

Economic Growth & Development Committee
Planning & Community Development Agenda
August 23, 2022

COMMITTEE MEMBERS: Supervisors **WILD**, McDevitt, Hogan, Strough, Leggett, Frasier, Magowan - *Chair of the Board shall serve as an Ex-Officio member when needed in accordance with the Section C(4) of the Rules of the Board*

- I. Committee meeting called to order by Chair
- II. Approval of minutes of prior Committee Meeting
- III. Action Agenda/New Business Items:
 1. Request: Establish Capital Project for Recreation Economy study
Rationale: put \$92,500 in capital project for Recreation Economy study - \$42,500 from Empire State Development Grant, Res# 201 of 2022 put the \$35,000 into the A.9950 910 code and Res# 153 of 2022 put the \$15,000 from Tourism into the A.9950 910 code
 2. Request: Establish Capital Project for Septic Replacement Fund Round 3
Rationale: The County was notified that it had received a Round 3 award of \$595,000 under the State Septic System Replacement Fund Program. This Capital Fund is established to allow for County Administration of the grant award.
 3. Request: Amend revenue codes to reflect ARPA administrative funding
Rationale: per resolution 260 of 2022, move \$66,040 from Coronavirus Local Fiscal Recovery Fund to salary and benefit codes in 8021.4999
 4. Request: Extend contract with NYS ITS for orthoimagery
Rationale: The NYS Office of Information Technology Services has requested that the existing contract end date of 31 December be changed to allow for service completion through the end of 2023.
- IV. Discussion Items:
 - None
- V. Referrals/Pending Items:
 - None
- VI. Privilege of the floor and public comment (please allow for 15 second delay on live stream meetings)
- VII. Motion to adjourn

Attachments:

1. Reso request form #8 – establish Recreation Economy capital project
2. Reso request form #8 – establish Septic Replacement Fund Round 3 capital project
3. Reso request form #7 – amend county budget to reflect ARPA admin funding
4. Reso request form #4 – extend contract with NYS ITS

RESOLUTION REQUEST FORM NO. 8

Request to Establish Capital Project or Capital Reserve Project*

****If this is the result of a grant award, also complete and submit Form No. 5 or 6***

DEPARTMENT NAME: Planning and Community Development

DATE: August 2022

- (a) Exact Title* and Number of Project (must be obtained from Treasurer's Office):
H416 Recreation Economy Study

- (b) Is this a Capital Project?
Yes

- (c) Is this a Capital Reserve Project?
No

- (d) Amount of Project:
\$92,500

- (e) Source of Funding (including name & title of codes, etc.):
H418.9550 3717 Empire State Development Grant. \$42,500, A.9950 910 50,000

- (f) Purpose of Establishment:
Res# 201 of 2022 put the \$35,000 into the A.9950 910 code and Res# 153 of 2022 put the \$15,000 from Tourism into the A.9950 910 code

***Title should reflect department if possible:**

i.e. Capital Project No. H274.9550 280 *Replace VASI with PAPI* would be clearer if name was listed as Airport Replace VASI with PAPI.



Department of
Environmental
Conservation

Environmental
Facilities Corporation

JUL 25 2022

RECEIVED
JUL 28 2022
Office of Warren
County Administrator

Honorable Ryan Moore
County Administrator, Warren County
1340 State Route 9
Lake George, NY 12845

Re: Septic System Replacement Fund

Dear County Administrator Moore:

On behalf of Governor Kathy Hochul, the Department of Environmental Conservation (DEC) and the Environmental Facilities Corporation (EFC) are pleased to offer your County \$595,000 to participate in Round 3 of the State Septic System Replacement Fund Program. The Clean Water Infrastructure Act of 2017 established the State Septic System Replacement Fund Program as a grant program to counties to allow them to reimburse property owners for a portion of the cost of replacing cesspools and septic systems that impair or threaten waterbodies. The program's goal is to reduce the environmental and public health impacts associated with adverse impact from cesspools and inadequate septic systems in close proximity to priority waterbodies. For more information on the program please visit <https://efc.ny.gov/septic-replacement>.

