PHILADELPHIA AVENUE AREA, MASSAPEQUA PARK CONTRACT NO. H18-171-P5

This is a project funded by and conceived through the NY Rising Community Reconstruction Program of the Governor's Office of Storm Recovery.

, by and between TOWN OF OYSTER THIS AGREEMENT made as of the _day of _ BAY, a municipal corporation having its principal place of business at Town Hall, Audrey Avenue, Oyster Bay, New York, acting on behalf of Town of Oyster Bay and Special Districts, hereinafter called the TOWN, Lockwood, Kessier & Bartlett, Inc., with their office and principal place of business at 1 Aerial Way, Syosset, New York 11791, hereinafter called CONSULTANT. WITNESSETH, That whereas the Town deems it necessary and desirable to retain the services of a CONSULTANT for the purpose of preparing surveys, plans, contract documents, and specifications and provide other services in connection with Flood Diversion and Control Projects in Massapequa and Massapequa Park, Project #5: Philadelphia Avenue Area, Massapequa Park. NOW. THEREFORE, THE PARTIES HERETO MUTUALLY AGREE AS FOLLOWS: That the CONSULTANT is hereby retained, on a non-exclusive basis to render the services required of the Consultant in accordance with the terms, conditions, and provisions as set forth herein, commencing and to continue until completion of all services, outlined in the request for proposals, or until such time that this Agreement is terminated or cancelled in accordance with and pursuant to the terms, conditions, and provisions set forth herein.

SECTION 1

Genera!

A. CONSULTANT - Professional Representative. The CONSULTANT shall serve as the TOWN'S professional representative in the planning, design, professional supervision, and inspection of the construction of the Project and shall give consultation and advice to the TOWN during the performance of their services, and the CONSULTANT herein represents that they are adequately staffed, skilled, and experienced in the type of work proposed, and represents further that they are duly licensed and qualified to perform these services under the Laws of the State of New York; and it is understood and agreed that in the event the CONSULTANT herein should for any reason desire to subcontract for any of the consulting services herein even though this be an accepted or usual practice of the profession, the CONSULTANT shall advise the TOWN'S representative in writing as to the name and office address of the sub-consultant and obtain the Town Board's approval as to the scope and percentage of work to be performed by the subconsultant and, further that all sub-consultant work is to be performed at no additional cost to the TOWN; however, in those instances where the CONSULTANT'S fee is based upon a multiple of wage rate, then it is agreed that the maximum cost for the Project shall include the cost of services rendered by all sub-consultants, and the CONSULTANT is required to file with the Town Comptroller a certified list of the payroll cost of those employees of the sub-consultant who are to perform services on the Project, and for purposes of payment and only for this purpose, under the provisions of Section V the sub-consultant and the designated employees of the subconsultant will be deemed to be employees of the CONSULTANT.

> Reviewed By Office of Town Attorney

- B. DESIGNATION OF TOWN'S REPRESENTATIVE The TOWN hereby designates the Commissioner of Public Works as its representative. In the event the Commissioner is unavailable or incapacitated, his duly designated Deputy Commissioner of Public Works may act in his stead. The Commissioner shall have complete authority to transmit instructions, receive information, interpret, and define the TOWN'S general policy and decisions insofar as he is acting as the TOWN'S administrator under the terms of this Agreement. This authority, however, is restricted as aforesaid and there is no intention on the part of the Town Board, either express or implied, to delegate its exclusive authority insofar as other matters under this contract, such as but not limited to, increase or decrease in the scope of the work and approval of designs and plans.
- C. NON-DISCRIMINATION CLAUSE The CONSULTANT agrees that neither he nor any subconsultant, vendor, or other person shall discriminate in any manner by reason of race, creed, or color in employment of persons for the performance of any work under this contract.
- D. COMPLIANCE WITH LABOR STATUTES AND RULES AND WAIVER OF IMMUNITY The CONSULTANT agrees to comply in all respects with the laws of the State of New York respecting labor and compensation and with all labor statutes, ordinances, rules and regulations applicable and having the force of law. In addition thereto, this contract is subject to cancellation pursuant to the provisions of Sec. 103-a of the General Municipal Law, which relates to refusal to sign a waiver of immunity when called to appear before a Grand Jury.
- E. SEPARATION OF CONSTRUCTION CONTRACTS In those cases where a construction contract is subdivided into separate contracts in compliance with the provisions of law (General Municipal Law, Sec. 101) the separate contracts shall, for the purpose of determining the CONSULTANT'S fee as herein set forth, be treated as one contract.
- F. INSURANCE The CONSULTANT shall secure and maintain such insurance as will protect him and the TOWN from claims under the Workmen's Compensation Acts, also secure and maintain bodily injury and property damage liability insurance coverage as will protect him and the TOWN, INCORPORATED VILLAGE OF MASSAPEQUA PARK, NASSAU COUNTY, NEW YORK STATE, and NEW YORK STATE HOUSING TRUST FUND CORPORATION, from claims which may arise from the performance of all services under this Agreement, in minimum limits of \$2,000,000.00, bodily injury and \$2,000,000.00 property damage, a Professional Liability Policy in an amount not less than \$2,000,000.00 insuring the CONSULTANT against errors and omissions. Automobile Liability and Property Damage Insurance is required in an amount not less than \$1,000,000.00 combined single limit for both Bodily Injury and Property Damage. The said insurance policies or certificates will be submitted for approval as to form to the Town Attorney's Office prior to or at the time of signing of this Agreement and copies then filed with the TOWN.
- G. COPYRIGHT OR PATENT INFRINGEMENT The CONSULTANT shall defend actions or claims charging infringement of any copyright or patent by reason of the use of adoption of any designs, drawings, or specifications supplied by him, and he shall hold harmless the TOWN from loss or damage resulting therefrom.
- H. TESTING OF CONSTRUCTION MATERIALS It is understood and agreed by the parties that the TOWN may contract with private testing laboratories for the purpose of testing construction materials that are typical of the construction contracts generally performed unless the private firm contracted with the Town is not equipped to do that particular type of testing or unless the facilities of the said laboratory are not available, or in the written opinion of the TOWN'S representative it is deemed to be in the best interests of the TOWN to use the facilities of an outside testing laboratory as a sub-contractor to the CONSULTANT, and in this regard the CONSULTANT shall comply with such procedures for testing as directed by the TOWN or the TOWN'S representative.

The CONSULTANT shall process claims for payment from the outside testing laboratories and submit to the TOWN'S representative his certification that the testing results were acceptable.

Reviewed By Office of Joyn Attorney

- CHANGE ORDERS in all those instances involving CONSULTANTS, Change Orders to the contractors, the CONSULTANT shall obtain written authorization in the form of a resolution from the Town Board along with approval by the Governor's Office of Storm Recovery (GOSR) as to the details and cost prior to authorizing the contractors to proceed with the work provided for under Change Orders, except in those instances when the CONSULTANT must issue the Change Orders on an emergency basis, and in these instances he shall contact the TOWN'S representative and GOSR's representative as soon as reasonably possible to obtain his authorization to proceed with that amount of work made necessary by the emergency conditions, and he shall as soon as reasonably possible thereafter contact the Town Board to obtain the written authorization to proceed with the balance of the work in the same manner as prescribed for in regular change orders.
- J. DIVISIBLE AGREEMENT The parties agree that the work and services to be performed by the CONSULTANT herein consists of three distinct but related phases of a program leading to the ultimate development and completion of the Project.

For this project, the funding authorization for the CONSULTANT will be made as a LUMP SUM which shall include all three phases of the project, and it is agreed that the fee for such services shall not be more than that set forth in Section V – PAYMENTS of this Agreement.

K. OWNERSHIP OF DOCUMENTS – The completed original tracings and the original master specification sheets shall remain the property of the TOWN but may remain in the custody of the CONSULTANT, unless otherwise determined by the TOWN. In the event of any subsequent revisions, the CONSULTANT shall submit two (2) revised prints to the office of the TOWN'S representative.

Until final acceptance of the Project by the TOWN, there shall be no publication of the plans, specifications, or contract documents relating to the Project by the CONSULTANT without the prior approval of the TOWN.

- L. COMPLETION OF PROJECT WITHIN CONSULTANT'S FINAL PROJECT COST ESTIMATE The CONSULTANT hereby acknowledges that he is familiar with the provisions of law dealing with municipal corporations, particularly those relating to the construction of Projects within the authorized amounts; therefore, said CONSULTANT hereby agrees to design the Project and arrive at his final Project cost estimate in such a manner as to allow the TOWN to build the Project at an amount which will not exceed the authorized amount which includes construction costs, engineering fees, and contingencies, and in the event that the bid amounts for the construction of the Project should exceed the CONSULTANT'S final Project cost estimate, the TOWN reserves the right to either cancel this Agreement or any portion thereof or instructs the CONSULTANT'S to redesign the plans so that the construction cost can come within the authorized amount, and if so directed to redesign, the CONSULTANT agrees to do so without any additional cost or fee to the TOWN, unless it is determined from a recognized construction cost index, such as the "Engineering News-Record Index," "Industrial Index," "Consumer Index," etc., that costs have increased beyond predictable amounts since the CONSULTANT'S design was submitted to the TOWN.
- M. SUCCESSORS AND ASSIGNS This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the Town and the CONSULTANT respectively and his partners, successors, assigns, and legal representatives. The CONSULTANT shall not have the right to assign, transfer or sublet his interest or obligations hereunder without written consent to the Town Board.
- N. By executing this agreement, CONSULTANT certifies that it is not currently engaged in a boycott of any American Allied Nation, as such term is defined by Town Code § 64-11, and CONSULTANT further agrees that it will not engage in a boycott of any American Allied Nation during the term of this agreement.

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SECTION II

Services of the Consultant

- A. THE DESIGN PHASE After the Town Board adopts a resolution directing the CONSULTANT to proceed with the Design Phase, the principal services to be performed are as follows:
 - 1. To avoid duplication of efforts, unless otherwise specified by GOSR in writing, the CONSULTANT will not conduct environmental review activities. It is presumed that GOSR will serve as lead agency for the purposes of NEPA and SEQRA. The CONSULTANT will be required to coordinate with GOSR and its contractors in support of any environmental review activity. Notwithstanding the above, the CONSULTANT will be responsible for applying for, obtaining and complying with all applicable, local, state and federal permits.
 - The CONSULTANT must abide by GOSR's environmental requirements, including but not limited to elevation design standards adapted to address impacts of climate change. Updated copies of these environmental requirements are available at www.stormrecovery.ny.gov/environmental-docs
 - After the initial pre-design conference, the CONSULTANT shall meet and work with the Town of Oyster Bay to determine more detailed program requirements for the project and shall refine and complete the program in a form acceptable to the Town of Oyster Bay.
 - 4. The consultant shall review and field-verify the existing condition findings of the preliminary technical report. If necessary, complete necessary topographic and boundary survey work to determine existing elevation of road surface, curbs, drainage structures, piping and outfalls, and adjacent properties.
 - 5. Prepare a conceptual design report (10%) for Town review that includes the following components: (1) alternatives for mitigating flooding conditions associated with various return interval design storms, within the budgetary constraints set forth for this project; (2) preliminary estimate of total project costs broken out by services and construction costs for these alternatives; (3) an analysis that explains the basis for selecting a specific storm return period as a basis for the design of the proposed alternative(s); (4) an analysis which provides a recommendation for a preferred alternative; and (5) summary.
 - 6. Upon acceptance of the design report, submit plans and specifications at the 30%, 60%, and 90% completion milestones for review and approval by the Town. Contents of deliverables should be based on the guidance provided in the CR Program Design Submission Guidance document dated May 5, 2017. With each submission, the CONSULTANT shall provide a report which shall include an updated estimate of probable construction costs, suggestions for design modifications which shall bring the project into conformance with the project budget, if necessary, and a timeline for completion of the next design milestone. The CONSULTANT shall not advance drawings beyond these milestones until approval from the Town is received. CONSULTANT shall also prepare a detailed schedule for the supply of next deliverable. Prepare a complete set of Final Contract Documents (drawings, specifications, and calculations), including an estimate of probable construction costs for use as the basis for advertising the construction project for bid. Upon the acceptance of each milestone submission, the Town will specify a deadline for the delivery of the next completion milestone.
 - Plan, advertise, and convene public meetings to gain feedback regarding the aesthetic, economic, and environmental impacts of the project.
 - 8. Ascertain public opinion and incorporate resident feedback into project design.
 - 9. Design the Project so that the actual Total Project Construction Cost does not exceed the Approved Construction Budget. In the event it is discovered at any phase of design that the estimated Total Project Construction Cost of the work is in excess of the Approved Construction Budget, or the bids received are in excess of the Approved Construction Budget, the CONSULTANT shall revise, at its own cost and expense, all or any part of the Schematic Deliverables, the Design Development Deliverables, the Construction Documents or the Bid Documents necessary to bring the estimated Total Project Construction Cost within the Approved Construction Budget. In order to reduce the estimated Total Project Construction Cost to the Approved Construction Budget, the CONSULTANT shall, in addition to the above, at the Town of Oyster Bay's request and at no additional cost, (i) provide value engineering to reduce the estimated Total Project Construction Cost to the Approved Construction Budget; (ii) assist the Town of Oyster

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- Bay in redefining the scope of the Project; (iii) incorporate all scope reductions and Project modifications into the modified Schematic Deliverables, Design Development Deliverables, Construction Documents or Bid Documents; and (iv) develop and incorporate bid alternates into the Construction Documents and Bid Documents.
- 10. Prepare a complete set of Final Contract Documents (drawings, specifications, and calculations), including an estimate of probable construction costs for use as the basis for advertising the construction project for bid within 120 calendar days of the acceptance of the final design report for review and approval by both the Town and GOSR.
- 11. Deliver copies of all GIS data generated during this project to Town of Oyster Bay with the final design delivery.
- 12. Prepare and submit any and all required permit applications.
- 13. Attend and present project update at one NYRCR Planning Committee update meeting. This meeting is separate from other meetings referenced in this Scope of Work.
- B. BIDDING PHASE After the Town Board adopts a resolution approving the CONSULTANT'S final design, cost and construction time estimates, and directing the CONSULTANT to proceed with the Bidding Phase, the principal services to be performed are as follows:
 - Assist the Town of Oyster Bay during the construction bid process by attending the prebid site meeting, responding to bidder questions, distributing documents to prospective bidders by mail or email and maintaining a list of prospective bidders, issuing any necessary addenda, and reviewing bids received to determine technical responsiveness and bidder experience and qualification to perform the work.
 - Recommend to the Town of Oyster Bay, award to the lowest, responsive, responsible bidder and assist the Town of Oyster Bay in the preparation of the Notice of Award.
- C. CONSTRUCTION PHASE This Phase is undertaken only after adoption of a resolution by the Town Board awarding construction contracts and authorizes the CONSULTANT to act on behalf of the TOWN in this Phase. The principal services to be performed are as follows:
 - 1. Conform the required copies of the contract and bid documents to the originals, if so required by the TOWN'S representative.
 - Review the low bidder's submittals of bonds and insurance certificates and assist the Town of Oyster Bay in the preparation of the Notice to Proceed.
 - 3. Conduct the pre-construction meeting and prepare meeting minutes.
 - 4. Review submittals for contract document compliance.
 - 5. As lights may be installed on Town, Village or County roadways, the selected firm will be required to ensure that the awarded Contractor submits and complies with the permitting and maintenance & protection of traffic requirements of these agencies.
 - 6. Answer Requests for Information within 5 business days.
 - Prepare agendas and conduct regular construction progress meetings in accordance with the Town of Oyster Bay's requests. Prepare meeting minutes. Meetings shall be held weekly, biweekly or monthly depending on the duration and complexity of the construction.
 - Conduct regular construction inspections to ensure contract compliance, design intent, quality of workmanship, and material acceptance. The frequency of inspections will be based on the duration and complexity of the construction and the level of construction activity.
 - Review and approve all contractor requests for payment, and submit approved requests to the Town of Oyster Bay. Payment requests shall meet GOSR and CDBG-DR Program requirements for reimbursement.
 - 10. Prepare and issue Field Orders and Change Orders.
 - 11. At Substantial Completion, conduct Substantial Completion Inspection and prepare punchlist of work to be completed
 - 12. At Final Completion, conduct Final Completion Inspection and prepare Certification of Final Completion

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- 13. Collect contract closeout documents from all prime contractors, this includes but is not limited to lien and claim releases from all subcontractors and vendors, Consent of Surety to Final Payment, and equipment warranties, if applicable.
- 14. Prepare Record (as-built) drawings
- 15. If applicable, prepare Operation and Maintenance Manual
- Coordinate project activities with the activities of the Town of Oyster Bay and other parties.
- 17. Conduct, in company with the TOWN'S representative, a final inspection of the Project for conformance with the design concept of the Project and compliance with the information given by the contract documents, approving, in writing, final payments to the contractors, and submit a written report of the completed Project to the TOWN.
- 18. Inspection during the Guaranty Period and during the term of any Performance or Maintenance Bond relating to the Project and preparation of a written report listing discrepancies between guarantees and performance.

