

Meeting of January 23, 2018

Resolution No. TF-03-2018

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

ITEM NO.	DEPT.	AMOUNT	FROM
003-18	IGA	\$ 2,900.00	IGA CD 6293 41600 000 CW17
			TO
		\$ 2,900.00	IGA CD 6293 46410 000 CW17
			FROM
004-18	IGA	\$ 3,100.00	IGA CD 6293 41600 000 CW18
			TO
		\$ 3,100.00	IGA CD 6293 46410 000 CW18
			INCREASE
005-18	EXE	\$82,140.22	TWN AMS 0001 02680 000 0000 000
			INCREASE
		\$82,140.22	TWN AMS 1910 43030 606 0000 000

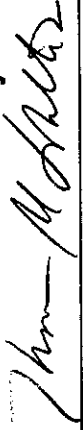
#

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	Aye
Councilman Hand	Aye

cc: Supervisor  
Town Attorney  
Comptroller  
Intergovernmental Affairs

Reviewed By  
Office of Town Attorney



2A

**TOWN OF OYSTER BAY**  
**Inter-Departmental Memo**

January 8, 2018

**TO:** MEMORANDUM DOCKET  
**FROM:** FRANK V. SAMMARTANO, COMMISSIONER  
INTERGOVERNMENTAL AFFAIRS  
**SUBJECT:** TRANSFER OF FUNDS

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AMOUNT: \$ 6,000.00

FROM: IGA-CD-6293-41600-000-CW17 \$ 2,900.00  
(Materials & Supplies)


TO: IGA-CD-6293-46410-000-CW17 \$ 2,900.00  
(IT Maintenance)

FROM: IGA-CD-6293-41600-000-CW18 \$ 3,100.00  
(Materials & Supplies)

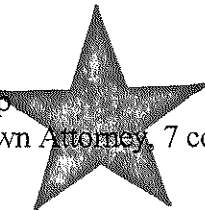
TO: IGA-CD-6293-46410-000-CW18 \$ 3,100.00  
(IT Maintenance)

The above listed transfers of funds are required to accommodate the Department of Intergovernmental Affairs (IGA), Division of Employment and Training's (DET) Workforce Innovation and Opportunity Act (WIOA) program expenses. All WIOA program funding is provided to the Town through a federal grant passed through the New York State Department of Labor. As IGA DET is informed by NYS DOL of its annual appropriation of WIOA funding, IGA DET make projections as to how that funding will be utilized on program expenses over the course of the fiscal year. As the fiscal year advances and actual expenditures vary from preliminary projections, transfers of WIOA funds are required to accommodate present day WIOA program needs.

Thank you for your attention to this matter.

  
Frank V. Sammartano  
Commissioner

FVS:dp  
cc: Town Attorney, 7 copies



23

# Town of Oyster Bay Inter-Departmental Memo

January 12, 2018

**To:** Memorandum Docket  
**From:** Robert Darienzo, Director of Finance  
**Subject:** Transfer of Funds

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In January 2016, a fire damaged the Albany Avenue Community Center. In April 2016, the Town received an advance payment from the insurance company in the amount of \$200,000.00 to begin to pay for costs to renovate and restore the Community Center. As of December 31, 2017, \$117,859.78 has been spent. For accounting purposes, the remaining \$82,140.22 needs to be added to the 2018 Budget. Therefore, the following transfer of funds is hereby requested:



Increase:									
TWN	AMS	0001	02680	000	0000	000	Ins Recoveries		82,140.22
Increase:									
TWN	AMS	1910	43030	606	0000	000	Ins Prop-Albany Ave		82,140.22

Thank you.

  
Robert Darienzo  
Director of Finance

RD/rd  
cc: Town Attorney (with 7 copies)  
Word/Documents/Docket/TOF 2018 AMS AACC



 Reviewed By  
Office of Town Attorney  


WHEREAS, Joseph G. Pinto, Commissioner, Department of Parks, by memorandum dated January 4, 2018, requested Town Board authorization to establish the attached Fee Schedule for Harry Tappen and Theodore Roosevelt Marinas, Spring, Summer and Fall for the 2018 season,

NOW, THEREFORE, BE IT RESOLVED, That the Town Board hereby approves the attached 2018 Harry Tappen and Theodore Roosevelt Marinas, Spring, Summer and Fall Fee Schedule for the 2018 season, and authorizes the Department of Parks to establish and collect said fees.

-#-

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	Aye
Councilman Hand	Aye

cc: Supervisor  
Town Attorney  
Comptroller  
Parks

8

# TOWN OF OYSTER BAY

## Inter-Departmental Memorandum

To: Memorandum Docket


From: Joseph G. Pinto, Commissioner of Parks

Date: January 4, 2018

Subject: Harry Tappen/Theodore Roosevelt Marinas,  
Spring, Summer, & Fall Fee Schedule – 2018

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It is requested that Town Board approval be given to implement the attached Harry Tappen/Theodore Roosevelt Marinas Spring, Summer, and Fall fee schedule for the 2018 season.

  
Joseph G. Pinto  
Commissioner of Parks

JGP:gmw

cc: Town Attorney (+7 copies)  
Gabriel Pontillo, Parks Finance

Attachments

HARRY TAPPEN/THEODORE ROOSEVELT MARINAS  
SPRING, SUMMER AND FALL FEE SCHEDULE - 2018

**Seasonal rental fee:**

**Roosevelt Marina**

Resident - 20' and up - Without electric - \$90.00 per foot  
Resident - 20' and up - With electric - \$97.50 per foot

**Tappen Marina**

Resident - 14' to 17' - Without electric - \$45.00 per foot  
Non-Resident - 14' to 17' - Without electric - \$60.00 per foot  
Resident - 18' to 20' - Without electric - \$60.00 per foot  
Resident - 18' to 20' - With electric - \$67.50 per foot  
Non-Resident - 18' to 20' - Without electric - \$75.00 per foot  
Non-Resident - 18' to 20' - With electric - \$87.50 per foot  
Resident - 21' to 24' - Without electric - \$65.00 per foot  
Resident - 21' to 24' - With electric - \$72.50 per foot  
Non-Resident - 21' to 24' - Without electric - \$80.00 per foot  
Non-Resident - 21' to 24' - With electric - \$92.50 per foot  
Resident - 25' and up - Without electric - \$70.00 per foot  
Resident - 25' and up - With electric - \$77.50 per foot  
Non-Resident - 25' and up - Without electric - \$85.00 per foot  
Non-Resident - 25' and up - With electric - \$97.50 per foot

**Prorate fee:**

Persons who are contacted by the Beach Division office on or after June 14, 2018, for slip availability will be eligible for a prorated fee. The fee will be determined by the full cost of a slip rental for appropriate vessel size divided by 151. 151 represents the number of days after June 14 through November 11. The prorate date will, in all cases, be the date that the Beach Division first made contact with the person with actual slip availability. This same prorate formula will be used for slip holders who upgrade to electric use or purchase a larger vessel during the season.

**Senior Citizen Discount:**

Persons who were born on or before November 11, 1958 are entitled to a discount of 10% on their marina fee.

**Transient Fee - (Tappen Marina only):**

1. Weekly

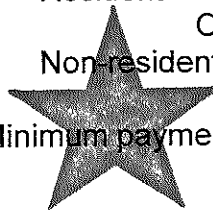
Resident - 20 foot and under - \$85.00 per week

Over 20 foot - \$150.00 per week

Non-resident - 20 foot and under - \$150.00 per week

Over 20 foot - \$200.00 per week

a. Minimum payment is for a seven (7) day period.



- b. Weekly transient fee is valid from June 1, 2018 until November 11, 2018. Maximum length of stay is any combination of four (4) weeks.
- c. Vessels must vacate the marina by 8 a.m. on the day after their authorization has expired.
- d. All payments must be made at Town Hall South.
- e. The Parks Department reserves the right to have any transient vessel vacate the marina after a seven (7) day stay.

2. Daily

Resident and Non-Resident - \$20.00

- a. This rate will be applied to all boats from sunup to sundown or any portion thereof.
- b. This transient fee will be applied from April 16, 2018 to November 11, 2018.

**Seasonal rental of sailing dinghy/canoe/kayak racks**

Resident - \$150.00

Non-resident - \$300.00

Limit one vessel per rack except for kayaks. Limit two kayaks per rack.

WHEREAS, Joseph Nocella, Town Attorney, and Matthew M. Rozea, Deputy Town Attorney, by memorandum dated January 3, 2018, have advised that in connection with certain litigation, the services of Intercounty Judicial Services, LLC, 85 Willis Avenue, Suite F, Mineola, New York were necessary in order to serve pleadings upon ten (10) defendants; and

WHEREAS, in accordance with the Procurement Policy, the Office of the Town Attorney consulted with the Office of the Comptroller, which concluded, by memorandum dated December 20, 2017, that in view of the specific nature of the professional services rendered by Intercounty Judicial Services, LLC and the cost for same, the Procurement Policy has been satisfied; and

WHEREAS, Joseph Nocella, Town Attorney, and Matthew M. Rozea, Deputy Town Attorney, by the aforementioned memorandum, request and recommend that the Town Board authorize payment to Intercounty Judicial Services, LLC, in an amount not to exceed \$1,023.20, to satisfy all outstanding invoices for process service,

NOW, THEREFORE, BE IT RESOLVED, That the recommendation as hereinabove set forth is hereby accepted and approved and the Comptroller is hereby authorized and directed to make payment to Intercounty Judicial Services, LLC, 85 Willis Avenue, Suite F, Mineola, New York, in an amount not to exceed \$1,023.20, 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	Aye
Councilwoman Alesia	Aye
Councilwoman Johnson	Aye
Councilman Imbroto	Aye
Councilman Hand	Aye

cc: Supervisor  
Town Attorney  
Comptroller

Reviewed By  
Office of Town Attorney  
*[Signature]*



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# Town of Oyster Bay

## Inter-Departmental Memo

**TO** : Memorandum Docket

**FROM** : Office of the Town Attorney

**DATE** : January 3, 2018

**SUBJECT:** Payment for Process Server  
Intercounty Judicial Services, LLC

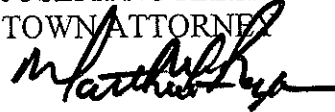
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This Office required the services of Intercounty Judicial Services, LLC, 85 Willis Avenue, Suite F, Mineola, New York in order to serve copies of a pleading on ten (10) defendants. The cost incurred in connection with such process service was \$1,023.20.

In accordance with Procurement Policy Guideline 6, this Office consulted with the Office of the Comptroller, which concluded that the Procurement Policy has been satisfied in view of the specific nature of the professional services rendered and the cost for same.

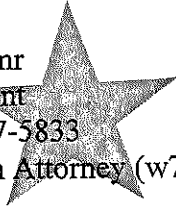
Accordingly, attached hereto for Town Board consideration is a proposed resolution to authorize payment to Intercounty Judicial Services in an amount not to exceed \$1,023.20, with funds to be drawn from Account No. OTA A 1420 44110 000 0000.