Please sign the letter below indicating your acceptance of this offer and return an executed original to Brian Hahn no later than **August 5, 2022**. Failure to return an executed original by August 5, 2022, will result in the immediate revocation of this offer. Should you accept this offer, you will need a local program contact who can field questions from the public about the program, as well as be a program point of contact for DEC and EFC. Include your local program contact's name, phone number and email address in the email transmitting your signed letter to Brian.Hahn@efc.ny.gov. This information will be included on the EFC webpage listed above.

We look forward to working with the County to provide funding to support these essential projects. Please contact us at septicreplace@dec.ny.gov if you have any questions.

Sincerely,

Basil Seggos
Commissioner

Sincerely,

Maureen A. Coleman
President & CEO

So Agreed:

Ryan Moore
County Administrator

625 Broadway Albany, NY 12207

dec.ny.gov | efc.ny.gov

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DEPARTMENT NAME: Planning and Community Development

DATE: August 2022

- (a) Exact Title* and Number of Project (must be obtained from Treasurer's Office):
H418 Septic System Replacement Fund Round 3?
- (b) Is this a Capital Project?
Yes
- (c) Is this a Capital Reserve Project?
No
- (d) Amount of Project:
\$595,000
- (e) Source of Funding (including name & title of codes, etc.):
H418.9990 3990 Septic System Replacement Fund Round 3? \$595,000
- (f) Purpose of Establishment:
The County was notified that it had received a Round 3 award under the State Septic System Replacement Fund Program. This Capital Fund is established to allow for County Administration of the grant award.

***Title should reflect department if possible:**

i.e. Capital Project No. H274.9550 280 *Replace VASI with PAPI* would be clearer if name was listed as Airport Replace VASI with PAPI.



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Basil Seggos
Commissioner

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Maureen A. Coleman
President & CEO

So Agreed:

Ryan Moore
County Administrator

625 Broadway Albany, NY 12207

dec.ny.gov | efc.ny.gov

RESOLUTION REQUEST FORM NO. 7

Request to Amend County Budget*

****If this is the result of a grant award, also complete and submit Form No. 5 or 6***

DEPARTMENT NAME: Planning and Community Development

DATE: August 2022

(a) Purpose of Amendment:

Amend revenue codes to reflect ARPA administrative funding for 2022 per resolution 260 of 2022

(b) Appropriation Code, Object Code, Full Title and Amount:

A.8021.4999 110 Salaries, regular, \$52,000 American Rescue Plan Act (ARPA)

A.8021.4999 810 Retirement \$5,500

A.8021.4999 830 Social Security \$3,400

A.8021.4999 831 Medicare Contribution \$800

A.8021.4999 860 Hospitalization \$4,300

A.8021.4999 865 Dental Insurance \$40

(c) Revenue Code (with title), and Amount:

A.8021.4999 4090 – Coronavirus Local Fiscal Recovery Fund (CLFRF) \$66,040

RESOLUTION REQUEST FORM NO. 4

Request for Extending, Rescinding or Amending Existing Contract

DEPARTMENT NAME: Planning and Community Development

DATE: August 2022

- (a) Purpose of Contract Change: Extend agreement to 31 December 2023
- (b) Resolution Number, or Numbers if Amended, which Authorized the Original Contract: 593/2021
- (c) Name of Contractor: NYS Office of Information Technology Services⁺
Geographic Information Officer
- (d) Address of Contractor: NYS Office of Information Technology Services
1220 Washington Ave, Building 5, Floor 1, Albany
12226 Information Technology Services 1220⁺
- (e) Contractor's Contact Person and Telephone Number:
Tim Ruhren, 518.242.5061
- (f) Commencement Date of Extension: 31 December 2022
- (g) Termination Date of Extension: 31 December 2023
- (h) Payment Provisions: i) lump sum amount
ii) hourly rate amount
iii) total amount not to exceed \$86,200
iv) how will payments be made (i.e. monthly, quarterly, upon completion of the project, etc.
- (i) Where are the Funds for this Contract? List Budget Code, Object Code, Full Title* and Amount: OR Capital Project OR Capital Reserve Project Number, and Title, and Amount: A8022.439

The NYS Office of Information Technology Services has requested that the existing contract end date of 31 December be changed to allow for service completion through the end of 2023.