Change Orders shall not be permitted unless specifically requested and approved by the Town of Oyster Bay.

SECTION III

Project Description

The Town of Oyster Bay is proposing to design and construct improvements to roads and drainage infrastructure throughout Massapequa, a hamlet of the Town of Oyster Bay, and the Incorporated Village of Massapequa Park, in an effort to mitigate roadway flooding that occurs during severe storms and extreme tidal events.

Flooding not only prevents safe egress from homes and businesses, but also damages homes, properties, and automobiles. Flooding further creates quality of life issues, including disruption of services such as school bus routes, mail and sanitation services.

Mitigation of these flooding events can be accomplished with techniques such as road raisings, installation of tidal check valves, repair of existing drainage systems, modification to existing drainage systems to increase capacity or elevation, and installation of new drainage infrastructure.

Penalties For Non-Performance

A design schedule, with all the critical completion dates for the above tasks, shall be prepared by the CONSULTANT and approved by the Town and GOSR. If the design tasks are not achieved by the CONSULTANT by the agreed to schedule deadlines, to the acceptance of the Town, payment will be withheld according to the payment schedule included in PAYMENT SCHEDULE.

Section IV

The Town

The TOWN agrees to provide the CONSULTANT, when requested, with complete information concerning the requirements of the project and to perform the following services:

- A. The TOWN shall provide legal access for the CONSULTANT to enter upon public and private lands as required for the CONSULTANT to perform such work and inspections in the development of the project.
- B. The TOWN shall give thorough consideration to all the CONSULTANT'S requests and proposals and shall inform the CONSULTANT of all decisions within a reasonable time.
- C. The TOWN shall hold all required public hearings and serve all required legal notices.

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- D. The TOWN shall furnish all the necessary topographical and property line surveys required for design purposes unless the TOWN shall direct the CONSULTANT to obtain or perform such necessary surveys under the Optional Services provisions of the Agreement.
- E. The TOWN shall furnish the CONSULTANT with a copy of the design and construction standards, if any, and the CONSULTANT agrees to consider and incorporate same in his design. However, if the CONSULTANT, in his professional judgment, deems an alternate design to be more desirable, then the same may be incorporated in his design, provided he obtains the prior written approval of the Town Board.

SECTION V

Payments to the Consultant

Payments to the CONSULTANT are contingent upon the TOWN's receipt of CDBG-DR funding to be applied to said payment and shall be made based upon the following schedule:

1. Surveying	\$32,500.00
2. Schematic Design Phase (30% Design Submission)	\$40,500.00
3. Design Development Phase (60% Design Submission)	\$48,600.00
4. Advanced Design Phase (90% Design Submission)	\$50,700.00
5. Completion of Construction Documents (100% Design)	\$29,800.00
6. Permitting	\$13,500.00
7. Contract Bid and Award	\$7,100.00
8. Construction Administration & Inspection	\$204,600.00
TOTAL FEES:	\$427,300.00

SECTION VI

Schedule of Payments

The CONSULTANT agrees to supply with all payment requests:

- A. A Consultant Claim summary report, outlining the status of the project budget, status of project completion, work performed in the claim period, and work anticipated to be performed in the next claim period.
- B. Time sheets for personnel working on the project, which shall be signed by the employee and approved by that employee's supervisor.
- C. Copies of all invoices for approved reimbursable costs, including, but not limited to, sub-contractor costs, sub-consultant costs, and supplies. No sales tax shall be reimbursed to the CONSULTANT. Copies of the Town's Tax-Exempt form can be provided upon request.

SECTION VII

Definitions & Requirements

A. PROJECT CONSTRUCTION COST shall not include the CONSULTANT'S fee or that of other special consultants whose fee is paid by the TOWN, nor does it include the cost of land, right-of-way, or compensation for and/or damages to property unless this Agreement so specifies, nor does it include the TOWN'S legal, accounting, bonding or interest charges incurred in connection with the Project. It is further agreed that nothing contained in this definition shall be construed to entitle the CONSULTANT to a fee or additional fee where any of the provisions of this Agreement provide otherwise, such as but not limited to the requirement that the CONSULTANT agrees without additional fee to redesign plans in order to award construction contracts within the authorized amount or where he designs plans for alternate items, the cost of which is not included in his Project construction cost estimate, or is not included in a construction contract under this Agreement.

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- B. WAGE RATE: The wage rate shall mean the actual hourly rate paid to the employee engaged directly in the project by the CONSULTANT, including, but not limited to principals, engineers, resident representatives, surveyors, designers, draftsmen, specification writers, estimators, and administrative staff. The CONSULTANT further agrees that in the event that an employee provides services to the project for which the time is in excess of a normal 40-hour week, the Town will only reimburse the CONSULTANT for the employee's wage rate without the application of a multiplier.
- C. CERTIFIED LIST OF PAYROLL COST: Upon the signing of this Agreement, the CONSULTANT shall file with the Office of the Town Comptroller a certified list of all employees, including partners and principals, who may be engaged in any of the work under this Agreement in which the fee for a said service to be rendered the TOWN under any Phase or Optional Service is to be based on a multiple of payroll factor. Any changes in the said payroll list are to be certified and filed promptly with the Office of the Comptroller. The TOWN reserves the right to audit the CONSULTANT'S payroll records and all other financial records, and the CONSULTANT herein agrees to cooperate with the TOWN and to make said records available, upon reasonable notice of the request of the TOWN or the Town Comptroller.
- D. REIMBURSABLE SERVICES: The CONSULTANT shall be reimbursed for the actual cost to the CONSULTANT for any authorized services as approved by the TOWN or the TOWN'S representative, for the following optional services such as, but not limited to:
 - Furnishing of drawings and specifications in addition to those provided for in this Agreement.
 - Work of special consultants when required by the complex nature of the Project, provided that the special consultant has been authorized by the Town Board as a subconsultant.
 - 3. Aerial Photography or photographic reproductions.
 - 4. Soil Borings and Investigations
- E. RESIDENT REPRESENTATIVES: The CONSULTANT shall furnish and direct qualified Resident Representatives, and the cost will be paid for by the TOWN as provided for the schedule of payments to be filed by the CONSULTANT in connection with the services to be rendered under the Optional Services section of this Agreement.

The program for Resident Representatives is to be submitted by the CONSULTANT for the approval of the Commissioner before such services begin.

- F. TERMINATION: Either party may terminate this Agreement hereto by giving a thirty-day (30-day) written notice to the other party of Notice of Cancellation. The CONSULTANT, shall be paid for services actually authorized and performed pursuant to the provisions of this Agreement up to the date of termination, including reimbursements then due unless the cancellation of the Agreement by the TOWN is due to the CONSULTANT'S failure to properly perform under the provisions of this Agreement.
- G. ABANDONED OR SUSPENDED WORK: If any work performed by the CONSULTANT is abandoned or suspended, in whole or in part, by the TOWN without any fault of the CONSULTANT, then the CONSULTANT shall be paid for services which have been performed and approved pursuant to the provisions of this Agreement prior to the TOWN giving written notice to the CONSULTANT of such abandonment or suspension.
- H. COMPLETION OF AUTHORIZED WORK: Any work authorized by the resolution and not completed nor abandoned nor suspended at the end of this contract shall be completed under the terms and conditions of this contract (until the effective date of a new or renewed contract, if any).

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- UNIT ITEMS OF WORK: Where a contract for construction employs the use of unit items of work, the CONSULTANT'S fee will be adjusted at the completion of work to account for the actual number of units used in the construction of Project and paid by the TOWN.
- J. IT IS UNDERSTOOD AND AGREED that this Agreement may be amended only in writing and that all understandings and agreements heretofore had between the parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement, and that the same is entered into after full investigation, neither party relying upon any statement or representation, not embodied in this Agreement, made by the other.
- K. APPROVAL OR AUTHORIZATION: Whenever approval or authorization is required in this contract by the Town Board, such approval or authorization shall be deemed granted only upon the adoption of a resolution by the Town Board approving or authorizing same.

SECTION VIII

Additional Provisions

Any of the foregoing provisions to the contrary notwithstanding, the parties hereto agree as follows:

- A. That during the Design Phase, the CONSULTANT shall, in addition to performing the services enumerated in the "Design Phase," without limitation as therein prescribed, design and assume responsibility for the sufficiency and adequacy of the design, plans and specifications and assure the TOWN that the design, plans and specifications will accomplish the purpose intended by the TOWN.
 - In the event, however, that the CONSULTANT has, because of the existing state of knowledge within the profession, any reservations as to the sufficiency and adequacy of any aspect of the design to accomplish the purpose intended by the TOWN for the Project, he shall submit for review by the Town Board his reservations, in writing, enumerating with specificity, the reservations and the reasons therefor. Upon review of said reservations, the Town Board may at its option either accept the reservation or request the CONSULTANT to redesign without additional cost to the TOWN.
- B. The CONSULTANT agrees, after the construction contract has been awarded, to keep the TOWN informed of any delays in the construction of Project and to notify the Commissioner of the Department of Public Works of the reasons for such delays prior to recommending to the TOWN that an extension of time for completion be granted.
- C. The CONSULTANT agrees, with regard to this Project, generally to assist the TOWN, upon request of the Town Attorney, in preparations associated with legal actions arising therefrom and to testify on behalf of the TOWN should the same be requested by the TOWN. The parties agree, in the event the aforesaid services are required, that the CONSULTANT'S principals will be compensated at the rates specified elsewhere in this Agreement.
- D. The parties agree that wherever it is provided in the Agreement to which this Rider is attached that the TOWN "approves," or words of like effect, that the approval contemplated by the parties is pro forma approval and that the TOWN does not intend by such approval to assume any of the CONSULTANT'S responsibility with regard to any Phase of the Project.
- E. The CONSULTANT agrees that the services which he may be required to perform under this Agreement can generally be categorized in Phases as follows:

Design, Bidding and Construction

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- F. It is understood and agreed by the CONSULTANT that in no event will the CONSULTANT commence work on any of the above Phases unless and until specifically directed to do so by a separate and distinct resolution by the Town Board.
- G. If, in the opinion of the CONSULTANT, any additions or changes of plans recommended or directed by the TOWN will increase the cost of the work beyond the amount agreed to by the TOWN after acceptance of the Preliminary Phase, then and in that event, the CONSULTANT shall not incorporate said changes in his design unless specifically authorized and directed to do so by resolution of the Town Board.
- H. The CONSULTANT agrees prior to commencing on the Bidding Phase of any contract to submit, in writing, to the Town Board for approval of the CONSULTANT'S final Project cost estimate.
- I. It is hereby agreed by and between the parties hereto that if the CONSULTANT'S final Project cost estimate or the bid price exceed the amount appropriated therefor as herein above specified in Paragraph "L," of Section I, then and in that event the TOWN reserves the right to direct the CONSULTANT to redesign the Project so that the Project will not exceed the aforesaid amount and the CONSULTANT agrees, if so directed, to redesign and he will do so at no additional cost to the TOWN.
- J. The parties hereto agree that the TOWN may, if it decides to undertake the Construction Phase of this Project regardless of anything to the contrary therefore set forth in this Agreement, at it sole option and discretion, perform said Phase using TOWN personnel and/or any other consultants and is not constrained to use the services of the other party to this Agreement beyond the Bid Phase. In the event, however, that the TOWN directs the CONSULTANT to perform these services, it is agreed that the fee for such services shall be set forth in Section V, "Payment," of this Agreement.
- K. "All attachments and exhibits to this Contract are hereby incorporated by reference into the Contract and are considered a material part of this Contract. Should any provision(s) of this Contract (including any terms in any of the attachments and/or exhibits thereto and amendments thereof) be deemed to be in conflict with any other provision(s), the provisions shall be applied pursuant to the priority set forth in the Order of Precedence section of the Governor's Office of Storm Recovery Supplementary Conditions for Contracts."

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<u>APPENDIX A</u>

Governor's Office of Storm Recovery

Supplementary Conditions

(Exhibit E)

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Office of Town Attorney

EXHIBIT E SUPPLEMENTARY CONDITIONS FOR CONTRACTS

Rev. 2/27/17

DEFINITIONS

"GOSR": Governor's Office of Storm Recovery and its successors and assigns, as well as the Housing Trust Fund Corporation and its successors and assigns, and its parent entities and their successors and assigns.

"Subrecipient": Town of DYSTER BAY

"Contractor": LOCKWOOD, KESSLER + BARTLETT, INC.

When these Supplementary Conditions are attached to any lower tier contract (e.g., a contract between Contractor (as defined above) and any subcontractor, or between Contractor's direct or indirect subcontractors), references herein to "Subrecipient" shall be deemed to refer to the party seeking products and/or services, and references to "Contractor" shall be deemed to refer to the party providing products and/or services, and references to the "Agreement" or "Contract" or "contract" shall be deemed to refer to the agreement between such subcontracting parties.

ORDER OF PRECEDENCE

In the event of a conflict between the terms of these Supplementary Conditions and the terms of the remainder of the contract (including any other attachments thereto and amendments thereof), the terms of these Supplementary Conditions shall control.

In the event of a conflict among the requirements found in these Supplementary Conditions, which conflict would make it impossible to comply with all of the requirements set forth herein, the provisions shall be applied with the following priority:

- (1) Part I: Required Federal Provisions; then
- (2) Part II: Required State Provisions;

and the remaining requirements shall be interpreted in a manner so as to allow for the terms contained therein to remain valid and consistent with such superseding provisions. If any provision of these Supplementary Conditions relates to a matter embraced by another provision(s) of these Supplementary Conditions, but is not in conflict therewith, all such provisions shall apply. Any question as to which requirements control in a particular instance which cannot be resolved by Contractor and Subrecipient shall be submitted in writing (indicating the issue and the applicable provisions) by Subrecipient to GOSR, which shall decide the applicable question.



PART I: REQUIRED FEDERAL PROVISIONS

The following terms and conditions apply to any contract for which any portion of the funding is derived from a grant made by the United States Department of Housing and Urban Development ("HUD").

GENERAL CONDITIONS

- 1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.
- 2. STATUTORY AND REGULATORY COMPLIANCE. Contractor shall comply with all laws and regulations applicable to the Community Development Block Grant-Disaster Recovery funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2), including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including the allowability of certain expenses.
- 3. <u>BREACH OF CONTRACT TERMS.</u> The Subrecipient and GOSR reserve their rights to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of this contract, in instances where the Contractor or any of its subcontractors violate or breach any contract term. If the Contractor or any of its subcontractors violate or breach any contract term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- 4. <u>REPORTING REQUIREMENTS.</u> The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Subrecipient and GOSR. The Contractor shall cooperate with all Subrecipient and GOSR efforts to comply with HUD requirements and regulations pertaining to reporting, including but not limited to 2 CFR Part 200 and 24 C.F.R. § 570.507.
- 5. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government, GOSR, and the Subrecipient in any resulting invention in accordance with 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD.