JOSEPH NOCELLA  
TOWN ATTORNEY



Matthew M. Rozea  
Deputy Town Attorney

MMR:mmr  
Attachment  
File: 2017-5833  
cc: Town Attorney (w7/copies)



PRIVILEGED AND CONFIDENTIAL  
ATTORNEY-CLIENT COMMUNICATION  
NOT SUBJECT TO DISCLOSURE UNDER THE FREEDOM OF INFORMATION LAW

Town of Oyster Bay  
Inter-Departmental Memo

TO : Steven C. Ballas, Comptroller  
FROM : Office of the Town Attorney  
DATE : December 6, 2017  
SUBJECT : Procurement Policy – Guideline 6  
Process Servers

TOWN OF OYSTER BAY  
COMPTROLLER'S OFFICE  
2017 DEC -7 P 1:08

In connection with some of this Office's functions, a need for process servers arises so that legal papers may be timely and properly served.

Following the commencement of the Town's action against certain individuals and entities that are responsible for the negotiation and drafting of purported loan guarantees, this Office utilized the services of Intercounty Judicial Services, LLC, 85 Willis Avenue, Suite F, Mineola, New York 11501 ("Intercounty") to serve the legal papers on the ten (10) defendants. The total amount owed to Intercounty is \$1,023.20.

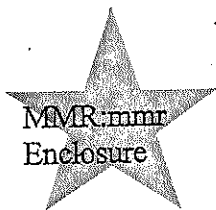
So that we may prepare a resolution to authorize payment to Intercounty, a request is hereby made pursuant to Guideline 6 of the Procurement Policy, which authorizes the retention of certain professional services without a formal procurement where the amount to be incurred is less than \$10,000.00. Relatedly, kindly be advised that this Office did not utilize process servers in any other capacity this year. As such, the outstanding invoice from Intercounty (a copy of which is enclosed) represents the sum total of expenses incurred for process servers in calendar year 2017.

JOSEPH NOCELLA  
TOWN ATTORNEY



Matthew M. Rozea  
Deputy Town Attorney

MMR:mmm  
Enclosure



TOWN OF OYSTER BAY

Inter-Departmental Memo

DECEMBER 20, 2017

To: JOSEPH NOCELLA, TOWN ATTORNEY  
Attn: MATTHEW M. ROZEA, DEPUTY TOWN ATTORNEY  
From: STEVEN C. BALLAS, COMPTROLLER  
Subject: PROCUREMENT POLICY- GUIDELINE 6  
PROCESS SERVERS

In response to your memo dated December 6, 2017, copy enclosed, please be advised that our office has reviewed your procurement efforts, pursuant to the above mentioned subject matter.

It is our determination that, due to the specific nature of this professional service, town wide we do not expect spending to exceed the current threshold of \$10,000.00 in a calendar year, and therefore, the provisions have been met to satisfy procurement.

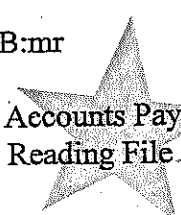
If we can be of further assistance, please do not hesitate to contact the undersigned.

  
STEVEN C. BALLAS  
COMPTROLLER

Enclosure

SCB:mr

cc: Accounts Payable Division  
Reading File



1 2017 DEC 20 P 3:40 I

TOWN OF OYSTER BAY  
RECEIVED  
12/20/17

WHEREAS, the Town had entered into an Agreement with the New York State Department of Environmental Conservation (NYSDEC) through its Brownfield Cleanup Program (BCP) for the environmental remediation and monitoring of the ice rink portion of the Bethpage Community Park; and

WHEREAS, the Town seeks to close out the Agreement as it approaches the last phase of the BCP; and

WHEREAS, Joseph Nocella, Town Attorney, and Frank M. Scalera, Chief Deputy Town Attorney, by memorandum dated December 27, 2017, have advised that the Town Board authorize an outside counsel to handle the last phase of the BCP which will include reviewing, analyzing and modifying any documentation provided by the NYSDEC in furtherance of the close out; and

WHEREAS, given the environmental significance to the Park, it is in the best interests of the Town to retain a transactional and regulatory compliance attorney with extensive experience of the laws, rules and regulations regarding environmental hazardous substances and remediation of land, including, but not limited to, the New York State Brownfield Cleanup Program; and

WHEREAS, by the aforementioned memorandum, Joseph Nocella, Town Attorney, and Frank M. Scalera, Chief Deputy Town Attorney recommend that the Town Board ratify the Office of the Town Attorney's retention of Theodore W. Firetog, Esq., 111 Thomas Powell Boulevard, Farmingdale, New York 11735 to perform the legal services, in an amount not to exceed \$6,000.00, with funds available in Account No. OTA A 1420 44110 000 0000,

NOW, THEREFORE, BE IT RESOLVED, That the request and recommendation as hereinabove set forth is ratified and approved, and Theodore W. Firetog, Esq., 111 Thomas Powell Boulevard, Farmingdale, New York 11735 is and was authorized to perform the aforementioned transactional and regulatory compliance legal services in connection with the final phase of BCP relative to the ice rink portion of the Bethpage Community Park, and be it further

RESOLVED, That the Comptroller is hereby authorized and directed to make payment, in an amount not to exceed \$6,000.00, 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	Aye
Councilwoman Alesia	Aye
Councilwoman Johnson	Aye
Councilman Imbroto	Aye
Councilman Hand	Aye

cc: Supervisor  
Town Attorney  
Comptroller

Reviewed By  
Office of Town Attorney

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# Town of Oyster Bay

## Inter-Departmental Memo

**TO** : MEMORANDUM DOCKET

**FROM** : OFFICE OF THE TOWN ATTORNEY

**DATE** : December 27, 2017

**SUBJECT:** Legal Services in Connection with New York State Brownfield Cleanup Program

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The Town has been involved with the New York State Department of Environmental Conservation (NYSDEC) in connection with the continued environmental remediation and monitoring of the Bethpage Community Park. The Town had entered into an Agreement with the NYSDEC through its Brownfield Cleanup Program (BCP) relative to the portion of the Park where the ice rink is situated. At this juncture, it appears that the Town is nearing its goal to close out the Agreement.

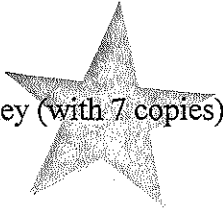
To guard against any unforeseen occurrences, this Office recommends that the Town Board authorize an outside counsel to handle the last phase of the BCP which will include reviewing, analyzing and modifying any documentation provided by the NYSDEC in furtherance of the close out. Given the environmental significance to the Park, it is in the best interests of the Town to have a transactional and regulatory compliance attorney with extensive experience of the laws, rules and regulations regarding environmental hazardous substances and remediation of land, including, but not limited to, the New York State Brownfield Cleanup Program.

This Office identified one such counsel, Theodore W. Firetog, Esq., 111 Thomas Powell Boulevard, Farmingdale, New York 11735 to perform the legal services. Mr. Firetog's experience in environmental law is wide-ranging. It is this Office's opinion that Mr. Firetog's unique experience and qualifications will beneficially serve the Town's interests. Of note, Mr. Firetog has agreed to limit his fees to under \$6,000.00 in connection with this service. Further, this Office acknowledges compliance with Guidelines 6 and 9 of the Town's Procurement Policy. The legal subject matter has been deemed by this Office to be unique and separate.

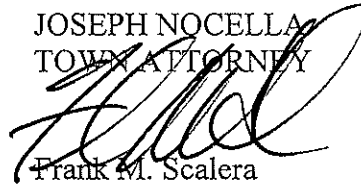
Because the NYSDEC will be soon issuing a substantive decision with regard to the remediation and monitoring of the ice rink portion of the Park and in light of Mr. Firetog's qualifications experience, it is recommended that the Town Board ratify this Office's selection of Theodore W. Firetog, Esq. to function in such manner for the purpose of reviewing, analyzing, modifying, and finalizing any close out documents with the NYSDEC, as appropriate. Funds are available in Account No. OTA A 1420 44110 000 0000.

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FMS:mek  
cc: Town Attorney (with 7 copies)



JOSEPH NOCELLA  
TOWN ATTORNEY

  
Frank M. Scalera  
Chief Deputy Town Attorney

WHEREAS, Neil O. Bergin, Commissioner, Department of Environmental Resources, by memorandum dated January 2, 2018, requested Town Board authorization to renew the membership of the following employees in the New York State Association for Solid Waste Management for 2018, at an annual fee of \$75.00 per person, for a total amount of \$300.00:

Neil O. Bergin, Commissioner, Department of Environmental Resources  
Daniel Pearl, Deputy Commissioner, Department of Environmental Resources  
Maryann Webb, Research Assistant Town Board, Department of Environmental Resources  
Gary Terrell, Supervisor, Solid Waste Disposal District

NOW, THEREFORE, BE IT RESOLVED, That the request as hereinabove set forth is granted and approved, and Neil O. Bergin, Commissioner of the Department of Environmental Resources, is hereby authorized to renew the membership of the abovementioned employees in the New York State Association for Solid Waste Management, for the 2018 calendar year, at an annual fee of \$75.00 per person, for a total amount of \$300.00; and be it further



RESOLVED, That the Comptroller is hereby authorized and directed to make payment for same, upon presentation of a duly certified claim, after audit, and that the funds for said payment are to be drawn from Account No. DER SR05 8160 47900 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	Aye
Councilman Hand	Aye

cc: Supervisor  
Town Attorney  
Comptroller  
Environmental Resources

  
Reviewed By  
Office of Town Attorney  


18  
**TOWN OF OYSTER BAY**

**Inter-Departmental Memo**

**January 2, 2018**

**TO: MEMORANDUM DOCKET**

**FROM: NEIL O. BERGIN, COMMISSIONER ENVIRONMENTAL  
RESOURCES**

**SUBJECT: NEW YORK STATE ASSOCIATION FOR SOLID WASTE  
MANAGEMENT MEMBERSHIP 2018**

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As members of the docket committee may be aware, The New York State Association for Solid Waste Management is New York State's oldest and largest organization comprised of local government solid waste professionals from across New York State. It provides a network for solid waste officials to share and distribute information on the latest trends and advances in solid waste management. The association conducts informational conferences, training workshops, DEC certification courses, video conferences, track legislative developments, produces an informative newsletter and generally serves as a resource to municipalities. Oyster Bay has been a member since its inception in 1975 and has benefited tremendously from this association. Oyster Bay currently has one of its former employees on the Board of Directors.