*as listed in budget and LOGOS

Warren County Board of Supervisors

RESOLUTION NO. 593 OF 2021

RESOLUTION INTRODUCED BY SUPERVISORS BEATY, THOMAS, McDEVITT, MERLINO, BRAYMER, DIAMOND AND BRUNO

AUTHORIZING AGREEMENT WITH NEW YORK STATE OFFICE OF INFORMATION TECHNOLOGY SERVICES TO ACQUIRE NEW IMAGERY FOR WARREN COUNTY FOR THE PLANNING DEPARTMENT

RESOLVED, that the Warren County Board of Supervisors hereby authorizes the Chair of the Board of Supervisors to enter into an agreement with the New York State Office of Information Technology Services, 1220 Washington Avenue, Building 5, Floor 1, Albany, New York 12226, to acquire new imagery for Warren County in the Spring of 2022, for a term commencing upon execution by both parties and terminating December 31, 2022, for an amount not to exceed Eighty-Six Thousand Two Hundred Dollars (\$86,200), in a form approved by the County Attorney, and be it further

RESOLVED, that the funds shall be expended from Budget Code A.8022 470, Planning GIS Program, Contract.

**AGREEMENT
BETWEEN THE

OFFICE OF INFORMATION TECHNOLOGY SERVICES

AND

WARREN COUNTY

FOR UPGRADED GEOGRAPHIC INFORMATION SYSTEMS
DIGITAL ORTHOIMAGERY DATA
Contract # X000738**

This **GEOGRAPHIC INFORMATION SYSTEMS DIGITAL ORTHOIMAGERY DATA ENHANCEMENT AGREEMENT** (hereinafter "Agreement") by and between the State of New York (hereinafter "State"), acting by and through the New York State Office of Information Technology Services (hereinafter "ITS") with offices located at Empire State Plaza, (PO Box 2062), Albany, NY 12220, and **Warren County** (hereinafter "Governmental Entity"), located at 1340 State Route 9, Lake George, NY 12845, its successor and/or assigns (collectively, the "Parties").

WITNESSETH:

WHEREAS, ITS conducts a Geographic Information System (hereinafter "GIS") Coordination Program, designed to improve and enhance various forms of spatial data related to the State of New York; and

WHEREAS, ITS will be enhancing and improving the State's spatial data through a Statewide Digital Orthoimagery Program (hereinafter "Program"); and

WHEREAS, a Governmental Entity shall be deemed to include: all New York State agencies, authorities, departments, offices, divisions, boards, bureaus, and commissions; and all public corporations and metropolitan planning organizations in New York State; and

WHEREAS, this Program is designed to meet the needs of Governmental Entities and is designed to provide complete statewide orthoimagery coverage on an annual phased cycle, with each phase covering approximately 25% of the State; and

WHEREAS, under the Program, the State has contracted for most areas of the State to be covered by 1.0 Ft GSD four-band orthoimagery. The State has also contracted for other options (hereinafter "upgrades") for higher resolution and alternate imagery type to be exercised should an individual Governmental Entity opt to contribute additional funding for this purpose; and

WHEREAS, the Governmental Entity has determined that digital orthoimagery upgrades are convenient, necessary and desirable for the Governmental Entity, its general population and its agencies, and has opted to contribute additional funding to the State for such purpose.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties do hereby agree as follows:

I. Purpose

The purpose of this Agreement is to set forth the mutual understanding between the Governmental Entity and the State with respect to the financing and development of upgrades for digital orthoimagery covering the Governmental Entity.

II. Consideration

The Governmental Entity hereby agrees to pay the State a sum not to exceed \$66,406.6 (Sixty-six thousand, four hundred six dollars, and sixty cents), which final amount will represent the actual cost to ITS in consideration for the upgrades, or any part thereof, for digital orthoimagery as described below. Such consideration must be paid by the Governmental Entity within forty-five (45) days after receipt of a fully executed and approved (*) agreement or February 1, 2023, whichever is later.