- 6. <u>DEBARMENT, SUSPENSION, AND INELIGIBILITY</u>. The Contractor represents and warrants that it and its subcontractors are not debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs subject to 2 C.F.R. Part 2424. The Contractor shall notify the Subrecipient and GOSR should it or any of its subcontractors become debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs subject to 2 C.F.R. Part 2424.
- 7. CONFLICTS OF INTEREST. The Contractor shall notify the Subrecipient as soon as possible if this contract or any aspect related to the anticipated work under this contract raises an actual or potential conflict of interest (as described in 2 CFR Part 200). The Contractor shall explain the actual or potential conflict in writing in sufficient detail so that the Subrecipient is able to assess such actual or potential conflict. The Contractor shall provide the Subrecipient any additional information necessary for the Subrecipient to fully assess and address such actual or potential conflict of interest. The Contractor shall accept any reasonable conflict mitigation strategy employed by the Subrecipient, including but not limited to the use of an independent subcontractor(s) to perform the portion of work that gives rise to the actual or potential conflict. If requested by GOSR, Contractor shall sign a certification affirming that it has no conflict of interest arising from performance of work on a specific task.
- 8. <u>SUBCONTRACTING.</u> The Contractor represents to the Subrecipient that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this contract.

The Contractor will include these Required Federal Provisions in every subcontract issued by it so that such provisions will be binding upon each of its subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors.

- 9. <u>ASSIGNABILITY</u>. The Contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Subrecipient.
- 10. <u>INDEMNIFICATION</u>. The Contractor shall indemnify, defend, and hold harmless the Subrecipient, GOSR, and their agents and employees from and against any and all claims, actions, suits, charges, and judgments arising from or related to the negligence or willful misconduct of the Contractor in the performance of the services called for in this contract.
- 11. TERMINATION FOR CAUSE (Applicable to contracts exceeding \$10,000). If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Subrecipient shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the Subrecipient, become the Subrecipient's property and the Contractor



shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Subrecipient for damages sustained by the Subrecipient by virtue of any breach of the contract by the Contractor, and the Subrecipient may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Subrecipient from the Contractor is determined.

- 12. TERMINATION FOR CONVENIENCE (Applicable to contracts exceeding \$10,000). The Subrecipient may terminate this contract at any time by giving at least ten (10) days' notice in writing to the Contractor. If the contract is terminated by the Subrecipient as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.
- 13. <u>LOBBYING (Applicable to contracts exceeding \$100,000)</u>. The Contractor certifies, to the best of his or her knowledge and belief, that:
 - A. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - C. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

14. BONDING REQUIREMENTS (Applicable to construction and facility improvement contracts exceeding \$100,000). The Contractor shall comply with New York State bonding requirements, unless they have not been approved by HUD, in which case the Contractor shall comply with the following minimum bonding requirements:

- A. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.
- C. A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
- 15. <u>ACCESS TO RECORDS.</u> The Subrecipient, GOSR, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have, at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the Contractor which are related to this contract, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions.
- 16. MAINTENANCE/RETENTION OF RECORDS. Contractor shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement (collectively, the "Records") (i) for three (3) years from the time of closeout of HUD's grant to the State or for the period provided in the CDBG regulations at 24 CFR 570.487 (or other applicable laws and program requirements) and 24 CFR 570.488, or (ii) for six (6) years after the closeout of a CDBG-DR funded project pursuant to 42 USC 12707(a)(4) and New York Civil Practice Law and Rules § 213, whichever may be longer, provided that Section 1 of the Required State Provisions herein is also satisfied.

CIVIL RIGHTS AND DIVERSITY PROVISIONS

17. SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS. The Contractor will comply with the small and minority firms, women's business enterprise, and labor surplus area requirements as set forth at 2 CFR Part 200. Contractor will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of the contract. As used in these Required Federal Provisions, the terms "small business" means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 U.S.C. § 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed, or Spanish-heritage Americans, Asian-

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Americans, and American Indians. Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

The Contractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- E. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- 18. TITLES VI AND VIII OF THE CIVIL RIGHTS ACT OF 1964 AND EXECUTIVE ORDER 11063. The Contractor shall comply with the provisions of Titles VI and VIII of the Civil Rights Act of 1964 and with Executive Order 11063. No person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. No person shall, on the grounds of race, color, religion, sex, or national origin, be discriminated against in the sale, rental, or financing of dwellings. To the extent that any such sale, lease or other transfer of land shall occur, Contractor, in undertaking its obligation to carry out the Program assisted hereunder, will not itself so discriminate.
- 19. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974. The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.
- 20. <u>SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT OF 1990.</u> The Contractor shall comply with



section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as amended, and any applicable regulations, and with the Americans with Disabilities Act of 1990 (42 U.S.C. § 126), as amended, and any applicable regulations

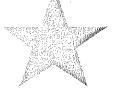
The Contractor agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance from HUD.

21. AGE DISCRIMINATION ACT OF 1975. The Contractor shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), as amended, and any applicable regulations. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

22. NONDISCRIMINATION.

The Contractor shall comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 C.F.R. § 570.607. The applicable non-discrimination provisions in Section 109 of the Housing and Community Development Act of 1974 are still applicable. The Contractor shall comply with all other federal statutory and constitutional non-discrimination provisions. During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a



part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- D. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Contractor will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

With respect to construction contracts and subcontracts exceeding \$10,000, The Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967; Executive Order

11478 of August 8, 1969; Executive Order 12107 of December 28, 1978; Executive Order 12086 of October 5, 1978; and as supplemented in Department of Labor regulations (41 C.F.R. Part 60). Subrecipient shall include the following Specifications, which are required pursuant to 41 CFR 60-4.3 in all federally assisted contracts and subcontracts. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term "Construction Work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Standard Federal Equal Employment Opportunity Construction Contract Specifications for Contracts and Subcontracts in Excess of \$10,000. (Federal Notice Required by 41 CFR 60-4.3)

- 1. As used in these specifications:
- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

- (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
- (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
- (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
- (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- 2. Whenever the contractor or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Agreement resulted.
- 3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or

through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

- 4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this Agreement resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each Construction trade in which it has employees in the covered area. Covered Construction contractors performing Construction Work in geographical areas where they do not have a Federal or federally assisted Construction contract shall apply the minority and female goals established for the geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- 5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- 6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- 7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each

Construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment

opportunities available, and maintain a record of the organization's responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to

meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction Work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction Work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with

other contractors and subcontractors with whom the contractor does or anticipates doing business.

- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- I. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.



- 9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- 10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- 11. The contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.
- 12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- 13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- 14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- 15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of

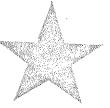
requirements for hiring of local or other areas residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

23. <u>CERTIFICATION OF NONSEGREGATED FACILITIES (Applicable to construction contracts exceeding \$10,000)</u>. The Contractor certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the nondiscrimination clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the nondiscrimination clause; that it will retain such certifications in its files; and that it will forward the preceding notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

- 24. SECTION 503 OF THE REHABILITATION ACT OF 1973 (Applicable to contracts exceeding \$10,000). The Contractor shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.
 - A. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:
 - 1. Recruitment, advertising, and job application procedures;
 - 2. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 - 3. Rates of pay or any other form of compensation and changes in compensation;
 - 4. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - 5. Leaves of absence, sick leave, or any other leave;



6. Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

7. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

8. Activities sponsored by the Contractor including social or recreational programs; and

9. Any other term, condition, or privilege of employment.

- B. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
- C. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
- D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Contractor must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).
- E. The Contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.
- F. The Contractor will include the provisions of this clause in every subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.
- 25. <u>SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968</u> (Applicable to contracts exceeding \$100,000 in value for housing construction, rehabilitation, or other public construction).



- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, the availability of apprenticeship and training positions, the qualifications for each, the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
- D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.
- E. The Contractor will certify that any vacant employment positions, including training positions, that are filled: (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. Part 135.
- F. Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of



- contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).
- H. Irrespective of any applicable federal reporting requirements as noted in the statutory language above or otherwise, Contractor shall submit quarterly reports along with any supporting documentation, in a form acceptable to Subrecipient, of its Section 3 compliance efforts to Subrecipient. Contractor may be required to consolidate all reports received from subcontractors and lower-tiered subcontractors into a single report or several reports as reasonably requested by Subrecipient. Notwithstanding the provision of such reports and supporting documentation, Contractor shall maintain copies of all reports and supporting documents as set forth in these Supplementary Conditions.
- 26. FAIR HOUSING ACT. Contractor shall comply with the provisions of the Fair Housing Act of 1968 as amended. The act prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. Contractor shall comply with the provisions of the Equal Opportunity in Housing Act, which prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with federal funds.

LABOR PROVISIONS

- 27. COPELAND "ANTI-KICKBACK" ACT (Applicable to all construction or repair contracts). Salaries of personnel performing work under this contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the Copeland "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874; and 40 U.S.C. § 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.
- 28. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (Applicable to construction contracts exceeding \$2,000 and contracts exceeding \$2,500 that involve the employment of mechanics or laborers). The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to that act and with other applicable federal laws and regulations pertaining to labor standards.

29. DAVIS-BACON ACT AND OTHER LABOR COMPLIANCE (Applicable to construction contracts exceeding \$2,000 when required by federal program legislation). The Contractor shall comply with the Davis Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 C.F.R. Part 5), and all other applicable federal, state, and local laws and regulations pertaining to labor standards insofar as they apply to the performance of this agreement. In addition, Contractor shall comply with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12586.pdf.

All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the Federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis Bacon Act. The Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to Subrecipient and GOSR for review upon request.

If Contractor is engaged under a contract in excess of \$2,000 for construction, renovation, or repair work financed in whole or in part with assistance provided by GOSR, Contractor agrees, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, to comply and to cause all subcontractors engaged under such contracts to comply with federal requirements adopted by GOSR pertaining to such contracts and with the applicable requirements of the Department of Labor under 29 C.F.R. Parts 1, 3, 5, and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is to relieve Contractor of its obligation, if any, to require payment of the higher wage. Contractor shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

ENVIRONMENTAL PROVISIONS

30. ENERGY EFFICIENCY. The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the New York State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).



31. SOLID WASTE DISPOSAL. Pursuant to 2 CFR § 200.322, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (codified at 42 USC § 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

32. CERTIFICATION OF COMPLIANCE WITH ENVIRONMENTAL LAWS.

The Contractor and all subcontractors agree to comply with the following requirements (and their state and/or local counterparts or analogues, if any) insofar as they apply to the performance of this Agreement as any of the following may hereinafter be amended, superseded, replaced, or modified:

- A. Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951, 3 C.F.R., 1977 Comp., p. 117, as interpreted at 24 C.F.R. Part 55), and Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961, 3 C.F.R., 1977 Comp., p. 121);
- B. Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1451 et seq.);
- C. Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. § 349, as amended), and EPA regulations for Sole Source Aquifers (40 C.F.R. Part 149);
- D. Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 et seq.);
- E. Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. § 1271 et seq.);
- F. Clean Air Act, as amended (42 U.S.C. § 7401 et seq.);
- G. EPA regulations for Determining Conformity of Federal Actions to State or Federal Implementation Plans (40 C.F.R. Parts 6, 51, and 93);
- H. Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201 et seq.), and USDA regulations at 7 C.F.R. Part 658;
- I. HUD criteria and standards at 24 C.F.R. Part 51;
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Feb. 11, 1994 (59 FR 7629, 3 C.F.R., 1994 Comp. p. 859);
- K. Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4001-4128);



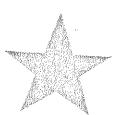
- L. National Flood Insurance Reform Act of 1994 (42 U.S.C. § 5154a);
- M. Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. § 3501);
- N. Runway Clear Zone regulations (24 C.F.R. Part 51);
- O. Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251, et seq.), commonly known as the Clean Water Act, and all regulations and guidelines issued thereunder;
- P. Environmental Protection Agency ("EPA") regulations at 40 C.F.R Part 50, as amended;
- Q. HUD regulations at 24 C.F.R. Part 51, Subpart B, and New York State and local laws, regulations, and ordinances related to noise abatement and control, as applicable;
- R. HUD regulations at 24 C.F.R. Part 51 Subpart C regarding siting of projects near hazardous operations handling conventional fuels or chemicals of an explosive or flammable nature;
- S. HUD and EPA regulations related to asbestos-containing material and lead-based paint, including but not limited to Part 56 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York Department of Labor (12 NYCRR 56), the National Emission Standard for Asbestos (40 C.F.R. § 61.145), the National Emission Standard for Asbestos (40 C.F.R. § 61.150), and 24 C.F.R. Part 35 Subparts B, H, and J; and
- T. All other applicable environmental laws that may exist now or in the future.

Further, Contractor shall abide by any conditions or requirements set forth in any environmental review performed pursuant to 24 C.F.R. Part 58, which are HUD's regulations for Responsible Entities implementing the National Environmental Policy Act.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the Subrecipient, the following:

- A. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. Part 32 or on the List of Violating Facilities issued by the EPA pursuant to 40 C.F.R. Part 15, as amended.
- B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

- C. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.
- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraphs A through D of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.



PART II: REQUIRED STATE PROVISIONS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "Contract") agree to be bound by the following clauses which are hereby made a part of the Contract.

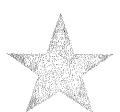
- ACCOUNTING RECORDS. The Contractor shall establish and maintain complete Records, including accurate books, records, documents, accounts and other evidence directly pertinent to performance of work done for the Subrecipient under this Contract consistent with generally accepted bookkeeping practices. Subrecipient shall retain the Records, including all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement (i) for three (3) years from the time of closeout of HUD's grant to the State or for the period provided in the CDBG regulations at 24 CFR 570.487 (or other applicable laws and program requirements) and 24 CFR 570.488, or (ii) for six (6) years after the completion of a CDBG-DR funded project pursuant to 42 USC 12707(a)(4) and New York Civil Practice Law and Rules § 213, whichever may be longer, provided that Section 16 of the Required Federal Provisions herein is also satisfied. The Subrecipient, GOSR, and any person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The Subrecipient and GOSR shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform the Subrecipient and GOSR, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Subrecipient's or GOSR's right to discovery in any pending or future litigation.
- 2. <u>NON-ASSIGNABILITY</u>. This Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent in writing of the Subrecipient and GOSR, and any attempts to assign the Contract without such written consent are null and void. However, this Contract shall be binding upon and inure to the benefit of the Subrecipient and GOSR, and their successors and assigns.
- 3. <u>INDEMNITY.</u> The Contractor shall indemnify and hold New York State and the Housing Trust Fund Corporation and their employees, officers, Members and Directors (collectively, the "Indemnities") harmless from and against all claims, demands, liability, loss, cost, damage or expense, including attorney's fees, which may be incurred by the Indemnities because of negligence or malfeasance on the part of the Contractor arising out of this Contract.
- 4. <u>NON-DISCRIMINATION</u>. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any

employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status, domestic violence victim status, pregnancy, religious practice, presence of a service animal, or criminal conviction. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. Contractor is subject to fines of \$50 per person per day for any violation of Section 239 as well as possible termination of this Contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

If directed to do so by the State Commissioner of Human Rights ("Commissioner"), the Contractor will send to each labor union to which the Contractor is bound a notice provided by the Commissioner advising of this provision. The Contractor will keep posted in conspicuous places notices of the Commissioner regarding laws against discrimination. The Contractor will state in all advertisements for employees that all qualified applicants will be afforded equal opportunities without discrimination because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status.

If the Contractor has fifteen or more employees, it is an unlawful employment practice for the Contractor to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, or to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an individual's status as an employee, because of such individual's race, color, religion, sex, or national origin, or because an individual opposed any practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended, or because he or she made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that Title, and that it shall be an unlawful employment practice to print or publish or cause to be printed or published any notice or advertisement relating to employment indicating any preference, limitation, specification, or discrimination on the basis of race, color, religion, sex, or national origin.

If the Contractor has fifteen or more employees, the Contractor: (1) will make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed; (2) will preserve such records for such periods as the Equal Employment Opportunity Commission ("EEOC") shall prescribe by regulation; (3) will make such reports therefrom as the EEOC shall prescribe by regulation or order; (4) must post and keep posted in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted a notice prepared or approved by the EEOC setting forth excerpts from, or summaries of, pertinent provisions of Title VII of the Civil Rights Act of 1964, as amended, and information pertinent to the filing of a complaint.