We therefore recommend that the Town Board, by Resolution, renew its membership in NYSASWM and that the Comptroller be authorized and directed to pay the annual dues in the total amount of \$300.00 from account DER SR05 8160 47900 000 0000 for the following persons:

**Neil O. Bergin, Commissioner of Environmental Resources**  
**Daniel Pearl, Deputy Commissioner of Environmental Resources**  
**Maryann Webb, Research Assistant Town Board, DER**  
**Gary Terrell, Supervisor, Solid Waste Disposal District**

  
\_\_\_\_\_  
Neil O. Bergin

Commissioner Department of Environmental Resources

Attachments

cc: Town Attorney /7 copies

Steve Ballas, Comptroller

File B100/G500

Docket Memo for NYSASWM 2018.doc





**NYSASWM**  
**C/O: JEFF BOUCHARD**  
546 EAST ROAD  
ST. JOHNSVILLE, NEW YORK 13452

Ton L

# Invoice

**PLEASE PAY BY**

January 1, 2018

**TO:**

Neil Bergin  
Town of Oyster Bay  
150 Miller Place  
Syosset, NY 11791

Please provide NYSASWM with your email address \_\_\_\_\_

Please return entire invoice with your payment (Make a copy for your records.)

\$75 each

DATE	TRANSACTION	AMOUNT	BALANCE
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New York State Association For Solid Waste Management Membership 2018 Dues for the following person(s):

PLEASE renew your membership early to ensure that you continue to receive NYSASWM benefits including newsletters, scholarships, research grants, internship program and discounts on all upcoming events.

*PLEASE remember to return the entire invoice with your payment. Make any address corrections as necessary. Thank You.*

PLEASE MAIL to above address  
CHECKS MAY BE MADE PAYABLE TO  
"NYSASWM"

*Please note that while NYSASWM is a not-for-profit organization, membership dues are not tax deductible as a charitable contribution. To the extent permitted under the Internal Revenue Code, dues may be deducted as a business expense.*

Questions? Contact **Jeff Bouchard** at (518) 568-2095  
or  
e-mail: [jbnysaswm@gmail.com](mailto:jbnysaswm@gmail.com)

Credit card renewal: Type of card: MC, VISA, DISC, AMEX. CARD # \_\_\_\_\_

Name (as on Card): \_\_\_\_\_

Address (for cardholder): \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Card Expiration date \_\_\_\_\_

Signature: \_\_\_\_\_ Last three #'s on signature line: \_\_\_\_\_

For renewal please return this entire invoice. Make a copy for your records.

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
					\$75 each

NEW YORK STATE ASSOCIATION FOR SOLID WASTE MANAGEMENT



**NYSASWM**  
**C/O: JEFF BOUCHARD**  
546 EAST ROAD  
ST. JOHNSVILLE, NEW YORK 13452

# Invoice

**PLEASE PAY BY**

January 1, 2018

**TO:**

**Daniel Pearl**  
**Town of Oyster Bay**  
**150 Miller Place**  
**Syosset, NY 11791**

Please provide NYSASWM with your email address \_\_\_\_\_

Please return entire invoice with your payment (Make a copy for your records.)

**\$75 each**

DATE	TRANSACTION	AMOUNT	BALANCE
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New York State Association For Solid Waste Management Membership 2018 Dues for the following person(s):

PLEASE renew your membership early to ensure that you continue to receive NYSASWM benefits including newsletters, scholarships, research grants, internship program and discounts on all upcoming events.

*PLEASE remember to return the entire invoice with your payment. Make any address corrections as necessary. Thank You.*

PLEASE MAIL to above address  
CHECKS MAY BE MADE PAYABLE TO  
"NYSASWM"

*Please note that while NYSASWM is a not-for-profit organization, membership dues are not tax deductible as a charitable contribution. To the extent permitted under the Internal Revenue Code, dues may be deducted as a business expense.*

Questions? Contact **Jeff Bouchard** at (518) 568-2095  
or  
e-mail: [jbnysaswm@gmail.com](mailto:jbnysaswm@gmail.com)

Credit card renewal: Type of card: MC, VISA, DISC, AMEX. CARD # \_\_\_\_\_

Name (as on Card): \_\_\_\_\_

Address (for cardholder): \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Card Expiration date \_\_\_\_\_

Signature: \_\_\_\_\_ Last three #'s on signature line: \_\_\_\_\_

**For renewal please return this entire invoice. Make a copy for your records.**

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
					<b>\$75 each</b>

NEW YORK STATE ASSOCIATION FOR SOLID WASTE MANAGEMENT



**NYSASWM**  
**C/O: JEFF BOUCHARD**  
546 EAST ROAD  
ST. JOHNSVILLE, NEW YORK 13452

# Invoice

**PLEASE PAY BY**

January 1, 2018

**TO:**

Gary Terrell  
Town of Oyster Bay, DER  
150 Miller Place  
Syosset, NY 11791

Please provide NYSASWM with your email address \_\_\_\_\_

**\$75 each**

Please return entire invoice with your payment (Make a copy for your records.)

DATE	TRANSACTION	AMOUNT	BALANCE
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New York State Association For Solid Waste Management Membership 2018 Dues for the following person(s):

PLEASE renew your membership early to ensure that you continue to receive NYSASWM benefits including newsletters, scholarships, research grants, internship program and discounts on all upcoming events.

*PLEASE remember to return the entire invoice with your payment. Make any address corrections as necessary. Thank You.*

PLEASE MAIL to above address  
CHECKS MAY BE MADE PAYABLE TO  
"NYSASWM"

*Please note that while NYSASWM is a not-for-profit organization, membership dues are not tax deductible as a charitable contribution. To the extent permitted under the Internal Revenue Code, dues may be deducted as a business expense.*

Questions? Contact **Jeff Bouchard** at (518) 568-2095  
or  
e-mail: [jbnysaswm@gmail.com](mailto:jbnysaswm@gmail.com)

Credit card renewal: Type of card: MC, VISA, DISC, AMEX. CARD # \_\_\_\_\_

Name (as on Card): \_\_\_\_\_

Address (for cardholder): \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Card Expiration date \_\_\_\_\_

Signature: \_\_\_\_\_ Last three #'s on signature line: \_\_\_\_\_

For renewal please return this entire invoice. Make a copy for your records.

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
					\$75 each

NEW YORK STATE ASSOCIATION FOR SOLID WASTE MANAGEMENT



NYSASWM  
C/O: JEFF BOUCHARD  
546 EAST ROAD  
ST. JOHNSVILLE, NEW YORK 13452

# Invoice

DATE

January 1, 2018

TO:

Maryann Webb, Town of Oyster Bay  
Department of Environmental Resources  
29 Spring Street  
Oyster Bay, NY 11771

Please provide NYSASWM with your email address \_\_\_\_\_

AMOUNT DUE

AMOUNT ENC.

\$75 each

\$75.00

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR PAYMENT

DATE	TRANSACTION	AMOUNT	BALANCE
------	-------------	--------	---------

New York State Association For Solid Waste  
Management Membership Dues for 2018  
for the following persons:

\$75.00

PLEASE renew your membership early to ensure that you continue to receive our newsletter, conference proceedings and discounts on all upcoming events.

PLEASE also remember to detach and include the upper portion of this invoice with your check. Make any address corrections as necessary. Thank You.

PLEASE MAIL to above address  
CHECKS MAY BE MADE PAYABLE TO  
"NYSASWM"

Please note that while NYSASWM is a not-for-profit organization, membership dues are not tax deductible as a charitable contribution. To the extent permitted under the Internal Revenue Code, dues may be deducted as a business expense.

Questions? : Contact **Jeff Bouchard** at (518) 568-2095  
or  
e-mail: [jbnyaswm@gmail.com](mailto:jbnyaswm@gmail.com)

Credit card renewal: Type of card: MC, VISA, DISC, EX, CARD # \_\_\_\_\_

Name ( as on Card): \_\_\_\_\_

Address(for cardholder): \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Card Expiration date \_\_\_\_\_

Signature: \_\_\_\_\_ Last three #'s on signature line: \_\_\_\_\_

For Credit Card renewal please return this entire invoice sheet.

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
					\$75.00

NEW YORK STATE ASSOCIATION FOR SOLID WASTE MANAGEMENT

WHEREAS, this Town Board did heretofore authorize the Town of Oyster Bay to implement a Program of Self-Insurance for General Liability, including Automobile Liability; and

WHEREAS, Joseph Nocella, Town Attorney, and Dennis P. Sheehan, Assistant Town Attorney, by memorandum dated January 8, 2018, advised that it will be necessary for the Town to retain law firms experienced in these matters to provide legal services in connection with the Town's self-insurance program for cases initiated through December 31, 2018; and

WHEREAS, the Town Attorney, after having investigated and reviewed the qualifications of numerous law firms, recommended by memorandum dated December 20, 2017, that the following firms be retained to assist the Town in the aforementioned self-insurance program:

Milber Makris Plousadis & Seiden, LLP  
1000 Woodbury Road, Suite 402  
Woodbury, New York 11797

Law Offices of Alan Reardon  
19 Park Avenue  
Williston Park, New York 11596

Law Office of Jerry C. Guarino, P.C.  
1070 Middle Country Road, Suite 7-355  
Selden, New York 11784

Cascone & Kluepfel, LLP  
1399 Franklin Avenue, Suite 302  
Garden City, New York 11530

Bartlett LLP  
170 Old Country Road  
Mineola, New York 11501

Ken Maguire & Associates PLLC  
3366 Park Avenue  
Wantagh, New York 11793

West Group Law PLLC  
81 Main Street, Suite 510  
White Plains, New York 10601; and

WHEREAS, payment to said law firms will be in accordance with the terms, conditions and fee schedules set forth below:

Trials including jury selection	\$400.00
---------------------------------	----------

Reviewed By  
Office of Town Attorney

(per half day)	
Court appearances other than trials	\$250.00
All Court appearances in which the matter is adjourned and/or rescheduled, with the exception of trials	\$100.00
50-h Hearings and Examinations Before Trial - Each Party	\$250.00
Office work by attorneys including, but not limited to, pleadings, research, motions & briefs	\$150.00 per hour

NOW, THEREFORE, BE IT RESOLVED, That upon the recommendations as hereinabove set forth, the law firms abovementioned are hereby retained nunc pro tunc to provide legal services in connection with the Town's self-insurance program, for cases initiated from January 1, 2018 through December 31, 2018, and payment is hereby authorized and directed to be made therefor, in an amount not to exceed \$25,000.00 per year, per law firm, upon submission of a duly certified claim, after audit by the Comptroller, in accordance with the fee provisions outlined hereinabove; and be it further

RESOLVED, That funds are available in Account Nos. TWN AMS 1910 43010 602 0000 000 and TWN AMS 1910 43020 602 0000 000.

