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Edwin J. Day, County Executive

APPENDICIES

RFP-RC-2020-028

APPENDICIES: NOTE: APPENDICIES K & H ARE INCLUDED IN THE RFP DOCUMENT – ALL OTHER LISTED APPENDICIES ARE UPLOADED AS A SEPARATE ATTACHMENT

Appendix A	Defined Terms
Appendix B	Special Legislation
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Appendix K	Fixed Design-Build Price Proposal Form – Included in RFP Document
Appendix L	Design Review and Construction Review Procedures
Appendix M	NYS Environmental Facilities Corporation Program Requirements and Bid Packet for Construction Contracts
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Appendix O	New York State Water Infrastructure Improvement Act Grant
Appendix P	Air Permit

APPENDIX A

DEFINED TERMS

“Acceptance Test” means tests conducted by the Company to determine if the Odor Control Systems and heating and ventilation system improvements are fully functioning in accordance with the requirements of the Design-Build Agreement.

“Agreement Date” means the date the Design-Build Agreement has been executed by the RCSD.

“Alternate Proposal” means a proposal submitted by a Proposer in response to this RFP that is in addition to the required base Proposal submitted by the Proposer, suggesting an alternate approach to completing the Project that will achieve the RCSD objectives.

“Applicable Law” means any law, rule, codes, standards, regulation, requirement, policy, consent decree, consent order, consent agreement, permit, guideline, action, determination or order of, or legal entitlement issued by, any Governmental Body having jurisdiction, applicable from time to time to any activities associated with the subject matter of this RFP, including but not limited to design and construction of the Project or any other transaction or matter contemplated hereby, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of prevailing wages, including the Prevailing Wage Law. Applicable Law includes, but is not limited to the New York Labor Law, the Immigration and Naturalization Laws and Regulation, the General Municipal Law, the Workers’ Compensation Law, the Lien Law, Personal Property Law, State Unemployment Insurance Law, Federal Social Security Law, State, Local and Municipal Health Laws, Rules and Regulations, and any and all regulations promulgated by the State of New York and amendments and additions thereto, insofar as the same shall be applicable to any contract awarded hereunder with the same force and effect as if set forth at length herein.

“Certificate of Final Completion” means the document verifying that the Project has reached Final Completion and is ready for final payment. Such document shall specify the date for Final Completion, as well as the name and address of the Company and the RCSD. It shall also specify the date on which such certificate is issued and the Fixed Design-Build Price.

“Change in Law” means any of the following events or conditions occurring on or after the execution of the Design-Build Agreement which has a material and adverse effect on the performance by the parties of their respective obligations under the Design-Build Agreement (except for payment obligations):

A. **Inclusions:** A “Change in Law” shall include:

1. The enactment, adoption, promulgation, issuance, modification or written change in administrative or judicial interpretation on or after the Design-Build Agreement Date of any federal, State or local law (except as set forth in the exclusions in (B) below), regulation, rule, requirement, guideline, ruling or ordinance, unless such law, regulation, rule, requirement, ruling or ordinance was, on or prior to the Design-Build Agreement Date, proposed and published in the Federal or New York Register or was duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation;

2. The order or judgment of any federal, State or local court, administrative agency or Governmental Body, on or after the Agreement Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Company or of the RCSD, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or
3. The denial of an application for, delay in the review, issuance or renewal of, or suspension, termination, interruption, imposition of a term, condition or requirement which is more stringent or burdensome in connection with the issuance, renewal or failure of issuance or renewal on or after the Agreement Date of any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption or imposition materially and adversely affects the performance of the Design-Build Agreement, if and to the extent that such denial, delay, suspension, termination, interruption or imposition is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the Company or of the RCSD, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such denial, delay, suspension, termination, interruption or imposition shall not be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

B. Exclusions: A “Change in Law” shall not include:

1. A change in Applicable Law pertaining to taxes;
2. A change in the law of any foreign country;
3. Any Change in Law (including the issuance of any Legal Entitlement, the enactment of any statute, or the promulgation of any regulation) the terms and conditions of which do not impose more stringent or burdensome requirements on the Company than those set forth in the obligations contained herein;
4. Any change in interpretation, however stringent, by a Governmental Body of the meaning of the terms and conditions of the Legal Entitlements in force as of the Agreement Date; or
5. A change in law pertaining to the payment of prevailing wages or benefits, including the Prevailing Wage Law.

“Change Order” means a written order to the Company executed by the Parties after execution of the Design-Build Agreement, directing a change in the Work.

“Company” means the entity executing the Design-Build Agreement with the RCSD to provide the Contract Services, whether such entity is the Proposer or another entity used or created by the Proposer to provide such services.

“Construction Work” means everything required to be furnished and done for and relating to construction of the Project by the Company pursuant to the Design-Build Agreement. A reference

to “Construction Work” means any part and all of the Construction Work, unless the context requires otherwise.

“**Construction Review Procedures**” shall have the meaning set forth in Appendix L.

“**Contract Documents**” means the Design-Build Agreement, all appendices, schedules, and amendments thereto, Change Orders, the Technical and General Design Requirements, and all other documents listed in the Design-Build Agreement, all of which form the Design-Build Agreement, and are as fully a part of the Design-Build Agreement as if attached to the Agreement or repeated therein.

“**Contract Services**” means everything required to be furnished and completed for and relating to the services to be provided by the Company pursuant to the Agreement, including, but not necessarily limited to, the demolition, Design Work, Construction Work, start-up, and Acceptance Test obligations described in this RFP and set forth in the Agreement.

“**Contract Standards**” means the standards, terms, conditions, methods, techniques and practices imposed or required by: (i) Applicable Law, (ii) the Design Standard of Care; (iii) Good Construction Industry Practice, (iv) applicable equipment manufacturers’ specifications; (v) applicable Insurance Requirements, and (vi) any other standard, term, condition or requirement specifically provided in the Agreement to be observed by the Company.

“**Contract Time**” means the number of Days from the Design/Build Commencement Date within which the Company shall accomplish Final Completion as specified in the Agreement.

“**County**” means the County of Rockland, New York.

“**Days**” means calendar days unless otherwise specified.

“**Design-Build Agreement**” means the agreement for the design, construction and commissioning of the Project, for which this RFP has been issued. The Design-Build Agreement shall include the appendices and schedules thereto and all Contract Documents, as the same may be amended or modified from time to time. The Design-Build Agreement represents the entire and integrated agreement between the parties thereto and supersedes prior negotiations, and representations or agreements, either written or oral.

“**Design/Build Commencement Date**” means the date, as set forth in the Notice to Proceed, upon which the Company commences providing the Contract Services.

“**Design/Build Work Warranty**” means the warranty provided by Company to RCSD that the Contract Services, including all materials, equipment, and structures furnished, shall (i) be new, of recent manufacture and of high quality, (ii) conform to the requirements of the Design-Build Agreement, and (iii) be free of defects in materials, equipment, workmanship.

“**Design Recommendation Report**” means the report submitted by D&B Engineers and Architects, P.C. regarding upgrading the plant odor control systems and miscellaneous heating and ventilation system improvements.

“**Design Standard of Care**” means the standard of professional care applicable to the Company’s architectural and engineering services for the performance of the Design Work and is the prevailing standard of professional care for design and construction professionals engaged in the engineering and design of projects of the same or similar nature to the Project in the United States.

“Design Submittals” means a design package, which includes but is not limited to: sketches, working drawings, shop drawings, studies and analysis, specifications, and calculations as required to adequately perform the Design Work in accordance with the Design-Build Agreement.

“Design Review Procedures” shall have the meaning set forth in Appendix L.

“Design Work” means everything required to be furnished and done for and relating to the design of the Project by the Company pursuant to the Design-Build Agreement. A reference to “Design Work” means any part and all of the Design Work, unless the context requires otherwise.

“Executive Director” means the Executive Director of the RCSD, or his or her designee.

“Final Completion” means the date of completion of the Contract Services such that Substantial Completion has been achieved, the RCSD has inspected, tested and approved the Project, and the RCSD has issued a Certificate of Final Completion.

“Final Punch List” means a statement of repairs, corrections and adjustments to the Contract Services, and incomplete aspects of the Contract Services.

“Fixed Design/Build Price” means the price contained on Fixed Design/Build Price Proposal Form from the selected Proposer.

“Good Construction Industry Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally accepted as good design, engineering, equipment installation, construction and commissioning practices for the design and construction industries as followed in the Northeast region of the United States.

“Governmental Body” means any federal, state, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

“Guarantor” means the entity to be provided by the Company, if required by the RCSD, that will guarantee the performance and payment obligations of the Company throughout the term of the Design-Build Agreement.

“Guaranty Agreement” means the written agreement to be provided to the RCSD by the Guarantor (if a Guarantor is required by the RCSD), that will guarantee the Company’s payment and performance obligations throughout the term of the Design-Build Agreement.

“Insurance Requirement” means any rule, regulation, code, or requirement issued by any fire insurance rating bureau or anybody having similar functions or by any insurance company which has issued an insurance policy as required under this RFP, compliance with which is a condition to the effectiveness of such policy.

“Labor and Materials Payment Bond” means the bond which guarantees the timely payment by the Contractor for all labor, materials, supplies, implements, and machinery and equipment to be furnished with respect to the Contract Services throughout the term of the Design-Build Agreement.

“Legal Entitlement” means all permits, licenses, registrations, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contract Services.

“Liquidated Damages” means those damages payable by the Company for a failure to achieve Final Completion as set forth in the Design-Build Agreement.

“NYSDEC” means the New York State Department of Environmental Conservation.

“Notice to Proceed” means the document issued to the Company designating the official Design/Build Commencement Date.

“Odor Control Systems” means those systems at the WWTP that are included within the scope of the Project.

“Party or Parties” means the RCSD and/or the Company executing the Design-Build Agreement.

“Participating Firms” means as applicable, (1) the Proposer, (2) the Guarantor, (3) the new entity, if any, to be formed for the sole purpose of executing and performing the Design-Build Agreement, (4) the firm that will design the Project, (5) the firm that will construct the Project, and (6) any other significant participant in the transaction.

“Payment Request” means a request for payment signed by the Company representing that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with the Contract Documents, and that the Company knows of no reason why payment should not be made as requested.

“Performance Bond” means the bond which guarantees the Contractor’s timely performance of its obligations under the Design-Build Agreement for the benefit of the RCSD and the County throughout the term of the Design-Build Agreement.

“Performance Warranty” means the warranty provided by the Company after Final Completion, as further discussed in this RFP and as will be required by the Design-Build Agreement.

“Prevailing Wage Law” means Articles 8 and 9 of the New York Labor Law, as amended.

“Project” means the design and construction of the Odor Control Systems and the heating and ventilation system improvements, consisting of all work to be performed as set forth in the Design-Build Agreement, including furnishing all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of work contemplated under the Design-Build Agreement.

“Project Labor Agreement” means a pre-hire collective bargaining agreement between a contractor and a bona fide building and construction trade labor organization establishing the labor organization as the collective bargaining representative for all persons who will perform work on the Project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform Project work.

“Project Site” means the WWTP.

“Project Technical and General Design Requirements” means those requirements the Company must meet in order to fully complete the Project in accordance with the Design-Build Agreement.

“Proposer” means the principal business entity sponsoring the submittal of a Proposal in response to this RFP.

“Proposal” means a document submitted for evaluation in response to this RFP.

“Proposal Submission Date” means the deadline for submission of Proposals in connection with this RFP.

“Record Drawings” means the set of as-built drawings that show the character and installation of all Construction Work, which shall be provided to RCSD upon Final Completion as required by the Design-Build Agreement.

“Request for Proposals or RFP” means this request for proposals, including all addenda hereto, issued by the RCSD, for the procurement of design-build services for the Project.

“Rockland County Sewer District No. 1” or “RCSD” means the entity issuing this RFP.

“Schedule of Values” means the document submitted by Company to the RCSD for approval, apportioning the entire Design/Build Price among the different elements of the Work for purposes of periodic and final payment.

“Subcontract” means an agreement between the Company and a Subcontractor or between two (2) Subcontractors, as applicable.

“Subcontractor” means every person (other than employees of the Company) employed or engaged by the Company or any person directly or indirectly in privity with the Company (including every subcontractor of whatever tier) for any portion of the Contract Services, whether for the furnishing of labor, materials, equipment, supplies, services, or otherwise in connection with the design and construction of the Project.

“Substantial Completion” means the point when all of the following conditions have been satisfied:

1. Company has delivered to the RCSD written certification from the equipment manufacturers that all major items of machinery and equipment included in the Project have been properly installed and tested in accordance with the manufacturers’ recommendations and requirements;
2. Company has provided training to personnel of the RCSD regarding operation of the Project as well as any and all documentation surrounding the Project;
3. The Company has obtained all Governmental approvals and such approvals have not been withdrawn, revoked, superseded, suspended, or materially impaired or amended;
4. All utilities specified or required under the Design-Build Agreement to be arranged for by the Company are connected and functioning properly;
5. The Company and the RCSD have agreed in writing upon the final punch list (or, if are unable to agree, the RCSD shall have prepared and issued the final punch list to the Company within fifteen (15) business days of the Company having submitted its final punch list to the RCSD);
6. The RCSD has received and indicated, in writing, that it has no objection to the certification by the Company that all Contract Services pertaining to the Project, excepting the items on the final punch list, is complete and in all respects is in compliance with the Design-Build Agreement;
7. The Company has delivered to the RCSD a claims statement setting forth in detail all claims of every kind whatsoever of the Company connected with, or arising out of,

the Contract Services pertaining to the Project, and arising out of or based on events prior to the date when the Company provides such statement to the RCSD; and

8. The Company has submitted written certification that all of the foregoing conditions have been satisfied and the RCSD has received and indicated, in writing, that it has no objection to the Company's certification.

Alternatively, Substantial Completion shall occur on any date certified by the RCSD, which shall have discretion to waive any of the foregoing conditions.

“Uncontrollable Circumstances” means any act, event or condition that is beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under the Design-Build Agreement, and that materially interferes with or materially increases the cost or time required for performing its obligations thereunder (other than payment obligations), to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of the Design-Build Agreement on the part of such Party.

A. Inclusions: Subject to the foregoing, Uncontrollable Circumstances shall include the following:

1. A Change in Law;
2. Naturally occurring events (but not including reasonably anticipated weather conditions for the geographic area of the WWTP) such as landslides, underground movement, earthquakes, fires, tornadoes, floods, epidemics, lightning, and other acts of God;
3. Explosion, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, terrorism, blockade or insurrection, riot or civil disturbance;
4. Nationwide strikes or strikes that by virtue of their extent or completeness make the particular goods or services effectively unavailable to the Company;
5. The failure of any appropriate federal, State, authority, or local public agency or private utility having operational jurisdiction in the area in which the Project Site is located to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Project Site (but not including reasonably anticipated power outages) which are required for the performance of the Contract Services; and
6. Acts of terror of a public enemy.

B. Exclusions: It is specifically understood that none of the following acts, events or circumstances shall constitute Uncontrollable Circumstances:

1. Any act, event or circumstance to the extent that it would not have occurred if the affected Party had complied with its obligations hereunder;
2. Changes in interest rates, inflation rates, wage rates, insurance costs, commodity prices, currency values, exchange rates or other general economic conditions;
3. Changes in the financial condition of the RCSD, the Company, its Subcontractors,

- or its affiliates affecting their ability to perform their respective obligations;
4. The consequences of error, neglect or omissions by the Company or any of its employees, agents, suppliers, Subcontractors or affiliates in the performance of the Contract Services;
 5. The failure of the Company to secure patents or licenses or similar authorizations necessary for the performance of the Contract Services;
 6. Strikes (other than nationwide strikes or strikes that by virtue of their extent or completeness make the particular goods or services effectively unavailable to the Company), work stoppages or other labor disputes or disturbances occurring with respect to any activity performed or to be performed on or off the Project Site by the Company, a Subcontractor, or any affiliate of either;
 7. Reasonably anticipated weather conditions for the geographic area of the WWTP;
 8. Labor disputes involving employees of the Company, its affiliates or Subcontractors;
 9. Union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed at the Project or otherwise increasing the cost or burden to the Company of performing the Contract Services;
 10. Any act, event, circumstance or Change in Law occurring outside of the United States;
 11. The failure of any Subcontractor or supplier to furnish labor, materials, services or equipment for any reason other than for acts or events specifically enumerated herein as Uncontrollable Circumstances;
 12. Any increase for any reason in premiums charged by the Company's insurers or the insurance markets generally for the Required Insurance;
 13. Any impact of prevailing wages, laws (including the Prevailing Wage Law) or rates on the Company's costs with respect to wages and benefits.
 14. Mechanical failure of equipment to the extent not resulting from a condition that is listed in the "Inclusions" section of this definition;
 15. The failure or delay of any Governmental Body to issue any Legal Entitlements which are required for the performance of the Contract Services;
 16. Power outages to the extent not caused by third-party utilities or resulting from a condition that is listed in the "Inclusions" section of this definition; and
 17. A Change in Law pertaining to income taxes.

"Wastewater Treatment Plant" or "WWTP" means the treatment plant located in Orangeburg, NY.

"Warranty" means any Original Equipment Manufacturer's warranty, and express or implied warranty provided by Applicable Law or common application and usage in the design and construction industry.

"Warranty Performance Bond" means a bond which secures the warranty related

responsibilities set forth herein in the event that the Performance Bond does not cover all the obligations of the Contractor under the Design-Build Agreement.

“Warranty Period” means the period commencing on the Date of Final Completion and continuing through the first anniversary of the Date of Final Completion, unless otherwise extended as provided in the Design-Build.

“Work” means the totality of the Contract Services, including but not limited to the Design Work and the Construction Work.

“Work Change Directive” means, where there is a lack of total agreement on the terms of a Change Order or insufficient time to execute a Change Order, an oral or written order prepared and signed by RCSD directing a change in the Work, prior to agreement on an adjustment in the Fixed Design/Build Price and/or the Contract Time(s).

“Working Day” means any day on the calendar, exclusive of state holidays, Saturdays, and Sundays. Unless another meaning is intended, “working days” shall mean consecutive working days.

APPENDIX B SPECIAL LEGISLATION



NEW YORK ADVANCE LEGISLATIVE SERVICE
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NEW YORK 225TH ANNUAL LEGISLATIVE SESSION
SENATE - ASSEMBLY

CHAPTER 665

SENATE BILL 7354

2002 N.Y. ALS 665; 2002 N.Y. LAWS 665; 2002 N.Y. S.N. 7354

BILL TRACKING SUMMARY FOR THIS DOCUMENT

SYNOPSIS: AN ACT in relation to authorizing the building of a wastewater treatment plant in the county of Rockland by a private company

To view the next section, type .np* TRANSMIT.