To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor will comply with all non-discriminatory employment practices, will furnish all information deemed necessary by the Commissioner, and will permit the Commissioner access to its records to ascertain compliance. The Contractor will bind all subcontractors hired to perform services in connection with this Contract to the requirements of this section, take such action for enforcement as the Commissioner may direct, and notify the Commissioner if such action results in litigation. This Contract may be terminated by Subrecipient upon the Commissioner's finding of non-compliance with this section, and the Contractor may be declared ineligible for future contracts with an agency of the state or a public authority until the Contractor satisfies the Commissioner of compliance.

- 5. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby the Agency or Agencies, is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Agency or Agencies, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:
 - A. The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Subrecipient's contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
 - B. At the request of the Subrecipient or GOSR, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and
 - C. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of this Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of A through C above in every subcontract. Section 312 does not apply to: (i) work, goods or services unrelated to this Contract; or (ii) employment



outside New York State. Subrecipient and GOSR shall consider compliance by a Contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The Subrecipient and GOSR shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, Subrecipient and GOSR shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

6. OPPORTUNITIES FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES. Contractor shall make a good faith effort to solicit active participation by enterprises identified in the New York State Minority and Women-Owned Business Enterprises Directory of Certified Firms in order to promote Subrecipient's obligation to make good-faith efforts to promote and assist the participation of certified M/WBEs through the use of contractors and their subcontractors in an amount equal to fifteen percent (15%) minority-owned business enterprises ("MBE") and fifteen percent (15%) women-owned business enterprises ("WBE").

Contractor agrees to be bound by the provisions of Section 316 of Article 15-A of the Executive Law, which pertain to enforcement of Article 15-A.

- 7. PROPRIETARY INFORMATION. All memoranda, analyses, spreadsheets and other pertinent documents or writings, including reports and financial statements developed or prepared by, or for, the Contractor in connection with the performance of this Contract are "Proprietary Information" and shall be, and remain, the property of the Subrecipient. All original documents constituting Proprietary Information shall be delivered to the Subrecipient by the Contractor, or any subcontractor, or any other person possessing them, upon the termination of this Contract or upon the earlier request of the Subrecipient, except that the Contractor may retain copies for its files. Proprietary Information may not be utilized, disclosed or otherwise made available to other persons by the Contractor without the prior written approval of the Subrecipient. The provisions of this section shall be in addition to, and not in derogation of, any duty imposed upon the Contractor by any law, regulation or rule governing professional conduct respecting confidentiality.
- 8. <u>COPYRIGHT.</u> If this Agreement results in any copyrightable material or inventions, the Subrecipient, GOSR, and/or HUD reserve the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes. This clause shall survive indefinitely the termination of this Agreement for any reason.
- 9. <u>ENVIRONMENTAL LAWS.</u> Contractor shall comply with any and all applicable New York State and local environmental laws, including all permits and approvals issued thereunder. Additionally, Contractor shall comply with any and all conditions or requirements set forth in an environmental review performed pursuant to the State Environmental Quality Review Action

- 10. <u>SECTION HEADINGS</u>. The caption of sections in this Contract are inserted solely for convenience of reference and are not intended to define, limit, or describe the scope of this Contract or any provision hereof or to otherwise affect this Contract in any way. The section headings shall not be considered in any way in construing this Contract.
- 11. <u>COUNTERPARTS.</u> This Contract may be executed in any number of counterparts. Each such counterpart shall be deemed to be a duplicate original. All such counterparts shall constitute but one and the same instrument.
- 12. GOVERNING LAW. This Contract has been executed and delivered in, and shall be construed and enforced in accordance with the laws of, the State of New York. In the event of conflict between New York State law and federal laws and regulations, the latter shall prevail.
- 13. WORKERS' COMPENSATION. This Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
- 14. <u>NO ARBITRATION.</u> Disputes involving this Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.
- 15. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service of process hereunder shall be complete upon the Contractor's actual receipt of process or upon the Subrecipient's receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contractor must promptly notify the Subrecipient, in writing, of each and every change of address to which service of process can be made. Service of process by the Subrecipient to the last known address shall be sufficient. The Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.
- 16. <u>NON-COLLUSIVE BIDDING CERTIFICATION</u>. If this Contract was awarded based upon the submission of a bid or proposal, the Contractor affirms, under penalty of perjury, that the prices in its bid or proposal were arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, or as to any matter relating to such prices with any other Contractor or with any competitor.
- 17. LOBBYING REFORM LAW DISCLOSURE. If the procurement of the goods or services provided herein were applicable to Lobbying Reform Law Disclosure as pursuant to State Finance Law §§139-j and 139-k, the Subrecipient reserves the right to terminate this Contract in the event it is found that the certification filed by the Offerer/Bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Subrecipient may exercise their termination right by providing written notification to the Contractor.



- 18. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.
- 19. <u>GENERAL RESPONSIBILITY LANGUAGE</u>. The Contractor shall at all times during Contract term remain responsible. The Contractor agrees, if requested by Subrecipient or GOSR, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

For purposes of this Agreement, Contractor responsibility generally means that the Contractor has the integrity to justify the award of public dollars and the capacity to perform the requirements of this Contract fully. In connection herewith, to the extent that the Subrecipient may make certain determinations with respect to Contractor responsibility, wherein the Subrecipient determines whether it has reasonable assurances that a Contractor is responsible, is an important part of the procurement process, promoting fairness in contracting, mitigating contract issues, and protecting the Contractor and the Subrecipient against failed contracts. In making such a responsibility determination, the Subrecipient shall evaluate the Contractor's responsibility with respect to four factors: (i) financial and organizational capacity; (ii) legal authority to do business in New York State; (iii) integrity; and (iv) previous performance.

- 20. SUSPENSION OF WORK (for Non-Responsibility). The Subrecipient reserves the right to suspend any or all activities under this Contract, at any time, when the Subrecipient discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Subrecipient issues a written notice authorizing a resumption of performance under the Contract.
- 21. <u>TERMINATION (for Non-Responsibility)</u>. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Subrecipient staff, the Contract may be terminated by the Subrecipient at the Contractor's expense where the Contractor is determined by the Subrecipient to be non-responsible. In such event, the Subrecipient may complete the contractual requirements in any manner they deem advisable and pursue available legal or equitable remedies for breach.
- 22. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or

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extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the Subrecipient.

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

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



PART III: INSURANCE

- A. Unless otherwise directed by GOSR, Contractor shall procure and maintain without interruption, at its sole cost and expense, during the term of this Agreement (or any extensions thereof) and for a period of two years thereafter, insurance of the type, and with limits and deductibles, as follows:
 - a. Commercial General Liability Insurance and Excess Liability Insurance.

 Providing both bodily injury (including death) and property damage insurance with limits in the aggregate and per occurrence in accordance with the following table:

Contract Value	Commercial General Liability in combination with Excess (Umbrella) Liability	
	Each Occurrence	General Aggregate
<\$10M	\$2,000,000	\$2,000,000
>\$10M - \$50M	\$5,000,000	\$5,000,000
>\$50M	\$10,000,000	\$10,000,000

Such insurance is to be written on an occurrence basis with defense outside of limits. New York State, the New York State Housing Trust Fund Corporation, and the Subrecipient shall each be named as an additional insured. The minimum required level of insurance may be provided through a combination of commercial general liability and umbrella and/or excess liability policies.

- b. <u>Automobile Liability and Property Damage Insurance</u>. In an amount not less than One Million Dollars (\$1,000,000) combined single limit for both Bodily Injury and Property Damage.
- c. <u>Professional Liability</u>. If the Contractor is engaged in providing professional services under this Agreement, professional errors and omissions coverage with a limit not less than Two Million Dollars (\$2,000,000) in the aggregate and One Million Dollars (\$1,000,000) per occurrence. If the Contractor is not engaged in providing professional services under this Agreement, this professional errors and omissions coverage is not required.
- d. <u>Worker's Compensation</u>. Covering workers' compensation and employers' liability and disability benefits as required by the State of New York.
- B. In addition to the foregoing, Contractor and any subcontractors shall procure and maintain any and all insurance which is required by any applicable current or future law, rule, regulation, ordinance, permit, license, order or other legal requirement.
- C. All insurance shall be primary and non-contributory and shall waive subrogation against GOSR and the Subrecipient and all of either of their former, current, or future officers, directors, and employees. No deductible of more than \$50,000 shall be permitted without

- advance written approval by GOSR, which GOSR may withhold, condition or deny in its sole and exclusive discretion.
- D. The Contractor shall provide Certificates of Insurance to GOSR and the Subrecipient prior to the commencement of work and shall provide full and complete copies of the actual policies and all endorsements upon request. Subcontractors under this Agreement shall be required to maintain insurance meeting all of the requirements set forth in Section A above for items a-d; however Contractor shall require subcontractors to maintain greater limits and/or other or additional insurance coverages if greater limits and/or other or additional insurance coverages are (a) generally imposed by the Contractor given its normal course of business for subcontracts for similar work or services to those being provided by the subcontractor at issue; or (b) reasonable and customary in the industry for similar work or services to those anticipated hereunder.
- E. If the above insurance requirements are potentially excessive because they exceed the type and/or amount of insurance which is reasonable and customary for similar work or services in the same general geographic area, Contractor shall, within fifteen (15) calendar days of the execution of this Agreement, provide written notice of the same to GOSR, along with a written summary of the type and amount of insurance Contractor believes is reasonable and customary for similar work or services in the same general geographic area. GOSR may, in GOSR's sole and exclusive discretion, but is under no obligation to, waive, decrease, or otherwise alter or amend the insurance requirements in light of this notice. However, notwithstanding anything to the contrary herein, nothing in this paragraph requires or shall be deemed to require GOSR to waive, decrease, alter or amend, in whole or in part, any insurance requirements as a result of the foregoing notice from Contractor or for any other reason, and no waiver, decrease, alteration or amendment shall be made except as approved in advance and in writing by GOSR.
- F. If the above insurance requirements are potentially inadequate because they do not meet or exceed the type and/or amount of insurance which is reasonable and customary for similar work or services in the same general geographic area, Contractor shall, within fifteen (15) calendar days of the execution of this Agreement, provide written notice of the same to GOSR, along with a written summary of the type and amount of insurance Contractor believes is reasonable and customary for similar work or services in the same general geographic area. GOSR may, in GOSR's sole and exclusive discretion, but is under no obligation to increase, supplement, expand, or otherwise alter or amend the insurance requirements in light of this notice. However, notwithstanding anything to the contrary herein, nothing in this paragraph requires or shall be deemed to require GOSR to increase, supplement, expand, or otherwise alter or amend, in whole or in part, any insurance requirements as a result of the foregoing notice from Contractor or for any other reason, and no increase, supplement, expansion or other alteration or amendment shall be made except in an amendment to this Agreement, as approved in advance and in writing by GOSR.



PART IV: REPORTING

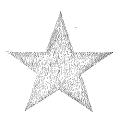
Elation Systems, Inc. is a provider of cloud-based diversity and labor compliance reporting and management services. The Governor's Office of Storm Recovery (GOSR) has adopted this web-based compliance management system to help all of its Contractors, Subrecipients, and Subrecipient's Contractors receiving federal funds to adhere to Labor Compliance (Davis-Bacon), Minority and Women Owned Business (MWBE) and Section 3 reporting requirements.

Contractors, Subrecipients, and Subrecipient's Contractors must comply with instructions from GOSR on how and when to meet all reporting requirements, and how to utilize Elation to satisfy those requirements.

To this end, all Contractors, Subrecipients, and Subrecipient's Contractors must register with Elation Systems and attend an online training on the use of this tool. GOSR offers a series of virtual training events. GOSR requires all parties receiving federal funds through GOSR programs to use the Elation Systems application to make reporting requirements easier, faster and simpler to complete.

Prior to participating in training, it is necessary to create an Elation account. An account may be created at https://www.elationsys.com/app/Registration/.

Questions related to reporting requirements should be directed to GOSR's Monitoring and Compliance team at stormrecovery.ny.gov.



APPENDIX B

Governor's Office of Storm Recovery

Environmental Requirements and Güidelines

Reviewed By Office of Town Attorney

ENVIRONMENTAL REVIEW

for community development block grant-disaster recovery (CDBG-DR) funded projects in the NY Rising Community Reconstruction Program

INTRODUCTION

All projects funded by the Governor's Office of Storm Recovery (GOSR) must undergo environmental review pursuant to both the National Environmental Policy Act (NEPA) and State Environmental Quality Review Act (SEQRA). These environmental reviews are typically conducted by GOSR's Bureau of Environmental Review and Assessment (BERA) and are informed by information provided by engineering and design professionals, as well as qualified environmental professionals.

ACTIVITY	BERA	SUBRECIPIENT
NEPA Review	X	
SEQRA Lead Agency	X¹	
Asbestos/Lead/Radon surveys	Project by project determination ²	
Phase 1 and 2 ESAs	X	
Phase 1 Arch Survey	X	
Noise Analysis	X	
Site Remediation and Hazard Abatement		X
Permitting		X ₃
Sole Source Aquifer Analysis	X	
Threatened and Endangered Species	X	

¹Although the subrecipient agreement template indicates that GOSR will serve as Lead Agency, this is a responsibility that can be delegated to municipalities demonstrating experience with conducting SEQRA reviews. A Subrecipient may apply to GOSR's Certifying Officer to obtain Lead Agency status on any project.

²Subrecipients should coordinate with GOSR's BERA and NYRCR Program Staff to assign responsibility.

³Permitting responsibilities will reside with the responsible permitee. Please note that BERA will assist as need in coordinating permitting with the New York Department of Environmental Conservation (DEC), United States Army Corps of Engineers (USACE), New York Department of State (DOS), and other permitting agencies.

ANALYSIS OF ALTERNATIVES

The NEPA and SEQRA environmental review processes require GOSR to consider reasonable alternatives that achieve the purpose and need of most projects. GOSR relies upon project engineers, architects, designers and planners to inform this alternative analysis.

In some cases, the NY Rising Community Reconstruction Program planning process has identified a specific project to be implemented, such as the replacement of a particular bridge or culvert. In these cases, in addition to the "no action" alternative, reasonable alternatives might include investigation into the various sizing possibilities for the hydraulic opening of the structure. In other cases, design professionals are tasked with undertaking a study or crafting recommendations to address community needs. In these cases, design professionals working on NY Rising Community Reconstruction Program projects must be sure to document various alternative design solutions, including the type of sustainable and resilient alternatives described below.

In accordance with the requirements of Executive Order 13693, Planning for Federal Sustainability, GOSR is requiring consideration of sustainability measures in all design and engineering projects. In addition to meeting the requirements of all applicable existing federal, state, and local codes, laws, and ordinances, engineering design reports should analyze practicable alternatives that incorporate sustainability measures and green infrastructure practices into the proposed design where possible. These alternatives should include natural systems, ecosystem processes, and nature-based approaches to achieve the purpose and need of the project and overall design objectives. These sustainable practices should be integrated into the base design of the engineering projects.

Evaluation of project design alternatives should consider site/project suitability, environmental benefits, operating and maintenance costs, decommissioning, and useful lifetime. Where sustainable practices are determined to be infeasible or in conflict with project objectives or budget, design reports should document the evaluation of sustainable practices.

ENVIRONMENTAL BEST PRACTICES

Environmental best practices can and should be incorporated into all types of recovery and resilience projects. Some of the most common projects proposed for HUD Community Development Block Grant – Disaster Recovery (CDBG-DR) funding are culvert resizing or replacement, drainage and stormwater management improvements, streambank stabilization and restoration, emergency generator installation, and repair or renovation of structures. An overview of key sustainable design practices related to these categories of projects, as well as hyperlinks to guidance documents, are provided on the following pages.