-#-

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	Abstain
Councilwoman Johnson	Aye
Councilman Imbroto	Aye
Councilman Hand	Aye

cc: Supervisor  
Town Attorney  
Comptroller

19

# Town of Oyster Bay

## Inter-Departmental Memo

TO: MEMORANDUM DOCKET

FROM: Office of the Town Attorney

DATE: January 8, 2018

SUBJECT: Retention of Attorneys to Represent the Town in Negligence Matters  
Account Numbers: TWN AMS 1910 43010 602 0000 000 and  
TWN AMS 1910 43020 602 0000 000

---

A review of proposals solicited from law firms which specialize in the defense of negligence actions resulted in the selection of the following firms:

Milber Makris Plousadis & Seiden, LLP  
1000 Woodbury Road, Suite 402  
Woodbury, New York 11797

Law Offices of Alan Reardon  
19 Park Avenue  
Williston Park, New York 11596

Law Office of Jerry C. Guarino, P.C.  
1070 Middle Country Road, Suite 7-355  
Selden, New York 11784

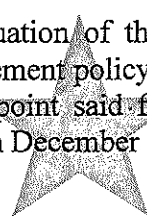
Cascone & Kluepfel, LLP  
1399 Franklin Avenue, Suite 302  
Garden City, New York 11530

Bartlett LLP  
170 Old Country Road  
Mineola, New York 11501

Ken Maguire & Associates PLLC  
3366 Park Avenue  
Wantagh, New York 11793

West Group Law PLLC  
81 Main Street, Suite 510  
White Plains, New York 10601

After careful evaluation of the experience of said law firms, and in accordance with Guideline 9 of the Town's procurement policy, the Town Attorney has determined that it would be in the best interests of the Town to appoint said firms to assist the Town of Oyster Bay in its defense of negligence claims initiated through December 31, 2018.



Payment shall be made in accordance with the terms, conditions and fee schedule set forth in the attached resolution.

Funds for such services are available in Account Nos. TWN AMS 1910 43010 602 0000 000 and TWN AMS 1910 43020 602 0000 000.

Accordingly, kindly place this item on the January 23, 2018 action calendar.

JOSEPH NOCELLA  
TOWN ATTORNEY



Dennis P. Sheehan  
Assistant Town Attorney

DPS:ba

Attachment

File: 2016-5730

cc: Town Attorney (w/7 copies)

S:\Attorney\RESOS 2018\MD & RESO\OutsideCounselNeg2018.DPS.doc





WHEREAS, by Resolution 786-2013, as amended by Resolution 152-2017, the Town Board the Town Board authorized the retention of the law firm of Covington and Burling, LLP, 1201 Pennsylvania Avenue, N.W., Washington, D.C., for the purpose of representing the Town's interests in litigation relative to the Town's housing programs; and

WHEREAS, Joseph Nocella, Town Attorney, and Matthew M. Rozea, Deputy Town Attorney, by memorandum dated January 5, 2018, have requested that Resolution No. 786-2013, be amended to provide an additional amount not to exceed \$4,025.55 to satisfy outstanding invoices from Covington and Burling, LLP,

NOW, THEREFORE BE IT RESOLVED, That Town Board Resolution No. 786-2013 be amended to increase the authorized fees of Covington and Burling, LLP in an amount not to exceed \$4,025.55, including expenses and disbursements; and be it further

RESOLVED, That the Comptroller is hereby authorized and directed to make payment 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	Aye
Councilwoman Alesia	Aye
Councilwoman Johnson	Aye
Councilman Imbroto	Aye
Councilman Hand	Aye

cc: Supervisor  
Town Attorney  
Comptroller

Reviewed By  
Office of Town Attorney  
*[Signature]*

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# Town of Oyster Bay

## Inter-Departmental Memo

**TO:** Memorandum Docket

**FROM:** Office of the Town Attorney

**DATE :** January 5, 2018

**SUBJECT:** Covington and Burling, LLP  
Outside Counsel to the Town of Oyster Bay

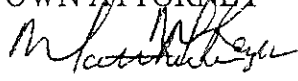
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By Town Board Resolution 786-2013, as amended by Resolution 152-2017, the Town Board authorized the retention of the law firm of Covington and Burling, LLP, 1201 Pennsylvania Avenue, N.W., Washington, D.C. for the purpose of representing the Town's interests in litigation relative to the Town's housing programs.

This Office requests that the Town Board amend Resolution 786-2013 to authorize additional funds in order to satisfy outstanding invoices in the amount of \$4,025.55. Funds are available in Account No. OTA A 1420 44110 000 0000.

Submitted herewith is a proposed resolution for the foregoing request.

JOSEPH NOCELLA  
TOWN ATTORNEY

  
Matthew M. Rozea  
Deputy Town Attorney

MMR:mmr  
Attachment

cc: Town Attorney (with 7 copies)

S:\Attorney\RESOS 2018\MD & Reso\Inc. Fees Covington and Burling MMR.docx

WHEREAS, By Town Board Resolution 595-2002, as amended by Resolution 324-2017, the Town Board authorized the retention of the law firm of Rivkin Radler, LLP, 926 RXR Plaza, Uniondale, New York, for the purpose of representing the Town's interests in litigation involving the Bethpage Community Park, including the handling of the action entitled *Town of Oyster Bay v. Northrop Grumman Corp., et al.*, 05-cv-1495 (EDNY); and

WHEREAS, Joseph Nocella, Town Attorney, and Matthew M. Rozea, Deputy Town Attorney, by memorandum dated January 5, 2018, have requested that Resolution No. 595-2002, be amended to provide an additional amount not to exceed \$6,419.72 to satisfy outstanding invoices from Rivkin Radler, LLP,

NOW, THEREFORE BE IT RESOLVED, That Town Board Resolution No. 595-2002 be amended to increase the authorized fees of Rivkin Radler, LLP in an amount not to exceed \$6,419.72, including expenses and disbursements; and be it further

RESOLVED, That the Comptroller is hereby authorized and directed to make payment 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	Aye
Councilwoman Alesia	Aye
Councilwoman Johnson	Aye
Councilman Imbroto	Aye
Councilman Hand	Aye

cc: Supervisor  
Town Attorney  
Comptroller

Reviewed By  
Office of Town Attorney  


21

# Town of Oyster Bay

## Inter-Departmental Memo

**TO:** Memorandum Docket  
**FROM:** Office of the Town Attorney  
**DATE:** January 5, 2018  
**SUBJECT:** Rivkin Radler, LLP  
Outside Counsel to the Town of Oyster Bay

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By Town Board Resolution 595-2002, as amended by Resolution 324-2017, the Town Board authorized the retention of the law firm of Rivkin Radler, LLP, 926 RXR Plaza, Uniondale, New York for the purpose of representing the Town's interests in litigation involving the Bethpage Community Park, including the handling of the action entitled *Town of Oyster Bay v. Northrop Grumman Corp., et al.*, 05-cv-1495 (EDNY).

This Office requests that the Town Board amend Resolution 595-2002 to authorize additional funds in order to satisfy outstanding invoices in the amount of \$6,419.72. Funds are available in Account No. OTA A 1420 44110 000 0000.

Submitted herewith is a proposed resolution for the foregoing request.

JOSEPH NOCELLA  
TOWN ATTORNEY

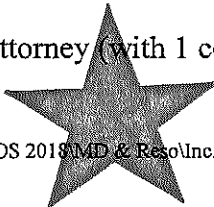


Matthew M. Rozea  
Deputy Town Attorney

MMR:mmr  
Attachment

cc: Town Attorney (with 1 copy)

S:\Attorney\RESOS 2018\MD & Reso\Inc. Fees Rivkin Radler MMR.docx



RESOLUTION NO. 595-2002

Meeting of September 17, 2002

WHEREAS, the Office of the Town Attorney anticipates that significant litigation will be generated by the recently discovered contamination at Bethpage Community Park, and it is in the Town's best interest to retain outside counsel, at this time, to assist the Office of the Town Attorney to ensure proper protection with respect to potential claims against the Town and remediation of the existing environmental conditions at the Park; and

WHEREAS, the foregoing matter involves the utilization of resources beyond what can be supplied by the Office of the Town Attorney, and knowledge of legal issues of a specialized nature; and

WHEREAS, Gregory J. Giammalvo, Town Attorney, by memorandum dated August 20, 2002, recommends that the law firm of Rivkin Radler, LLP, EAB Plaza, Uniondale, New York, be retained, nunc pro tunc from August 19, 2002, to represent the Town in the aforementioned matter, at a cost not to exceed \$75,000.00, with funds to be drawn from Account No. H 4171.2001,

NOW, THEREFORE, BE IT RESOLVED, That upon the recommendation of Gregory J. Giammalvo, Town Attorney, the law firm of Rivkin Radler, LLP, EAB Plaza, Uniondale, New York, is hereby retained, nunc pro tunc from August 19, 2002, to represent the Town of Oyster Bay to ensure proper protection with respect to potential claims against the Town and remediation of the existing environmental conditions at Bethpage Community Park, at a total cost not to exceed \$75,000.00, at the rate of \$250.00 per hour for partners, \$150.00 - \$195.00 per hour for associates, and \$90.00 per hour for paralegals, plus costs and disbursements; and be it further

RESOLVED, That the Comptroller is hereby authorized and directed to make payment, with funds to be drawn from Account No. H 4171.2001, or any other appropriate account, upon submission of a duly certified claim, approved by the Town Attorney, after audit.

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

Supervisor Venditto	Aye
Councilman Delligatti	Aye
Councilman Muscarella	Aye
Councilwoman Eisler	Aye
Councilman Macagnone	Aye
Councilman Coschignano	Aye
Councilwoman McCaffery	Aye

cc: Supervisor  
Town Attorney  
Comptroller (2)  
Parks

WHEREAS, by Resolution No. 198-2017, dated April 25, 2017, the Town Board authorized the Town to secure Hull and Machinery Insurance be secured from AGCS Marine Insurance Corp. for the period commencing February 1, 2017 to February 1, 2018; and

WHEREAS, Joseph Nocella, Town Attorney, and Donna B. Swanson, Deputy Town Attorney, by memorandum dated January 3, 2018, requested Town Board authorization to amend Resoultion No. 198-2017, to provide an increase of the premium in the amount of \$118.87 to cover the changes in our inventory,

NOW, THEREFORE, BE IT RESOLVED, That Town Board Resolution No. 198-2017, be amended to authorize payment of an increase premium in the amount of \$118.87 for Hull and Machinery Insurance for the period from February 1, 2017 to February 1, 2018, with funds to be drawn from Account No. TWN AMS 1910 43020 601 0000 000; and be it further

RESOLVED, That the Comptroller is hereby authorized and directed to make payment for same, upon submission of a duly certified claim therefor, 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	Aye
Councilwoman Alesia	Aye
Councilwoman Johnson	Aye
Councilman Imbroto	Aye
Councilman Hand	Aye

cc: Supervisor  
Town Attorney  
Comptroller

7ms  
Reviewed By  
Office of Town Attorney

22

# Town of Oyster Bay

## Inter-Departmental Memo

TO: MEMORANDUM DOCKET

FROM: Office of the Town Attorney

DATE: January 3, 2018

SUBJECT: Hull and Machinery Insurance


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By Resolution No. 198-2017, dated April 25, 2017, this Town Board authorized the Office of the Town Attorney to secure Hull and Machinery Insurance with AGCS Marine Insurance Company from February 1, 2017 to February 1, 2018.