To view a specific section, transmit p* and the section number. e.g. p*1

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

[*1] Section 1. Notwithstanding the provisions of any other law to the contrary, a county sewer district in Rockland county, acting through its administrative head, is hereby authorized and empowered to issue a request for proposals, and subsequently to enter into agreements based upon such request for proposals, or to amend, supplement, modify, change or extend such agreements, including but not limited to, contracts, with any private corporation, partnership or individual, upon such terms and conditions and for such consideration and for such term or duration not to exceed twenty-five years, as may be agreed upon by said administrative head, with the approval of the county legislature, wherein such private entity is granted the right to design, construct, operate, maintain, manage, use, occupy or any of them, all or part of certain facilities it or the district owns or will own and to carry on activities or furnish services, in whole or in part relative to the manner of sewerage and wastewater treatment and collection for the district on sites approved by the district which may either be owned by the district, the county, or privately. The district, only after conducting a cost/benefit review analyzing the efficacy of such an arrangement, may enter into such agreements with a private entity based upon a determination by the district that the selected proposal is the most responsive to the district's request for proposals and is in the best interest of the district, with the overall cost of the proposal being a major criterion in the selection. The district may negotiate with any proposer. This act shall not be construed to alter or diminish a district's obligation to provide wastewater services, to comply with all applicable environmental laws and regulations, and to administer the district's services, including the assessment, levying, and collection of the expenses of the district. Such facilities, including their influent, effluent, waste, and by-products, shall be regulated and permitted as if such facilities were fully owned and operated by a municipality.

A private entity which is a party to such agreement may be granted the rights hereinbefore referred to for any purpose or purposes which shall, by utilization of such sewerage and wastewater treatment and collection facilities, benefit the people of the district or provide for the improvement of their health and welfare or aid and undertake or assist in the financing of the design, construction, operation, maintenance, and management of such facilities. The district shall not sell to any such private entity any existing wastewater treatment facility of the district.

2002 N.Y. ALS 665, *; 2002 N.Y. LAWS 665;
2002 N.Y. S.N. 7354

All existing sewerage and wastewater operations currently operated, maintained and repaired by the county of Rockland shall continue to be so operated, maintained and repaired by county employees. There shall be no loss of county positions as a result of this legislation.

The by-products, if any, generated by the facility may be sold, utilized or otherwise disposed of by the private entity pursuant to the agreement, upon such terms and conditions and for such consideration as may be agreed upon by the parties thereto.

Every agreement entered into between the district and a private entity, pursuant to the provisions of this act, for the construction of a wastewater treatment facility, shall require the payment of all applicable prevailing wages pursuant to *section 220 of the labor law*, shall require the furnishing to the district of a performance bond in the full amount of the cost of such construction, shall require that each contractor and subcontractor performing work on such construction furnish a payment bond in the full amount of its contract guaranteeing prompt payment of monies that are due to all persons furnishing labor and materials to such contractor or subcontractor, and shall contain provisions that such construction, if in excess of twenty thousand dollars, shall be conducted pursuant to *sections 101 and 103 of the general municipal law*. A copy of the above mentioned payment and performance bonds shall be kept by the district and shall be open to public inspection.

A private entity that contracts with the county of Rockland to design and construct a new advanced wastewater treatment facility shall operate, maintain and repair said facility for a period of five years at which time the operations, maintenance and repairs shall be performed by county of Rockland employees. Said employees shall be fully trained to assume the operations of said plant by the employer as deemed necessary.

Every agreement entered into between the county of Rockland or any Rockland county water or sewer district and a private entity, pursuant to this section for the construction of a water treatment facility shall require a project labor agreement as an incident of any contract. As used in this section, "project labor agreement" shall mean a pre-hire agreement pursuant to *29 U.S.C. Section 158 (f)* negotiated by a person and a union or unions.

[*2] Section 2. This act shall take effect immediately.

HISTORY:

Enacted December 3, 2002

SPONSOR: Introduced by Sen. MORAHAN -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Colman, Gromack, Calhoun) -- read once and referred to the Committee on Local Governments -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

APPENDIX C

TERM SHEET

1. General

These terms have been developed as a summary of the significant cost and risk provisions that will be included in the Design-Build Agreement that will be distributed to the Proposers via addendum to the RFP. The terms should be used by the Proposer to understand the comprehensive responsibilities to be undertaken by the Company, to assess the risks associated with the specific performance obligations, and to develop the Proposer's Price Proposal.

The Proposers must submit a mark-up of the Design-Build Agreement that will be distributed via addendum to the RFP with its Proposal. Proposers may propose modifications to the Design-Build Agreement by providing exceptions and including specific substitute language pursuant to Proposal Form 14. Proposers should be aware that the extent of deviation from the RCSD's proposed risk allocation/business arrangement will be a factor in the overall evaluation of the Proposals.

2. Term

The Design-Build Agreement shall become effective on the Agreement Date, and shall continue in effect until termination of the Warranty Period.

3. Fixed Design-Build Price and Payment

a. Fixed Design-Build Price

The Company will perform the Contract Services for the Fixed Design-Build Price as proposed on the Price Proposal Form.

The proposed Design-Build Price must include all applicable federal, state, and local taxes and duties, except for sales taxes from which the RCSD is exempt. Accordingly, the Company will afford the RCSD the benefit of any exemption from sales tax afforded to the Company based on the RCSD's exemption from the payment of sales tax.

b. Schedule of Values

The Company must submit to the RCSD and receive the RCSD's approval for the Schedule of Values apportioning the entire Fixed Design/Build Price among the different elements of the Work for purposes of periodic and final payment. The Schedule of Values shall be presented in whatever format, with such detail including labor and material breakout, and backed up with whatever supporting information the RCSD may reasonably request. The Company shall not imbalance its' Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Company shall constitute a material breach of the Design-Build Agreement. The Schedule of Values will be utilized for the Company's Payment Requests but shall only be so utilized after it has been approved in writing by the RCSD.

c. Payment Requests

Each Payment Request shall be signed by the Company and shall constitute the Company's representation that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with the Contract Documents, and that the Company knows of no reason why payment should not be made as requested.

Upon receipt of a properly completed Payment Request, the RCSD shall review the Payment Request and may also review the Work at the Project Site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Payment Request and is as required by the Design-Build Agreement. The amount of each such payment shall be the amount approved for payment by the RCSD, less such amounts, if any, otherwise owing by the Company to the RCSD or which the RCSD shall have the right to withhold as authorized by the Contract Documents. Five percent (5%) of each payment will be retained by the RCSD until Final Completion is achieved. Approval of the Contractor's Payment Requests shall not preclude the RCSD from the exercise of any of its rights, including those related to authorized withholdings, offsets and reclamation.

The submission by the Company of a Payment Request also constitutes an affirmative representation and warranty that all work for which the RCSD has previously paid is free and clear of any lien, claim, or other encumbrance of any person whatsoever. As a condition precedent to payment, the Company shall, as required by the RCSD, also furnish to the RCSD properly executed waivers of lien or claim, in a form acceptable to the RCSD, from all Subcontractors, materialmen, suppliers or others having lien or claim rights, wherein said Subcontractors, materialmen, suppliers or others having lien or claim rights, shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any liens, lien rights or other claims relating to the Work and the Project Site. Furthermore, the Company warrants and represents that, upon payment of the Payment Request submitted, title to all Work included in such payment shall be vested in the RCSD, even though responsibility for the care and maintenance of said Work rests with Company until Substantial Completion of the Project. When payment is received from the RCSD, the Company shall promptly pay all Subcontractors, materialmen, laborers and suppliers the amounts they are due for the work covered by such payment.

Within thirty (30) days of the date of the Certificate of Final Completion issued by RCSD, the RCSD shall pay the Company an amount sufficient to increase total payments to the Company to one hundred percent (100%) of the Design/Build Price less any amounts attributable to damages, and less one hundred fifty percent (150%) of the costs, as reasonably determined by the RCSD for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or threatened claims. Such a calculation by the RCSD of costs for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or threatened claims shall not bar the RCSD from exercise of its rights elsewhere herein, or otherwise as provided by law for any incomplete, defective or nonconforming work or claims which are discovered by the RCSD after the date of making such calculation or after the date of any partial or final payment,

whether or not such incomplete, defective or nonconforming work or claims were obvious or should have been discovered earlier. Final payment shall be made only upon completion of the final inspection and issuance of a Certificate of Final Completion.

If the Company owes, or following the execution of the Design-Build Agreement, comes to owe property taxes to the County, the RCSD shall hold all payments due under the Design-Build Agreement, as they come due, in a non-interest bearing escrow account. The monies due from the County shall be held in escrow unless and until all property taxes owed by the Company to the County, including all penalties and accrued penalties and interest, are paid in full.

Upon determining to hold payments in escrow, the County shall provide notice to the Company. The County shall, upon request, but no more often than once per calendar month, give an accounting of the escrow to the Company.

Upon the Company's payment in full of all property taxes due to the County, including all accrued penalties and interest, all escrowed funds will be paid to the Company as soon as practicable. The escrowed funds may be applied towards any payment that fully satisfies all outstanding property tax debts, including all accrued penalties and interest. If the County holds an auction to satisfy the property tax debt and, upon the closing of the sale after auction there remains a deficiency, the County shall apply the escrow to the deficiency, but no more than necessary to make the County whole and any remaining amounts of the escrow shall be paid to the Company as soon as practicable. The County shall not apply the escrowed funds for any other purpose. This remedy shall not be deemed a waiver of any other remedy available to the RCSD or the County or bar any other means of collecting the property tax debt due to the County.

4. Design and Construction

a. Design-Build Responsibility

The Contract Documents shall set forth the Project Technical and General Design Requirements for the Project based on the technical specifications set forth in the RFP and the Company's Proposal. The Company shall complete the design and shall complete the Project according to the Company's Final Design Submittal, as approved by the RCSD. The RCSD's approval shall be limited to whether or not the Final Design Submittal complies with the Technical and General Design Requirements and any applicable performance standards. The RCSD's approval of the Final Design Submittal and any interim design submittals shall not relieve the Company from any of its obligations under the Design/Build Agreement. The Company shall be responsible for complying with any requirements imposed by Applicable Law relating to the development of the Project, including any applicable professional licensing requirements.

b. Sole Responsibility for Design and Construction

The Company shall have complete responsibility for the design and construction of the Project, including the preparation of all Design Submittals and other design documents. The RCSD shall not have any such responsibility. The Company shall indemnify, defend and hold harmless the RCSD against any and all claims arising out of the Contract Services.

The Company shall have total liability, throughout the Term of the Design-Build Agreement, for nonconforming or defective Design Work or Construction Work, equipment and materials, whether caused by error, omission, negligence or otherwise. Failure of any vendor, the Company or Subcontractor selected by the Company, with or without concurrence by the RCSD shall not excuse the Company from its obligations or constitute an Uncontrollable Circumstance.

The Company shall be responsible to protect the Work during the Project. The Company shall be responsible for any damage to the Work, destruction of property or materials, and failure of the construction to meet Final Completion under all circumstances with the exception of a defined, Uncontrollable Circumstance. This condition shall apply regardless of any other Subcontractor, prime contractor, or the RCSD's own personnel performing any work at the Project Site.

c. Notice to Proceed

The Notice to Proceed Date shall be the date included in the Notice to Proceed issued by RCSD authorizing the Company to commence the Contract Services, in accordance with a Project schedule that is documented and agreed upon by the Parties.

Following the Notice to Proceed, the Company shall prepare and finalize (i) the Design Submittal(s), and (ii) apply for and obtain in its name or the RCSD's name, as applicable, (at its own cost) all Governmental Approvals or modifications to existing Governmental Approvals necessary for the Company to perform the Contract Services.

Following the Notice to Proceed, the RCSD shall: (i) sign any application for new Governmental Approvals or any modification to its existing Governmental Approvals prepared by the Company but which must be applied for in the RCSD's name; and (ii) review and comment on Design Submittals; and review and approve the final Design Submittal.

d. Design and Construction Review

The RCSD shall be permitted to review, monitor, inspect, and correct, as necessary, the Design Work and Construction Work. The Design Review and Construction Review Procedures are attached to the RFP as Appendix L.

e. Conditions to Substantial Completion of the Project

Substantial Completion shall not be achieved until each of the following conditions has been satisfied:

1. Company has delivered to the RCSD written certification from the equipment manufacturers that all major items of machinery and equipment included in the Project have been properly installed and tested in accordance with the manufacturers' recommendations and requirements;
2. Company has provided training, as necessary, to personnel of the RCSD regarding operation of the Project as well as any and all documentation surrounding the Project;

3. The Company has obtained all Governmental Approvals and such approvals have not been withdrawn, revoked, superseded, suspended, or materially impaired or amended;
4. All utilities specified or required under the Design-Build Agreement to be arranged for by the Company are connected and functioning properly;
5. The Company and the RCSD have agreed in writing upon the final punch list (or, if are unable to agree, the RCSD shall have prepared and issued the final punch list to the Company within fifteen (15) business days of the Company having submitted its final punch list to the RCSD);
6. The RCSD has received and indicated, in writing, that it has no objection to the certification by the Company that all Contract Services pertaining to the Project, excepting the items on the final punch list, are complete and in all respects are in compliance with the Design-Build Agreement;
7. The Company has delivered to the RCSD a claims statement setting forth in detail all claims of every kind whatsoever of the Company connected with, or arising out of, the Contract Services pertaining to the Project, and arising out of or based on events prior to the date when the Company provides such statement to the RCSD; and
8. The Company has submitted written certification that all of the foregoing conditions have been satisfied and the RCSD has received and indicated, in writing, that it has no objection to the Company's certification.

Alternatively, Substantial Completion shall occur on any date certified by the RCSD, which shall have discretion to waive any of the foregoing conditions.

f. Beneficial Occupancy

The RCSD shall have the right to take possession of and use any completed or partially completed portion of the Work, notwithstanding the time for completing the entire Work or such portions which may not have expired. Taking possession and use shall not be deemed an acceptance of any Work. The RCSD's utilization of odor control systems prior to Final Completion shall not relieve the Company of any of its obligations under the Design-Build Agreement. The RCSD's utilization of any portion of the Work prior to Final Completion of the Project shall not be a representation by the RCSD that such portions of the Work are free from defects or a waiver of any of RCSD's rights and/or remedies in connection therewith.

Upon occupancy by the RCSD, the following procedures will apply:

1. The RCSD will notify the Company as to what portion or portions of the Work have been placed into Beneficial Occupancy.
2. If the RCSD takes Beneficial Occupancy of any part of the Project, the retained amount shall be reduced below 5%, but not less than two (2) times the value of any remaining items to be completed for the Project, provided that the Company submits acceptable affidavits, certificates or waivers showing no right of lien exists

in connection with that portion of the Work, and evidence acceptable to RCSD as to the satisfaction of all claims applicable to that portion of the Work.

g. Final Punch List

The Company shall submit a proposed final punch list to the RCSD when the Company believes that the Contract Services have been Substantially Completed in compliance with the Design-Build Agreement.

h. Startup and Commissioning

The Company shall complete all Acceptance Tests, startup and troubleshoot all operating systems and provide any necessary operational training to RCSD personnel. The Company shall furnish the RCSD with all testing and certification documentation, operating manuals and equipment warranty documentation. The Company shall notify RCSD seven (7) days in advance of any Acceptance Testing or any other testing or inspections. The RCSD shall have a right to have a representative present at the testing or inspection.

i. Final Completion of the Project

The Company shall notify the RCSD, in writing of the date when the Contract Services have reached or will reach Final Completion and will be ready for final inspection and testing. Final Completion shall occur within ninety (90) days of Substantial Completion. The notice shall be given at least five (5) days in advance of said date. Final inspection and any necessary testing shall be conducted in the same manner as the inspection for Substantial Completion. When the Contract Services are finally and totally complete, in the sole judgment of the RCSD, including the elimination of all defects, and the RCSD executes a Certificate of Final Completion, the Project shall achieve Final Completion.

j. Licensed Architect/Engineer

All Design Work required by the Contract Documents shall be performed, as applicable, by licensed architects and engineers registered in New York State. In the case of termination of an architect or engineer, the Company shall provide the services of another lawfully licensed person or entity against whom the RCSD makes no reasonable objection. The Company agrees that the Agreement will contain a provision which in sum and substance states that in the event that payment(s) for professional design or engineering services are transmitted to Company, or a third-party, by the RCSD, Company or third-party shall be deemed an agent for the purposes of receipt and payment of monies and shall immediately pay such funds to the authorized entity or licensed design or engineering professional; and that the use of this payment methodology shall not alter the duties and responsibilities governing each of the signatories to the Agreement. The Company further agrees that the portion of the Fixed Design-Build Price allocable to the licensed design or engineer professional shall be specifically stated in the Agreement.

k. Ownership and Use of Premises

The Project Site shall be owned by the RCSD at all times. The Company may not treat itself as the owner of the Project or Project Site for federal tax purposes or any other purpose.

The Company must coordinate the project construction and its use of the premises in a manner that does not disrupt the daily operations of the RCSD.

5. Spare Parts And Data

As soon as practicable after approval of the list of equipment, the Company shall submit for approval a spare parts list for each different item of equipment listed. The list shall include a complete item list of parts and supplies subject to breakdown, with current unit prices and source of supply. A complete set of spare parts and supplies with an inventory list as approved by the Engineer shall be furnished to the RCSD to assure efficient operation for a period of 365 days. The foregoing shall not relieve the Company of any responsibilities under any guaranty specified herein. The above inventory list shall be submitted with the final shop drawing submission for the equipment. All spare parts shall be plainly tagged and marked for identification and ordering. The Company shall provide adequate storage and protection for spare parts. Spare parts and supplies shall be turned over to the RCSD at start-up.

6. Tools And Accessories

The Company shall, unless otherwise stated, furnish with each type, kind or size of equipment, one complete set of suitable marked, high-grade special tools and appliances which may be needed to adjust, operate, maintain or repair the equipment.

Each piece of equipment shall be provided with a nameplate, securely fastened in place and clearly inscribed with the manufacturer's name, year of manufacture and principal rating data.

7. Operation And Maintenance Manuals

The Company shall furnish the services of qualified manufacturer's representatives to instruct designated employees of the RCSD in the operation and care of all equipment. The Company shall also furnish and deliver to the RCSD six complete sets of instruction, bulletins, diagrams and other data and information required for proper operation and maintenance of the equipment, including ordering of spare parts. An Operation and Maintenance Manual shall be furnished by the Company.

The operation and maintenance manuals shall include, but not be limited to, the following topics:

- 1) Dimension drawing of the installation;
- 2) Assembly and erection drawings of the equipment;
- 3) Complete parts list with prices and name of local supplier;
- 4) Installation instructions;
- 5) Maintenance instructions including lubrication schedule;
- 6) Performance data including temperature, pressure and other limitation;

- 7) As-installed control diagrams, including color coded wiring diagrams for all electrical motor controller connections and interlock connections with other mechanical equipment; and
- 8) Step-by-step operating instructions for each piece of equipment and system, including preparation for starting, shutdown and drainage.
- 9) Operation and maintenance of air release valves on the force main.

The Company shall submit two (2) complete copies of the proposed section of the Operation and Maintenance Manual pertaining to each piece of equipment, to the Engineer for review and comment within a period of thirty (30) calendar days after the date of approved shop drawings.

The Engineer shall review and return one copy of the proposed section with comments. The final Operations and Maintenance Manual shall include all equipment and systems and shall be submitted prior to substantial completion. The Company shall submit two copies of the final Operations and Maintenance Manual to the Engineer for review. Upon the Engineer's approval, the Contractor shall deliver to the Engineer six (6) additional copies of the complete Operation and Maintenance Manual.