2 | page

CULVERT RESIZING / REPLACEMENT

In addition to ensuring that culverts are properly sized, several environmental design factors must be considered in a culvert resizing or replacement project. While traditional culverts enable bridges and roadways to safely cross a stream or wetland, they can disrupt stream continuity, inhibiting passage for fish and wildlife and causing significant streambed erosion and destabilization. Open bottom culverts are effective for facilitating fish and aquatic species passage. When closed bottom culverts are used, they should be designed and installed to mimic natural stream flow and bottom substrate. Inadequate culvert sizing is a primary factor in streambed erosion. In general, culverts should be sized such that they are wider than the bankfull width (BFW) of the stream. In all culvert projects, pre-installation stream conditions should be retained to the maximum extent possible and construction schedules should be coordinated to minimize impacts to wildlife and vegetation.



recommendations

- The capacity and size of the culvert should be maximized to accommodate a 100+ year flood event.
 At a minimum, the width of the structure should be 1.25 times the BFW of the stream
- · Use open bottom culverts when possible
- Construct culverts to match the characteristics of the natural stream channel, including: slope, substrate, stability, and width
- Make stream crossings, such as roads and bridges, perpendicular to the direction of streams or drainage to minimize the area of disturbance
- · Replacement structures must not create an inlet or outlet drop that restricts aquatic organism passage



resources

- New York State Department of Environmental Conservation (NYSDEC) Stream Crossing Guidelines: http://www.dec.ny.gov/permits/49066.html
- Bureau of Land Management (BLM) Culvert Use Guidelines: http://www.blm.gov/bmp/low%20
 volume%20engineering/J Ch8 Culvert Use Installation & Sizing.pdf
- U.S. Army Corps of Engineers (USACE) Stream Crossing BMPs: http://www.nae.usace.army.mil/Portals/74/docs/regulatory/StateGeneralPermits/NEGP/BMPStreamCrossings21Jan2015.pdf
- Wetland Crossing BMPs: http://www.dem.ri.gov/programs/benviron/water/permits/fresh/pdfs/bmpch9.
 pdf
- Water Crossing Design Guidelines Washington Department of Fish and Wildlife: http://wdfw.wa.gov/publications/01501/wdfw01501.pdf



STREAMBANK / STREAMBED RESTORATION

Degraded streambanks and streambeds can lead to erosion, slope instability, water quality impairment, and other significant environmental issues. Riprap revetments and other streambank armoring measures can cause environmental damage of their own, as they impede the natural functions of a streambank, diminish aquatic habitats, and can even cause destabilization downstream. Natural streambank stabilization uses targeted vegetation, engineered logjams, and other bioengineering methods to return streams to a natural state of hydraulic stability. In addition to providing long-term stream stability benefits, natural stream restoration measures encourage healthy, vegetated stream buffers, thereby improving water quality and increasing riparian habitat.

recommendations

- Plant hardy and flood-resistant native species on riverbanks to stabilize soil and strengthen the riparian buffer
- Use biodegradable erosion control blankets to provide temporary erosion protection during vegetation establishment
- · Install tree revetments or engineered logjams to dissipate flow in locations of excessive erosion



resources

- Federal Emergency Management Agency (FEMA) Bank Stabilization Alternatives: http://www.fema.gov/pdf/about/regions/regionx/Engineering_With_Nature_Web.pdf
- Minnesota Vegetated Stream Restoration Program: http://files.dnr.state.mn.us/publications/waters/understanding_our_streams_and_rivers_resource_sheet_2.pdf
- Natural Resources Conservation Service (NRCS) Stream Restoration Design Handbook: http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/water/manage/restoration/?cid=stelprdb1044707
- Westchester County Aquatic Buffer Guide: http://www.westchestergov.com/planning/environmental/BronxRiver/Westchester%20County%20Water%20Resource%20Buffer%20Brochure%20FINAL%20for%20e-mail1.pdf
- Integrated Stream Bank and Restoration Guidelines Washington Department of Fish and Wildlife: http://wdfw.wa.gov/publications/00046/wdfw00046.pdf

4 | page

DRAINAGE / STORMWATER MANAGEMENT

Effective and sustainable management of stormwater is critical to ensure the long-term sustainability and resiliency of infrastructure projects. Incorporating nature-based features, such as vegetated swales, bioretention cells, and tree box filters, not only reduces the quantity of stormwater runoff from an area, but also improves the quality of runoff by allowing for filtration and settling of solids. Structural stormwater BMPs, such as permeable pavement, inlet protection devices, and swirl separators, can provide cost-effective stormwater quantity and quality improvements in space-constrained projects. Many municipalities operate Municipal Separate Storm Sewer Systems (MS4) and are subject to specific permit requirements under National Pollutant Discharge Elimination System (NPDES) regulations. In the State of New York, the Federal MS4 Program is delegated to NYSDEC. Implementing State regulations and guidance are available on NYSDEC's website.



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 The MS4 General Permit requires the consideration and incorporation of cost effective green infrastructure approaches in routine upgrades of stormwater conveyance systems and municipal properties to the maximum extent practicable



recommendations

- Incorporate low impact development principles into project design
- Incorporate green infrastructure, such as bioretention cells, rain gardens, or vegetated filter strips, into project designs to increase infiltration
- Use permeable paving material in parking areas or other paved site areas to increase infiltration and reduce runoff from these surfaces
- · Collect roof top runoff in rain barrels or dry wells
- · Install a swirl separator in a stormwater collection system to remove solids prior to discharge
- Daylight streams where feasible to improve water quality, increase infiltration, and decrease sewer overflow
- Utilize the U.S. Environmental Protection Agency's (EPA) Storm Water Management Model



resources

- Stormwater BMP overview: http://www.epa.gov/greeningepa/stormwater/best_practices.htm
- Low Impact Development overview: http://water.epa.gov/polwaste/green/
- NYSDEC Stormwater website: http://www.dec.ny.gov/chemical/8468.html
- NYSDEC MS4 website: http://www.dec.ny.gov/chemical/43150.html#Permit
- NYSDEC Stormwater Management Design Manual, Green Infrastructure Chapter: http://www.dec.ny.gov/docs/water_pdf/swdm2010chptr5.pdf
- NYSDEC Better Site Design guide: http://www.dec.ny.gov/docs/water_pdf/bsdcomplete.pdf
- Hudson Valley green infrastructure examples: http://www.dec.ny.gov/lands/58930.html

DRAINAGE / STORMWATER MANAGEMENT

resources (continued)

- New York Environmental Facilities Corporation (EFC) Green Grants program: http://www.efc.ny.gov/Default.aspx?tabid=461
- EPA Showing Buried Streams the Daylight: http://www.epa.gov/ord/gems/buriedstream.htm
- EPA Storm Water Management Model: http://www2.epa.gov/water-research/storm-water-management-model-swmm



FLOOD ELEVATION DESIGN CONSIDERATIONS

Only if there are no practicable alternatives should a structure be located in the floodplain. Engineering and design professionals must use the best available flood hazard data identified by FEMA, where applicable, to guide decision-making. Best available flood hazard data should be used to determine elevation and construction requirements. Best available flood hazard data is derived from the most current and restrictive of the following: FEMA Flood Insurance Rate Map, FEMA Advisory Base Flood Elevation Map, FEMA publicly released working map, or FEMA preliminary Flood Insurance Rate Map.



- · If the project or activity is located in a Special Flood Hazard Area, it must be designed using the best available base flood elevation plus two feet as the baseline standard for elevation, the Sandy high water mark plus one foot, or the 500 year flood elevation, whichever is highest
- · Critical equipment is held to a higher design standard, which varies depending on if the equipment is in a floodplain that is subject to tidal influence
- · For projects located in areas that are not subject to tidal influence, critical equipment should be designed to be placed at the best available base flood elevation plus three feet, the highest of the Sandy, Irene or Lee high water mark plus two feet, or the 500 year flood elevation, whichever is highest
- · For projects located in areas that are subject to tidal influence, critical equipment should be designed to be placed at the best available base flood elevation plus five feet, the highest of the Sandy, Irene or Lee high water mark plus four feet, or the 500 year flood elevation, whichever is highest
- · Note that if higher elevations are required by local codes or standards, those higher standards will apply



resources

FEMA Map Service Center: https://msc.fema.gov/portal



EMERGENCY GENERATORS

Emergency generators serve a key role in ensuring continuity of operations at critical facilities. Though emergency generators are not designed to operate continuously, they have the potential to be sources of air pollutants and are thus subject to specific standards. Any new emergency generator installation must meet the maximum achievable control technology (MACT) standards for reciprocating internal combustion engines (RICE), often referred to as the MACT RICE standards. The MACT RICE requires that new generators can comply with the MACT by complying with the requirements in the New Source Performance Standards. Any new Compression Ignition generator will have to comply with 40 CFR 60, Subpart IIII, and any new Spark Ignition generator will have to comply with 40 CFR 60, Subpart JJJJ. New generators must be certified by the manufacturer that they comply with the EPA's New Source Performance Standards (NSPS).

Fuel tanks supplying generators pose an environmental threat from the risk of leaks, spills, and other accidental discharges of petroleum products. Fuel tanks for all new emergency generators must employ multiple leak protection systems, such as double-walled tanks, containment enclosures, or leak-tested valves. Flooding can cause significant damage to emergency generators and can cause accidental discharge of fuel and other engine fluids. All emergency generators and fuel tanks must be anchored and installed in accordance with the Flood Elevation Design Considerations, below. Design incorporating freeboard, or excess elevation of floor levels or equipment above the BFE, is considered a best practice and can be an effective means of eliminating risk to critical equipment.



Transpiriting in a first state of the state

- Specify a generator with a double-walled fuel tank and leak-proof fixtures
- · Specify a generator that is manufacturer certified to meet EPA's NSPS
- · Design the generator and fuel storage locations with adequate freeboard above the BFE



resources

- MACT RICE standards: http://www.epa.gov/region1/rice/
- FEMA Flood Insurance Rate Maps with BFE: https://msc.fema.gov/portal
- FEMA recommendations for reducing facility vulnerability: http://www.fema.gov/media-library-data/1381404651877-881a2cf70a90ac63b9c067100ffccace/SandyRA2CriticalFacilities_508_FINAL2.pdf
- NYSDEC Petroleum Tank Requirements: http://www.dec.ny.gov/chemical/2642.html



FLOOD INSURANCE REQUIREMENTS

When Community Reconstruction projects are proposed that are located in the Special Flood Hazard Area (100-year Floodplain), it is important to understand the implications of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a). Insurable structures within the floodplain that are improved with CDBG-DR grant assistance must obtain and maintain flood insurance for the life of the structure. The insurance coverage must be at least the grant amount used to improve insurable property or the maximum available NFIP coverage, whichever is less.

One common issue is related to insurance requirements related to generator installations. When a generator is installed in the floodplain, flood elevation design standards (see page 7) must be adhered to and insurance must be obtained in certain circumstances. Section VIII of the FEMA Adjuster Claims Manual states:

"Building coverage extends to the insured building and additions and extensions attached to and in contact with it by means of a common wall. Air conditioning condensers and solar heating panels are considered building property even if they are located apart from the structure and are not attached in accordance with the policy definition. Condensers are eligible for replacement cost coverage if the structures they service are eligible for it. Coverage does not apply to other equipment, such as generators, air compressors, and substation transformers owned by the policyholder that may service the building, but are located apart from the structure and are not attached (see Diagram 1). If a generator or other such equipment is attached in accordance with the policy definition or are in a fully-enclosed structure, coverage would apply (see Diagram 2)."



organistration from the contraction of the contract

- Structures, or improvements to structures, located in the 100-year floodplain and funded with CDBG-DR must be insured under the NFIP prior to grant closeout.
- Equipment located in the 100-year floodplain and funded with CDBG-DR (e.g., generators, air conditioners, solar panels, substation transformers) that is attached to an insurable structure and is in contact with it by means of a common wall must be insured under the NFIP prior to grant closeout.
- When flood insurance is required, the insurance coverage must be at least the grant amount used to improve insurable property or the maximum available NFIP coverage, whichever is less.



resources

- FEMA Map Service Center: https://msc.fema.gov/portal
- FEMA Adjuster Claims Manual: https://www.fema.gov/media-library/assets/documents/2675



FLOOD INSURANCE REQUIREMENTS

Diagram 1.

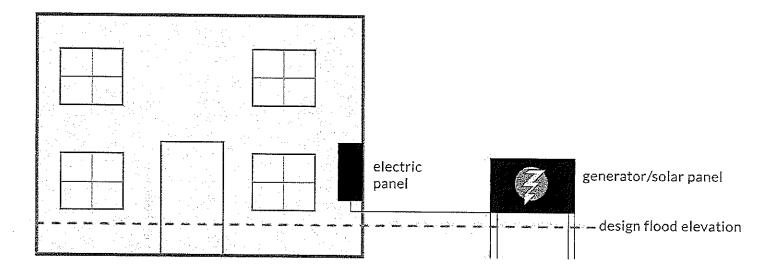
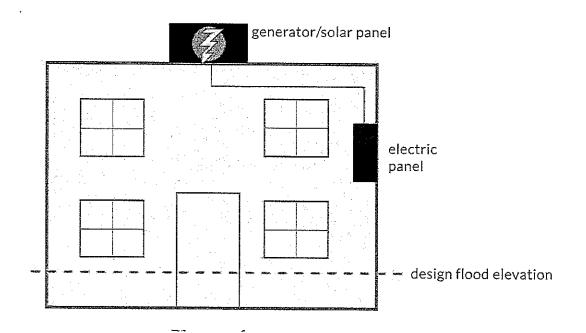


Diagram 2.





REPAIR / RENOVATION / DEMOLITION OF STRUCTURES

Building codes and standards form the basis of many design considerations for structural repair and renovation projects. In addition to these standards, incorporating environmental best practices can elevate the performance, safety, and cost-effectiveness of a project.

First and foremost, any project that requires modifications to existing buildings or certain other man-made structures must comply with all applicable asbestos and lead standards, including pre-construction surveys, abatement, and clearance by a qualified professional. Additionally, federal requirements for construction within the FEMA floodplain require adherence to floodplain regulations for construction or development within the Special Flood Hazard Area (See Flood Elevation Design Considerations below). Historic preservation requirements must also be met for any buildings or structures with landmark, historic, or other protected status, as well as those structures that are eligible for listing on the National Register of Historic Places.

Incorporating best practices that exceed these baseline standards can improve the environmental, economic, and energy performance of a building. Even if a project will not be submitted for an environmental certification, such as Leadership in Energy and Environmental Design (LEED), the guiding principles of such programs can help set measurable and achievable performance targets for any project.



Patrick Brief

- Prior to repair, renovation or demolition of a structure, a NYS Department of Labor-qualified professional must perform an asbestos and lead paint survey
- For structures that have been damaged at least 50% of their pre-flood value, or that will be
 reconstructed, rehabilitated, or added on to with the value of the improvement at least 50% of the
 pre-improvement value of the structure, the entire structure must meet local and state floodplain
 development standards
- · All projects must be in compliance with the National Historic Preservation Act



recommendations

- Incorporate on-site renewable energy sources, energy efficient heating, ventilation, and air conditioning equipment, insulation, and water-saving fixtures into renovation plans
- Maximize use of existing building materials when feasible; incorporate recycled or renewable material when specifying new building materials



resources

- Asbestos in New York: https://labor.ny.gov/formsdocs/wp/p224.pdf
- Asbestos and Lead Hazard Mitigation: https://www.osha.gov/SLTC/etools/hurricane/building-demolition.html
- EPA Construction and Demolition Materials Guidelines: http://www.epa.gov/wastes/nonhaz/industrial/cd/index.htm
- FEMA Guidelines for Development in Floodplains: https://www.fema.gov/permit-floodplain-development
- NYSDEC Floodplain Construction Requirements: http://www.dec.ny.gov/lands/40576.html

REPAIR / RENOVATION / DEMOLITION OF STRUCTURES

resources (continued)

- NYS Historic Preservation Legislation: http://nvsparks.com/shpo/environmental-review/preservation-legislation.aspx
- NYS Environmental and Historic Review Process: http://nysparks.com/shpo/environmental-review/
- LEED Principles for Major Renovations: http://www.usgbc.org/articles/federal-guiding-principles-new-construction-and-major-renovations
- LEED Principles for Existing Buildings: http://www.usgbc.org/articles/federal-guiding-principles-existing-buildings
- EPA Water Conservation Program, WaterSense: http://www.epa.gov/watersense/commercial/bmps.
 html

CONSTRUCTION EQUIPMENT STANDARDS

The noise and air quality effects that result from construction equipment can have a cumulative, negative effect on the environment. Though impacts from construction are temporary, they can be a source of environmental disturbance and should be mitigated through the use of BMPs. To mitigate or prevent these impacts a Construction Management Plan may be required. The following practices should be incorporated into plans and specifications:



- Use ultra-low sulfur diesel fuel in all construction equipment with an engine of 50 horsepower (hp) or greater
- · Use diesel engine retrofit technology where practicable, such as:
 - · Diesel Oxidation Catalyst or Diesel Particulate Filters
 - · Engine upgrades
 - · Engine Replacements
- · Limit idling times to 3 minutes
- · Locate diesel powered engines away from fresh air intakes
- Control construction dust through Soil Erosion and Sediment Control Plan measures, including use of a dust suppressant and fugitive dust controls
- All construction equipment over 50 hp must meet EPA's Tier 2 emission standards for non-road construction equipment. Where a project is located in a non-attainment or maintenance area under the Clean Air Act, Tier 3 and Tier 4 standards may be imposed



noise and vibration recommendations

- Schedule individual project construction activities such that activities resulting in the greatest noise or vibration impacts do not overlap
- · Coordinate construction activities with construction in nearby or adjacent locations to minimize impacts
- · Consider condition of surrounding structures and the potential effects of vibration, where appropriate
- · Prepare contingency measures in the event that established limits are exceeded



resources

- NYSDOT Environmental Performance Commitments: http://www.northeastdiesel.org/pdf/RTE9A-NY.
- Sacramento, California Construction Greenhouse Gas (GHG) Emissions Reductions: http://www.airquality.org/ceqa/cequguideupdate/Ch6FinalConstructionGHGReductions.pdf
- Los Altos, California Construction Site and Equipment Best Management Practices: http://www.losaltosca.gov/sites/default/files/fileattachments/Community%20Development/page/3751/construction_equipment_bmp_handout.pdf

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, and such of them as are corporation have caused these present to be signed by their duly authorized officers.