Salerno Brokerage Corp. has advised this office by letter dated December 13, 2017, that due to a change in our inventory of vessels, namely the deletion of two (2) smaller, older boats and the addition of one (1) newer boat, our premium has been increased in the amount of \$118.87.

Therefore, it is necessary to authorize an additional premium in the amount of \$118.87 to cover said changes to be paid from Account No. TWN AMS 1910 43020 601 0000 000.

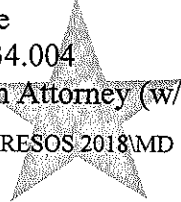
JOSEPH NOCELLA  
TOWN ATTORNEY



Donna B. Swanson  
Deputy Town Attorney

DBS:ba  
Enclosure  
2017-5834.004  
cc: Town Attorney (w/7 copies)

S:\Attorney\RESOS 2018\MD & Reso\2018Hull&Machinery.docx



WHEREAS, pursuant to public notice, bids were duly solicited and regularly received for Engineering Services Contract relative to Restoration and Improvements to Alhambra Park, Massapequa, Town of Oyster Bay, New York, in accordance with the specifications contained in Contract No. DP17-151, and said bids were publicly opened and read on April 27, 2017; and

WHEREAS, the evaluation of the bids and the selection process were performed in compliance with the requirements of Guideline 9 of the Town of Oyster Bay Procurement Policy, and the lowest responsible bid submitted was that of Cashin Associates, P.C., with a bid in the amount of \$391,200.00; and

WHEREAS, Richard W. Lenz, P.E., Commissioner, Department of Public Works, by memorandum dated January 12, 2018, recommended that the bid as hereinabove set forth be accepted; and

WHEREAS, this project is funded by and conceived through the New York Rising Community Reconstruction Program of the Governor's Office of Storm Recovery, and is of no cost to the Town of Oyster Bay, and the selection of Cashin Associates, P.C., was approved by the Governor's Office of Storm Recovery,

NOW, THEREFORE, BE IT RESOLVED, That the recommendation as hereinabove set forth, is accepted, and Contract No. DP17-151 shall be awarded to Cashin, Associates, P.C., in the amount of \$391,200.00, in accordance with the provisions thereunder.

-#-

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	Aye
Councilman Hand	Aye

cc: Supervisor  
Town Attorney  
Comptroller  
Public Works  
Intergovernmental Affairs  
Parks

7MS  
Reviewed By  
Office of Town Attorney  
[Signature]



**TOWN OF OYSTER BAY**  
**INTER-DEPARTMENTAL MEMO**

JANUARY 12, 2018

TO : MEMORANDUM DOCKET

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

SUBJECT: SUPPLEMENTAL DOCKET MEMO TO ITEM NO. 23  
DOCKET OF JANUARY 9, 2018  
AWARD OF ENGINEERING SERVICES CONTRACT  
RESTORATION AND IMPROVEMENTS TO ALHAMBRA PARK, MASSAPEQUA  
AS PART OF THE N.Y. RISING COMMUNITY RECONSTRUCTION PROGRAM  
CONTRACT NO. DP17-151  
ACCOUNT NO. IGA H 1997 20000 000 1303 001  
PROJECT ID NO. 1303TWNA-05

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In furtherance to Item No. 23 of the Docket of January 9, 2018, this project will provide FOR Restoration and Improvements to Alhambra Park, Massapequa, 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.

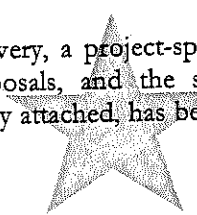
On March 31, 2017 the Department of Public Works, through the Office of the Town Clerk published a public notice in Newsday to announce the availability of Request for Proposals documents for this project. On April 27, 2017 the Division of Engineering had received eight (8) proposal responses which were 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 Cashin Associates, P.C. 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 Cashin Associates, P.C..

The maximum total fee for engineering services for all phases of the project being \$391,200.00, as detailed in the attached cost proposal submitted by Cashin Associates, P.C. as part of their proposal. 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 \$391,200.00 in Account No. IGA H 1997 20000 000 1303 001.

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. This Agreement, copy attached, has been reviewed and approved by the Office of the Town Attorney.



It is hereby requested that the Town Board authorize, by resolution, Cashin Associates, P.C., to perform engineering services relative to Restoration and Improvements to Alhambra Park, Massapequa, and that the Town Supervisor, or his designee, be authorized to execute the Consultant Agreement for this project.

  
RICHARD W. LENZ, P.E.

COMMISSIONER  
DEPARTMENT OF PUBLIC WORKS/HIGHWAY

RWL/MR/lk

Attachments

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

DP17-151 DOCKET AWARD ENG SERVICES SUPP



**Cashin Associates, P.C.**  
ENGINEERING • PLANNING • CONSTRUCTION MANAGEMENT  
Est. 1959

**Proposal for Improvements to Alhambra Park  
Contract No. DP17-151**

**Cost Proposal**

Cashin Associates, PC fee proposal for the Rehabilitation of Alhambra Park requested by the April 3, 2017 RFP for the Town of Oyster Bay DPW Contract No. DP17-151.

<b>Task</b>	<b>Lump Sum</b>
Survey, Soil Borings and Other Testing	\$34,000.00
Conceptual Plans	\$8,500
Design Report	\$12,500
50% Documents / Cost Estimate	\$35,500
75% Documents / Cost Estimate	\$32,500
90% Documents / Cost Estimate	\$21,000
Final Documents / Cost Estimate	\$11,600
Permits	\$8,200
Design Meetings (4)	\$3,300
BID Phase Services / Award Recommendation	\$4,100
Construction Administration	\$57,000
Construction Progress Meetings	\$14,500
CO Review / Punchlist / Substantial Completion	\$8,000
Inspection/ Closeout	
Full time Inspection*	\$140,500
<b>Total Project Hours/Cost</b>	<b>\$391,200</b>

Assumptions: \*full-time inspection for a nine (9) month period

- 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.
- 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:

Task	Lump Sum
Survey, Soil Borings and Other Testing	\$34,000.00
Conceptual Plans	\$8,500.00
Design Report	\$12,500.00
50% Documents/ Cost Estimate	\$35,500.00
75% Documents/Cost Estimate	\$32,500.00
90% Documents/Cost Estimate	\$21,000.00
Final Documents/Cost Estimate	\$11,600.00
Permits	\$8,200.00
Design Meetings (4)	\$3,300.00
BID Phase Services/Award Recommendation	\$4,100.00
Construction Administration	\$57,000.00
Construction Progress Meetings	\$14,500.00
CO Review/Punch list/Substantial Completion/Inspection/Closeout	\$8,000.00
Full Time Inspection	\$140,500.00
<b>Total Project Hours/Cost</b>	<b>\$391,200.00</b>

#### SECTION VI

##### Schedule of Payments

- A. WHERE FEE IS BASED UPON A LUMP SUM: The TOWN and the CONSULTANT agree, nor withstanding any other provision contained herein, that the if TOWN elects to use LUMP SUM, as its method of payment, that upon being instructed to undertake any of the Phases under this Agreement, the CONSULTANT shall submit to the Town Board for its approval a statement setting forth a maximum dollar amount for the said services to be provided by the CONSULTANT herein including, but not limited to those under Optional Services. Payments shall be made based upon the schedule outlined in the "Request for Proposal" for projects involving Design, Bidding and Construction Phase contract.

CONSULTANT AGREEMENT

APPLICATION DEVELOPMENT, ENGINEERING, DESIGN & CONSTRUCTION MANAGEMENT,  
SERVICES FOR RESTORATION AND IMPROVEMENTS TO ALHAMBRA PARK, MASSAPEQUA,  
AS DEFINED IN THE NY RISING COMMUNITY RECONSTRUCTION (NYRCR) PLAN, CDBG-DR MASSAPEQUAS

CONTRACT NO. DP17-151

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

THIS AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_, by and between TOWN OF OYSTER 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, and CASHIN ASSOCIATES, P.C., with their office and principal place of business at 1200 Veterans Memorial Highway, Hauppauge, New York 11788, 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 relative to this project.

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 him 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.

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.

SECTION 1

General

- A. CONSULTANT – Professional Representative. The CONSULTANT shall serve as the TOWN'S professional representative in the planning, professional supervision, and inspection of the construction of the Project and shall give consultation and advice to the TOWN during the performance of his services, and the CONSULTANT herein represents that he is adequately staffed, skilled, and experienced in the type of work proposed, and represents further that he is 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 sub-consultant 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 sub-consultant will be deemed to be employees of the CONSULTANT.

  
Reviewed By  
 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 sub-consultant, 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 TOWN, NEW YORK STATE, NEW YORK STATE HOUSING TRUST FUND CORPORATION, and NASSAU COUNTY, 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 or 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.

I. 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 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.

## 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. Detailed conferences with the TOWN'S representatives and approval of regulatory authorities.
  2. Planning for and assisting the TOWN in procuring the following necessary field information for design, which information may include, but not necessarily be limited to:
    - a. Field Surveys
    - b. Photogrammetry
    - c. Traffic Studies
    - d. Other Special Studies
  3. Prepare engineering data for approval of the TOWN and other approving agencies and assist in obtaining necessary regulatory permits.
  4. From the approved final preliminaries, the CONSULTANT shall prepare working drawings, specifications, bid proposal forms and notice to bidders, and other contract documents completely describing the material and workmanship required and procedures to be followed for the construction of the Project.
  5. When directed by the TOWN'S representative, the CONSULTANT will submit a testing program for approval.
  6. Advise the TOWN, in writing, of any adjustment of the cost and construction time estimate caused by changes in scope, design requirements or construction cost, and furnish a revised cost estimate (or an initial cost estimate in cases which the Preliminary Phase is waived, including all engineering fees) based on the completed drawings and specifications in order that the TOWN may be able to let the contracts for the construction of the Project within the authorized amount and furnish as many copies of the contract documents as directed by the TOWN'S representative marked "Submitted for Approval of Design Phase" consisting of the Construction Agreement forms, general conditions, special provisions, detailed construction drawings, and specifications.
  7. The Town Board will either approve this Design Phase or notify the CONSULTANT that they are not approving the Design Phase within sixty (60) days from the date of submission of the documents to the Town Board.
  8. The selected A/E firm 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](http://www.stormrecovery.ny.gov/environmental-docs).
  9. Complete a topographic and boundary survey of the project area, identifying wetland boundaries, mean high water, and any other information which may be necessary to secure any permits for this work.
  10. Submit a conceptual design plan (10% design completion) for Town review that includes drawings reflecting the designation of permanent private/public property boundaries, ownership, temporary construction easements and existing easements of private and public utilities and ROW on drawings.
  11. Upon acceptance of the conceptual design plan, prepare a design report for Town review that includes the following components: (1) problem definition; (2) existing conditions; (3) project description; (4) preliminary drawings/site plan including ownership information for all involved property; (5) estimate of total project costs broken out by services and construction costs; (6) project schedule; (7) preliminary engineering analysis (e.g. hydrocad model, building code, constructability, etc.); (8) alternatives to the project that address the problem, along with an alternatives analysis that explains the basis for selecting the proposed alternative(s); and (9) summary.
  12. Upon acceptance of the design report, submit plans and specifications at the 50%, 75%, and 90% completion milestones for review and approval by the Town. With each submission, the Respondent shall provide a report which shall include an updated estimate of probable construction cost, 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.