In addition to the requirements listed, the Operation and Maintenance manual shall include the following format:

- 1) Neatly typewritten index near the front of the manual, giving immediate information as to the location within the manual of all emergency data regarding the installation.
- 2) Use heavy-duty plastic covers with binding mechanism concealed inside the manual; 3-ring binders will be acceptable; all binding shall be subject to the Engineer's approval.
- 3) Covers: Provide front and back labels for each manual, using durable material approved by the Engineer and clearly identified on or through the front cover with at least the following information for each project:

OPERATION AND MAINTENANCE MANUAL
WASTEWATER TREATMENT PLANT
ODOR CONTROL SYSTEMS
ROCKLAND COUNTY SEWER DISTRICT NO. 1
ORANGEBURG, NEW YORK

(Name of Company)
(General subject of this manual)
(Space for approval signature of Engineer and date of approval)

8. Performance Bond and Payment Bonds

As security for the performance of the Contract Services, the Company shall provide performance and payment bonds in accordance with Section V of this RFP, and on the forms provided as Appendix D to this RFP. The date of the Performance Bond and the date of the Payment Bond must not be prior to date of the Company's signature on the Design-Build Agreement.

9. Insurance

The Company shall, at its own cost and expense, procure and maintain, the Required Insurance set forth in Appendix J, and submit to the RCSD certificates of insurance as evidence for all Required Insurance specified in Appendix J within five (5) business days after the Agreement Date and prior to the commencement of Contract Services. The County of Rockland and Rockland County Sewer District No. 1 shall be listed as additional insureds. If requested by the RCSD, the Company shall promptly provide certified copies of its policies of insurance. At all times during the term of the Design-Build Agreement, the Company and its Subcontractors, shall obtain and maintain the Required Insurance and shall pay all premiums and deductibles with respect thereto as the same become due and payable. The failure of the Company or its Subcontractors to obtain and maintain any Required Insurance shall not relieve the Company of its liability for any losses intended to be insured thereby. Should any failure to provide continuous insurance coverage occur, the Company shall indemnify and hold harmless the RCSD in the manner provided in the Design-Build Agreement from and against any loss and expense arising out of such failure.

10. Uncontrollable Circumstances

Neither the Company nor the RCSD shall be liable for the failure to fulfill their responsibilities due to an Uncontrollable Circumstance as defined in this RFP and as provided for in the Contract Documents. If the Executive Director of the RCSD determines that the event which caused the disruption of services has ended, but the Company does not resume service after notification, such failure to resume services will constitute a breach of the Design-Build Agreement.

11. Health and Safety Plan

On or prior to the Design-Build Commencement Date, the Company must have a site specific Health and Safety Plan in place that complies with Applicable Law, including but not limited to applicable Occupational Safety and Health Administration (OSHA) standards. The Health and Safety Plan shall also include applicable RCSD standards and the safety procedures, including but not limited to safety procedures for work in confined spaces.

12. Assignment of Design-Build Agreement

The Company shall not assign, transfer, convey, sublet or otherwise dispose of all or any part of the Company's right, title, or interest in the Design-Build Agreement (including without limitation through a sale of assets or ownership interest, merger, consolidation other change of control) to any third-party, or assign all or any portion of compensation then or thereafter due under the terms thereof, without the previous written consent of the RCSD. If the Company

violates this provision, the RCSD shall have the right, in its sole discretion, to terminate the Design-Build Agreement without prior notice to the Company and without an opportunity for the Company to cure such failure, and in the event of such termination, the Company shall forfeit all monies earned under the Design-Build Agreement. The RCSD may, without the consent of the Company, make assignments, create such security interests in its rights under the Design-Build Agreement and pledge such monies receivable thereunder as may be required in connection with the issuance of bonds.

13. Ownership of the Company

The Company shall provide the RCSD with sixty (60) days prior written notice of any change of any nature in the ownership, or ownership structure, of the Company or any parent, subsidiary or affiliate thereof, including, without limitation, any transfers of shares of stock, membership or other ownership units of the Company, parent, subsidiary or affiliate. In addition, if the Company is a privately held company, the Company shall provide the RCSD with sixth (60) days prior written notice of any changes in the officers, principals or directors of the Company. Subsequent to any such notices, the Company shall provide, without limitation, upon request of the RCSD any information requested by the RCSD related to such change in ownership, officers, principals or directors or ownership structure. At any time within sixty (60) days following the RCSD's receipt of such supporting information, the RCSD shall have the right to terminate the Design-Build Agreement upon thirty (30) days' notice to the Company. In the event of a violation of this provision by the Company, the RCSD shall have the right in its sole discretion to terminate the Design-Build Agreement without prior notice or cure period, and in the event of such termination, the Company shall forfeit all monies earned thereunder.

14. Indemnification by the Company

The Company shall protect, indemnify and hold harmless the RCSD and its representatives, officers, employees and Subcontractors (the "Indemnified RCSD Parties") from and against all liabilities, damages, claims, judgments, expenses, or actions, and will defend the Indemnified RCSD Parties in any suit, including appeals, for personal injury to, or death of, any person, or loss or damage to property arising out of or resulting from the performance or nonperformance of the Company's obligations under the Design-Build Agreement or a breach of its obligations thereunder.

The Company shall reimburse the RCSD for any actual damages or costs, as well as court costs and reasonable attorney's fees, related to or arising out of the Company's failure to perform the Company's obligations as required by the Contract Documents. This remedy shall be in addition to, not in lieu of, any other remedies of the RCSD provided by law, equity, or the Design-Build Agreement.

15. Subcontractors

Upon execution of the Design-Build Agreement, the Company shall identify to the RCSD, in writing, those parties Company intends on using as Subcontractors on the Project. Any changes to this list at any time shall be subject to the prior approval of the RCSD. The RCSD shall, in

writing, state any objections the RCSD may have to one or more of such Subcontractors. The Company shall not enter into a Subcontract with an intended Subcontractor to whom the RCSD reasonably objects. If at any time the RCSD objects to a Subcontractor, the Company shall solicit proposals from potential replacements and shall submit the names of the replacement Subcontractor to the RCSD for approval without an increase in the Design/Build Price.

The Company, upon request by the RCSD, shall provide the RCSD with copies of any Subcontract, whether requested prior or subsequent to the Subcontract being executed. Failure of a Company to comply with this requirement shall provide cause for termination of the Design-Build Agreement. The Company shall assign all Subcontracts to the RCSD if the Design-Build Agreement is terminated for any reason.

16. Withholding

In the event that the Company fails to perform any of the Company's obligations in accordance with the Contract Documents, the RCSD shall have the right to withhold payments to the Company to the extent of any amount owed by the Company under any provisions of the Design-Build Agreement. This remedy is in addition to, and not in lieu of, any other rights of the RCSD provided by law, equity or the Design-Build Agreement.

17. Joint Liability

If the Company is composed of more than one individual, corporation or other entity, each of the entities comprising the Company shall be jointly and severally liable for Design-Build Agreement breaches and resultant damages.

18. Binding Effect

The provisions, covenants, and conditions in the Design-Build Agreement apply to bind the Parties, their legal heirs, representatives, successors, and assignees.

19. Insolvency

If at any time prior to the date fixed as the termination of the term of the Design-Build Agreement, there shall be filed by or against said Company, in any court pursuant to any statute either of the United States or of any State, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Company's property, and within thirty (30) days thereof Company fails to secure a discharge thereof, or if Company makes an assignment for the benefit of creditors, or petition for or enters into an arrangement, the Design-Build Agreement may be declared canceled and terminated and in which event neither Company nor any person claiming through or under Company or by virtue of any statute or of an order of any court shall be entitled to the Design-Build Agreement nor any rights therewith.

If the Design-Build Agreement is annulled under this section, the Company shall not be entitled to any damages on account thereof nor shall such annulment affect the right of the RCSD to recover against the Company or its surety damages which may arise, or extra costs which may be incurred by the RCSD as the result of the failure of the Company to carry out the terms of the Design-Build Agreement.

20. No Consequential or Punitive Damages

In no event shall either the RCSD or the Company be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or nonperformance of its obligations or otherwise under the Design-Build Agreement, or the material inaccuracy of any representation made in the Design-Build Agreement, whether such claims are based upon Design-Build Agreement, tort, negligence, warranty or other legal theory.

21. Forum for Dispute Resolution

All legal actions and proceedings related to the Design-Build Agreement or to any rights or any relationship between the Parties arising therefrom shall be solely and exclusively initiated and maintained in the New York State Supreme Court located in Rockland County. The Parties expressly waive any right otherwise provided by any Applicable Law to remove the matter to any other state or federal venue.

22. Liquidated Damages

The Design-Build Agreement will provide that the Company shall pay the RCSD the sum of One Thousand Dollars (\$1,000.00) per day for each and every calendar day of unexcused delays in achieving Substantial Completion beyond the date set forth in the Design-Build Agreement for Substantial Completion. Additionally, the Design-Build Agreement will provide that the Company shall pay the RCSD the sum of Five Hundred Dollars (\$500.00) per day for each and every calendar day of unexcused delays in achieving Final Completion beyond the date set forth in the Design-Build Agreement for Final Completion. Any sums due and payable by the Company shall be payable, not as a penalty, but as Liquidated Damages representing a reasonable and fair approximation of the damages likely to be sustained by the RCSD as a result of the Company's delay, estimated at the time of executing the Design-Build Agreement. When the RCSD reasonably believes that Substantial Completion or Final Completion will be inexcusably delayed, the RCSD shall be entitled, but not required, to withhold from any amounts otherwise due the Company an amount then believed by the RCSD to be adequate to recover Liquidated Damages applicable to such delays. If and when the Company overcomes the delay in achieving Substantial Completion or Final Completion, for which RCSD has withheld from payment amounts sufficient to cover Liquidated Damages commensurate with the anticipated delays, the RCSD shall promptly release to the Company those funds withheld as liquidated damages for anticipated delays which did not occur, and as such were not incurred by the Company. Nothing in this section shall be constructed to limit any non-damage remedies, including termination, also provided for with respect to any such nonperformance, breach or default.

23. Non Discrimination

The Company shall not discriminate nor permit discrimination by any of its officers, employees, agents and representatives against any person because of age, race, color, religion, national origin, sex, sexual orientation, physical or mental disability, or any other protected status. The Company will take all actions reasonably necessary to ensure that applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion,

national origin, sex, sexual orientation, physical or mental disability, or any other protected status. Such action shall include, without limitation, recruitment and recruitment advertising; layoff or termination; upgrading, demotion, transfer, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Company shall impose the non-discrimination provisions of this section by Design-Build Agreement on all Subcontractors hired with the RCSD's consent to perform work related to performance of its obligations and shall take all reasonable actions necessary to enforce such provisions. The Company will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Proposers agrees to comply with the provisions of the Americans with Disabilities Act of 1990 (ADA) prohibiting discrimination on the basis of disability with regard to employment policies and procedures, structural and program accessibility, transportation and telecommunications. Contractors shall have in place sexual harassment policies that are compliant with the New York Human Rights Law ("NYHRL"), and shall provide annual training to all of their employees in accordance with the NYHRL.

24. Breach of Design-Build Agreement

If the Company fails to perform or to perform in a satisfactory manner as required in the Design-Build Agreement, or to perform in compliance with Applicable Law, the RCSD shall have the right to take whatever corrective action as the RCSD deems appropriate, including, but not limited to, withholding of Design-Build Agreement payments, terminating the Design-Build Agreement or calling upon the surety which has issued the Performance Bond and all interest which may have accrued from the date of initial deposit with the RCSD.

Any unjustified failure to provide services as required in the Design-Build Agreement will constitute breach of Design-Build Agreement. The Executive Director of the RCSD will make the determination of when a breach of Agreement exists and shall notify the Company as provided for in the Design-Build Agreement.

25. Termination

- a. If the Company refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will insure its completion within the time specified in the Design-Build Agreement, or any extension thereof, or fails to complete said Work within such time, the RCSD may, by written notice to the Company, terminate the Company's right to proceed with the Work or such part of the Work as to which there has been delay. In such event, the RCSD may take over the Work and prosecute the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the Work, such materials and appliances as may be on the site of the Work and necessary therefor. Whether or not the Company's right to proceed with the Work is terminated, the Company and its sureties shall be liable for any damage or cost to the RCSD resulting from the Company's refusal or failure to complete the Work within the specified time.
- b. Should the Company fail to perform as required by the Contract Standards, RCSD may cancel the order and/or contract. In such event, the County will assume no

responsibility for, nor will it reimburse the Company for any expense or loss to the Company because of such termination or cancellation. RCSD will then purchase products and/or services on the open market and charge back the differences to the defaulting vendor.

- c. If the RCSD so terminates the Company's right to proceed, the resulting damage will include, but not be limited to, liquidated damages, as otherwise described in the Design-Build Agreement, for each day of delay until the Work achieves Final Completion, together with any increased costs occasioned by the RCSD in completing the Work and any other damages allowed under the Design-Build Agreement or Applicable Law.
- d. The Company's right to proceed shall not be so terminated nor the Company charged with resulting damage if:
 1. The delay in the completion of the Work arises from an Uncontrollable Circumstance;
 2. The Company, within five (5) days from the beginning of any such delay notifies the RCSD in writing of the causes of delay. The RCSD shall ascertain the facts and the extent of the delay and extend the time for completing the Work when, in its judgement, the findings of fact justify such an extension.
- e. The rights and remedies of the RCSD provided in this clause are cumulative and are in addition to any other rights and remedies provided by law or under the Design-Build Agreement.
- f. The Agreement may be declared suspended in whole or in part or canceled in whole or in part by the RCSD, upon notice to the Company, and in certain cases ((1), (2), (3), and (7) below) following an opportunity for the Company to cure such failure, for any of the following reasons:
 1. Unexcused failure of the Company to commence Contract Services within the time specified in the Design-Build Agreement.
 2. Failure of the Company to provide and maintain sufficient labor and equipment to properly execute the Contract Services.
 3. The unauthorized assignment of the Design-Build Agreement or any funds due therefrom.
 4. Failure to supply complete and accurate information, records or accounts as provided in the Design-Build Agreement.
 5. Violations of New York State Prevailing Wage Laws.
 6. Failure to obtain and maintain the Performance Bond, the Labor and Materials Payment bond or the Required Insurance as security for performance of the Design-Build Agreement.
 7. Failure on the part of the Company to comply with the Design-Build Agreement or any material requirement stated therein, or to comply with any requirements

of the RCSD.

- g. If the Design-Build Agreement is suspended or canceled in accordance with section (f) above, the Company shall discontinue the Contract Services or such part thereof as the RCSD shall designate. Upon such suspension or cancellation, the RCSD shall have the power to perform and complete, itself, by agreement or otherwise with another general contractor or combination of subcontractors, as it may determine, the Contract Services or such part thereof as it may deem necessary, and the Company agrees that the RCSD shall have the right to procure equipment, labor and materials necessary for the completion of the Contract Services. If the expense to the RCSD of completing the Contract Services shall exceed the amount which would have been payable under the Design-Build Agreement, then the Company and/or its surety shall pay the amount of such excess to the RCSD on notice from the RCSD of such excess due.
- h. When any particular part of the Contract Services is being carried on by the RCSD by Design-Build Agreement or otherwise, the Company shall continue the remainder of the Contract Services in conformity with the terms of the Design-Build Agreement.
- i. In the case of termination of the Design-Build Agreement before completion from any cause whatever, the Company, if notified to do so by the RCSD, shall promptly remove any part of all of its equipment and supplies from the property of the RCSD, failing which the RCSD shall have the right to remove such equipment and supplies at the expense of the Company.

26. Optional Termination

- a. The RCSD may, at its option, terminate the Design-Build Agreement, in whole or in part, at any time by ten (10) days' written notice (delivered by Certified or Registered Mail, Return Receipt Requested) to the Company, whether or not the Company is in default. Upon such termination, Company shall waive any claims for damages, including loss of anticipated profits, on account thereof, but as the sole right and remedy of Company, RCSD shall pay Company in accordance with subparagraph (c) below, provided, however, that those provisions of the Design-Build Agreement which by their very nature survive Final Completion under the Design-Build Agreement shall remain in full force and effect after such termination.
- b. Upon receipt of any such notice, Company shall, unless the notice requires otherwise:
 - 1. immediately discontinue work on the date and to the extent specified in the notice;
 - 2. place no further orders or subcontracts for materials, services or facilities, other

than as may be necessary or required for completion of such portion of Work under the Design-Build Agreement that is not terminated, and;

3. promptly make every reasonable effort to obtain cancellation upon terms satisfactory to the RCSD of all orders and subcontracts to the extent they relate to the performance of Work terminated or assign to RCSD those orders and subcontracts and revoke agreements specified in such notice.
- c. Upon any such termination, RCSD will pay to the Company an amount determined in accordance with the following (without duplication of any item):
1. all amounts due and not previously paid to the Company for Work completed in accordance with the Design-Build Agreement prior to such notice and for Work thereafter completed as in such notice;
 2. the cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in subparagraphs (b) (3) above; and
 3. any such reasonable costs incidental to such termination of Work, including demobilization.

The foregoing amounts will include a reasonable sum, under all of the circumstances, as profit for all Work satisfactorily performed by the Company.

27. Approval of Federal, State and Local Agency

Notwithstanding any other provisions of the Design-Build Agreement, RCSD shall not be liable for any payment or compensation to Company until the Contract Services rendered by Company under any resulting Design-Build Agreement meet the approval and standards of any other Federal, State or local agency, authority, commission or body, which has jurisdiction over the Contract Services and which provides funding in whole or in part for the Contract Services provided under the Design-Build Agreement.

28. Financial Records/Audit

The Company shall maintain records of all of its financial transactions, including all expenses and disbursements, which relate to the Design-Build Agreement. Such records shall be kept in accordance with GAAP (Generally Accepted Accounting Practices) and/or RCSD record-keeping requirements, and each transaction shall be documented. Such records shall be made available to RCSD for inspection or audit upon request. No compensation or fee for Contract Services will be due Company unless or until financial statements have been filed with the RCSD, if and when required by the RCSD.

29. Liability Only for Monies Budgeted

The Design-Build Agreement shall be deemed executory to the extent that the monies are appropriated in the current budget of RCSD for the purposes of the Design-Build Agreement, and

no liability shall be incurred by RCSD, or any department, beyond the monies budgeted and available for this purpose. The resulting Design-Build Agreement is not a general obligation of RCSD. Neither the full faith and credit nor the taxing power of the County is pledged to the payment of any amount due or to become due under the Design-Build Agreement. It is understood that neither the Design-Build Agreement nor any representation by any County or RCSD employee or officer creates any obligation to appropriate or make monies available for the purpose of the Design-Build Agreement. The Design-Build Agreement shall not be effective unless the monies to be paid thereunder by RCSD are appropriated in RCSD's budget.

30. Claims by Company

Claims by the Company against the RCSD shall be subject to the terms and conditions of the Design-Build Agreement. Any claims not filed with the RCSD in compliance with the Design-Build Agreement shall be deemed conclusively to have been waived and shall be dismissed.

The Company shall continue to perform the Contract Services regardless of the existence of any claims submitted by the Company. In a claim by the Company against the RCSD for compensation in excess of the Design/Build Price, any liability of the RCSD to the Company shall be strictly limited and computed in accordance with the Contract Documents and shall in no event include indirect costs (such as a home office overhead) or consequential damages of the Company or any estimated costs or damages.