(*Approval by the NYS Office of the State Comptroller and The NYS Office of the Attorney General is only required where the amount of the consideration is in excess of \$10,000.00 [Ten Thousand Dollars])

All funds should be remitted to:

NYS Office of Information Technology Services
State Capitol ESP
PO Box 2062
Albany, NY 12220-0062
Attn: Accounts Receivables – Financial Reporting unit

- Please include supporting documentation to identify the payment including NYS ITS Contract #.
- For any questions regarding billing: itsbilling@its.ny.gov

All invoices or requests for remittance of payment should be sent to:

Governmental Entity
Name: Wayne LaMothe
Title: County Planner
Address: 1340 State Route 9, Lake George, NY 12845
Telephone Number: 518-761-6410
Facsimile Number: 518-761-6411
E-Mail Address: lamothe@warrencountyny.gov

III. Term of this Agreement

This Agreement shall commence upon execution by all parties and if required, approval of the Agreement by the New York State Office of the Comptroller (OSC) and the New York State Office of the Attorney General (OAG). The contract will terminate on December 31, 2023.

IV. Deliverable

OPTIONS PURCHASED:

Substitute 0.5-ft resolution orthoimagery for 1.0-ft orthoimagery

MATERIALS TO BE DELIVERED:

- Compressed orthoimagery (JP2 format) in the East Zone of the New York State Plane Coordinate System (NAD 83), U.S. Survey Feet.
- Other related materials can be made available upon the Governmental Entity's request and at the convenience of ITS.

V. Information Sharing

ITS agrees to provide upgrades for digital orthoimagery covering the Governmental Entity, and to provide the upgraded digital orthoimagery to the Governmental Entity to assist the Governmental Entity in providing services to its general population and its agencies. The Governmental Entity and ITS agree that the upgraded digital orthoimagery will also be made available to the public by ITS through methods including, but not limited to, Internet distribution and that such orthoimagery will be provided to the public free of charge or subject to any statutory allowed fees. The portion of this Agreement regarding release of the digital orthoimagery will survive the expiration or termination of this contract or until amended by a writing signed by both parties.

VI. Termination

ITS may terminate this Agreement and the services provided at any time by providing the Governmental Entity with 30 calendar days' written notice prior to the intended termination date.

VII. Nonperformance

If for any reason the upgraded digital orthophotography cannot be delivered, or any part thereof, to the Governmental Entity, the State's liability to the Governmental Entity shall be limited solely to the return of any actual consideration paid prorated for any upgraded digital orthophotography delivered to the Governmental Entity.

VIII. Disclaimer

Neither the Governmental Entity nor ITS assumes any risk, liability or responsibility for the accuracy of the data which is the subject of this Agreement.

IX. Non-Waiver

The failure by any Party to insist on performance of any term or condition or to exercise any right or

privilege included in this Agreement shall not constitute a waiver of same unless explicitly denominated in writing as a waiver and shall not thereafter waive any such term or condition and/or any right or privilege. No waiver by any party of any breach of any term of this Agreement shall constitute a waiver of any subsequent breach or breaches of such term.

X. New York State Appendix A - Standard Terms for State Contracts

New York State Appendix A - Standard Terms for State Contracts - is attached hereto as Appendix A and made a part hereof to the extent applicable.

XI. Federal Funding

To the extent that any of the goods or services provided under this Agreement may be funded in whole or in part by federal funds, Governmental Entity agrees to comply with all applicable federal laws, rules and regulations required for the receipt and/or expenditure of such funds, including, but not limited to 2 CFR Part 200, relating to procurements by States and any federal laws, rules, regulations specifying federal government intellectual property rights.

XII. Laws of New York State

This Agreement shall be construed in accordance with the Laws of the State of New York.

XIII. No Third Party Rights

Nothing in the Agreement shall create or give to third parties any claim or right of action against the Governmental Entity or ITS beyond such as may legally exist irrespective of the Agreement.