13. 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.
  14. 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 Respondent 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 Respondent shall, in addition to the above, at the Subrecipient's request and at no additional cost to the Subrecipient, (i) provide value engineering to reduce the estimated Total Project Construction Cost to the Approved Construction Budget; (ii) assist the Subrecipient 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.
  15. Coordinate and attend meetings with involved Town Departments and community organizations to obtain project feedback.
  16. Prepare and submit any and all required permit applications.
- 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:
1. After the TOWN sets down a bidding date, the CONSULTANT shall furnish as many additional copies of the contract documents, marked in numerical order, as directed by the TOWN'S representative, consisting of the Construction Agreement forms, general conditions, special provisions, detailed construction drawings, and specifications for the use of prospective bidders.
  2. Assist the TOWN in securing bids, responding to contractor inquiries of the Contract Documents, necessary document reproduction at the bid opening, tabulation and analysis of bid results, and furnish recommendations on the award of construction contracts, within ten (10) days from receipt of bids.
  3. The Town Board will either approve the construction contract award or notify the CONSULTANT that they are not approving the award within forty-five (45) days from the date of receipt of bids.
- 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.
  2. After the contract has been executed, the CONSULTANT shall provide the necessary copies and said construction contract documents for the use of the contractors, utilities, and others as directed by the TOWN'S representative.
  3. Consultation and advising to the TOWN during construction, acting as the TOWN'S professional representative at the construction site and issuing all instructions of the TOWN to the contractor; maintain daily log of work performed and contractor personnel on-site, preparing written change orders as required; disapproving of any of the contractor's work which fails to conform with the contract documents; periodic meetings with the contractors and forwarding minutes of said meetings to the TOWN.

4. Notify utilities and governmental agencies and contractors when work is to commence.
5. Preparation of elementary sketches and supplementary sketches required to resolve actual field conditions encountered.
6. Checking detailed construction drawings and shop and erection drawings submitted by contractors for compliance with design concept.
7. Reviewing and evaluating reports of laboratory, mill and shop tests of materials and equipment.
8. Establish survey base lines and bench marks in the field from which the contractor can properly lay out his work; and the CONSULTANT shall check construction locations and elevations established by the contractors.
9. The CONSULTANT, in accordance with the provisions of the construction contract, shall assist in the processing of the contractor's labor affidavit and claims for payment, and said claims shall be accompanied by the Approved Engineer's Certification form, which shall be based on his on-site observations as an experienced and qualified design professional; and on his review of the contractor's applications for payment determine the amount owing to the contractor and approve, in writing, payment to the contractor in such amounts; such approvals of payment to constitute a representation to the TOWN, based on such observations and review and the data comprising such application, that the work has progressed to the point indicated and that, to the best of his knowledge, information, and belief, the quality of work is in accordance with the contract documents and any qualifications stated in his approval.
10. Making periodic site visits to observe work in progress and providing appropriate reports to the TOWN and directions to the contractors.
11. Observing initial operation of the Project or of performance tests required by specifications.
12. Furnishing the TOWN a set of reproducible record prints of drawings and addendum drawings showing any significant changes made during the construction process.
13. The CONSULTANT shall prepare periodic punch lists. Such work enumerated on said punch lists shall be completed in accordance with the terms of the contract documents. The CONSULTANT shall file his final certificate with the TOWN as to his approval of the contractor's final request for payment and, at such time, submit any and all required permits and certificates issued or required to be issued in connection with the construction of the Project; or, in the alternative, submit satisfactory data to the TOWN'S representative that all said permits or certificates have been properly filed.
14. 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.
15. 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.

### SECTION III

#### Project Scope of Work

The Town of Oyster Bay is requesting CDBG-DR funding, as described in the *Massapeguas NY Rising Community Reconstruction Plan* (NYRCR Plan), to stabilize, restore, redesign, rebuild, enhance, and improve Alhambra Park. The park is situated on Great South Bay. The project will reduce flood risk and vulnerability by stabilizing the shoreline. The project will also increase resiliency, by incorporating green infrastructure and other sustainable elements into the redesign.

Superstorm Sandy severely damaged Alhambra Park and the surrounding area, situated at the end of Alhambra Peninsula. After the storm, the informal kayak launch and the small park were unusable and the demand to repair, expand, and improve the park is high.

Alhambra Park currently includes two adjacent parcels, which were acquired by the Town, and are currently vacant. These previously derelict commercial properties will be repurposed as park land as part of this project. These parcels present an opportunity for incorporating green infrastructure components which can accommodate storm water run-off from Alhambra Road and the Alhambra Park.

The Alhambra Park redevelopment will include shoreline stabilization to mitigate ongoing erosion, which has resulted in loss of park land and sedimentation in the navigable canals on the east and west sides of the park. Replacement of existing, failing bulkhead structures with new bulkhead, and/or rip rap and/or gablons to stabilize the shoreline, protect park assets, and protect inland residential properties north of the park. Public access will be increased, with additional parking and walking paths. Bicycle racks may be included to facilitate linkage to the Massapequa Preserve Bethpage Bikeway. A kayak launch area will be provided to replace the previous informal kayak-launch site, consistent with the South Shore Blueway<sup>2</sup>. Storm water retention and drainage design will limit direct runoff to the bay to the extent practicable, incorporating green infrastructure features to remove pollutants and increase recharge.

Improvements to Alhambra Park may include, but are not limited to the following components:

- Installation of permeable pavement in parking areas
- Installation of energy-efficient lighting
- Replacement of existing, failing bulkhead structures with new bulkhead and/or rip rap to stabilize the shoreline, protect park assets, and protect inland residential properties north of the Park.
- Green infrastructure improvements including, permeable paving, bio-swales, stormwater retention ponds, swirl separators and/or rain garden(s).
- Provide recreational amenities, including linkages to the South Shore Blueway (a recreational kayak/canoe waterway trail along the south shore) and the established Massapequa Preserve Bethpage Bikeway.

Alternative interventions, specifically green infrastructure solutions, should be explored, as well.

Town of Oyster Bay reserves the right to modify the project description.

The firm shall 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.

Assist the Town of Oyster Bay during the construction bid process by attending the pre-bid site meeting, responding to bidder questions, issuing any necessary addenda, and reviewing bids received to determine technical responsiveness.

During Construction, attend the pre-construction meeting and review submittals for contract document compliance; answer Requests for Information within 5 business days; prepare agendas and attend meetings in accordance with the Town of Oyster Bay requests; and provide full-time inspection services to ensure contract compliance, design intent, quality of workmanship, and material acceptance.

At the completion of construction, deliver full close-out packages to the Town of Oyster Bay, which shall include as-built drawings, operation and maintenance manuals, and copies of all necessary certificates.

Provide technical assistance to the Town of Oyster Bay to resolve issues with all elements installed as part of this project during the one-year maintenance period.

#### 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 task 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.
- 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:

Task	Lump Sum
Survey, Soil Borings and Other Testing	\$34,000.00
Conceptual Plans	\$8,500.00
Design Report	\$12,500.00
50% Documents/ Cost Estimate	\$35,500.00
75% Documents/Cost Estimate	\$32,500.00
90% Documents/Cost Estimate	\$21,000.00
Final Documents/Cost Estimate	\$11,600.00
Permits	\$8,200.00
Design Meetings (4)	\$3,300.00
BID Phase Services/Award Recommendation	\$4,100.00
Construction Administration	\$57,000.00
Construction Progress Meetings	\$14,500.00
CO Review/Punch list/Substantial Completion/Inspection/Closeout	\$8,000.00
Full Time Inspection	\$140,500.00
<b>Total Project Hours/Cost</b>	<b>\$391,200.00</b>

#### SECTION VI

##### Schedule of Payments

- A. WHERE FEE IS BASED UPON A LUMP SUM: The TOWN and the CONSULTANT agree, notwithstanding any other provision contained herein, that if the TOWN elects to use LUMP SUM as its method of payment, that upon being instructed to undertake any of the Phases under this Agreement, the CONSULTANT shall submit to the Town Board for its approval a statement setting forth a maximum dollar amount for the said services to be provided by the CONSULTANT herein including, but not limited to those under Optional Services. Payments shall be made based upon the schedule outlined in the "Request for Proposal" for projects involving Design, Bidding and Construction Phase contract.

- B. The CONSULTANT agrees to supply with all payment requests:
1. 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.
  2. Time sheets for personnel working on the project, which shall be signed by the employee and approved by that employee's supervisor.
  3. 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.
- 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 as provided for in Section III (Optional Services), such as, but not limited to:
1. Furnishing of drawings and specifications in addition to those provided for in this Agreement.
  2. 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 sub-consultant.
  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).
- I. **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
- 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 its 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.

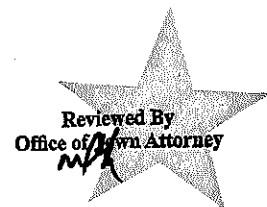


APPENDIX A

Governor's Office of Storm Recovery

*Supplementary Conditions*

*(Exhibit E)*





**EXHIBIT E**

**SUPPLEMENTARY CONDITIONS FOR CONTRACTS**

## DEFINITIONS

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"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": \_\_\_\_\_

"Contractor": \_\_\_\_\_

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

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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

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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. **BREACH OF CONTRACT TERMS.** 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. **REPORTING REQUIREMENTS.** 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. **DEBARMENT, SUSPENSION, AND INELIGIBILITY.** 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. **SUBCONTRACTING.** 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. **ASSIGNABILITY.** 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. **INDEMNIFICATION.** 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. LOBBYING (Applicable to contracts exceeding \$100,000).** 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. **ACCESS TO RECORDS.** 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-

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. SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT OF 1990.** 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

*[Handwritten signature]*



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.

l. 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. CERTIFICATION OF NONSEGREGATED FACILITIES (Applicable to construction contracts exceeding \$10,000).** 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. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968**  
**(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](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

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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.

1. **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. **NON-ASSIGNABILITY.** 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. **INDEMNITY.** 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. **NON-DISCRIMINATION.** 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. COPYRIGHT.** 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. ENVIRONMENTAL LAWS.** 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 Act.