31. Warranties

a. Performance Warranty

After Final Completion, the Company shall provide a Warranty during the Warranty Period that the Odor Control Systems and the heating and ventilation system improvements meet the Final Design Submittal and any and all requirements contained in the Design-Build Agreement (the "Performance Warranty").

If the Project fails to satisfy the Performance Warranty, the Company shall, upon notice from the RCSD, promptly begin and continue to take all necessary actions to satisfy the Performance Warranty. The costs of any such correction, repair or replacement required to achieve satisfaction of the Performance Warranty shall be paid by the Company without reimbursement from the RCSD. Before any necessary correction, repair or replacement is initiated by the Company, a plan indicating the scope and schedule for such work shall be approved by the RCSD.

b. The Design/Build Work Warranty

The Company warrants to RCSD that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Company's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides RCSD with greater

warranty rights than set forth in this Section or the Contract Documents. Company will provide RCSD with all manufacturers' warranties upon Substantial Completion.

c. Manufacturer's Warranty

The Company shall, for the protection of the RCSD, obtain from all Subcontractors, vendors, suppliers and other persons from which the Company procures structures, improvements, fixtures, machinery, equipment and materials to be incorporated in the Project such warranties and guarantees as are normally provided with respect thereto and as are specifically required in the Agreement ("Manufacturers' Warranties"), each of which shall be assigned to the RCSD to the full extent of the terms thereof.

d. Call-Back Obligations

The Company must correct any and all defects in material and/or workmanship which may appear during the Warranty Period, by repairing (or replacing with new items or new materials, if necessary) any such defect at no cost to the RCSD, within a reasonable period of time, and to the RCSD's satisfaction.

If the Company fails to commence and correct the condition within the required time frames, the RCSD may commence and correct the condition and the Company shall be responsible for all costs incurred in performing such correction.

This Warranty does not establish a period of limitation with respect to other obligations that the Company has under the Design-Build Agreement or under Applicable Law with respect to the Work, including warranties and obligations with respect to latent defects.

The "call-back" obligations for re-done or corrected elements of the Work shall extend the Warranty Period, if necessary, to provide a one (1) year period following acceptance by the RCSD of such re-done or corrected Work.

The Company acknowledges that the Fixed Design/Build Price contains the entire compensation due the Company for any and all warranty work to be performed by the Company or its Subcontractors or agents.

e. Warranty Performance Bond

If the Performance Bond does not cover all the warranty obligations of the Company included in the Design-Build Agreement, then the warranty related responsibilities shall be secured by a Warranty Performance Bond in accordance with same provisions of the Design-Build Agreement that are applicable to the Performance Bond.

32. Changes to the Work

The RCSD may at any time, without notice, by written order, make any changes in the Work, additions or deletions, within the general scope of the Design-Build Agreement, including but not limited to changes:

- 1) In the specifications (including drawings and designs);
- 2) In the time, method or manner of performance of the Work;
- 3) In the RCSD furnished facilities, equipment, materials, services or site, or;
- 4) In directing acceleration of the performance of the Work.

All changes in the Design-Build Agreement, additions or deletions, must be approved in writing by the RCSD prior to the Company or subcontractors commencing the contract modifications. Any “extra work” or Change Order performed without a properly executed written Change Order shall be at no cost to the RCSD.

Changes in the Work can be achieved through a Change Order or Work Change Directive, as further defined below.

In the absence of a written Change Order, if the RCSD shall direct, order or require any work, whether orally or in writing which the Company deems to be “extra work,” (a “Work Change Directive”) the Company shall nevertheless comply therewith, but shall within five (5) days give written notice to the RCSD stating why the Company deems it to be “extra work”. The written notice is for the purpose of (1) allowing the RCSD the opportunity to cancel the order, direction or requirement; (2) allowing the RCSD an opportunity to keep accurate record of materials, labor and other items used to perform the Work; and (3) allowing the RCSD an opportunity to take action as it may deem advisable in light of the Company’s claim. Accordingly, the failure of the Company to serve notice shall be deemed to be a conclusive and binding determination on the Company’s part that the direction, order or requirement of the RCSD is not “extra work” and shall be deemed to be a waiver by the Company of all claims for additional compensation or damages.

The RCSD and the Company shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

33. Pricing of Changes

The equitable adjustment for any change in the Work (increase/decrease, credit) shall be determined by one or more of the following methods:

- a) By prices specifically named in the Design-Build Agreement or Proposals.
- b) By acceptance of agreed-upon unit prices based on the estimated cost plus overhead and profit as applicable.
- c) By estimate of the actual cost of labor and materials plus overhead and profit, cost to be determined as the work progresses.
- d) By estimate of the value as discernible from the form of invoice.

- e) By acceptance of agreed-upon lump sum prices based on the estimated cost.

“Overhead” shall be defined as an allowance to compensate for all costs, charges and expenses, direct or indirect, except for the actual cost of labor and material. Overhead shall be considered to include, but not be limited to insurance bond or bonds, field and office supervisors and assistants above the level of foremen, use of hand tools and minor equipment, incidental job burdens, general office expense, etc.

Actual cost of labor and material shall be defined as the amount paid for the following items, to the extent determined reasonable and necessary:

- Item 1 - Cost of materials delivered to the job site for incorporation into the Work.
- Item 2 - Wage paid to workmen and foremen and wage supplements paid to labor organization in accordance with current labor agreements, if any.
- Item 3 - Premiums or taxes paid by the Company for workmen's compensation insurance, unemployment insurance, FICA tax and other payroll taxes as required by law, not of actual and anticipated refunds and rebates.
- Item 4 - Sales taxes paid as required by law.
- Item 5 - Allowance for the use of construction equipment (exclusive of hand tools and minor equipment) as approved for use by the RCSD. The rental rate for self-owned equipment used shall be reasonable and shall be based upon those prevailing in the area of the County where such work is to be done, and shall be agreed to in writing before the work is begun. For equipment which is already on the project, the rental period shall start when ordered to work by the RCSD, and shall continue until ordered to discontinue by the RCSD. For equipment which has to be brought to the Project Site for a specific operation ordered by the RCSD, the RCSD will pay all loading and unloading costs, also all transportation costs to and from the Project within the boundaries of Rockland County provided, however, that the cost of return transportation shall not exceed that of moving the equipment to the Project. The minimum payment for any one rental period shall be for four (4) hours, unless otherwise agreed upon between the RCSD and the Company. The rental period shall begin at the time the equipment has been unloaded on the Project, and shall end on and include the day the order to discontinue the use of the equipment is given to the Company by the RCSD. The daily rate shall apply for rental periods of four (4) calendar days or less, the weekly rate shall apply for rental periods of more than four (4) and not exceeding twenty-one (21) calendar days, and the monthly rate shall apply for rental periods in excess of twenty-one (21) calendar days. For fractional periods above the full unit rental period (day, week, month) reimbursement shall be proportioned on the basis of the applicable rental period (Day = 8 Hours; Week = 7 Calendar Days; Month = 30 Calendar Days). In the

alternative, the RCSD may approve for reimbursement a rate representing the allocable costs of ownership. Self-owned equipment is defined to include equipment rented from controlled or affiliated companies. Rented equipment shall be paid for at the actual rental cost. Gasoline, oil and grease required for operation and maintenance of all rental equipment shall be paid for at the actual cost.

- Item 6 - When the material furnished under item (1) is used material, its value shall be pro-rated to the value of new material, but should be no more than its cost. When the salvage value of salvable material furnished under Item (1) exceeds the cost of salvage, a suitable credit shall be given to the RCSD.

Regardless of the method used to determine the value of any change, the Company shall submit evidence satisfactory to the RCSD to substantiate each and every item that constitutes the Company's proposal of the value of the change. The amounts allowed for overhead and profit shall not exceed the applicable percentages as established in the following paragraphs.

If the work is done directly by the Company, under method (b), (c), (d), or (e), overhead and profit may be added to the cost of the labor and materials. The amount allowed for overhead and profit shall be determined by negotiations. The objective of the negotiations shall be the exercise of sound business judgment including a fair and reasonable profit based on the RCSD's assumption of risk and input to total performance. In no case, however, shall the percentage for overhead be more than 10% of the cost of labor and materials. The percentage for profit shall in no case be greater than 10% of the cost of labor, materials and overhead. These maximum allowable overhead and profit percentages shall be applicable to all changes (increase/ decrease, credit). No amount for overhead and profit shall be allowed on the premium portion of overtime pay. No amount for overhead and profit shall be allowed on payroll taxes which include unemployment insurance, FICA tax, workman's compensation, overtime portion of pay, and other payroll taxes required by law. No overhead and profit shall be allowed for insurances the Company is contractually required to maintain.

If the work is done by a subcontractor under method (b), (c), (d), or (e) the subcontractor may be compensated for overhead and profit negotiated but with a maximum allowable overhead of 5% of the cost of labor and materials and a maximum profit of 10% of the cost of labor, materials and overhead. These overhead and profit percentages shall be considered to include all allowances to subcontractors, including the subcontractor's overhead and profit. These maximum allowable overhead and profit percentages shall be applicable to all changes (increase/decrease, credit). No amount for overhead and profit shall be allowed on the premium portion of overtime pay. No amount for overhead and profit shall be allowed on payroll taxes which include unemployment insurance, FICA tax, workman's compensation, overtime portion of pay, and other payroll taxes required by law. No overhead and profit shall be allowed for insurances the Company is contractually required to maintain.

The Company shall only be entitled to a maximum allowable overhead of 5% for subcontractors' costs, overhead, and profit. The Company is not entitled to profit or any other compensation for subcontractors' work. The RCSD shall determine by which of the foregoing methods the value of any changes shall be computed.

34. . New York State Water Infrastructure Improvement Act Grant

This Project has been awarded a NYS Water Infrastructure Improvement Act grant. The terms, conditions, and requirements of the Design-Build Agreement shall include and comply with any and all conditions placed upon the Project by the Environmental Facilities Corporation ("EFC") in connection with the grant, including the NYS Environmental Facilities Corporation Program Requirements and Bid Packet for Construction Contracts, attached to the RFP as Appendix M. The Company must explicitly agree to comply therewith. A copy of the grant award is attached to the RFP as Appendix O.

APPENDIX D**FORM OF PERFORMANCE BOND AND FORM OF LABOR AND MATERIALS
PAYMENT BOND**

[FORM OF PERFORMANCE BOND]

Bond No. _____

KNOW ALL MEN BY THESE PRESENT, that we _____ with a place of business at _____ as principal (the “Principal”), and _____, a [corporation] qualified to do business in the State of New York, with a place of business at _____ as Surety (the “Surety”), are held and firmly bound unto the Rockland County Sewer District No. 1 as Obligee (the “Obligee”), in the sum of *[insert amount and spell out bond penal sum]* lawful money of the United States of America (the “Penal Sum”), to be paid to the Obligee, for which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these present.

WHEREAS, the Principal has assumed and made a contract with the Obligee, bearing the date of _____, and entitled the Design-Build Agreement for Odor Control System Replacements and Miscellaneous Heating and Ventilation System Improvements at the Wastewater Treatment Plant in Orangeburg, NY (the “Design Build Agreement”), for demolition and replacement of odor control systems and the performance of various heating and ventilation system improvements at the Wastewater Treatment Plant, all in accordance with the terms of such Design Build Agreement and which Design Build Agreement by reference is made a part hereof.

NOW THE CONDITIONS of this obligation are such that if the Principal and all Subcontractors or Suppliers under said Design-Build Agreement shall well and truly keep and perform all the undertakings, covenants, agreement, terms, and conditions of said Design-Build Agreement on their parts to be kept and performed during the original term of said Design-Build Agreement and any extensions thereof that may be granted by the Obligee, with or without notice to the Surety, and shall also well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions of any and all duly authorized modifications, alterations, changes or additions to said Design-Build Agreement, the obligations of the Surety set forth herein shall become null and void, otherwise such obligations shall remain in full force and effect.

Whenever the Principal shall be declared by the Obligee to be in default under the Design-Build Agreement, the Obligee having performed the Obligee’s material obligations thereunder, the Surety may promptly remedy the default whatever it may be or shall promptly perform the Design-Build Agreement in accordance with all of its terms and conditions. To the extent that the Surety elects to not remedy default nor promptly perform the Design-Build Agreement, the Surety shall make payment to the Obligee up to the Penal Sum of this instrument.

IN THE EVENT the Design-Build Agreement is abandoned by the Principal, or is terminated by the Obligee, under the applicable provisions of the Design-Build Agreement, the Surety hereby further agrees that the Surety shall, if requested in writing by the Rockland County Sewer District No. 1, promptly take all such actions as is necessary to complete said Design Build Agreement in accordance with its terms and conditions.

IN WITNESS WHEREFORE, the Principal and Surety have hereto set their hands and seals this _____ day of _____, 20__.

PRINCIPAL SURETY

[Name and Seal] [Attorney-In-Fact][Seal]

[Title] [Address]

[Phone]

Attest: _____ Attest: _____

The rate for this Bond is _____% of the first \$ _____ and _____% for the next \$ _____.

The total premium for this Bond is \$ _____.

NOTE: The date of this Bond must not be prior to date of the Company's signature on the Design-Build Agreement.

[END OF PERFORMANCE BOND]

LABOR AND MATERIALS PAYMENT BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENT, that we _____ with a place of business at _____ as principal (the “Principal”), and _____, a [corporation] qualified to do business in the State of New York, with a place of business at _____ as Surety (the “Surety”), are held and firmly bound unto the Rockland County Sewer District No. 1 as Oblige (the “Obligee”), in the sum of *[insert amount and spell out bond penal sum]* lawful money of the United States of America (the “Penal Sum”), to be paid to the Oblige, for which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these present.

WHEREAS, the Principal has assumed and made a contract with the Oblige, bearing the date of _____, and entitled the Design-Build Agreement for Odor Control System Replacements and Miscellaneous Heating and Ventilation System Improvements at the Wastewater Treatment Plant in Orangeburg, NY (the “Design-Build Agreement”), for demolition and replacement of odor control systems and the performance of various heating and ventilation system improvements at the Wastewater Treatment Plant, all in accordance with the terms of such Design-Build Agreement and which Design-Build Agreement by reference is made a part hereof.

NOW, THE CONDITIONS of this obligation are such that if the Principal makes payment of all sums due for labor, materials and equipment furnished for use in the performance of the Design-Build Agreement (including any amendments or modifications thereto) and defends, indemnifies and holds harmless the Oblige from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Design Build Agreement, then the Surety and the Principal shall have no obligation under this Bond.

The Surety’s obligation to the Oblige under this Bond shall arise after the Oblige provides notice to the Principal and Surety of claims, demands, liens or suits against the Oblige or the Oblige’s property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Design Build Agreement.

The Surety shall promptly and at the Surety’s expense defend, indemnify and hold harmless the Oblige against a duly tendered claim, demand, lien or suit against the Oblige or the Oblige’s property.

IN WITNESS WHEREFORE, the Principal and Surety have hereto set their hands and seals this _____ day of _____, 20_____.

PRINCIPAL

SURETY

[Signature]

[Signature]

[Printed Name and Seal]

[Printed Name and Seal]

[Title]

[Title]

[Address]

[Address]

[Phone]

[Phone]

Attest:_____

Attest:_____

The rate for this Bond is _____% of the first \$_____ and _____% for the next \$_____.

The total premium for this Bond is \$_____.

NOTE: The date of this Bond must not be prior to date of the Company's signature on the Design-Build Agreement.

[END OF LABOR AND MATERIALS PAYMENT BOND]

APPENDIX E

PROJECT TECHNICAL AND GENERAL DESIGN REQUIREMENTS

1.0 General

The Upgrade of the Odor Control Systems and Miscellaneous Heating and Ventilation System Improvements – Design Recommendation Report dated May 2017 (Design Report) shall be used as the basis of design. Excerpts of the report are below. Any portions in this appendix that are more stringent than the Design Report shall apply.

The twelve (12) existing wet scrubber and carbon adsorption systems will be demolished in their entirety (The B7 odor control vessel has already been demolished) and replaced (system B8 is demolished only), extending from the carbon filters up to the connection point of the new odor control ductwork to the existing ductwork, with dry engineered media systems consisting of a carbon vessel, blower, demister and controls as the primary means of odor control with redundant systems, one operating and one standby.

Also, provide odor control for four additional areas: the A-side primary pumping chamber and electric room, the A-side secondary pumping chamber and electric room, the B-side primary pumping chamber and the B-side secondary pumping chamber.

Also, provide miscellaneous heating and ventilation systems in 5 locations: the Storage Building, the A-side primary pumping chamber and electric room, the A-side secondary pumping chamber and electric room, the B-side primary pumping chamber and the B-side secondary pumping chamber, blower room and electric room.

Electric heaters added to A and B-Side Primary and Secondary Pump Chamber areas and the Storage Building. The odor control system B8 at the Scavenger Building will be demolished.

The Design Parameters include: ventilation rates, odorous compound concentrations, emission control requirements, vessel media specifications, room temperature, equipment and duct sizes.

Ensure the air changes per hour (acph) for the Odor Control Systems are consistent with NYSDEC requirements and industry standards.

Ensure that the Odor Control Systems meet the goal of having no detectable odor at the property line, using a design basis of 5 D/T (Dilution/Threshold)

The design parameter for Hydrogen Sulfide (H₂S) is 99.5% H₂S removal, or a maximum allowable limit of 0.05 ppm H₂S, whichever is lower.

The typical other odorous compounds shall also be treated with the new odor control system.

Media will have uniform spherical shape, size (approx.. 4mm dia.) and particle hardness (95 ball pan hardness or greater), and be of the appropriate material for that specific type of odor chemical.

Ducts sized on the basis of industry standard of 750-2,500 feet per minute duct velocity.

Achieve a temperature of 65 degrees for all areas.

Locations without redundancy include: A3, A4, B7, B9 and B10, due to limited flow rate.

Two options for carbon vessels are dual bed vessels and radial vessels.

All control panels shall be inside.

Odor testing should be performed of the various spaced in order to customize the type(s) of media to be specified for each odor control system. The different media types vary significantly in cost, as much as 300% variance in cost. Therefore, the media type for each specific odor control system shall be evaluated.

Dispersion Modeling should be performed to estimate the D/T level at the property lines to identify whether additional measures are needed to meet the no detectable odor threshold of 5 D/T.

During construction of the new odor control system, where applicable, only one carbon blower and carbon vessel may be out of service at one time at each location. The only exceptions being where tie-ins can only be made with the entire system shut down and then the shut down time should be limited to the absolute minimum required.

After the odor control systems are installed and operational, testing must be performed to verify hydrogen sulfide removal at the discharge stack. In addition, odor detection testing must be done at the property lines to verify no detectable odor 5 D/T at or beyond the property line.

Air velocities at the intake register must be verified and that they system is balanced per specified air flows from each area.

The design standards should at a minimum include NYSDEC standards, NYS Environmental Facilities Corporation (NYSEFC), New York State Code, 10 State Standards for Wastewater Facilities and TR-16, Guides for the Design of Wastewater Treatment Works, New England Interstate Water Pollution Control Commission along with any other applicable code.

The RCSD air permit shall be updated based on the final design.

The RCSD received a grant from the NYSEFC in the amount of \$3,375,000. All of the NYSEFC requirements shall be met including but not limited to MWBE, SDVOB and EEO requirements. See Appendix M for the NYS Environmental Facilities Corporation Program Requirements and Bid Packet for Construction Contracts. The goals will be applicable only to the grant amount.