APPROVED:		TOWN OF OYSTER BAY
		Ву:
Commissioner of Public Town of Oyster Bay	: Works	Supervisor
<i>5</i> E -		•
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APPROVED AS TO FORM	⁄ 1:	By:Name & Title
		·
Town Attorney	 -	Firm
STATE OF NEW YORK COUNTY OF NASSAU)) ss:)	•
On this		before me personallyto me known to be a member of the
firm	L. L	whose offices are located at the firm described in and which executed wledged to me that he subscribed the name of said firm thereto
on behalf of said firm fo		
		NOTARY PUBLIC
STATE OF NEW YORK)) ss:	
On this) .	
appeared		the duly elected and qualified Supervisor of the Town of and, which executed the foregoing instrument to me know and,
known to me to be su depose and say;		the Town of Oyster Bay; and they being by me duly sworn did pervisor of the Town of Oyster Bay resides at
•		ay; that the seal affixed to said instrument is such corporate seal; uch Supervisor for the purpose therein mentioned.
		Å
		NOTARY PUBLIC
		Reviewed By Office of //1 wn Attorney

WHEREAS, pursuant to public notice, bids were duly solicited and regularly received for a contract relative to Consultant Services for "Zombie" and Vacant Property Research/Inventory from July 1, 2018 through June 30, 2020, and said bids were publicly opened and read; and

WHEREAS, in compliance with Guidelines 6 and 9 of the Town's Procurement Policy, the bids were reviewed; and

WHEREAS, the services of the consultant are to be provided pursuant to a New York State grant to the Town of Oyster Bay in the amount of \$100,425.00 under the State's "Zombie and Vacant Properties Remediation and Prevention Initiative"; and

WHEREAS, Elizabeth L. Maccarone, Commissioner, Department of Planning and Development, by memorandum dated June 8, 2018, recommended that the bid by Smith & Drake Realty Corp. d/b/a/ Smith & DeGroat Real Estate, 888 Veterans Memorial Highway, Hauppauge, New York 11788 be accepted; and

WHEREAS, grant funds for the contract are available through Account No. IGA CD 8689 44800 762 CZ17;

NOW, THEREFORE, BE IT RESOLVED, that the recommendation as hereinabove set forth is accepted, and the Supervisor or his designee is hereby authorized and directed to sign a contract relative to Consultant Services for "Zombie" and Vacant Property Research/Inventory with Smith & Drake Realty Corp. d/b/a/ Smith & DeGroat Real Estate, for the period from July 1, 2018 through June 30, 2020, in the amount not to exceed of \$100,425.00, in accordance with the provisions thereunder; and be it further

RESOLVED, that the Comptroller is hereby authorized and directed to issue an encumbrance order in an amount of not to exceed \$100,425.00, upon presentation of a duly certified claim, after audit, with funds to be drawn from Account No. IGA CD 8689 44800 762 CZ17.

#-

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino Aye
Councilman Muscarella Aye
Councilman Macagnone Nay
Councilwoman Alesia Abstain
Councilwoman Johnson Aye
Councilman Imbroto Absent
Councilman Hand Aye

cc:

Supervisor Town Attorney Comptroller

Planning & Development

A

Inter-Departmental Memo

June 8, 2018

TOWN OF OYSTER BAY

TO:

MEMORANDUM DOCKET

FROM:

ELIZABETH L. MACCARONE, COMMISSIONER

DEPARTMENT OF PLANNING AND DEVELOPMENT

SUBJECT:

AWARD OF CONTRACT FOR CONSULTANT SERVICES

FOR 'ZOMBIE' AND VACANT PROPERTY RESEARCH/INVENTORY

On April 2, 2018 the Department of Planning and Development issued a "Request for Proposals" on the Town of Oyster Bay website and in Newsday seeking Consultant Services for 'Zombie' and Vacant Property Research/Inventory.

After an internal committee review and preliminary recommendation and based on compliance with Guidelines 6 and 9 of Town's Procurement Policy, I recommend Smith & Drake Realty Corp. d/b/a/ Smith & DeGroat Real Estate, 888 Veterans Memorial Highway, Hauppauge, New York 11788 be authorized to perform Consultant Services assisting the Department for 'Zombie' and Vacant Property Research/Inventory from July 1, 2018 through June 30, 2020.

Services of the Consultant are to be provided in a total amount not to exceed \$110,425.00. Funds for the above contract are available through Account No. IGA CD 8689 44800 762 CZ17. The \$110,425.00 is money that was awarded to the Town of Oyster Bay through a New York State Grant entitled "Zombie and Vacant Properties Remediation and Prevention Initiative."

Payments will be made by the Town Comptroller's Office after review and approval by the Department of Planning and Development and an audit by the Comptroller's Office of the claim form submitted by the consultant.

Therefore, it is respectfully requested that the Town Board authorize the Town to enter into an agreement with Smith & Drake Realty Corp. d/b/a/ Smith & DeGroat Real Estate as negotiated and attached and further authorize the Supervisor and/or his designee to execute said agreement.

ELIZABETH L. MACCARONE COMMISSIONER

ELM /dm Attachments

cc: Legislative Affairs (w/ 7 copies)

4/55

AGREEMENT FOR PROFESSIONAL SERVICES by and between SMITH & DRAKE REALTY CORP. and

THE TOWN OF OYSTER BAY, OYSTER BAY, NEW YORK

This is an Agreement by and between the Town of Oyster Bay (the "Town") and Smith & Drake Realty Corp. d/b/a Smith & DeGroat Real Estate ("S&D" or the "Consultant") to provide professional real estate research, inventorying, and other associated tasks in connection with the Town's Zombie and Vacant Properties Remediation and Prevention Initiative, as more fully described in the Request for Proposals ("RFP"), issued on April 2, 2018. The terms and conditions of the RFP are expressly incorporated by reference in this Agreement.

The term of this Agreement shall begin on July 1, 2018 and continue through and including June 30, 2020.

Scope of Services:

Real property research will be provided by S&D directly to the Commissioner and/or Deputy Commissioner of the Department of Planning and Development (the "Department").

Specifically, S&D shall provide the services as called for in the RFP and as outlined in the Consultant's response thereto dated April 20, 2018. Without limitation, the following list of tasks shall be provided by the Consultant to the Town and/or the Department on an as-needed basis, with specific tasks directed by the Commissioner and/or the Deputy Commissioner in her or his sole discretion:

- 1. Identify "zombie," vacant, and abandoned properties and properties at risk of foreclosure by reviewing Town records, including Town code enforcement data, and any other information and records available to the Consultant in their professional capacity;
- 2. Research individual properties suspected of being vacant and/or abandoned;
- 3. Identify current property owners and their mortgagees and mortgagors, if any, to address issues with "zombie," vacant, and abandoned properties;
- 4. Contact financial and lending institutions identified as mortgagors or lienholders on "zombie" properties in order to negotiate remediation of unlawful conditions at such properties;
- 5. Develop an interactive database of "zombie," vacant, abandoned, and "at-risk" properties identified by S&D, the Town, and the Town's residents;

6. Coordinate with the Town's Division of Information Technology to ensure that the formatting of the interactive database is compatible with the Town's present and anticipated hardware and software;

Reviewed By
Office of Town Attorney

- 7. Maintain and populate the interactive database with relevant information and data during the term of this Agreement;
- 8. Adhere to the deliverable schedule, biannual reporting requirements and to the timeline set forth in the Disbursement Conditions Agreement between the Town and the Local Initiatives Support Corporation; and
- 9. Prior to or at the completion of these tasks, report on the efficacy of the Town and Consultant's efforts to identify parties responsible, in whole or in part, for the creation and perpetuation of "zombie," vacant, and abandoned structures within the Town.

At all times during the term of this Agreement, S&D warrants and agrees to abide by and follow all Town protocols, policies, and regulations that govern the relationship between the Town and its vendors.

Qualifications:

S&D warrants and represents that it, and its personnel, have the professional expertise necessary to complete the tasks as set forth herein, as needed and requested by the Town and/or the Department.

Compensation:

The consulting fees charged by S&D will be based upon time expended in completing services at a maximum rate of \$125.00 per hour. All billable time shall be computed on a one-tenth of an hour basis, rounded down to the nearest tenth of an hour.

The Town agrees to compensate S&D for its reasonable disbursements expended in the course of its work on behalf of the Town. However, S&D shall obtain the consent of the Commissioner or Deputy Commissioner, or their designee, prior to making any disbursements in excess of \$350.00.

S&D shall, on a monthly basis, submit an invoice, timesheet, and claim form (which shall be provided by the Town) prior to the receipt of payment. Timesheets shall detail: (1) the names of all personnel who performed work hereunder during the respective billing period, (2) a detailed description of the tasks performed by each individual, (3) the number of hours spent working by each individual for each task, and (4) the hourly rate being billed for such personnel and task performance. The Consultant will be paid only for hours as documented in the form prescribed herein, which records shall be subject to review and audit by the Department and the Town Comptroller prior to the Town's issuance of payment.

Other Provisions Governing this Agreement:

S&D agrees to obtain, at its sole expense, from an insurance company authorized to do business in the State of New York, and to keep in force during the term of this Agreement, a policy of comprehensive general liability on which the Consultant and the Town are each named

Reviewed By
Office of Town Attorney
Page 2 of 5

insured, including, but not limited to, for the torts and negligence of the S&D's personnel, with a combined single limit of \$2,000,000 per occurrence for bodily injury and property damage and a Professional Liability policy in an amount not less than \$1,000,000 insuring the Consultant against, among other things, the Consultant's errors and omissions in the course of its performance under this Agreement. On or before the effective date of this Agreement, the Consultant shall provide the Town Attorney with a certificate and copy of the policy evidencing its procurement of the insurance required under this Paragraph.

S&D shall comply with all provisions of New York State Workers' Compensation Law and shall furnish a certificate showing evidence of current coverage.

If S&D fails to maintain such insurance policies and to obtain such policies and furnish certificates evidencing such coverage within thirty (30) days of the receipt of notice by the Town regarding this deficiency, the Town shall have the right to terminate this Agreement.

The Consultant agrees to indemnify, defend and hold the Town harmless for and against demands, claims, actions, causes of action, proceedings, liabilities, fines, penalties, damages, losses, judgments and expenses, (including, without limitation, reasonable attorney's fees) of whatsoever kind and nature, imposed upon, incurred by, or asserted against any of the Indemnified Parties directly or indirectly arising out of or resulting from: (i) S&D's negligent performance under this agreement and/or (ii) S&D's failure to comply with or perform any of the terms, covenants or conditions of this Agreement. The indemnity and hold harmless provisions of this Paragraph shall survive and be of full force and effect notwithstanding any lapse in the insurance coverage required under this Paragraph.

S&D agrees that it is, and shall at all times be deemed to be, an independent contractor, and it shall not, in any manner whatsoever, by its actions or deeds, commit the Town to any obligation irrespective of the nature thereof, and it shall not, at any time or for any purpose, be deemed an employee of the Town. It is further understood and agreed that no agent, servant, or employee of the Consultant shall, at any time or under any circumstances, be deemed to be an agent, servant, or employee of the Town.

Authorization:

In accordance with the foregoing, it is mutually agreed that the Consultant is authorized to proceed with the provision of professional real estate services to the Town of Oyster Bay, Department of Planning and Development and to be paid for such services in accordance herewith effective July 1, 2018.

Reviewed By
Office of Town Attorney

The Town's execution of this Agreement was author of Oyster Bay pursuant to Resolution No2018.	orized by the Town Board of the Town
For Smith & Drake Realty Corp.	
Matthew L. Smith, President	Date
For the Town of Oyster Bay, Oyster Bay, New York	
	Date

Reviewed By
Office of Town Attorney

Page 4 of 5

ACKNOWLEDGEMENTS

"ZOMBIE" AND VACANT PROPERTY RESEARCH CONSULTING AGREEMENT

STATE OF NEW YORK)) ss.:
COUNTY OF NASSAU)
On the day of in the year 2018 before me personally came to me personally known, who, being by me duly sworn, did depose and say that he has a principal place of business in Oyster Bay, New York; that he is
depose and say that he has a principal place of business in Oyster Bay, New York; that he is Town Supervisor of the TOWN OF OYSTER BAY, the municipal corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto pursuant to authorization of the Town Board of the Town of Oyster Bay.
NOTARY PUBLIC
STATE OF NEW YORK)) ss.: COUNTY OF NASSAU)
On the day of, in the year 2018 before me personally came to me personally known, who, being by me duly sworn, did
depose and say that he is the of SMITH & DRAKE REALTY
depose and say that he is the of SMITH & DRAKE REALTY CORP., the corporation described herein and which executed the above instrument and that he
signed his name pursuant to the authority as the of SMITH &
DRAKE REALTY CORP.
NOTARY PUBLIC
S:\Attorney\Matt\Draft Agreements\Vacant Property Research and Inventory.docx

Reviewed By
Office of Town Attorney

DISCLOSURE QUESTIONAIRE

SECTION I: GENERAL INFORMATION

- 1. BUSINESS NAME (LEGAL INC. NAME): Smith & Drake Realty Corp.
- 2. FEDERAL EMPLOYER ID NO. (FEIN): 02-0763626
- 3. D/B/A DOING BUSINESS AS (IF APPLICABLE): Smith & DeGroat Real Estate COUNTY FILED: Nassau
- 4. WEBSITE ADDRESS (IF APPLICABLE): sdnyrealty.com
- 5. BUSINESS E-MAIL ADDRESS: mschackner@sdnyrealty.com
- 6. PRINCIPAL PLACE OF BUSINESS ADDRESS: 27 East Jericho Turnpike, Mineola, NY 11501
- 7. TELEPHONE NUMBER: 516-248-6905 7. FAX NUMBER: 516-741-4587
- 8. DOES THE BUSINESS USE, OR HAS IT USED IN THE PAST FIVE (5) YEARS, ANY OTHER BUSINESS NAME, FEIN, OR D/B/A OTHER THAN WHAT IS LISTED IN QUESTIONS 1-4 ABOVE?

☐ YES XNO

If yes, provide the name(s), FEIN(s) and d/b/a(s) and the address for each such entity on a separate piece of paper and attach to this questionnaire.