10. **SECTION HEADINGS.** 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. **COUNTERPARTS.** 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. **NO ARBITRATION.** Disputes involving this Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

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. **NON-COLLUSIVE BIDDING CERTIFICATION.** 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. **GENERAL RESPONSIBILITY LANGUAGE.** 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. **TERMINATION (for Non-Responsibility).** 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

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. Automobile Liability and Property Damage Insurance. In an amount not less than One Million Dollars (\$1,000,000) combined single limit for both Bodily Injury and Property Damage.
- c. Professional Liability. 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. Worker's Compensation. 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

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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.dl.gosr-monitoring&compliance@stormrecovery.ny.gov](mailto:stormrecovery.dl.gosr-monitoring&compliance@stormrecovery.ny.gov).



APPENDIX B

Governor's Office of Storm Recovery

*Environmental Requirements and Guidelines*



# ENVIRONMENTAL REVIEW

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

Reviewed By  
Office of Open Access

*WAL*

# 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.

Because GOSR must conduct NEPA reviews as the "responsible entity" under the authority of the United States Department of Housing and Urban Development (HUD), for efficiency purposes and as a service to grant recipients, GOSR assumes Lead Agency status for coordinated Unlisted and Type I actions pursuant to SEQRA. GOSR is unable to delegate NEPA decision-making authority. Should a grant recipient or other Involved Agency wish to assume SEQRA Lead Agency status, GOSR's BERA may concede upon request. As an added benefit to grant recipients, GOSR's BERA will assume the costs associated with the NEPA and SEQRA process. The generalized breakdown of cost sharing is summarized by the chart below. If you have questions, comments, or suggestions with regard to information contained in this document, please contact GOSR's BERA staff at [nyscdbg\\_dr\\_er@nyshcr.org](mailto:nyscdbg_dr_er@nyshcr.org) or call at (518) 473-0015.

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

<sup>1</sup>Although 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.

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

<sup>3</sup>Permitting responsibilities will reside with the responsible permittee. 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.

Reviewed By  
Office of Town Attorney  
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# 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.

Reviewed By  
Office of the Town Attorney  
24 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%20volume%20engineering/J\\_Ch8\\_Culvert\\_Use\\_Installation\\_&\\_Sizing.pdf](http://www.blm.gov/bmp/low%20volume%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](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](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>



## 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.

### requirements

- 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](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](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](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 floodproofing 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. Floodproofing is prohibited for residential buildings.



### Program Requirements

- 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 Flood of Record plus two feet, or the 500 year flood elevation, whichever is highest
- Critical equipment and infrastructure 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 and infrastructure should be designed to be placed at the best available base flood elevation plus three feet, the Flood of Record plus three feet, or the 500 year flood elevation, whichever is highest
- For projects located in areas that are subject to tidal influence, critical equipment and infrastructure should be designed to be placed at the best available base flood elevation plus five feet, the Flood of Record plus four feet, or the 500 year flood elevation, whichever is highest
- Note that if higher elevations are required by state or local codes or standards, those higher standards will apply
- In consideration of climate change, design standards for infrastructure projects subject to tidal influence should incorporate the NYSDEC sea-level rise projections, as described in 6 NYCRR Part 490, and in riparian areas north of New York City, flood elevations derived from flows provided by USGS Future Flow Explorer. This calculation should consider the useful life of the infrastructure.



### Resources

- FEMA Map Service Center: <https://msc.fema.gov/portal>
- FEMA Guidance - Floodproofing Non-residential Buildings: [http://www.fema.gov/media-library-data/5420711cd929a194254329c15f11616e/P-936\\_front-matter\\_508.pdf](http://www.fema.gov/media-library-data/5420711cd929a194254329c15f11616e/P-936_front-matter_508.pdf)
- NYSDEC Projected Sea-Level Rise Regulations - 6 NYCRR Part 490 - Proposed Regulations <http://www.dec.ny.gov/regulations/103877.html>
- USGS Future Flow Explorer: <http://ny.water.usgs.gov/maps/floodfreq-climate/>



## 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.

### requirements

- 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](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)."

### Program requirements

- 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.

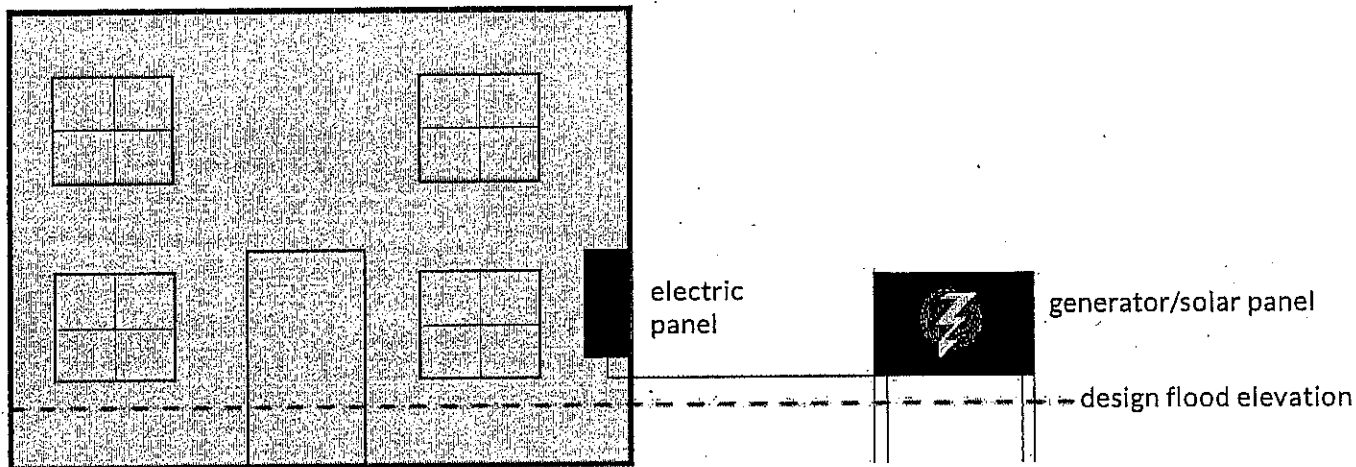
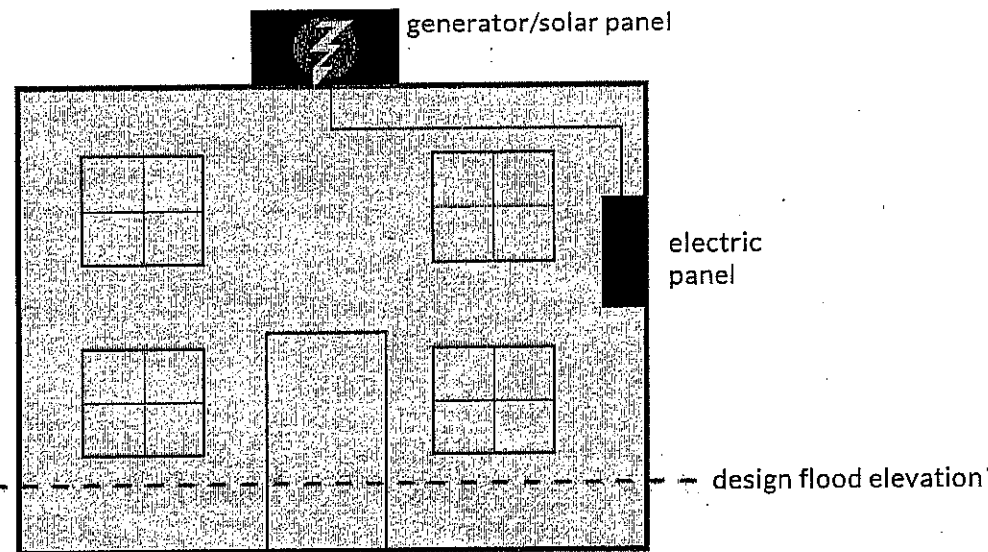


Diagram 2.



Reviewed By  
Office of Town Attorney  
*ML*

## 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.

### requirements

- 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://nysparks.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>

Reviewed By  
Office of Town Attorney

*[Signature]*

12 | page

## 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:

### equipment and fuel requirements

- 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.pdf>
- 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](http://www.losaltosca.gov/sites/default/files/fileattachments/Community%20Development/page/3751/construction_equipment_bmp_handout.pdf)





23

TOWN OF OYSTER BAY  
INTER-DEPARTMENTAL MEMO

JANUARY 8, 2018

TO: MEMORANDUM DOCKET

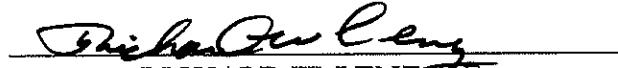
FROM: RICHARD W. LENZ, P.E., COMMISSIONER  
DEPARTMENT OF PUBLIC WORKS/HIGHWAY

SUBJECT: AWARD OF ENGINEERING SERVICES CONTRACT  
RESTORATION AND IMPROVEMENTS TO ALHAMBRA PARK, MASSAPEQUA  
NY RISING COMMUNITY RECONSTRUCTION (NYRCR) PLAN  
CONTRACT NO. DP17-151  
SUPPLEMENTAL MEMO TO FOLLOW

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The Department of Public Works issued a "Requests for Proposals" for the above-referenced contract. Proposals have been received by prospective engineering firms and have been reviewed by the Division of Engineering and the Governor's Office of Storm Recovery. A formal recommendation of award will be provided by supplemental memorandum docket.

It is hereby requested that a space be reserved at the Town Board meeting of January 23, 2018 for the Town Board to take action to award Engineering Services for Restoration and Improvements to Alhambra Park, Massapequa, Contract No. DP17-151.