For clarification, the Sludge Oxidation Building, the Storage Building and the Zimpro Building are all the same building.

If odor control units from different locations can be combined, this alternative should be evaluated.

Odor control location B7 is to be relocated. Under a current construction project, an iron sponge will be located in its current location.

2.0 Minimum Design Standards

2.1 Odor Control Minimum Design Criteria, if applicable

- 1) FRP Ductwork - The Company shall install ductwork for the collection of air from the locations described above that meet the following minimum requirements.
 - a) FRP ductwork shall be specifically designed, constructed and installed for all ductwork related to odor control scrubber systems and shall comply with the following minimum conditions:
 - Air temperature: -10 to 105°F.
 - Corrosion resistant to water vapor, wet concentrations of H₂S (up to 50 ppm), mercaptans, wet concentrations of ammonia, and other gases commonly encountered in wastewater treatment plants.
 - Pressure service: 12 inches water gauge vacuum, 16 inches water gauge positive pressure.
 - b) The FRP ductwork shall be of filament wound or hand lay-up construction. FRP ductwork shall be of flame retardant material inside and outside in accordance with NFPA-91. The FRP duct shall meet the applicable requirements of ASTM D2310, Type 1, Grade 1 or 2, with Class E liner, 20 mils minimum thickness, and be manufactured in accordance with ASTM D2996. Flanges and bolt drilling circles and diameters shall conform to NBS PS 15-69 except that flanges shall be a minimum of 0.75 inches thick. The ductwork shall be fabricated of vinyl ester resin. All interior and exterior surfaces of ducts, dampers and FRP accessories shall be coated with a minimum 90 percent resin, 5 percent antimony trioxide and nexus veil reinforcement. Exterior surfaces shall have a factory-applied paraffinated pigmented gel coat finish with UV inhibitors. The FRP ductwork shall also meet ASME RTP-1 standards.
 - c) Laminates shall consist of a 10 to 20 mil chemical resistant liner with a synthetic surface veil embedded in a resin-rich surface.
 - d) All FRP ductwork installed within the interior of any building shall be additionally protected with a two-component catalytic epoxy fire-retardant coating.
 - e) Anchor bolts and nut shall be of Type 316 stainless steel, in accordance with ASTM A276, and a minimum of 5/8-inch diameter.
 - f) Flanged expansion joints shall be designed into the ductwork system to account for axial and lateral expansion and contraction of ductwork and to dampen vibration from odor control system blowers.

- g) Isolation and shutoff dampers shall be provided to allow for close off and isolation of odor control system components. Dampers shall be heavy duty, industrial type constructed of Type 316 stainless steel or FRP. Automatic damper actuators shall be used when specific odor sources are of an intermittent nature.
- 2) Carbon Adsorption Vessels - The odor control carbon vessels shall conform to the following minimum requirements:
- a) Carbon adsorption vessels shall meet the seismic requirements for the Facilities in accordance with the Building Code of the State of New York.
 - b) The adsorption vessels should be FRP and be fabricated from premium corrosion resistant, fire retardant brominated bisphenol A vinylester resin.
 - c) FRP construction shall be in accordance with Voluntary Product Standard PS-15-69 "Custom Contact Molded Reinforced Polyester Chemical Resistant Process Equipment. Fabrication shall also conform to ASTM D3299, "Filament-Wound Glass Fiber Reinforced Polyester Chemical Resistant Tanks," ASTM D4097, "Contact Molded Fiber Reinforced Thermoset Chemical Resistant Tanks" and ASME RTP-1, "Reinforced Thermoset Plastic Corrosion-Resistant Equipment." The vessels shall be stamped with the RTP-1 accreditation.
 - d) Vessel resin system shall be an isophthalic resin suitable for continuous exposure to saturated hydrogen sulfide gas. The outer layer of the system shall receive a paraffinated gel top coat, with an ultraviolet degradation inhibitor.
 - e) Carbon support system shall be as recommended by the carbon supplier.
 - f) Vessel appurtenances shall include three 1-1/2-inch sample probes with CPVC ball valve, lifting and hold-down lugs, drain and overflow couplings with plugs, grounding rods of type 316 stainless steel construction.
 - g) If carbon is used, it shall be Calgon Carbon Corporation Centaur HSV, water regenerable type. Carbon shall be provided to fill each carbon bed to a depth of 3 feet. The activated carbon shall be suitable for the vapor phase adsorption of wastewater treatment Plant odors. No chemical impregnation of the activated carbon is permitted.
 - h) The carbon shall be of a type that does not require chemicals to be regenerated in-place. Carbon shall be regenerated using clean water.
 - i) At least one redundant odor control vessel shall be provided to allow for vessel carbon regeneration without causing interruption to the odor control flow rate of the Facilities.

- 3) Odor Control Blowers - The odor control blower(s) shall conform to the following minimum requirements:
- a) Fiberglass reinforced plastic, fire retardant fan shall be provided with entire air stream surface graphite impregnated, complete with motor, drive, guard, vibration isolation and coatings of sufficient capacity for the duty required. Fan shall operate continuously, drawing odorous air from process areas and exhausting through its scrubber unit.
 - b) Single width, single inlet, backward curved type impellor, centrifugal fan. Fan shall be tested and rated in accordance with ASHRAE 51-75 and fan shall be licensed to bear the AMCA 210-74 Test Code Seal, and be guaranteed by manufacturer to deliver rated performance.
 - c) Motors shall be explosion proof, rated for NEC Class I, Division 1, Group D, solid shaft, ball bearing, energy efficient type. Motors shall be inverter duty if the odor control flow rates call for varying airflow rates. Motor shall be of sufficient size so that there will be no overload of the motor above rated nameplate horsepower under any condition of operation from shut-off to zero head, unless otherwise specifically permitted in this Section. Motor thrust bearings shall be adequate to carry continuous thrust loads under all conditions of fan operation.
- 4) Odor Control System Controls - The system controls shall be designed to continuously monitor airflow through the packed bed carbon adsorption system. Controls shall be designed to include the following as a minimum. A single odor control system control panel shall be provided to monitor the operation of the system including the following minimum requirements.
- a) Blower inlet ductwork shall be provided with a flow measuring station consisting of a honeycomb type airflow straightening section and multiple pitot traverse array for sensing duct velocity pressure. The flow measuring station shall be constructed of Type 316 stainless steel and shall be provided with high and low pressure air ports connected by pneumatic tubing to pressure transducer.
 - c) The following blower status shall be monitored: Blower On/Off, blower motor failure, blower speed, blower airflow, blower differential pressure and VFD failure.
 - d) The inlet temperature to the odor control system shall be monitored to prevent operation of the odor control system in the event that the inlet air temperature to the odor control system falls below 35 degrees F.
 - e) The Open/Closed status of key automatic air dampers in the system shall be monitored.

- g) Each carbon vessel shall be provided with a differential pressure gauge and transmitter for local and remote monitoring of vessel pressure drop. The control system shall monitor which carbon beds are in service and which carbon bed is being regenerated.
- h) The control system shall log the amount of time that each carbon bed has been on line. The control system shall be provided with provisions for automatically controlling the regeneration of the selected odor control bed.

2.2 Electrical

The electrical system shall be designed and constructed in accordance with the following requirements:

1. Motor starters shall be designed as NEMA rated. VFDs and/or solid-state reduced voltage starters with bypass shall be provided for all motors over 30 HP.
2. VFDs shall be designed to accept automatic control signals as required for the process they are a part of.
3. Equipment enclosure shall be designed as follows:
 - General, Non-Classified Areas - NEMA 12.
 - Wet, Outdoor, Corrosive Areas - NEMA 4X.
 - Hazardous Areas - NEMA 7
4. All electrical equipment, conduit, conductors, control panels, control panel components, power distribution panels, circuit breakers, motor control centers, and the like shall be designed with a unique designation and shall be provided with a nameplate or label. The nameplate and label information shall be recorded on the as-built drawings.
5. All instrumentation and control conductors shall be isolated from power conductors (i.e., do not design instrumentation and control conductors to be run in the same conduit as power conductors).

6. Design a separate conduit for all motor-driven equipment power feeds from the power distribution equipment to the load (i.e., do not run feeders for more than one piece of motor-driven equipment in the same conduit).
7. The conduits shall be plastic encased in a minimum of 6” of concrete if buried. Conduits above grade shall be galvanized steel, hot-dipped with zinc over the entire length, including threads.
8. All electrical equipment shall have a minimum of 36 inch space in front of the units.
9. The power distribution system shall have local disconnect switches for all motor-driven equipment.
10. The material for control panels shall be 316 stainless steel.
11. The material for hangers and supports shall be 316 stainless steel.

2.3 Heating and Ventilating

2.3.1 General

The heating and ventilating (HV) systems and components shall be designed to meet local, state and federal codes.

The design ventilation rates for the treatment plant process areas shall be at a minimum in accordance with the Design Report. Equipment design shall be coordinated with the hazardous rating of the individual spaces and in accordance with the National Electric Code (NEC) requirements. For the purposes of this document, ventilation air rates are rates of introducing fresh outside air and not return air.

Heating and ventilating systems shall filter the outside air and return air to prevent airborne dust and particulate matter from fouling the internal surfaces of air handling unit coils and internal ductwork surfaces.

Ventilation rates shall consider the heat gain from internal equipment in addition to heat gain from building components. The ventilation system, including air inlets and outlets shall be designed to minimize onsite and offsite noise impacts. Filtration of dilution cooling air shall be provided for

spaces with equipment that is sensitive to airborne dust and particulate. For spaces with high rates of noise generation, air inlets and air outlets shall be designed with features that will reduce the level of noise exiting the space to the outdoors or to adjacent spaces. Noise attenuation design elements shall be selected to limit noise levels at the Plant property line in accordance with local noise ordinances and requirements contained herein.

All HV equipment shall be constructed or coated to protect against exposure to low ambient concentrations of hydrogen sulfide (H₂S) gas in the range of 1 ppm. Galvanized steel, aluminum or painted steel shall be used for these applications. Process ventilation ductwork in wet and corrosive areas such as wet wells, influent rooms, sludge handling and chemical storage and handling rooms shall be constructed of Type 316 stainless steel or FRP.

2.3.2 HVAC Pumps

The design basis for HVAC pumps shall be as follows: Pumps shall be centrifugal inline or base-mounted type with nominal 1750 rpm motors. For primary circulating pumps, a duplex pump system shall be designed that shall be controlled by a dual pump control panel that includes both manual and automatic sequencing of pumps. Pump controls shall include a Hand-Off-Automatic feature. HVAC pumps shall include the following features:

- Casing - Cast iron.
- Impeller - Brass or bronze, keyed to shaft.
- Bearings - Two, oil lubricated bronze sleeves or permanently lubricated bearings.
- Shaft - Stainless steel with stainless steel sleeve, integral thrust collar.
- Seal - Carbon rotating against a stationary ceramic seat, viton fitted, 275°F maximum continuous operating temperature.
- Drive - Flexible coupling.
- Baseplate (Base-Mounted Pumps) - Cast iron or fabricated steel with integral drain rim.
- Provide inverter duty motor for VFD-driven pumps.

2.3.3 Heating Hot Water Hydronic System Piping

Heating hot water piping in non-process areas shall be Type L copper. All other heating hot water piping in process areas are to be threaded/welded steel. Dielectric connections shall be provided at all connections between copper and steel piping. Piping shall be insulated in accordance with the New York State Energy Conservation Construction Code. For concealed heating hot water

pipng in non-process areas, an FSK jacket shall be used. For exposed insulated piping, a PVC jacket shall be used.

Systems shall incorporate standard hydronic system air removal equipment (air/water separators and manual air vents) as well as thermal expansion equipment and fittings (expansion tanks, pipe expansion loop, flexible connectors at equipment, etc.). Air vents located above 8 feet above floor elevation shall be provided with vent piping down to 5 feet above finished floor with shutoff valve.

Heating hot water systems shall be provided with provisions for thermal expansion of piping to reduce stresses on piping, equipment and building structures.

Hydronic heating hot water supply and return systems shall be of a reverse/return design. Systems shall be provided with components for proper air removal and thermal expansion of the heating hot water.

Buried heating hot water distribution piping shall be of a pre-engineered, double wall, insulated design that included provisions for leak detection, building entry, anchoring and thermal expansion.

2.3.4 Terminal Heating Equipment

For process areas, industrial duty, corrosion-resistant, and/or explosion-proof terminal heating units shall be installed. The design of heating systems shall allow buildings to be heated independent of the operation of the respective building heating ventilation systems.

2.3.5 Air Handling Equipment

Air handling equipment shall be designed to match the corrosive nature of the airstreams being handled. In wet process areas, the use of corrosion resistant fans shall be used. Materials of construction shall include FRP, stainless steel, aluminum or steel with a suitable corrosion-resistant finish such as epoxy or Heresite.

For spaces that require continuous ventilation at rates of six air changes per hour or greater, the use of energy recovery ventilators with air-to-air heat exchangers shall be used.

Air handling units shall be double-wall construction and shall be located with consideration to the architectural design of the building.

Fans and blowers shall be selected for low noise and with consideration for access and maintenance. Extended lubrication fittings shall be used to improve access for lubrication of fans. In general, the use of centrifugal type fans is preferred over the use of axial flow type fans, such as wall propeller fans, from a standpoint of noise generation. Flexible duct connections and vibration isolators shall be incorporated into the design of all fan systems. Flexible duct connections for all low pressure fans 2,000 cfm and below shall be standard industrial quality. High pressure fans and blowers (over 4-inch total water gauge pressure) shall be provided with heavy duty, minimum 3/16-inch thick neoprene, flanged-type flexible connections with backing flanges.

Control systems for air handling equipment shall be designed such that the associated fans are automatically shut down upon detection of smoke or fire from the building fire/smoke detection system. Where a building-wide fire and smoke detection system is not part of the design, use of fire and smoke detection devices within ductwork and air handlers shall be provided. Use of smoke detection devices within recirculating air systems, placement of fire and smoke dampers in ductwork and ventilation openings and selection of air handling equipment to be automatically shut down shall be in accordance with NFPA 90A, Air Conditioning and Ventilating Systems.

2.3.3 Ductwork

Ductwork systems where concentrations greater than 1 ppm H₂S occur shall require the use of Type 316 stainless steel, fiberglass reinforced plastic (FRP) or PVC ductwork materials. Exterior ductwork systems shall be selected such that deterioration due to ultra-violet (UV) radiation is minimized; use of UV inhibitors shall be required for exterior ductwork finishes. PVC ductwork shall not be used on outside air ductwork or fresh air intakes due to the potential for damage during cold weather conditions. The materials of construction of chemical storage and handling area ventilation systems shall be selected to minimize the corrosive effects of the specific chemicals being stored or handled. Selection of ductwork and equipment materials and finish systems shall be selected based on the specific corrosive effects of chemicals stored and used. Ductwork systems in administrative areas, electric rooms, control rooms and non-corrosive shall be constructed of galvanized steel and in accordance with SMACNA duct design standards.

Ductwork penetrations through building structures shall be protected with fire and/or smoke dampers in accordance with applicable NFPA codes and guidelines. Ductwork penetrations between spaces of dissimilar hazardous rating shall be gas tight. Access doors shall be provided in ductwork systems to provide access to all control equipment including dampers, motor operators, duct sensors, and fire and smoke dampers.

All ductwork accessories shall be constructed of materials having similar corrosion resistant properties as the associated ductwork.

2.3.7 Ventilation Air Inlets and Outlets

The selection and specification of all exterior air inlets and outlets, including louvers and relief vents shall be coordinated with the building architectural design so that the locations, dimensions and required masonry openings are coordinated with the overall architectural scheme for the project. All louvers shall be provided with external or internal bird screens to match the finish of the louvers. Insect screens are required for all inlet louvers and are to be mounted internally with a removable frame assembly.

The free area velocity for inlet louvers and relief vents shall not exceed the manufacturer's rated velocity at which water carryover occurs.

Where a louver and damper assembly might be required, consideration should be given to using a combination fixed/operable louver design.

For spaces where noise needs to be contained, the use of 6- or 12-inch deep acoustical louvers shall be used to meet the site noise generation criteria.

Individual ductwork air inlets outlets in process and non-process areas shall be designed for a nominal 0.1-inch (w.g.) pressure drop. Air outlets for process area ventilation systems may be as high as 0.2-inch (w.g.) where high velocities and throws are required for the specific design.

2.3.8 Finish Systems for Exterior HVAC Equipment

Equipment finishes shall be coordinated for all exterior wall-mounted and rooftop HVAC equipment including louvers, relief vents, roof mounted fans, and air handling units. Finish

systems for architectural louvers will be coordinated to ensure that the finish system matches other exterior architectural finish systems.

2.3.9 Equipment Supports and Building Penetrations

The support of all equipment shall be coordinated with the structural and architectural design, especially when equipment weights are substantial and where equipment vibration is anticipated. All wall, roof and floor penetrations for ductwork and equipment shall be coordinated with the structural and architectural design.

Ductwork in process areas and mechanical rooms and piping galleries shall be supported by threaded hanger rod with trapeze type hangers. Use of hanger strap for ductwork in these areas shall not be allowed. Use of hanger strap shall only be allowed in above-ceiling applications in administrative type areas.

HVAC systems supports shall meet the seismic requirements for the facilities in accordance with the Building Code of the State of New York.

2.4 Supports and Building Penetrations

The support of all piping, equipment, and penetrations to be coordinated with the structural and architectural design. All wall, roof, and floor penetrations for piping, flue, and equipment shall be sleeved and sealed per applicable codes. All plumbing systems supports shall meet the seismic requirements for the facilities in accordance with the Building Code of the State of New York.

APPENDIX F

SITE VISIT PROTOCOL

I. The County of Rockland (the “County”) and the Rockland County Sewer District No. 1 (“RCSD”) are soliciting Proposals for Odor Control Systems Replacement and Miscellaneous Heating and Ventilation System Improvements at its Orangeburg Wastewater Treatment Plant. The County of Rockland and the Rockland County Sewer District No. 1 strive to:

- Distribute any relevant information to all Proposers through site visits
- Provide an established schedule for the site visits
- Accommodate the Proposers' requests for the access date and time to the site

Each Proposer, including any representative, agent, consultant, Subcontractor, affiliate or interested party, is required to comply with the Site Visit Protocol during access to and inspection of the Orangeburg Wastewater Treatment Plant.. Failure to do so may result in the rejection of a Proposal.

II. Plant Accessibility

The guidelines for visits to the WWTP are as follows:

- The Site Visit will take place on the date and time indicated in Section III of this RFP. If any Proposer cannot attend on the date and time set forth in Section III, that Proposer can request an alternate date from the RCSD. RCSD will use reasonable efforts to accommodate alternate dates. Alternate Site visits shall be conducted on weekdays between 8 am and 3 pm, and no visits will occur during holidays observed by the County.
- The Proposer must include the names of the individuals that will visit the sites. Each member of the Proposer’s team shall attend the same scheduled site visit
- The RCSD shall designate specific individuals to conduct the tour of the facilities and answer questions.
- The Proposer, including any member of the team, representative, agent, consultant, Subcontractor, affiliate or interested party, shall not engage in any communication with a member of the RCSD, except the individuals specifically identified by the RCSD as allowed to guide site visits and answer questions from the Proposer.