9. AUTHORIZED CONTACT:

NAME: Martin Schackner

TITLE: Director

TELEPHONE NUMBER: 516-248-6905 FAX NUMBER: 516-741-4587

E-MAIL: mschackner@sdnyrealty.com

- 10. HOW MANY YEARS HAS THIS BUSINESS BEEN IN BUSINESS? 68 Years
- 11. TYPE OF BUSINESS (PLEASE CHECK APPROPRIATE BOX):
- a) X BUSINESS CORPORATION
- b) ☐ PUBLIC RESEARCH INSTITUTION
- c)

 ACADEMIC RESEARCH INSTITUTION
- d) INOT-FOR-PROFIT RESEARCH INSTITUTION
- e)

 NOT-FOR-PROFIT CORPORATION CREATED ON BEHALF OF
- A PUBLIC, NOT-FOR-PROFIT PRIVATE OR ACADEMIC RESEARCH INSTITUTION
- f) \square NOT-FOR-PROFIT CORPORATION CHARITIES REGISTRATION NUMBER:

·	LOCAL DEVELOPMENT CORPORATION OR INDUSTRIAL DEVELOPMENT NCY
h) 🗆	MUNICIPALITY
i) 🗆	UNIVERSITY/EDUCATIONAL ORGANIZATION
nП	OTHER - SPECIFY

SECTION II: DUE DILIGENCE QUESTIONS

1. DOES THE BUSINESS POSSESS ALL CERTIFICATIONS, LICENSES, PERMITS, APPROVALS, OR OTHER AUTHORIZATIONS ISSUED BY ANY LOCAL, STATE, OR FEDERAL GOVERNMENTAL ENTITY IN CONNECTION WITH THE PROPOSAL/PROJECT, BUSINESS'S SERVICES, OPERATIONS, BUSINESS, OR ABILITY TO CONDUCT ITS ACTIVITIES? PLEASE NOTE THIS DOES NOT INCLUDE CONSTRUCTION RELATED ACTIVITIES SUCH AS BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY.

X YES □ NO

IF THE ANSWER IS "NO", PLEASE SET FORTH ON A SEPARATE DOCUMENT ATTACHED HERETO THE CERTIFICATIONS, LICENSES, PERMITS, APPROVALS, OR OTHER AUTHORIZATIONS THAT ARE REQUIRED AND THE DATE(S) THAT SUCH CERTIFICATIONS, LICENSES, PERMITS, APPROVALS, OR OTHER AUTHORIZATION IS EXPECTED.

- 2. ON A SEPARATE DOCUMENT ATTACHED HERETO, LIST ALL CONTRACTS THE BUSINESS HAS ENTERED INTO WITH ANY MUNICIPALITY IN THE PAST FIVE (5) YEARS. PLEASE LIST THE NAME, ADDRESS AND CONTACT PERSON FOR THE CONTRACTING ENTITY, AS WELL AS THE CONTRACT EFFECTIVE DATES. ALSO PROVIDE CONTRACT IDENTIFICATION NUMBER, IF KNOWN.
- 3. WITHIN THE PAST FIVE (5) YEARS, HAS THE BUSINESS, ANY PRINCIPAL, OWNER, DIRECTOR, OFFICER, MAJOR STOCKHOLDER (10% OR MORE OF THE VOTING SHARES FOR PUBLICLY TRADED COMPANIES, 25% OR MORE OF THE SHARES FOR ALL OTHER COMPANIES), RELATED COMPANY OR AFFILIATE BEEN THE SUBJECT OF ANY OF THE FOLLOWING:

•		
(a) A JUDGMENT OR CONVICTION FOR ANY BUSINESS RELATI CONSTITUTING A CRIME UNDER FEDERAL, STATE OR LOCAL		
	□ YES X	NO
(b) BEEN SUSPENDED, DEBARRED OR TERMINATED BY A LOC AUTHORITY IN CONNECTION WITH A CONTRACT OR CONTRA		
	□ YES 🗓	NO
(c) BEEN DENIED AN AWARD OF A LOCAL, STATE OR FEDERA CONTRACT, HAD A CONTRACT SUSPENDED OR HAD A CONTRACT NON-RESPONSIBILITY?		
	\square YES X	NO
(d) HAD A LOCAL, STATE, OR FEDERAL GOVERNMENT CONTR TERMINATED FOR CAUSE PRIOR TO THE COMPLETION OF THE CONTRACT?		
	□ YES 🛚	NO
(e) A CRIMINAL INVESTIGATION OR INDICTMENT FOR ANY BUCONDUCT CONSTITUTING A CRIME UNDER FEDERAL, STATE GOVERNMENT?		ATED
	□ YES 🛚	NO
(f) AN INVESTIGATION FOR A CIVIL VIOLATION FOR ANY BUS CONDUCT BY ANY FEDERAL, STATE OR LOCAL AGENCY?	SINESS RELA	TED
	□ YES 🗓	NO
(g) AN UNSATISFIED JUDGMENT, INJUNCTION OR LIEN FOR AS CONDUCT OBTAINED BY ANY FEDERAL STATE OR LOCAL GO INCLUDING, BUT NOT LIMITED TO, JUDGMENTS BASED ON TA AND PENALTIES ASSESSED BY ANY FEDERAL, STATE OR LOCAGENCY?	VERNMENT AXES OWED	AGENCY AND FINES
	□ YES 🗓	NO
(h) A GRANT OF IMMUNITY FOR ANY BUSINESS-RELATED COI CRIME UNDER FEDERAL, STATE OR LOCAL LAW INCLUDING, ANY CRIME RELATED TO TRUTHFULNESS AND/OR BUSINESS	BUT NOT LIN	
	□ YES 🗓	NO
		Å



(i) AN ADMINISTRATIVE PROCEEDING OR CIVIL ACTION SEEKING SI PERFORMANCE OR RESTITUTION IN CONNECTION WITH ANY FEDER LOCAL CONTRACT OR LEASE?	PECIFIC RAL, STAT	E OR
	ES 🗓 NO	•
(j) A SUSPENSION OR REVOCATION OF ANY BUSINESS OR PROFESSION HELD BY THE BUSINESS, A CURRENT OR FORMER PRINCIPAL, DIRECT OF THE BUSINESS, OR ANY MEMBER OF THE ANY CURRENT OR FOR BUSINESS?	CTOR, OR	OFFICER
	ES X NO	•
(k) A SANCTION IMPOSED AS A RESULT OF JUDICIAL OR ADMINISTR PROCEEDINGS RELATIVE TO ANY BUSINESS OR PROFESSIONAL LICE	ATIVE ENSE?	
	es 🛚 no	
(I) A CONSENT OR A FEDERAL, STATE OR LOCAL GOVERNMENT ENF DETERMINATION INVOLVING A VIOLATION OF FEDERAL, STATE OR	ORCEMEN LOCAL L	NT AWS?
□ YH	es 🛚 no	
(m) A CITATION, NOTICE, VIOLATION ORDER, PENDING ADMINISTRA PROCEEDING OR DETERMINATION FOR VIOLATIONS OF:	TIVE HEA	ARING OR
- FEDERAL, STATE OR LOCAL HEALTH LAWS, RULES OR REGULATIO	NS □YES	X NO
- UNEMPLOYMENT INSURANCE OR WORKERS' COMPENSATION	□ YES	X NO
- COVERAGE OR CLAIM REQUIREMENTS	☐ YES	X NO
- ERISA (EMPLOYEE RETIREMENT INCOME SECURITY ACT)	□ YES	X NO
- FEDERAL, STATE OR LOCAL HUMAN RIGHTS LAWS	□ YES	X NO
- FEDERAL INS (IMMIGRATION AND NATURALIZATION SERVICE) AN	D	
ALIENAGE LAWS, SHERMAN ACT OR OTHER FEDERAL ANTI-TRUST I	LAWS 🗆 1	YES X NO
- A FEDERAL, STATE, OR LOCAL DETERMINATION OF A WILLFUL VIO	DLATION	
OF ANY PUBLIC WORKS OR LABOR LAW OR REGULATION?	☐ YES	X NO
- AN OCCUPATIONAL SAFETY AND HEALTH ACT CITATION AND NOT PENALTY CONTAINING A VIOLATION CLASSIFIED AS SERIOUS OR $\ensuremath{\mathbf{W}}$		N OF
	□ YES	X NO

FOR EACH YES ANSWER TO QUESTIONS 3 A-M, PROVIDE DETAILS ON ADDITIONAL SHEETS REGARDING THE FINDING, INCLUDING BUT NOT LIMITED TO CAUSE, CURRENT STATUS, RESOLUTION, ETC.

CURRENT STATUS, RESOLUTION, ETC.	
5. DURING THE PAST THREE (3) YEARS, HAS THE BUISNESS FAILED TO:	
(a-1) FILE ANY RETURNS, INCLUDING, IF APPLICABLE, FEDERAL FORM 990, W FEDERAL, STATE OR LOCAL GOVERNMENT ENTITY?	/ITH ANY
□ YES	X NO
IF YES, IDENTIFY THE RETURN THAT WAS NOT FILED, THE TYPE OF FORM, TO YEAR(S) IN WHICH THE REQUIRED RETURN WAS NOT FILED, AND THE REASON THE RETURN WAS NOT FILED:	
. (a-2) PAY ANY APPLICABLE FEDERAL, STATE, OR LOCAL GOVERNMENT TAX	ŒS?
□ YES	X NO
(b) FILE RETURNS OR PAY NEW YORK STATE UNEMPLOYMENT INSURANCE?	
□ YES	ابسب
IF YES, INDICATE THE YEARS THE BUSINESS FAILED TO FILE/PAY THE INSUR AND THE CURRENT STATUS OF THE LIABILITY:	ANCE
(c) FILE DOCUMENTATION REQUESTED BY ANY REGULATING ENTITY SET FO SECTION II, QUESTION I ABOVE, WITH THE ATTORNEY GENERAL OF THE STANEW YORK, OR WITH ANY OTHER LOCAL, STATE, OR FEDERAL ENTITY THAT MADE A FORMAL REQUEST FOR INFORMATION?	ATE OF
☐ YES IF YES, INDICATE THE YEARS THE BUSINESS FAILED TO FILE THE REQUESTE INFORMATION AND THE CURRENT STATUS OF THE MATTER:	
6. HAVE ANY BANKRUPTCY PROCEEDINGS BEEN INITIATED BY OR AGAINST BUSINESS, RELATED ORGANIZATIONS, ENTITIES OR ITS AFFILIATES WITHIN SEVEN (7) YEARS (WHETHER OR NOT CLOSED) OR IS ANY BANKRUPTCY PROPENDING BY OR AGAINST THE BUSINESS, RELATED ORGANIZATIONS, ENTITICATIONS, REPORTED ORGANIZATIONS, ENTITICATIONS, REGARDLESS OF THE DATE OF FILING?	THE PAST CEEDING
□ YES	X NO
IF YES, INDICATE IF THIS IS APPLICABLE TO THE SUBMITTING BUSINESS OR (ITS AFFILIATES:	ONE OF
IF IT IS AN AFFILIATE, RELATED ORGANIZATION OR ENTITY, INCLUDE THE	

PROVIDE THE COURT NAME, ADDRESS AND DOCKET NUMBER:		
INDICATE IF THE PROCEEDINGS HAVE BEEN INITIATED, REMAIN PENIBEEN CLOSED:	DING OR	HAVE
IF CLOSED, PROVIDE THE DATE CLOSED:		
7. DOES BUSINESS HAVE THE FINANCIAL RESOURCES TO FULFILL THI REQUIREMENTS OF THE PROPOSAL/PROJECT DESCRIBED?	E	
	□ YES	X NO

CERTIFICATION

THE UNDERSIGNED RECOGNIZES THAT THIS QUESTIONNAIRE IS SUBMITTED FOR THE EXPRESS PURPOSE OF INDUCING THE TOWN OF OSYTER BAY AWARD A CONTRACT/AGREEMENT TO THE BUSINESS FOR SERVICES RENDERED BY THE UNDERSIGNEDAND THAT THE TOWN OF OYSTER BAY MAY IN ITS DISCRETION, BY MEANS WHICH IT MAY CHOOSE, DETERMINE THE TRUTH AND ACCURACY OF ALL STATEMENTS MADE HEREIN. THE UNDERSIGNED FURTHER ACKNOWLEDGESTHAT INTENTIONAL SUBMISSION OF FALSE OR MISLEADING INFORMATION MAY CONSTITUTE A CRIME; AND STATES THAT THE INFORMATION SUBMITTED IN THISQUESTIONNAIRE AND ANY ATTACHED PAGES IS TRUE, ACCURATE AND COMPLETE.

THE UNDERSIGNED ALSO CERTIFIES THAT S/HE HAS NOT ALTERED THE CONTENT OF THE QUESTIONS IN THE QUESTIONNAIRE IN ANY MANNER; HAS READ AND UNDERSTANDS ALL OF THE ITEMS CONTAINED IN THE QUESTIONNAIRE AND ANY ATTACHED PAGES; HAS SUPPLIED FULL AND COMPLETE RESPONSES TO EACH ITEM THEREIN TO THE BEST OF HIS/HER KNOWLEDGE, INFORMATION AND BELIEF; IS KNOWLEDGEABLE ABOUT THE SUBMITTING BUSINESS'S BUSINESS AND OPERATIONS; UNDERSTANDS THAT THE TOWN OF OYSTER BAY WILL RELY ON THE INFORMATION SUPPLIED IN THIS QUESTIONNAIRE WHEN ENTERING INTO ACONTRACT WITH THE BUSINESS; AND IS UNDER DUTY TO NOTIFY THE TOWN OF OYSTER BAY OF ANY MATERIAL CHANGES TO THE BUSINESS'S RESPONSES HEREIN

Signature of Authorized Officer

Matthew L. Smith Printed Name of Authorized Officer

President Title of Authorized Officer

Sworn to before me this 27 Day of June 2018,

Notary Public

NEAL D. PEYSNER
NOTARY PUBLIC-STATE OF NEW YORK
NO. 01PE4948197
Qualified in Nassau County
My Commission Expires March 06, 2016



ALL CONTRACTS THE BUSINESS HAS ENTERED INTO WITH ANY MUNICIPALITY IN THE PAST FIVE (5) YEARS.

Municipality:

County of Nassau

Contract Title:

Manage, Operate, Maintain and Supervise Mitchel Field Properties

Contract Number:

CQPW16000014

Kevin C. Walsh, Fso

Contact Person: Kevin C. Walsh, Esq.

Chief Real Estate Negotiator and Special Counsel County of Nassau Office of Real Estate Services

One West Street

Mineola, New York, 11501

516-571-0591

Municipality:

County of Nassau

Contract Title:

Manage, Operate, Maintain and Supervise Landmark Properties

Contract Number: Contact Person:

CQPK17000001 Eileen A. Krieb

Commissioner

Nassau County Department of Parks, Recreation & Museums

1899 Hempstead Turnpike East Meadow, New York 11557

516-572-0272

Municipality

Town of Hempstead

Contract Title:

Evaluation & Inventory of Town Real Estate Assets

Formal Bid:

05-2018

Contact Person:

Adam Haber

Deputy Chief of Staff

Economic Development & Government Efficiency

Town of Hempstead One Washington Street Hempstead, New York 11550

516-874-8516

Municipality

County of Nassau

Contract Title:

Evaluation & Inventory of County's Real Estate Assets

Contract Title: Contact Person:

CQPW15000009 Kevin C. Walsh, Esq.

Chief Real Estate Negotiator and Special Counsel County of Nassau Office of Real Estate Services

One West Street

Mineola, New York, 11501

516-571-0591



WHEREAS, on May 22, 2018, the Town Board adopted Resolution 341-2018, authorizing the Department of Community and Youth Services to enter into contracts with various performers, and/or their agents, for the performers and locations on the attached Grid A, in connection with the "2018 Music Under the Stars" series, amended on June 12, 2018 by Resolution 400-2018;

WHEREAS, Maureen A. Fitzgerald, Commissioner, Department of Community and Youth Services, by memorandum dated June 29, 2018, requested that Grid A to Resolution 341-2018 (amended by Resolution 400-2018), be amended to change the location column for Dr. K's Motown Revue from Bethpage Community Park to John F. Kennedy Middle School, 500 Broadway, Bethpage, New York, 11714;

NOW, THEREFORE, BE IT RESOLVED, That the Town Board hereby authorizes the Department of Community and Youth Services to amend the location column for Dr. K's Motown Revue from Bethpage Community Park to John F. Kennedy Middle School, 500 Broadway, Bethpage, New York, 11714.