XIV. Notices

1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
 - (a) via certified or registered United States mail, return receipt requested;
 - (b) by facsimile transmission;
 - (c) by personal delivery;
 - (d) by expedited delivery service; or
 - (e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

New York State Office of Information Technology Services

Name: Tim Ruhren
Title: Manager of Information Technology Services 1
Address: 1220 Washington Ave, Building 5, Floor 1, Albany NY12226
Telephone Number: 518-242-5061
E-Mail Address: tim.ruhren@ITS.ny.gov

Governmental Entity

Name: Wayne LaMothe
Title: County Planner
Address: 1340 State Route 9, Lake George, NY 12845
Telephone Number: 518-761-6410
Facsimile Number: 518-761-6411
E-Mail Address: lamothew@warrencountyny.gov

2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

XV. General Responsibility

The Governmental Entity shall at all times during the Agreement term remain responsible. The Governmental Entity agrees, if requested by the Director of ITS or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

XVI. Suspension of Work (for Non-Responsibility)

The Commissioner of ITS or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of the Governmental Entity. In the event of such suspension, the Governmental Entity 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. Governmental Entity activity may resume at such time as the Director of ITS or his or her designee, issues a written notice authorizing a resumption of performance under the Agreement.

XVII. Termination (for Non-Responsibility)

Upon written notice to the Governmental Entity, and a reasonable opportunity to be heard with appropriate ITS officials or staff, the Agreement may be terminated by the Director of ITS or his or her designee, at the Governmental Entity's expense where the Governmental Entity is determined by the Director of ITS or his or her

designee, to be non-responsible. In such event the Director of ITS or his or her designee, may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

XVIII. Assignment

ITS may assign this agreement at any time to a successor NYS Agency by providing written notice to the Governmental Entity.

XIX. Amendments to this Agreement

Any amendments to this Agreement must be made in writing and executed by both parties and, if necessary, approved by the OSC.

IN WITNESS WHEREOF, this Agreement has been duly executed the date and year set out below.

<p>NEW YORK STATE OFFICE OF INFORMATION TECHNOLOGY SERVICES Federal ID #: 14-6013200</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: Deputy Commissioner</p> <p>Date: _____</p>	<p>GOVERNMENTAL ENTITY Federal ID#: _____</p> <p>By _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
<p>Approved:</p> <p>Office of the Attorney General By: _____</p> <p>Date: _____</p>	<p>Approved:</p> <p>State Comptroller By: _____</p> <p>Date: _____</p>

STATE OF)
))
COUNTY OF)

On this _____ day of _____, 202_, before me personally came _____, to me known, and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for her/himself depose and say that she/he is the _____ (title) of _____ (Governmental Entity), with its principal place of business located at _____, and that she/he executed the foregoing instrument in the name of the Governmental Entity, and that she/he executed the same as the act and deed of the Governmental Entity for the uses and purposes mentioned therein.

Notary Public

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

October 2019

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

TABLE OF CONTENTS

1. Executory Clause
2. Non-Assignment Clause
3. Comptroller's Approval
4. Workers' Compensation Benefits
5. Non-Discrimination Requirements
6. Wage and Hours Provisions
7. Non-Collusive Bidding Certification
8. International Boycott Prohibition
9. Set-Off Rights
10. Records
11. Identifying Information and Privacy Notification
12. Equal Employment Opportunities For Minorities and Women
13. Conflicting Terms
14. Governing Law
15. Late Payment
16. No Arbitration
17. Service of Process
18. Prohibition on Purchase of Tropical Hardwoods
19. MacBride Fair Employment Principles
20. Omnibus Procurement Act of 1992
21. Reciprocity and Sanctions Provisions
22. Compliance with Breach Notification and Data Security Laws
23. Compliance with Consultant Disclosure Law
24. Procurement Lobbying
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors
26. Iran Divestment Act
27. Admissibility of Contract

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of

payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 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 a contracting agency is committed to expend or does expend funds in return for labor,

services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the 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 State 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 contracting agency, 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 the State 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," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State 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 clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency 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.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. 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.

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically

exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. 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.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments

(Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. 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: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

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

The state agency 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.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.