- The Proposer’s team members must be dressed appropriately for site visits, including correct footwear and hard hats. Additional safety equipment required would be supplied by the RCSD.
- Any request for information and clarifications shall be submitted in writing. No oral information given by an RCSD team member shall be binding. The County and the RCSD are not responsible for any oral explanation given during the site visit.

III. Acknowledgement

The Proposer acknowledges that this Site Visit Protocol is part of the procurement process. The Proposer understands that failure to comply with the requirements may result in rejection of the Proposal.

Name of Proposer

Authorized Representative

Title

Signature

APPENDIX – I - GUARANTY AGREEMENT

GUARANTY AGREEMENT

from

to

THE ROCKLAND COUNTY SEWER DISTRICT NO. 1

[DATE]

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GUARANTY AGREEMENT

This GUARANTY AGREEMENT is made and dated as of [DATE] between - _____ organized and existing under the laws of the State of _____ (together with any permitted successors and assigns hereunder, the "Guarantor"), the ROCKLAND COUNTY SEWER DISTRICT NO. 1, (the "District") and the COUNTY OF ROCKLAND, NEW YORK (the "County").

RECITALS

WHEREAS, the District and _____(the "Company"), executed an agreement dated [DATE] for Design-Build Services for Odor Control System Replacements and miscellaneous Heating and Ventilation System Improvements at the Orangeburg Wastewater Treatment Plant (hereafter the "Design-Build Agreement");

WHEREAS, the Company is [an indirect subsidiary] of the Guarantor; and

WHEREAS, the District will enter into the Design-Build Agreement only if the Guarantor guarantees the performance by the Company of all of the Company's responsibilities and obligations under the Design-Build Agreement as set forth in this guaranty agreement (the "Guaranty"); now therefore be it

RESOLVED, in order to induce the execution and delivery of the Design-Build Agreement by the District and in consideration thereof, the Guarantor agrees as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

SECTION 1.1. DEFINITIONS. For the purposes of this Guaranty, the following words and terms shall have the respective meanings set forth as follows.

Any capitalized word or term used but not defined herein is used as defined in the Design-Build Agreement.

“Obligations” means each and all of the payments required to be made by the Company under the Design-Build Agreement or for the account of the District, when the same shall become due and payable pursuant to this Guaranty and the covenants and undertakings of the Company pursuant to the terms of the Design-Build Agreement.

SECTION 1.2. INTERPRETATION. In this Guaranty, unless the context otherwise requires:

(A) References Hereto. The terms “hereby, “hereof”, ”herein”, “hereunder” and any similar terms refer to this Guaranty, and the term "hereafter" means after, and the terms “heretofore” means before, the date of execution and delivery of this Guaranty.

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement: Authority. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this

Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the District and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

(F) Counterparts. This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.

(G) Applicable Law. This Guaranty shall be governed by and construed in accordance with the applicable laws of the State of New York.

(H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provisions, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor's liability beyond that expressly set forth herein.

(I) Approvals. All approvals, consents, and acceptances required to be given or made by any party hereto shall be at the sole discretion of the party whose approval, consent or acceptance is required.

(J) Payments. All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR. The Guarantor hereby represents and warrants that:

(1) Existence and Powers. The Guarantor is duly organized and validly existing corporation organized and existing under the laws of the State of _____, with full legal right, power and authority to enter into and perform its obligations under this Guaranty.

(2) Due Authorization and Binding Obligation. The Guarantor has duly authorized the execution and delivery of this Guaranty, and this Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium or by general equity principals of reorganization and other similar laws affecting creditors' rights generally.

(3) No Conflict. Neither the execution nor delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations hereunder to the best of Guarantor's knowledge (a) conflict with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor, or (b) conflicts with, violates or results in a material breach of any term or condition of the Guarantor's corporate charter or by-laws or any judgment, decree, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, or (c) will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor except as permitted hereby.

(4) No Governmental Approval Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required of the Guarantor for the valid execution and delivery by the Guarantor of this Guaranty, except such as shall have been duly obtained or made.

(5) No Litigation. There is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of Guarantor's knowledge, threatened against the Guarantor which has a likelihood of an unfavorable decision, ruling or finding that would materially and adversely affect the validity or enforceability of this Guaranty against the Guarantor, or on the ability of the Guarantor to perform its obligations hereunder.

(6) No Legal Prohibition. The Guarantor has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty.

(7) Consent to Agreements. The Guarantor is fully aware of the terms and conditions of the Design-Build Agreement.

(8) Consideration. This Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.

ARTICLE III

GUARANTY COVENANTS

SECTION 3.1. GUARANTY TO THE DISTRICT AND COUNTY. The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to the District and the County for the benefit of the District and the County the full and prompt payment, when due and performance and observance of each and all of the Obligations. Notwithstanding the unconditional nature of the Guarantor's obligations as set forth herein, the Guarantor shall have the right to assert the defenses provided in Section hereof against claims made under this Guaranty.

SECTION 3.2. RIGHT OF DISTRICT AND COUNTY TO PROCEED AGAINST GUARANTOR. This Guaranty shall constitute a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Company to pay or perform any Obligation guaranteed hereunder, the District and the County shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Company or exhausting any other remedies against the Company which the District or the County may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the District or County (1) file suit or proceed to obtain a personal judgment against the Company, or any other person that may be liable for any part of the Obligations, (2) make any other effort to obtain payment or performance of the Obligations from the Company other than providing the Company with any notice of such payment or performance as may be required by the terms of the Design-Build Agreement or required to be given to the Company under Applicable Law, (3) foreclose against or seek to realize upon any security for the Obligations, or (4) exercise any other right or remedy to which the District or the County is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Company or to the enforcement of remedies under the Design-Build Agreement. Upon any unexcused failure by the Company in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Company and Guarantor as may be required in connection with such Obligation and this Guaranty, the liability of the Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding the District's and the

County's right to proceed directly against the Guarantor, the District (or any successor) or the County shall not be entitled to more than a single full performance of the obligations in regard to any breach or non-performance thereof.

SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL. The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Company shall have fully discharged the Obligations in accordance with their respective terms, and except as provided in Section 3.4 hereof, shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Company, the District, the County, or any other person. Without limiting the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by or further consent of the Guarantor):

(1) the extension or renewal of this Guaranty or the Design-Build Agreement up to the specified Terms of each agreement;

(2) any exercise or failure, omission or delay by the District or the County in the exercise of any right, power or remedy conferred on the District with respect to this Guaranty or the Design-Build Agreement except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;

(3) any permitted transfer or assignment of rights or obligations under the Design-Build Agreement by any party thereto (other than a permitted assignment to a replacement contractor in the event of a termination of the Company pursuant to the Design-

Build Agreement), or any permitted assignment, conveyance or other transfer of any of their respective interests in the Orangeburg Wastewater Treatment Plant;

(4) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of the District or any other person in the Orangeburg Wastewater Treatment Plant;

(5) any renewal, amendment, change or modification in respect of any of the Obligations;

(6) any failure of title with respect to all or any part of the respective interests of any person in the Plant Site or the Orangeburg Wastewater Treatment Plant;

(7) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, composition with creditors or readjustment of, or other similar proceedings against the Company or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification had occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);

(8) except as permitted by Section 4. 1 hereof, any sale or other transfer by the Guarantor or any affiliate of any of the capital stock or other interest of the Guarantor or any

affiliate in the Company now or hereafter owned, directly or indirectly, by the Guarantor or any affiliate, or any change in composition of the interests in the Company;

(9) any failure on the part of the Company for any reason to perform or comply with any agreement with the Guarantor;

(10) the failure on the part of the District or the County to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty and to the Company as a condition to the enforcement of Obligations pursuant to the Design-Build Agreement;

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (10) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Company pursuant to the terms of the Design-Build Agreement and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty. Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Company's rights, benefits, duties or obligations under the Design-Build Agreement. To the extent that any of the matters specified in subparagraphs (1) through (6) and (8) through (10) would provide a defense to, release, discharge or otherwise affect the Company's Obligations, the Guarantor's obligations under this Guaranty shall be treated the same.

SECTION 3.4. DEFENSES, SET-OFFS, AND COUNTERCLAIMS.

Notwithstanding any provision contained herein to the contrary, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the

Company may have under the Design-Build Agreement or under Applicable Law (other than bankruptcy or insolvency of the Company and other than any defense which the Company has expressly waived in the Design-Build Agreement), and the obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or deductions which the Company is permitted to assert pursuant to the Design-Build Agreement, if any.

SECTION 3.5. WAIVERS BY THE GUARANTOR. The Guarantor hereby unconditionally and irrevocably waives:

- (1) notice from the District or County of its acceptance of this Guaranty;
- (2) notice of any of the events referred to in Section 3.3 hereof except to the extent that notice is required to be given as a condition to the enforcement of Obligations;
- (3) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Company required pursuant to the Design-Build Agreement or Applicable Law as a condition to the performance of any Obligation;
- (4) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;
- (5) any right to require a proceeding first against the Company;
- (6) the requirement of, or the notice of, the filing of claims by the District or the County in the event of the receivership or bankruptcy of the Company; and
- (7) all demands upon the Company or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of

this Section 3.5, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

SECTION 3.6. PAYMENT OF COSTS AND EXPENSES. The Guarantor agrees to pay the District or the County on demand all reasonable costs and expenses, legal or otherwise (including reasonable counsel fees), incurred by or on behalf of the District or County in successfully enforcing by Legal Proceeding observance of the covenants, agreements and obligations contained in this Guaranty against the Guarantor, other than the costs and expenses that the District incurs in performing any of its obligations under the Design-Build Agreement, where such obligations are a condition to performance by the Company of its Obligations.

SECTION 3.7. SUBORDINATION OF RIGHTS. The Guarantor agrees that any right of subrogation or contribution which it may have against the Company as a result of any payment or performance hereunder is hereby fully subordinated to the rights of the District and the County hereunder and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Company until the Company and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

SECTION 3.8. SEPARATE OBLIGATIONS; REINSTATEMENT. The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall (1) to the extent permitted by Applicable Law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty, (2) give rise to separate and independent causes of action against the Guarantor and (3) apply irrespective of any indulgence granted from time to time by

the District or the County. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Company is rescinded or must be otherwise restored by the District, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Design-Build Agreement or the Company's enforcement of such terms under Applicable Law.

SECTION 3.9. TERM. This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Company have been fully paid and performed.

SECTION 3.10. MAXIMUM GUARANTEE OBLIGATION. Notwithstanding anything to the contrary set forth in this Guaranty or the Design-Build Agreement, the Guarantor's maximum obligation hereunder, exclusive of costs incurred by the District or the County to enforce their rights hereunder, shall be limited to the following amounts:

(i) One Hundred and Ten Percent (110%) of the Fixed Design-Build Price set forth in the Design-Build Agreement for the performance of the Company's obligations under the Guaranty Agreement.

(ii) Excluded from this stated maximum dollar limitation on liability will be the following (without limitation):

- (a) Payment of any liquidated damages;
- (b) Any economic or operating losses sustained by the Company, Guarantor, or any other party in connection with the Design-Build Agreement, the Guaranty Agreement, or any other agreement related to the WWTP;

- (c) Any claims, losses, and liabilities to third parties in any legal proceeding;
- (d) Any fines and penalties paid to any Governmental Body;
- (e) Any indemnity payments made to the District or the County; and
- (f) Any proceeds of insurance policies or bonds paid to the District or the County.

ARTICLE IV

GENERAL COVENANTS

SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE

(A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge Into It unless the successor is the Guarantor and the conditions contained in clause (2) below are satisfied; provided, however, that the Guarantor may consolidate with or merge into another entity; or permit one or more other entities to consolidate with or merge Into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entity and thereafter dissolve if (1) the successor entity (if other than the Guarantor) (a) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business In the State of New York, and (b) delivers to the District an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws, and (2) any such transaction does not result in a change,

financial or otherwise, in the condition of the Guarantor that would materially and adversely affect the ability of the Guarantor to perform its obligations under this Guaranty,

(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section 4.1, the provisions of this Section 4.1 shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section 4.1. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty as provided in this Section 4.1.

SECTION 4.2. ASSIGNMENT. Without the prior written consent of the District, this Guaranty may not be assigned by the Guarantor, except pursuant to Section 4.1 hereof.

SECTION 4.3. CONSENT TO JURISDICTION. The Guarantor irrevocably: (1) agrees that any suit, action or other legal proceeding arising out of this Guaranty shall be brought in Supreme Court, State of New York, Rockland County; (2) consents to the jurisdiction of such courts in any such suit, action or proceeding; (3) waives any objection which it may have to the laying of the jurisdiction of any such suit, action or proceeding in any of such courts; and (4) waives its right to a trial by jury in any suit, action or proceeding in any of such courts.

SECTION 4.4. BINDING EFFECT. This Guaranty shall inure to the benefit of the District and the County and their permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

SECTION 4.5. AMENDMENTS, CHANGES, AND MODIFICATIONS. This Guaranty may not be amended, changed or modified or terminated and none of its provisions

may be waived, except with the prior written consent of the District, the County and of the Guarantor.

SECTION 4.6. LIABILITY. It is understood and agreed to by the District that nothing contained herein shall create any obligation of or right to look to any director, officer, employee or stockholder of the Guarantor (or any affiliate thereof) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this Guaranty shall be taken against any such director, officer, employee or stockholder.

SECTION 4.7. NOTICES. Any notices or communications required or permitted hereunder shall be in writing and shall be sufficiently given if faxed (with acknowledgment of receipt and followed by mailing of hardcopy), delivered in person, or sent by overnight courier to the following addresses, or to such other addresses as any of the recipients may from time to time designate by notice given in writing.

If to the Guarantor:

With a copy to:

If to the District: Michael Saber, P.E. Assistant Director/Acting Executive Director
Rockland County Sewer District No. I
4 Route 340
Orangeburg, NY I 0962
Telephone Number: (845) 365-6111
Fax Number: (845) 365-6685

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

Guarantor

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

On this _____ day of _____, 2020, before me, _____, personally appeared, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

Notary Public: _____, _____ County

On this _____ day of _____, 2020, before me, _____, personally appeared, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

Notary Public: _____, _____ County

[ROCKLAND COUNTY SEWER DISTRICT NO. 1 AND ROCKLAND COUNTY
SIGNATURE PAGE FOLLOWS]

[ROCKLAND COUNTY SEWER DISTRICT NO. 1 AND ROCKLAND COUNTY
SIGNATURE PAGE TO GUARANTY AGREEMENT]

COUNTY OF ROCKLAND

ATTEST:

Approved:

ROCKLAND COUNTY SEWER DISTRICT NO. 1
Approved for Signature of County Executive

MICHAEL SABER, P.E.
Assistant Director/
Acting Executive Director

Dated: _____

DANIEL J. BLOCK
Deputy County Attorney

Dated: _____

COUNTY OF ROCKLAND

Edwin J. Day
County Executive
Dated: _____

On this ____ day of _____, 2020, before me, Edwin J. Day, personally appeared,
known to me or satisfactorily proven to be the person whose name is subscribed to the within
instrument, and acknowledged that they executed the same for the purposes therein contained.

Notary Public: _____, _____ County

APPENDIX J

REQUIRED INSURANCE

As indicated in the RFP Documents, the County of Rockland requires insurance coverage from its vendors. Insurance requirements vary in accordance with the type and complexity of the goods and/or services requested. Specific insurance requirements for each type of contract can be found in the County's Insurance Requirements Matrix below. Certificates of Insurance are required for all RFPs and Contracts awarded by the County, as well as all services procured through the use of a County Purchase Order. The Company / Vendor / Consultant shall not commence work under the Design-Build Agreement until all insurance required therein is obtained and approved by the County Director of Purchasing. Nor shall the Company allow any Subcontractor to commence work until all similar insurance required of the Subcontractor has so been obtained.

Examples of the types of insurance that are typically required include:

- worker's compensation and disability insurance required by state legislation;
- employer's liability;
- personal accident;
- general third-party liability;
- professional liability; and
- Automobile liabilities.

The coverages will be based on the type of goods and/or services being provided by the vendor. In all instances in which vendor personnel enter County property to repair, install, service, construct, consult, etc., the County requires a certificate of insurance verifying coverage per County insurance requirements.

Whenever insurance is required on a purchase order, the vendor will be supplied with complete requirements for coverage. Please contact the County's Purchasing Department at (845) 364-3820 if you need further information on insurance requirements for a particular contract.

ROCKLAND COUNTY'S INSURANCE REQUIREMENTS:

GENERAL LIABILITY: Prior to commencing work, the CONTRACTOR or CONSULTANT shall, at its/his/her own cost and expense, procure and maintain insurance to cover his/her/its work, services, employees, agents and servants under the terms of the contract or purchase order which shall include, but not be limited to the coverage that is selected on the attached matrix. Insurance must be obtained from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better. Upon failure to furnish, deliver and maintain such insurance, the agreement, contract award or purchase order may be declared suspended, discontinued or terminated or canceled. If at any time any of the policies required herein shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the CONTRACTOR OR CONSULTANT shall upon

notice to that effect from the County, promptly obtain a new policy and submit same with a certificate for approval by the County.

Forced Placed Insurance. If CONTRACTOR OR CONSULTANT does NOT provide the County of Rockland with evidence of the insurance coverage required by the Design-Build Agreement, the County may purchase insurance (at Contractor's or Consultant's sole expense) to protect the County's interests. This insurance may, but need not, protect Contractor's or Consultant's interest. If the County purchases insurance under this Section, Contractor or Consultant will be responsible for the cost of that insurance, including interest and any other charges the County may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The cost of insurance under this Section may be more than the cost of insurance that Contractor or Consultant may be able to obtain on its own.

In relation to purchases that are not a result of a County Bid, RFP or Contract; Vendors who cannot provide the coverage limits on the attached matrix may provide the County with an ACORD Certificate detailing the coverage limits they currently have in place and the County will review such certificates on a case-by-case basis to determine if sufficient coverage is in place in relation to the perceived risks associated with the proposed purchase.

COVERAGES – (SEE ATTACHED MATRIX)

An ACORD Certificate of Insurance will confirm that the required policies have been issued to the named insured; for the policy period indicated. The ACORD Certificate is to be provided to the County of Rockland within five (5) business days of notice of contract award or of notice of intent to issue a Purchase Order. Please NOTE: the Certificate of Insurance must be updated to give the County of Rockland immediate notice of the following:

1. Dilution of the limits of insurance shown on the Certificate of Insurance by more than 20% as a result of the payment of claims or expenses;
2. The downgrading of any insurer listed on the Certificate of Insurance by AM Best to less than an "A" rating;
3. The receipt, from any listed insurer, of a notice of cancellation before the expiration date thereof or non-renewal will be delivered in accordance with the policy provisions;
4. The receipt, from any listed insurer, of any failure of the named insured to comply with an insurance policy term or condition.

All Certificates of Insurance must be updated at least annually to remain valid.

The ACORD Certificate of Insurance shall contain a Description of Operations and include any exclusions or special provisions added by endorsement that in any way restrict coverage. The Contract Number and/or Purchase Order Number and the name of the department requiring the insurance should be stated under the description. The description shall also contain a statement to the effect that "The following are named as Additional Insured's under General Liability and (if required) Automobile Liability, Excess Umbrella Liability, and Professional Liability (if applicable) on a primary basis, and on the broadest form available through the listed insurers with respect to this Contract or Purchase Order: *The County of Rockland, its employees, elected*

officials and affiliated municipal entities. The signing authorized representative warrants that the insurance carrier(s) have been informed of and accepted the County of Rockland as an additional insured.