-#-

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino	Aye
Councilman Muscarella	Aye
Councilman Macagnone	Aye
Councilwoman Alesia	Aye
Councilwoman Johnson	Aye
Councilman Imbroto	Absent
Councilman Hand	Aye

cc:

Supervisor Town Attorney Comptroller

Community & Youth Services

MUSIC UNDER THE STARS

Grid A

Town of Oyster Bay

Performance Date	Location	Check made payable to	Amount
7/10/2018	John J. Burns Town Park	SixGun Entertainment, Ltd.	\$2,700
7/10/2018	John J. Burns Town Park	Fireworks by Grucci	\$11,500
7/11/2018	Ellsworth W. Allen Town Park	The Concert Pops of Long Island	\$4,500
7/12/2018	John F. Kennedy Middle School	Dr. K's Motown Revue	\$3,000
7/14/2018	John J. Burns Town Park	NJ Star Productions, Inc.	\$3,400
7/17/2018	John J. Burns Town Park	Madding Music, Inc.	\$3,000
7/18/2018	Syosset-Woodbury Community Park	NJ Star Productions, Inc.	\$3,250
7/19/2018	Theodore Roosevelt Memorial Park & Beach	NJ Star Productions, Inc.	\$3,750
7/25/2018	Harry Tappen Beach	Charles D'Oria	\$1,750
7/25/2018	Harry Tappen Beach	Greg Warnokowski	\$1,750
7/28/2018	John J. Burns Town Park	Joseph Salucci	\$2,500
7/31/2018	Ellsworth W. Allen Town Park	Jeff Hickman	\$1,350
8/1/2018	Syosset-Woodbury Community Park	Anthony Garofalo	\$3,000
8/4/2018	John J. Burns Town Park	BonJourneyNY, LLC	\$1,800
8/7/2018	Ellsworth W. Allen Town Park	Lucilu Productions, incorporated	\$3,100
8/8/2018	Syosset-Woodbury Community Park	Simply Diamond Music	\$2,000
8/2018	John J. Burns Town Park	Ray Kairys	\$1,800
1971 BO18	John J. Burns Town Park	Lucilu Productions, Incorporated	\$9,000
		Total	\$63,150

Camival equipment for *Movies by Moonlight* will be procured through the Town of Oyster Bay's Carnival Equipment bid, # SO068-16.

* To be reimbursed by The Friends of the Community Service Department, Incorporated

Grid B

MUSIC UNDER THE STARS

The Friends of the Community Service Department, Incorporated

Performance Date	Location	Check made payable to	Amount
7/10 - 8/11/2018	Various Locations	Various National Anthem Artists	Amt. not to exceed \$1,200
7/7/2018	Ellsworth W. Allen Town Park	Swank Motion Pictures	\$420
7/10/2018	John J. Burns Town Park	Fireworks by Grucci, Incorporated	\$11,500
7/11/2018	Elisworth W. Allen Town Park	Dean Karahalis	\$750
7/21/2018	Marjorie R. Post Community Park	Swank Motion Pictures	\$384
7/21/2018	Marjorie R. Post Community Park	Jim Maurer	\$400
7/24/2018	John J. Bums Town Park	Dreamkast, Inc.	\$2,500
7/26/2018	Syosset-Woodbury Community Park	Swank Motion Pictures	\$420
7/26/2018	Syosset-Woodbury Community Park	KidzHitz	\$200
8/2/2018	Theodore Roosevelt Memorial Park & Beach	Swank Motion Pictures	\$420
8/9/2018	Plainview-Old Bethpage Community Park	Swank Motion Pictures	\$384
8/9/2018	Plainview-Old Bethpage Community Park	Dance Aloha	\$300
		Total	\$18,878



Imbursement to Town of Oyster Bay for Fireworks by Grucci, Incorporated

TOWN OF OYSTER BAY

Inter-Departmental Memorandum

June 29, 2018

TO:

Memorandum Docket

FROM:

Maureen A. Fitzgerald, Commissioner

Department of Community and Youth Services

SUBJECT:

Amendment to Town Board Resolution No. 400-2018, Music Under the

Stars Concert Series

Town Board Resolution No. 341-2018, dated May 22,, 2018, authorized the Department of Community & Youth Services to sign contracts with various vendors, performers, and/or their agents for the 2018 Music Under the Stars concert series. Town Board Resolution No. 400-2018, dated June 12, 2018 amended the Resolution.

We are respectively requesting permission to amend Town Board Resolution No. 400-2018 to include the following change of venue and reserve a space for the Town Board Meeting on Tuesday, July 10, 2018.

Grid A

Change the location column for Dr. K's Motown Revue from Bethpage Community Park to John F. Kennedy Middle School, 500 Broadway, Bethpage, New York 11714.

MAF:lw

cc: Town Attorney (+7 copies)

Attachments

Maureen A. Fitzgerald

Còmmissioner

Town of Oyster Bay

Performance Date	Location	Check made payable to	Amount
7/10/2018	John J. Burns Town Park	SixGun Entertainment, Ltd.	\$2,700
7/10/2018	John J. Burns Town Park	Fireworks by Grucci	\$11,500
7/11/2018	Ellsworth W. Allen Town Park	The Concert Pops of Long Island	\$4,500
7/12/2018	John F. Kennedy Middle School	Dr. K's Motown Revue	\$3,000
7/14/2018	John J. Burns Town Park	NJ Star Productions, Inc.	\$3,400
7/17/2018	John J. Burns Town Park	Madding Music, Inc.	\$3,000
7/18/2018	Syosset-Woodbury Community Park	NJ Star Productions, Inc.	\$3,250
7/19/2018	Theodore Roosevelt Memorial Park & Beach	NJ Star Productions, Inc.	\$3,750
7/25/2018	Harry Tappen Beach	Charles D'Oria	\$1,750
7/25/2018	Harry Tappen Beach	Greg Warnokowski	\$1,750
7/28/2018	John J. Burns Town Park	Joseph Salucci	\$2,500
7/31/2018	Ellsworth W. Allen Town Park	Jeff Hickman	\$1,350
8/1/2018	Syosset-Woodbury Community Park	Anthony Garofalo	\$3,000
8/4/2018	John J. Burns Town Park	BonJourneyNY, LLC	\$1,800
8/7/2018	Ellsworth W. Allen Town Park	Lucilu Productions, Incorporated	\$3,100
8/8/2018	Syosset-Woodbury Community Park	Simply Diamond Music	\$2,000
8/10/2018	John J. Burns Town Park	Ray Kairys	\$1,800
8/11/2018	John J. Burns Town Park	Lucilu Productions, Incorporated	\$9,000

Camival equipment for *Movies by Moonlight* will be procured through the Town of Oyster Bay's Carnival Equipment bid, # SO068-16.

\$63,150

^{*} To be reimbursed by The Friends of the Community Service Department, Incorporated

Grid B

MUSIC UNDER THE STARS

The Friends of the Community Service Department, Incorporated

Performance Date	Location	Check made payable to	Amount
7/10 - 8/11/2018	Various Locations	Various National Anthem Artists	Amt. not to exceed \$1,200
7/7/2018	Ellsworth W. Allen Town Park	Swank Motion Pictures	\$420
7/10/2018	John J. Burns Town Park	Fireworks by Grucci, Incorporated	\$11,500
7/11/2018	Ellsworth W. Allen Town Park	Dean Karahalis	\$750
7/21/2018	Marjorie R. Post Community Park	Swank Motion Pictures	\$384
7/21/2018	Marjorie R. Post Community Park	Jim Maurer	\$400
7/24/2018	John J. Burns Town Park	Dreamkast, Inc.	\$2,500
7/26/2018	Syosset-Woodbury Community Park	Swank Motion Pictures	\$420
7/26/2018	Syosset-Woodbury Community Park	KidzHitz	\$200
8/2/2018	Theodore Roosevelt Memorial Park & Beach	Swank Motion Pictures	\$420
8/9/2018	Plainview-Old Bethpage Community Park	Swank Motion Pictures	\$384
8/9/2018	Plainview-Old Bethpage Community Park	Dance Aloha	\$300
왞		Total	\$18,878

Reimbursement to Town of Oyster Bay for Fireworks by Grucci, Incorporated

Heviewed By Office of Town Attorney

WHEREAS, Maureen A. Fitzgerald, Commissioner, Department of Community and Youth Services, by memorandum dated April 27, 2018, requested Town Board authorization to sign contracts with various performers, and/or their agents, for the programs located on Grid A attached hereto and made a part hereof, in connection with the "2018 Music Under the Stars" series, which includes the Salute to America and Movies by Moonlight, for a total fee of \$61,350.00 (with the sum of \$11,500.00 to be reimbursed to the Town from The Friends of Community Services Department, Incorporated) to be drawn from Account No. CYS A 7020 47660 000 0000, and for programs, performances and services, as set forth on Grid B attached hereto and made a part hereof, fees for which will be paid by sponsor donations through The Friends of Community Services Department, Incorporated accounts:

See attached Grid A and Grid B Schedules,

NOW, THEREFORE, BE IT RESOLVED, That the Town Board hereby authorizes the Department of Community and Youth Services to enter into contracts with various performers, and/or their agents, for the programs located on Grid A attached hereto, in connection with the "2018 Music Under the Stars" series, for a total fee of \$61,350.00 (with the sum of \$11,500.00 to be reimbursed to the Town from The Friends of Community Services Department, Incorporated) to be drawn from Account No. CYS A 7020 47660 000 0000, and for programs, performances and services, as set forth on Grid B attached hereto, fees for which will be paid by sponsor donations through The Friends of Community Services Department, Incorporated accounts; and be it further

RESOLVED, That the Comptroller is hereby authorized and directed to make payment upon presentation of a duly certified claim, after audit.

-#-

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino Councilman Muscarella Councilman Macagnone Councilwoman Alesia Councilwoman Johnson Councilman Imbroto Councilman Hand

Aye Absent Aye Aye Aye

cc:

Supervisor
Town Attorney
Comptroller
Community & Youth Services

WHEREAS, on May 22, 2018, the Town Board adopted Resolution 341-2018, authorizing the Department of Community and Youth Services to enter into contracts with various performers, and/or their agents, for the described located on attached Grid A and Grid B, in connection with the "2018 Music Under the Stars" series;

WHEREAS, Maureen A. Fitzgerald, Commissioner, Department of Community and Youth Services, by memorandum dated May 24, 2018, requested that Grid A attached to Resolution 341-2018 be amended and corrected to reflect an additional performance by Ray Kairys on August 10, 2018 for a fee of \$1,800.00 at John J. Burns Town Park and to correct the payee of the August 4, 2018 performance, in connection with the "2018 Music Under the Stars" series, for a total fee of \$63,150.00 (with the sum of \$11,500.00 to be reimbursed to the Town from The Friends of The Community Services Department, Inc.);

WHEREAS, Maureen A. Fitzgerald, Commissioner, Department of Community and Youth Services, by memorandum dated May 24, 2018, requested that Grid B attached to Resolution 341-2018 be amended and corrected to include three additional performances on July 21, 2018, July 26, 2018, and August 9, 2018, respectively at a total cost of \$18,878.00, which will be paid by sponsor donations through The Friends of The Community Services Department, Inc. accounts:

See attached updated Grid A and Grid B Schedules,

NOW, THEREFORE, BE IT RESOLVED, That the Town Board hereby authorizes the Department of Community and Youth Services to enter into contracts with various performers, and/or their agents, for the programs located on updated Grid A attached hereto, in connection with the "2018 Music Under the Stars" series, for a total fee of \$63,150.00 (with the sum of \$11,500.00 to be reimbursed to the Town from The Friends of The Community Services Department, Inc.) to be drawn from Account No. CYS A 7020 47660 000 0000, Special Events and for programs, performances and services, as set forth on updated Grid B attached hereto, fees for which will be paid by sponsor donations through The Friends of The Community Services Department, Inc. accounts; and be it further

RESOLVED, That the Comptroller is hereby authorized and directed to make payment upon presentation of a duly certified claim, after audit.

_#.

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino Councilman Muscarella Councilman Macagnone Councilwoman Alesia Councilwoman Johnson Councilman Imbroto Councilman Hand

Aye Aye Aye Aye Aye Aye

Supervisor Town Attorney

ce:

Town Autome Comptroller

Community & Youth Services

The foregoing resolution was declared adopted after a poll of the members of the Board; the vote being recorded as follows:

Supervisor Saladino Councilman Muscarella Councilman Macagnone Aye Aye Abstain

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Town of Oyster Bay Inter-Departmental Memo

459

TO

MEMORANDUM DOCKET

FROM

Office of the Town Attorney

DATE

July 2, 2018

SUBJECT:

New York State Volunteer Firefighters' Benefit Law Policy

The Town issued a Request for Proposals for the provision of insurance pursuant to the New York State Volunteer Firefighters' Benefit Law Policy (VFBL), in accordance with the requirements of the Town of Oyster Bay Procurement Policy. As there are a limited number of providers for this type of coverage, the Town only received two (2) proposals. Therefore, a waiver of the Town's Procurement Policy is proper, pursuant to Guideline 7 of the Town of Oyster Bay Procurement Policy.

Of the two proposals received, this office recommends that this insurance be secured from Fire District of New York Mutual Insurance Co., Inc. nunc pro tunc for the period from January 1, 2018 to January 1, 2019, with a premium in the amount of \$361,120.00.

Funds are available in Account Nos. TWN SF12-3410-47790-000-0000; TWN SF02-3410-47790-000-0000; TWN SF15-3410-47790-000-0000; TWN SF08-3410-47790-000-0000 and TWN SF09-3410-47790-000-0000.

Submitted herewith is the Resolution for the foregoing request, as well as a copy of the invoice.

Accordingly, kindly suspend the rules and place this item on the July 10, 2018 action calendar.

JOSEPH NOCELLA, TOWN ATTORNEY

Elizabeth A. Faughnan Deputy Town Attorney

EAF:ba

Enclosure

GS 4299

S:\Attorney\RESOS 2018\MD & Reso\Volunteer Firefighters Benefit Law Coverage.2018.EAF final.docx

QUOTATION ONLY ***THIS IS NOT A POLICY OR A BINDER***

Fire Districts of New York Mutual Insurance Co.

NCCI No.: 18236

777 Chestnut Ridge Road, Snite 302, Chestnut Ridge, NY 10977 (845) 352-8855

(Volunteer Firefighters' Benefit Law Policy)

Item 1.

FEIN: 116001934

The Insured: Town Of Oyster Bay Volunteer Firefighters

Quote No. 01-FDM-VF-00511320-001

Mailing Address: 54 Audrey Avenue Oyster Bay, NY 11771

Item 2.

The policy period is from 01/01/2018

To 01/01/2019

12:01 A.M Standard time, at the insured's mailing address.

Location	Population	% Area	Annual Premium
Home Area: 01	80,252	100	\$ 335,305
List Other "Home Areas" Serviced Under Contract:			
List "Outside Areas":			
		.]	
	Estimated Manual Premium		\$ 335,30
•	Extension of Employers Liability	10.00%	\$ 35,87
Premium Subject to Experience Modification			\$ 335,39
	Modified Premium	1.07	\$ 358,7
National Disasters & Catastrophic 0. Estimated Standard Premium		3.40%	\$ 11,4
		0.70%	\$ 2,3
			\$ 394,6
Tion Town Comments			
Premium Discount -12.039			\$ -47,4
Security Fund 0.00			
,	Expense Constant		\$2
	Estimated Annual Premium	l .	\$361,1

Annual Minimum Premium: \$ 7,792.00 Fill in only where "Outside Area" has more than one contract for fire protection, provided the records of the "Home Area" are maintained so as to show separately its contract price as well as the total cost of all contracts being paid by the "Outside Area"

Form numbers of endorsements forming a part of the policy on its effective date:

WC31 00 01A

WC31 00 00 A

TVC 00 04 02 Signature Page

WC 00 04 2ID

WC 00 04 22B

WC 00 04 25

WC 31 06 06

WC 31 06 07 VF-105

THIS QUOTATION IS NOT VALID AFTER 30 DAYS FROM THE ISSUE DATE

Producer: Harbor Insurance Agency, LLC

5 Flint Road

Amity Harbor, NY 11701

(Authorized Representative)

Issue Date 11/29/2017 Rate Board File No.