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

RWL/<sup>dm</sup>MR/dz

c: Office of the Town Attorney (w/7 copies)  
Steven Ballas, Comptroller  
Colin Bell, Deputy Commissioner/IGA  
Sunita Chakraborti, Division of Engineering  
Kathy Stefanich, DPW/Administration

DP17-151 DOCKET AWARD ENG SERVICES RESERVE

Meeting of January 23, 2018

Resolution No. 54-2018

WHEREAS, the Town has been named as Respondent in a Notice of Claim entitled *Pincus v. Town of Oyster Bay, et al.*; and

WHEREAS, the Town maintains a Public Officials and Employees Liability Insurance Policy with Chubb Group Claims, Philadelphia, Pennsylvania f/k/a Ace American Insurance Company, authorized by Town Board Resolution No. 63-2017; and

WHEREAS, the aforementioned policy provides coverage to the Town for the above referenced Claim; and

WHEREAS, the insurance carrier has assigned the law firm of Jackson Lewis, P.C., 58 South Service Road, Suite 250, Melville, New York, to represent the Town's interest in said Claim; and

WHEREAS, the insurance policy maintains a self-insurance retention provision, obligating the Town to pay the first \$25,000.00 of defense and/or indemnity costs, either to the aforementioned law firm and/or the insurance carrier or its affiliates, before the insurance carrier assumes any costs; and

WHEREAS, subject to the terms and conditions of the Public Officials and Employees Insurance Policy, Joseph Nocella, Town Attorney and Matthew M. Rozea, Deputy Town Attorney, by memorandum dated January 9, 2018, recommend that an amount not to exceed \$25,000.00 be set aside for the aforementioned claim, from October 10, 2017, with funds to be drawn from Account No. OTA A 1420 44110 000 0000, in order to satisfy the self-insurance retention provision,

NOW, THEREFORE, BE IT RESOLVED, That the above recommendation is hereby accepted, and subject to the terms and conditions of the Public Officials and Employees Liability Insurance Policy authorized by Town Board Resolution No. 63-2017, an amount not to exceed \$25,000.00 be set aside for the aforementioned litigation, from October 10, 2017, in order to satisfy the self-insurance retention threshold for the payment of defense and/or indemnity costs, either to the law firm of Jackson Lewis, P.C., 58 South Service Road, Suite 250, Melville, New York or to the insurance carrier or its affiliates; and be it further

RESOLVED, That the Comptroller is hereby authorized and directed to make payment to the law firm of Jackson Lewis, P.C., 58 South Service Road, Suite 250, Melville, New York or the insurance carrier or its affiliates, 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	Aye
Councilwoman Alesia	Aye
Councilwoman Johnson	Aye
Councilman Imbroto	Aye
Councilman Hand	Aye

cc: Supervisor  
Town Attorney  
Comptroller

710  
Reviewed By  
Office of Town Attorney  
*Matthew M. Rozea*

24

# Town of Oyster Bay

## Inter-Departmental Memo

TO: Memorandum Docket

FROM: Office of the Town Attorney

DATE: January 9, 2018

SUBJECT: Self Insured Retention for Pending Litigation-  
*Pincus v. Town of Oyster Bay, et al.*  
Our Matter ID No. 2017-6097

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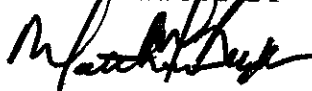
The Town of Oyster Bay maintains a Public Officials and Employees Liability Insurance Policy with Chubb Group Claims, Philadelphia, Pennsylvania f/k/a Ace American Insurance Co., which was authorized by Town Board Resolution No. 63-2017. This policy provides coverage to the Town for the above referenced claim, and the carrier retained the law firm of Jackson Lewis, P.C., 58 South Service Road, Suite 250, Melville, New York, to represent the Town's interests in said claim.

The insurance policy carries a self-insurance retention provision which obligates the Town to pay the first \$25,000.00 of defense and/or indemnity costs, either to the aforementioned law firm and/or the insurance carrier or its affiliates, before the insurance carrier assumes any costs.

Accordingly, subject to the terms and conditions of the Public Officials and Employees Insurance Policy, this Office recommends that an amount not to exceed \$25,000.00 be set aside for the aforementioned claim, from October 10, 2017, with funds to be drawn from Account No. OTA A 1420 44110 000 0000, to satisfy the self-insurance retention provision, for the payment of defense costs to the above law firm and/or indemnity costs to the insurance carrier or its affiliates.

Attached hereto is a proposed resolution authorizing the foregoing request.

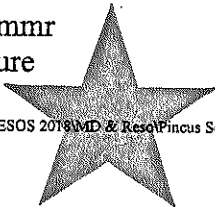
JOSEPH NOCELLA  
TOWN ATTORNEY



Matthew M. Rozea  
Deputy Town Attorney

MMR:mmr  
Enclosure

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WHEREAS, the Town has been named as Respondent in a Notice of Claim entitled *Herman v. Town of Oyster Bay, et al.*; and

WHEREAS, the Town maintains a Public Officials and Employees Liability Insurance Policy with Chubb Group Claims, Philadelphia, Pennsylvania f/k/a Ace American Insurance Company, authorized by Town Board Resolution No. 63-2017; and

WHEREAS, the aforementioned policy provides coverage to the Town for the above referenced Claim; and

WHEREAS, the insurance carrier has assigned the law firm of Jackson Lewis, P.C., 58 South Service Road, Suite 250, Melville, New York, to represent the Town's interest in said Claim; and

WHEREAS, the insurance policy maintains a self-insurance retention provision, obligating the Town to pay the first \$25,000.00 of defense and/or indemnity costs, either to the aforementioned law firm and/or the insurance carrier or its affiliates, before the insurance carrier assumes any costs; and

WHEREAS, subject to the terms and conditions of the Public Officials and Employees Insurance Policy, Joseph Nocella, Town Attorney and Matthew M. Rozea, Deputy Town Attorney, by memorandum dated January 9, 2018, recommend that an amount not to exceed \$25,000.00 be set aside for the aforementioned claim, from October 10, 2017, with funds to be drawn from Account No. OTA A 1420 44110 000 0000, in order to satisfy the self-insurance retention thresholds,

NOW, THEREFORE, BE IT RESOLVED, That the above recommendation is hereby accepted, and subject to the terms and conditions of the Public Officials and Employees Liability Insurance Policy authorized by Town Board Resolution No. 63-2017, an amount not to exceed \$25,000.00 be set aside for the aforementioned litigation, from October 10, 2017, in order to satisfy the self-insurance retention threshold for the payment of defense and/or indemnity costs, either to the law firm of Jackson Lewis, P.C., 58 South Service Road, Suite 250, Melville, New York or to the insurance carrier or its affiliates; and be it further

RESOLVED, That the Comptroller is hereby authorized and directed to make payment to the law firm of Jackson Lewis, P.C., 58 South Service Road, Suite 250, Melville, New York or the insurance carrier or its affiliates, 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	Aye
Councilwoman Alesia	Aye
Councilwoman Johnson	Aye
Councilman Imbroto	Aye
Councilman Hand	Aye

cc: Supervisor  
Town Attorney  
Comptroller

Reviewed By  
Office of Town Attorney  
*[Signature]*

23

# Town of Oyster Bay

## Inter-Departmental Memo

TO: Memorandum Docket

FROM: Office of the Town Attorney

DATE: January 9, 2018

SUBJECT: Self Insured Retention for Pending Litigation-  
*Herman v. Town of Oyster Bay, et al.*  
Our Matter ID No. 2017-6153

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The Town of Oyster Bay maintains a Public Officials and Employees Liability Insurance Policy with Chubb Group Claims, Philadelphia, Pennsylvania f/k/a Ace American Insurance Co., which was authorized by Town Board Resolution No. 63-2017. This policy provides coverage to the Town for the above referenced claim, and the carrier retained the law firm of Jackson Lewis, P.C., 58 South Service Road, Suite 250, Melville, New York, to represent the Town's interests in said claim.

The insurance policy carries a self-insurance retention provision which obligates the Town to pay the first \$25,000.00 of defense and/or indemnity costs, either to the aforementioned law firm and/or the insurance carrier or its affiliates, before the insurance carrier assumes any costs.

Accordingly, subject to the terms and conditions of the Public Officials and Employees Insurance Policy, this Office recommends that an amount not to exceed \$25,000.00 be set aside for the aforementioned claim, from October 10, 2017, with funds to be drawn from Account No. OTA A 1420 44110 000 0000, to satisfy the self-insurance retention provision, for the payment of defense costs to the above law firm and/or indemnity costs to the insurance carrier or its affiliates.

Attached hereto is a proposed resolution authorizing the foregoing request.

JOSEPH NOCELLA  
TOWN ATTORNEY



Matthew M. Rozea  
Deputy Town Attorney

MMR:mmr  
Enclosure



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WHEREAS, Joseph Nocella, Town Attorney, and Matthew M. Rozea, Deputy Town Attorney, by memorandum dated January 9, 2018, have advised that the Office of the Town Attorney issued a request for proposals relative to independent medical examination ("IME") services; and

WHEREAS, four (4) responses were timely received, each of which was evaluated in accordance with the Town of Oyster Bay Procurement Policy and Guideline 9 thereof; and

WHEREAS, following such evaluation, Joseph Nocella, Town Attorney, and Matthew M. Rozea, Deputy Town Attorney, by the aforementioned memorandum recommend and request that the Town Board authorize the retention of JuriSolutions, Inc., 33 Queens Street, Ste. 201, Syosset, New York, to facilitate and provide IME services for the period commencing on January 23, 2018 and concluding on December 31, 2018, with one, one-year extension option, at a cost not to exceed \$7,000.00,

NOW, THEREFORE, BE IT RESOLVED, That the above recommendation is hereby accepted and approved, and the Office of the Town Attorney is hereby authorized to retain JuriSolutions, Inc., 33 Queens Street, Ste. 201, Syosset, New York, to facilitate and provide IME services for the period commencing on January 23, 2018 and concluding on December 31, 2018, with one, one-year extension option, at a cost not to exceed \$7,000.00; and be it further

RESOLVED, That the Comptroller is hereby authorized and directed to make payment to JuriSolutions, Inc. for said IME services with funds to be drawn from Account Nos. TWN AMS 1910 43010 602 0000 000 and TWN AMS 1910 43020 602 0000 000, 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	Aye
Councilwoman Alesia	Aye
Councilwoman Johnson	Aye
Councilman Imbroto	Aye
Councilman Hand	Aye

cc: Supervisor  
Town Attorney  
Comptroller

Reviewed By  
Office of Town Attorney  


26

# Town of Oyster Bay

## Inter-Departmental Memo

TO: Memorandum Docket

FROM: Office of the Town Attorney

DATE: January 9, 2018

SUBJECT: Procurement of Independent Medical Examination Physicians

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This Office recently solicited the services of firms to facilitate and schedule independent medical examinations ("IME") in connection with negligence actions. In prior years, this Office directly procured the services of individual physicians to conduct IMEs. However, as those physicians' practices changed – in some instances due to retirement – it became increasingly difficult to schedule IMEs.

Pursuant to the terms of the recent request for proposals, firms were required to have access to a wide array of physicians in a number of disciplines including, without limitation, orthopedics, neurology, and radiology, so that IMEs may be scheduled without delay. The RFP was directly transmitted to four (4) firms and was also posted to the Town's website. A total of four responses were received by the deadline established in the RFP. In accordance with the requirements of the Town's Procurement Policy and Guideline 9 thereof, this Office evaluated each response as to the firms' experience, qualifications, and responsiveness to the RFP.

Based upon the aforementioned evaluation, this Office recommends that the Town Board authorize the retention of JuriSolutions, Inc., 33 Queens Street, Ste. 201, Syosset, New York. Of note, JuriSolutions' proposal fully responded to this Office's needs, and the proposed rates were the most cost effective among the responses received. The term of said retention is to commence on January 23, 2018 and conclude on December 31, 2018, with one, one-year extension, at a cost not to exceed \$7,000.00. Funds are available in Account Nos. TWN AMS 1910 43010 602 0000 000 and TWN AMS 1910 43020 602 0000 000.

A proposed resolution regarding the foregoing request is attached hereto.

JOSEPH NOCELLA  
TOWN ATTORNEY



Matthew M. Rozea  
Deputy Town Attorney

MMR:mmr  
Enclosure

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