WORKERS COMPENSATION REQUIREMENTS UNDER WORKERS' COMPENSATION

LAW §57: The Vendor shall procure, pay for, and maintain during the entire term of the contract such insurance as will protect both the owner and the vendor from claims under worker's compensation acts and amendments thereto and from any other claims for property damage and for personal injury including death, which may arise from operations under this contract, whether such operations by the Vendor or by any other party directly or indirectly employed by the Vendor. Vendors shall provide copies of the required certificate to the County of Rockland within five (5) business days of notice of contract award or of notice of intent to issue a Purchase Order.

To comply with coverage provisions of the Workers' Compensation Law ("WCL"), businesses must:

- A. Be legally exempt from obtaining workers' compensation insurance coverage; or
- B. Obtain such coverage from insurance carriers; or
- C. Be a Board-approved self-insured employer or participate in an authorized group self-insurance plan.

The Contractor must prove that they are in compliance with §57 of the Workers Compensation Law (WCL) by providing ONE of the following forms indicating that they are:

- **Insured Form C-105.2 or U-26.3** – *(All private insurance carriers and their licensed insurance agents are authorized to use the Form C-105.2 as their Certificate of NYS Worker's Comp Insurance. The State Insurance Fund uses the U-26.3 form as its Certificate of Workers Compensation Insurance).* Upon obtaining a permit, license or contract from a government agency Employers must obtain this form from their private insurance carrier. Carriers and their licensed agents may contact the Board's [Bureau of Compliance](#) to obtain this form.
- **Self-Insured Form SI-12** – Certificate of Worker's Compensation Self-Insurance or Form GSI-105.2 Certificate of Participation in Worker's Compensation Group Self-Insurance). Upon obtaining a permit, license or contract from a government agency. Board-approved self-insurers must obtain this form from Board's Self-Insurance Office.
- **Exempt Form CE-200** – Certificate of Attestation of Exemption From NYS Worker's Compensation Insurance) (Effective 12/1/08) Applicants for permits, licenses or contracts from State, county or municipal agencies in New York State that are not required to carry NYS workers' compensation and/or disability benefits insurance coverage. These exemption forms can ONLY be used to attest to a government entity that an applicant requesting a permit, license or contract from that government entity is not required to carry NYS workers' compensation and/or disability benefits insurance.

The Vendor will send the appropriate forms to the Purchasing Division within five (5) business days of notification of contract award. All correspondence shall contain the Solicitation Number and Title.

DISABILITY BENEFITS REQUIREMENTS UNDER WORKERS' COMPENSATION LAW §220(8):

To comply with coverage provisions of the WCL regarding disability benefits, businesses may:

- A. Be legally exempt from obtaining disability benefits insurance coverage; or
- B. Obtain such coverage from insurance carriers; or
- C. Be a Board-approved self-insured employer.

The Vendor must prove that they are in compliance with Section 220(8) of the Workers Compensation Law (WCL) by providing ONE of the following forms indicating that they are:

- **Insured Form DB-120.1** – Certificate of Disability Benefits Insurance (the businesses insurance carrier will send this form to the County upon request).
- **Self-Insured Form DB-155** – Certificate of Disability Benefits Self-Insurance (the business calls the Board's Self-Insurance Office at 518-402-0247).
- **Exempt Form CE-200** – Certificate of Attestation of Exemption from NYS Worker's Compensation and/or Disability Benefits Coverage.

The Vendor will send the appropriate forms to the Purchasing Division within five (5) business days of notification of contract award. All correspondence shall contain the Solicitation Number and Title.

Please note that ACORD forms are NOT acceptable proof of New York State Workers Compensation or Disability benefits insurance coverage.

NY State Department of Labor requirements for Workmen's Compensation and Disability forms. Online address: <http://www.wcb.ny.gov/content/main/forms/AllForms.jsp>

EMPLOYERS LIABILITY with minimum statutory requirements

COMMERCIAL GENERAL LIABILITY INSURANCE: This insurance shall include the following coverages:

- (i) Premises - Operations.
- (ii) Broad Form Contractual.
- (iii) Independent Contractor and Sub-Contractor.
- (iv) Products and Completed Operations.

AUTOMOBILE LIABILITY INSURANCE: This insurance shall include for bodily injury and property damage the following coverages:

- (i) Owned automobiles.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

PROFESSIONAL LIABILITY The Consultant shall provide proof of such insurance.

All policies of the Contractor or Consultant shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County of Rockland (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County of Rockland is named as an insured, shall not apply to the County of Rockland.

All contractual insurance requirements in any contract between the Contractor or Consultant and the County shall contain the following clauses:

(a) The insurance companies issuing the policy or policies shall have no recourse against the County of Rockland (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(b) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Contractor or Consultant.

Exceptions: The limits shown in the matrix and samples will generally be required for service providers involved in low-risk activities. Higher limits may be required for other service providers.

SEE FOLLOWING PAGE FOR INSURANCE COVERAGE MATRIX

APPENDIX J

REQUIRED INSURANCE

As indicated in the RFP Documents, the County of Rockland requires insurance coverage from its vendors. Insurance requirements vary in accordance with the type and complexity of the goods and/or services requested. Specific insurance requirements for each type of contract can be found in the County's Insurance Requirements Matrix below. Certificates of Insurance are required for all RFPs and Contracts awarded by the County, as well as all services procured through the use of a County Purchase Order. The Company / Vendor / Consultant shall not commence work under the Design-Build Agreement until all insurance required therein is obtained and approved by the County Director of Purchasing. Nor shall the Company allow any Subcontractor to commence work until all similar insurance required of the Subcontractor has so been obtained.

Examples of the types of insurance that are typically required include:

- worker's compensation and disability insurance required by state legislation;
- employer's liability;
- personal accident;
- general third-party liability;
- professional liability; and
- Automobile liabilities.

The coverages will be based on the type of goods and/or services being provided by the vendor. In all instances in which vendor personnel enter County property to repair, install, service, construct, consult, etc., the County requires a certificate of insurance verifying coverage per County insurance requirements.

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notice to that effect from the County, promptly obtain a new policy and submit same with a certificate for approval by the County.

Forced Placed Insurance. If CONTRACTOR OR CONSULTANT does NOT provide the County of Rockland with evidence of the insurance coverage required by the Design-Build Agreement, the County may purchase insurance (at Contractor's or Consultant's sole expense) to protect the County's interests. This insurance may, but need not, protect Contractor's or Consultant's interest. If the County purchases insurance under this Section, Contractor or Consultant will be responsible for the cost of that insurance, including interest and any other charges the County may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The cost of insurance under this Section may be more than the cost of insurance that Contractor or Consultant may be able to obtain on its own.

In relation to purchases that are not a result of a County Bid, RFP or Contract; Vendors who cannot provide the coverage limits on the attached matrix may provide the County with an ACORD Certificate detailing the coverage limits they currently have in place and the County will review such certificates on a case-by-case basis to determine if sufficient coverage is in place in relation to the perceived risks associated with the proposed purchase.

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5. Dilution of the limits of insurance shown on the Certificate of Insurance by more than 20% as a result of the payment of claims or expenses;
6. The downgrading of any insurer listed on the Certificate of Insurance by AM Best to less than an "A" rating;
7. The receipt, from any listed insurer, of a notice of cancellation before the expiration date thereof or non-renewal will be delivered in accordance with the policy provisions;
8. The receipt, from any listed insurer, of any failure of the named insured to comply with an insurance policy term or condition.

All Certificates of Insurance must be updated at least annually to remain valid.

The ACORD Certificate of Insurance shall contain a Description of Operations and include any exclusions or special provisions added by endorsement that in any way restrict coverage. The Contract Number and/or Purchase Order Number and the name of the department requiring the insurance should be stated under the description. The description shall also contain a statement to the effect that "The following are named as Additional Insured's under General Liability and (if required) Automobile Liability, Excess Umbrella Liability, and Professional Liability (if applicable) on a primary basis, and on the broadest form available through the listed insurers with respect to this Contract or Purchase Order: *The County of Rockland, its employees, elected*

officials and affiliated municipal entities. The signing authorized representative warrants that the insurance carrier(s) have been informed of and accepted the County of Rockland as an additional insured.

WORKERS COMPENSATION REQUIREMENTS UNDER WORKERS' COMPENSATION LAW §57: The Vendor shall procure, pay for, and maintain during the entire term of the contract such insurance as will protect both the owner and the vendor from claims under worker's compensation acts and amendments thereto and from any other claims for property damage and for personal injury including death, which may arise from operations under this contract, whether such operations by the Vendor or by any other party directly or indirectly employed by the Vendor. Vendors shall provide copies of the required certificate to the County of Rockland within five (5) business days of notice of contract award or of notice of intent to issue a Purchase Order.

To comply with coverage provisions of the Workers' Compensation Law ("WCL"), businesses must:

- D. Be legally exempt from obtaining workers' compensation insurance coverage; or
- E. Obtain such coverage from insurance carriers; or
- F. Be a Board-approved self-insured employer or participate in an authorized group self-insurance plan.

The Contractor must prove that they are in compliance with §57 of the Workers Compensation Law (WCL) by providing ONE of the following forms indicating that they are:

- **Insured Form C-105.2 or U-26.3** – *(All private insurance carriers and their licensed insurance agents are authorized to use the Form C-105.2 as their Certificate of NYS Worker's Comp Insurance. The State Insurance Fund uses the U-26.3 form as its Certificate of Workers Compensation Insurance).* Upon obtaining a permit, license or contract from a government agency Employers must obtain this form from their private insurance carrier. Carriers and their licensed agents may contact the Board's [Bureau of Compliance](#) to obtain this form.
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- **Exempt Form CE-200** – Certificate of Attestation of Exemption From NYS Worker's Compensation Insurance) (Effective 12/1/08) Applicants for permits, licenses or contracts from State, county or municipal agencies in New York State that are not required to carry NYS workers' compensation and/or disability benefits insurance coverage. These exemption forms can ONLY be used to attest to a government entity that an applicant requesting a permit, license or contract from that government entity is not required to carry NYS workers' compensation and/or disability benefits insurance.

The Vendor will send the appropriate forms to the Purchasing Division within five (5) business days of notification of contract award. All correspondence shall contain the Solicitation Number and Title.

DISABILITY BENEFITS REQUIREMENTS UNDER WORKERS' COMPENSATION LAW §220(8):

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- E. Obtain such coverage from insurance carriers; or
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The Vendor must prove that they are in compliance with Section 220(8) of the Workers Compensation Law (WCL) by providing ONE of the following forms indicating that they are:

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- (ii) Broad Form Contractual.
- (iii) Independent Contractor and Sub-Contractor.
- (iv) Products and Completed Operations.

AUTOMOBILE LIABILITY INSURANCE: This insurance shall include for bodily injury and property damage the following coverages:

- (i) Owned automobiles.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

PROFESSIONAL LIABILITY The Consultant shall provide proof of such insurance.

All policies of the Contractor or Consultant shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County of Rockland (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County of Rockland is named as an insured, shall not apply to the County of Rockland.

All contractual insurance requirements in any contract between the Contractor or Consultant and the County shall contain the following clauses:

(a) The insurance companies issuing the policy or policies shall have no recourse against the County of Rockland (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(b) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Contractor or Consultant.

Exceptions: The limits shown in the matrix and samples will generally be required for service providers involved in low-risk activities. Higher limits may be required for other service providers.

SEE FOLLOWING PAGE FOR INSURANCE COVERAGE MATRIX

	VENDOR CLASSIFICATION CHECK APPROPRIATE BOX	Janitorial Services <input type="checkbox"/>	Contracted Services <input type="checkbox"/>	Consultant Services <input type="checkbox"/>	Licensed Professional Consultant Services - Legal, Accounting, Architect & Engineers, Medical, Forensics, Environmental, Etc. <input checked="" type="checkbox"/>	Public and School Transport <input type="checkbox"/>	Capital Construction Projects –Buildings, Roads, Water Treatment <input checked="" type="checkbox"/>
	Type of Insurance						
A	Commercial General Liability (CGL) Each Occurrence						
	General Liability	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
	Personal & Adv Injury	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
	Med. Expense Any One Person	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
	Damage to Rented Premises	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
	General Aggregate	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
	Products-Comp / Op Aggregate	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
B	Auto Liability – Incl BI and PD (AL)	(2)	(2)	(2)	(2)	(2)	(2)
	Combined Single Limit per accident						
	Any Auto	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
	Or						
	All Owned	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
	All Hired	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
	All Non-Owned	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
C	Excess / Umbrella Liability						
	Each Occurrence	\$5,000,000	XXXXX	XXXXX	\$1,000,000	\$10,000,000	\$10,000,000
	Aggregate	\$5,000,000	XXXXX	XXXXX	\$1,000,000	\$10,000,000	\$10,000,000
D	Workers Compensation and Employers Liability	(3)	(3)	(3)	(3)	(3)	(3)
	E.L. Each Accident	Statutory	Statutory	Statutory	Statutory	Statutory	Statutory
	E.L. Each Disease-EA Employee	Statutory	Statutory	Statutory	Statutory	Statutory	Statutory
	E.L. Disease-Policy Limit						
E	Disability Benefits	(3)	(3)	(3)	(3)	(3)	(3)
	Each Employee	Statutory	Statutory	Statutory	Statutory	Statutory	Statutory
F	Other-Professional Liability or errors and Omissions or Malpractice			(4)	(4)	(4)	
	Per Claim			\$1,000,000	\$1,000,000	\$1,000,000 (Sexual Abuse) School Transportation only	
Opt	Owners and Contractors Protection						
	Each Occurrence						\$1,000,000
	Aggregate						\$2,000,000
*	All Other Insurance as Required by Law						
	Rockland County to be named as Additional Insured on these coverage's	GL-AL-EXCESS	GL-AL-EXCESS	GL-AL	GL-AL-PROFESSIONAL	GL-AL-EXCESS-PROFESSIONAL	GL-AL-EXCESS-OPT

APPENDIX L

DESIGN REVIEW AND CONSTRUCTION REVIEW PROCEDURES

1. General

The RCSD will conduct a review of Company's Design Submittals to ensure conformance to the Technical and General Design Criteria and will review, monitor and inspect the Contract Services to ensure conformance to Technical and General Design Criteria, to ensure that such Contract Services do not represent a substitution of lesser quality, and to ensure that the performance of the Contract Services does not pose a risk to human health, safety or the environment.

The reviews and inspections by the RCSD shall not affect in any way the Company's responsibilities for compliance with all Design-Build Agreement requirements, nor shall it impose any responsibility or liability on the RCSD due to such review and inspection, or lack thereof.

2. Design Review

a. Preliminary Design Review

The RCSD recognizes that the design-build project delivery process requires that the Company and the RCSD work cooperatively to assure timely Design Work review.

The Company shall make preliminary Design Submittals at the 50% and 90% design levels, in accordance with an agreed upon schedule set forth in the Design-Build Agreement.

The RCSD shall have a minimum of two (2) weeks to review Design Submittals.

b. Final Design Submittal

The Company shall make a Final Design Submittal thirty (30) days prior to commencement of Construction Work.

c. Format for Design Submittals

Design Submittals shall be made in accordance with the requirements of the Design-Build Agreement and in such sequence as not to cause delay in Design Work.

Design Submittals shall contain:

1. The date of submission, noting whether it is an original submission or a resubmission;
2. The project title and number;
3. The names of:
 - a. Contractor

- b. Supplier
 - c. Manufacturer
4. Identification of any deviations from the Technical and General Design Requirements; and
 5. State of New York Registered P.E. and/or Registered Architect certification, as applicable.
- d. Design Changes

The procedures to be followed for incorporating any Design Work changes requested by the Company and/or the RCSD will be specified in the Design-Build Agreement.

- e. Design Progress Meetings

The Company shall conduct at least bi-weekly progress review meetings, or more frequently as proposed by the Company, with the RCSD. The meetings will be conducted at the Project Site, at the RCSD's offices, or at another site designated by the RCSD.

- f. Regulatory Submittal Superintendence

The RCSD shall be afforded the opportunity for Design Work review prior to any submittal to regulatory agencies.

3. Construction Submittals

The Company shall submit to the RCSD, every two (2) weeks, an updated list of the current status of all shop drawings and submittals under review. The RCSD may request copies of any or all said drawings and submittals for its review. The Company shall supply any requested documents within five (5) business days of the RCSD's request.

All final shop drawings shall be submitted to the RCSD, filed in accordance with a numbered index.

4. Construction Review

- a. Construction Review Intent

In accordance with the terms and conditions of the Design-Build Agreement, the RCSD will review, monitor and, as it deems necessary, inspect the Construction Work to ensure conformance to the Design Submittals and to ensure that the Construction Work does not represent a substitution of lesser quality.

- b. RCSD Access, Review Meetings

The RCSD and its designated representative(s) shall have access to the Project Site at all times. The Company shall report to the RCSD weekly, hold bi-weekly progress review meetings, or more frequent meetings as needed to maintain the project schedule, with the RCSD at a location

designated by the RCSD, and otherwise solicit the RCSD's input to the process as required. The Company shall record the minutes of all meetings and construction progress, and provide the RCSD with copies of minutes and documentation of said meetings.

c. Construction Requirements

The Company shall perform the Construction Work in accordance with the Technical and General Design Criteria and using Good Construction Industry Practices and shall have exclusive responsibility for providing all construction means, methods, techniques, sequences, and Final Completion tests, and all procedures necessary and desirable for the correct, prompt and orderly conduct and completion of the Contract Services as required by the Design-Build Agreement.

The Company's exclusive responsibility to provide all Construction Work shall include, but is not be limited to, providing the following: required design certifications, required approvals, field document control and filing system for the control of all submittals and project communications, weather protection for stored materials, site cleanup and housekeeping, construction trade management, safety and first aid facilities, correction or compensation for defective work or equipment, equipment and materials storage areas, workshops and warehouses, portable two-way communication, design-build coordination and control, receipt and unloading of delivered materials and equipment and coordination of all construction activities under the Design-Build Agreement.

The Company warrants to the RCSD that materials and equipment will be new unless otherwise specified, and in conformance with the Contract Documents.

The Company shall fully cooperate with the RCSD, and its designated representatives to allow the RCSD to monitor and review Design Submittals and any proposed changes to Construction Work.

d. Construction Work Monitoring, Testing and Observation

The RCSD shall have the right to monitor and observe progress of the Construction Work. During the progress of the Construction Work through Final Completion, the Company shall allow the RCSD and/or its designated representative(s) access to all sites for the purpose of observing the conduct of the Construction Work. During any such observation, the RCSD and its designated representative(s) shall comply with all reasonable rules (safety and other) applicable to the Project Site. It is understood that the RCSD's monitoring and inspection shall be of an observational and review nature and that the RCSD and its representative(s) shall not have the RCSD to interfere with, halt or delay the Construction Work, except to ensure conformance with Technical and General Design Criteria, to ensure that such Construction Work does not represent a substitution of lesser quality and to ensure the Construction Work as it is being performed does not pose a threat to health, safety or the environment.

The Company shall provide the RCSD monthly progress reports detailing Construction Work accomplished during the previous month. The monthly progress reports shall include a summary of accomplished work activities, a summary of next month's work activities, a list of submittals delivered for the report month, a list of submittals scheduled for the next month, and an updated

project schedule which shall reflect any change in the Company's project schedule submitted the prior month.

The monthly progress reports shall be submitted to the RCSD for its information only. The monthly progress reports shall not bind the RCSD in any manner or imply that the RCSD approves the Construction Work to date, or agrees to any changes in schedule or extension of design or construction time.

The Company shall provide on-site quality control and quality assurance services. The Company shall prepare and submit to the RCSD a quality control and quality assurance plan detailing the actions which the Company shall take to control and demonstrate quality of Construction Work. The quality control and quality assurance plan shall be submitted to the RCSD prior to the start of Construction Work. The quality control and quality assurance plan shall identify all shop and field testing to be performed during Construction Work and list all testing, along with properly certified, independent, testing laboratories or testing services that will perform the Construction Work.

In accordance with the quality control and quality assurance plan, the Company shall maintain a file of and if requested, deliver to the RCSD or cause the certified independent testing laboratories or testing services to send the RCSD all required certificates of inspection, testing reports and all written testing documentation.

The RCSD shall reserve the right to conduct and pay for any on-site testing it deems necessary or desirable to verify that the Construction Work, including materials of construction, complies with the Technical and General Design Criteria. The Company shall not be entitled to any delays in the construction schedule due to reconstruction activities resulting from failed quality control and quality assurance testing.

During Construction, the Company shall conduct project meetings at least on a monthly basis or on an as-needed basis, depending on the nature of the schedule and Construction Work for the month. During the project meetings, discussions shall be held concerning all aspects of the Construction Work.

The Company shall afford the RCSD an opportunity to make final inspection and approve the Construction Work as having been completed. Final Completion of the Construction Work or any rejection of the Construction Work or such items as are incomplete shall be made by the RCSD in writing within thirty (30) business days from the date of receipt by the RCSD of the notification of Final Completion.

e. Change Orders and Modifications

The Parties may execute a Change Order a change in the Work if necessary in accordance with the terms of the Design-Build Agreement. A Change Order may include a change in the Design/Build Price or the time for the Contractor's performance, or any combination thereof.

f. Correction of Construction Work

Throughout the term of the Design-Build Agreement, the Company at its sole cost and expense shall complete, repair, replace, restore, rebuild and otherwise make whole any Construction Work which does not conform with all requirements of the Design-Build Agreement. The RCSD may elect by Change Order, at the Company's request, to accept Construction Work that does not comply with all requirements of the Contract.

If a Change Order is executed for nonconforming Construction Work, the Company's obligations for the Final Completion provided for in the Design-Build Agreement are in no way altered.

The Company shall re-perform any Construction Work, for which it is responsible within the Design-Build Agreement, which fails to conform to the Good Construction Industry Practice, throughout the term of the Design-Build Agreement.

The Company shall request from all vendors, or Subcontractors from which the Company procures machinery, equipment, or materials for the Project, warranties with respect to such machinery, equipment, and materials. The Company's responsibility with respect to such machinery, equipment, and materials obtained from vendors or Subcontractors, shall not be limited in any way throughout the term of the Design-Build Agreement. The Company shall have total liability, throughout the term of the Design-Build Agreement, for nonconforming Technical and General Design Criteria and nonconforming or defective Construction Work, equipment and materials, whether caused by error, omission, negligence or otherwise. Failure of any vendor, Company or Subcontractor selected by the Company, with or without concurrence by the RCSD shall not excuse the Company from its obligations or constitute an Uncontrollable Circumstance.

g. Suspension of Work

The RCSD shall have the right at any time to direct the Company to suspend its performance, or any designated part thereof when in the interests of the RCSD. If any such suspension is directed by the RCSD, the Company shall immediately comply with same.

5. Record Drawings and Documents

No later than sixty (60) days following Substantial Completion, the Company shall provide the RCSD a set of as built Record Drawings in print and in an AutoCAD format acceptable to the RCSD to show the character and installation of all Construction Work. At a minimum, Record Drawings shall include those listed in the Final Design Submittal. The Construction Work shall not achieve Final Completion by the RCSD without the Record Drawings and all documents of record. Record drawings shall be exclusively for the RCSD's use and the Company and its Subcontractors shall have no liability to any other party on account thereof.



**Environmental
Facilities Corporation**

ANDREW M. CUOMO
Governor

SABRINA M. TY
President and CEO

APPENDIX M - EFC GRANT REQUIREMENTS

Program Requirements and Bid Packet for Construction Contracts

(For projects funded with NYS financial assistance only)

Effective October 1, 2017

New York State Environmental Facilities Corporation
625 Broadway, Albany, NY 12207-2997
P: (518) 402-6924 F: (518) 402-7456
www.efc.ny.gov

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ATTACHMENTS (REQUIRED FORMS)

- Attachment 1 - EEO Policy Statement
- Attachment 2 - EEO Workforce Employment Utilization Report
- Attachment 3 - MWBE Utilization Plan
- Attachment 4 - MWBE Waiver Request
- Attachment 5 - Monthly MWBE-SDVOB Contractor Compliance Report
- Attachment 6 - SDVOB Utilization Plan
- Attachment 7 – SDVOB Waiver Request

PART 1:

HOW TO USE THIS DOCUMENT

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

This Program Requirements and Bid Packet for Construction Contracts document contains (1) a brief description of State program requirements for Contracts and Subcontracts funded by State financial assistance, (2) required language for such Contracts and Subcontracts to satisfy State financial assistance program requirements, including required forms, and (3) guidance materials to assist entities in complying with these requirements.

PROGRAM REQUIREMENTS

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

- Participation of Minority- and Women-Owned Business Enterprises (“MWBE”) and Equal Employment Opportunities (“EEO”) pursuant to New York State Executive Law, Article 15-A and New York Code of Rules and Regulations, Title 5 (5 NYCRR) Parts 140-145 (Regulations of the Commissioner of Economic Development);
- Participation of Service-Disabled Veteran-Owned Business Enterprises (“SDVOB”) pursuant to New York State Executive Law, Article 17-B and 9 NYCRR Part 252;
- Applicable State and/or local prevailing wage requirements; and,
- Requirements regarding suspension and debarment pursuant to State Labor Law § 220-b and State Executive Law § 316.

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

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

Refer to the EFC website at www.efc.ny.gov for the latest version of the bid packet to ensure that the most recent forms and contract language are being used.

REQUIRED CONTRACT LANGUAGE

Part 2 of this document is the Required Contract Language. All of the language in Part 2 must be inserted in to all Contracts and Subcontracts funded in whole or in part with State financial assistance, in order for State financial assistance Recipients, Contractors, and Subcontractors to comply with the above-listed State financial assistance program requirements.

GUIDANCE MATERIALS

Part 3 of this document sets forth Guidance Materials intended to assist State financial assistance Recipients, Contractors, and Subcontractors in complying with the foregoing State financial assistance program requirements, as applicable.

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

COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

“Contract” means an agreement between a Recipient and a Contractor.

“Contractor” means all bidders, prime contractors, Service Providers, and consultants as hereinafter defined, unless specifically referred to otherwise.

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

“Subcontract” means an agreement between a Contractor and a Subcontractor.

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

“Recipient” means the party, other than EFC, to a financial assistance agreement or a project finance agreement with EFC through which funds for the payment of amounts due thereunder are being paid in whole or in part.

“State” means the State of New York.

PART 2:

REQUIRED CONTRACT LANGUAGE

SECTION 1 REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

The Minority- and Women- Owned Business Enterprises (“MWBE”) and Equal Employment Opportunities requirements of this section apply to Contractors and Subcontractors working pursuant to: (1) construction Contracts greater than \$100,000; (2) Contracts that are initially under this threshold but subsequent change orders or contract amendments increase the Contract value to above \$100,000; and, (3) change orders greater than \$25,000.

Disregard this section if it does not apply to this Contract or Subcontract.

I. General Provisions

- A. Contractors and Subcontractors are required to comply with New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon.
- B. Failure to comply with all of the requirements herein may result in a finding by the Recipient that the Contractor is non-responsive, non-responsible, and/or has breached the Contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to subsection III(F) of this section, or enforcement proceedings as allowed by the Contract.
- C. If any terms or provisions herein conflict with Executive Law Article 15-A or the MWBE Regulations, such law and regulations shall supersede these requirements.
- D. Upon request from the Recipient's Minority Business Officer (“MBO”) and/or EFC, Contractor will provide complete responses to inquiries and all MWBE and EEO records available within a reasonable time. For purposes of this section, MBO means the duly authorized representative of the State financial assistance Recipient for MWBE and EEO purposes.

II. Equal Employment Opportunities (EEO)

- A. Each Contractor and Subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- B. Contractor represents that it has submitted an EEO policy statement to Recipient prior to the execution of this Contract.
- C. Contractor represents that it's EEO policy statement includes the following language:

1. The contractor will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Contracts relating to State financial assistance projects.
 2. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract relating to this State financial assistance project, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 3. 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.
- D. The Contractor will include the provisions of Subdivisions II(A), II(C), and II(E) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.
- E. The Contractor shall comply with the provisions of the Human Rights Law (Executive Law Article 15), and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- F. Required EEO Form
1. EEO Workforce Employment Utilization Report ("Workforce Report")
 - a. The Contractor shall submit a Workforce Report, and shall require each of its Subcontractors to submit a Workforce Report to the Recipient, in such format as shall be required by EFC on a monthly basis during the term of the Contract.
 - b. Separate forms shall be completed by Contractor and any Subcontractor.
 - c. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance of the Contract from the Contractor's and/or Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, the Contractor shall submit the Workforce Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

III. Business Participation Opportunities for MWBEs

A. Contract Goals

- For purposes of this Contract, EFC establishes the following goals for New York State certified MWBE participation (“MWBE Combined Goals”) based on the current availability of qualified MBEs and WBEs.

Program	MWBE Combined Goal*
Clean Water State Revolving Fund, Drinking Water State Revolving Fund, & Green Innovation Grant Program	20%
NYS WIIA Grants (also receiving EFC loan)	Clean Water project 23% Drinking Water project 26%
NYS Intermunicipal Grants (also receiving EFC loan)	Clean Water project 24% Drinking Water project 24%
NYS financial assistance only	30%
Engineering Planning Grant	30%

*May be any combination of MBE and/or WBE participation

- For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section III-A hereof, the Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com>.
- The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards achievement of applicable MWBE participation goals. For construction Contracts or Subcontracts, the portion of the Contract or Subcontract with an MWBE serving as a supplier, and so designated in ESD’s Directory, that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the Contract or Subcontract. The portion of a Contract or Subcontract with an MWBE serving as a broker, as denoted by NAICS code 425120, that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.
- Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR § 142.8, the Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as Subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of Contract and the Contractor shall be liable to the Recipient for liquidated or other appropriate damages, as set forth herein.

B. MWBE Utilization Plan

- The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan to the Recipient prior to the execution of this Contract.
- The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this section.
- The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is not responsive.

4. Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the Recipient's MBO. Contractor shall indicate the changes to the MBO in the next Monthly MWBE Contractor Compliance Report after the changes occurred. At EFC's discretion, an updated MWBE Utilization Plan form and good faith effort documentation may be required to be submitted. When a Utilization Plan is revised due to execution of a change order, the change order should be submitted to the MBO with the revised Utilization Plan.
5. The Contractor shall submit copies of all fully executed subcontracts, agreements, and purchase orders that are referred to in the MWBE Utilization Plan to the MBO within 30 days of their execution.

C. Requests for Waiver

1. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver to the Recipient documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Recipient shall forward the request to EFC for evaluation, and EFC will issue a written notice of acceptance or denial within twenty (20) days of receipt.
2. If the Recipient, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the Recipient may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

D. Monthly MWBE Contractor Compliance Report ("Monthly MWBE Report")

The Contractor agrees to submit a report to the Recipient by the third business day following the end of each month over the term of this Contract documenting the payments made and the progress towards achievement of the MWBE goals of the Contract. The Monthly MWBE Report must be supplemented with proof of payment by the Contractor to its Subcontractors (e.g., copies of both sides of a cancelled check) and proof that Subcontractors have been paid within 30 days of receipt of payment from the Recipient. The final Monthly MWBE Report must reflect all Utilization Plan revisions and change orders.

E. Liquidated Damages - MWBE Participation

In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, if it has been determined by the Recipient or EFC that the Contractor has willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to Recipient liquidated damages or other appropriate damages, as specified herein and as determined by the Recipient or EFC.

Liquidated damages shall be calculated as an amount not to exceed the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the approved MWBE participation goals; and,
2. All sums actually paid to MWBEs for work performed or materials supplied under this Contract.

The Recipient and EFC reserve the right to impose a lesser amount of liquidated damages than the amount calculated above based on the circumstances surrounding the Contractor's non-compliance.

In the event a determination has been made by the Recipient or EFC which requires the payment of damages identified herein and such identified sums have not been withheld, Contractor shall pay such damages to the Recipient within sixty (60) days after they are assessed unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Empire State Development Corporation – Division of Minority and Women's Business Development ("ESD")

pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the damages shall be payable if the Director of ESD renders a decision in favor of the Recipient.

SECTION 2 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES

The requirements of this section apply to Contractors and Subcontractors working pursuant to: (1) construction Contracts greater than \$100,000; (2) Contracts that are initially under this threshold but subsequent change orders or contract amendments increase the Contract value to above \$100,000; and, (3) change orders greater than \$25,000.

Disregard this section if it does not apply to this Contract or Subcontract.

I. General Provisions

Contractors and Subcontractors are required to comply with New York State Executive Law Article 17-B and 9 NYCRR Part 252 for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation or real property and improvements thereon.

II. Contract Goals

- A. EFC hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Contractor should reference the directory of New York State Certified SDVOBs found at: https://ogs.ny.gov/veterans/Docs/CertifiedNYS_SDVOB.pdf.
- B. Pursuant to 9 NYCRR § 252.2(n), Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

III. SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Contractor represents and warrants that it has submitted a completed SDVOB Utilization Plan to Recipient prior to the execution of this Contract.
- B. Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- C. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.
- D. Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the Recipient’s MBO. Contractor shall indicate the changes to the MBO in the next Monthly SDVOB Contractor Compliance Report after the changes occurred. At EFC’s discretion, an updated SDVOB Utilization Plan form and good faith effort documentation may be required to be submitted. When a Utilization Plan is revised due to execution of a change order, the change order should be submitted to the MBO with the revised Utilization Plan.
- E. The Contractor shall submit copies of all fully executed subcontracts, agreements, and purchase orders that are referred to in the SDVOB Utilization Plan to the MBO within 30 days of their execution.

IV. Request for Waiver

- A. If Contractor, after making good faith efforts, is unable to comply with the SDVOB Contract goals, Contractor may submit a request for a partial or total waiver to the Recipient, documenting good

faith efforts by Contractor to meet such goals. If the documentation included with the waiver request is complete, the Recipient shall forward the request to EFC for evaluation, and EFC will issue a written notice of acceptance or denial within twenty (20) days of receipt.

- B. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to the Recipient, but must be made no later than prior to the submission of a request for final payment on the Contract.
- C. If the Recipient, upon review of the SDVOB Utilization Plan and Monthly SDVOB Contractor Compliance Report determines that Contractor is failing or refusing to comply with the SDVOB Contract goals and no waiver has been issued in regards to such non-compliance, the Recipient may issue a notice of deficiency to Contractor. Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB Contract goals.

V. Monthly SDVOB Contractor Compliance Report (“Monthly SDVOB Report”)

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report monthly SDVOB contractor compliance to the Recipient during the term of the Contract for the preceding month’s activity, documenting progress made towards achieving the Contract SDVOB goals. The Contractor agrees to submit a report on to the Recipient by the third business day following the end of each month over the term of this Contract. The Monthly SDVOB Report must be supplemented with proof of payment by the Contractor to its Subcontractors (e.g., copies of both sides of a cancelled check). The final Monthly SDVOB Report must reflect all Utilization Plan revisions and change orders.

VI. Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

SECTION 3 REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT

The requirements of this section apply to all Contracts and Subcontracts.

The Contractor and any Subcontractors have not been deemed ineligible to submit a bid on or be awarded a public contract or subcontract pursuant to Article 8 of the State Labor Law, specifically Labor Law § 220-b. In addition, neither the Contractor nor any Subcontractors have contracted with, or will contract with, any party that has been deemed ineligible to submit a bid on or be awarded a public contract or subcontract under Labor Law § 220-b.

In addition, the Contractor and any Subcontractors have not been deemed ineligible to submit a bid and have not contracted with and will not contract with any party that has been deemed ineligible to submit a bid under Executive Law § 316.

PART 3:

GUIDANCE MATERIALS

APPLICABILITY OF PROGRAM REQUIREMENTS

This chart contains a listing of the State financial assistance program requirements contained within this document, as well as the following details regarding each requirement: (1) its applicability, i.e., what types of contracts/subcontracts, particular monetary thresholds if applicable; (2) a section reference to the Required Contract Language that applies from Part 2; and (3) a section reference to the Guidance that applies from this Part.

Requirement	Applicability	Section of Required Contract Language from Part 2	Section of Appropriate Guidance from Part 3
Minority- and Women-Owned Business Enterprises (MWBE) and Equal Employment Opportunities (EEO)	Contractors and Subcontractors working pursuant to: (1) Construction Contracts greater than \$100,000 (2) Contracts that are initially under this threshold but subsequent change orders or Contract amendments increase the Contract value above \$100,000 (3) Change orders greater than \$25,000	1	1
Service-Disabled Veteran-Owned Businesses (SDVOB)	Contractors and Subcontractors working pursuant to: (1) Construction Contracts greater than \$100,000 (2) Contracts that are initially under this threshold but subsequent change orders or Contract amendments increase the Contract value above \$100,000 (3) Change orders greater than \$25,000	2	2
Applicable Labor Standards	All Contracts and Subcontracts for public works are subject to State Labor Law requirements. Review local labor requirements to determine applicability of any additional requirements to your Contract or Subcontract.	-	3
Suspension and Debarment	All Contracts and Subcontracts	3	4

SECTION 1 GUIDANCE FOR THE REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

I. Summary of EEO and MWBE Forms

A. Forms to be Submitted Prior to Contract Execution

1. EEO Policy Statement

To be submitted by the Contractor to the Recipient's Minority Business Officer ("MBO") prior to Contract execution. The "MBO" refers to the duly authorized representative of the State financial assistance Recipient for MWBE and EEO purposes. This form is attached hereto as Attachment 1. See Required Contract Language, Section 1(II).

2. MWBE Utilization Plan

To be submitted by the Contractor to the MBO after the bid opening, but in no case more than ten (10) business days after the Contractor receives notice from the Recipient that the Contractor has submitted a low bid. This form is attached hereto as Attachment 3. See Required Contract Language, Section 1(III)(B).

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

1. EEO Workforce Employment Utilization Report ("Workforce Report")

To be submitted by the Contractor to the MBO on a monthly basis during the term of the Contract. An exemplar form with instructions is attached hereto as Attachment 2. The actual Excel fillable form for Contractors and Subcontractors to complete will be e-mailed to MBOs by EFC at the start of the Contract term. See Required Contract Language, Section 1(II)(F).

2. Request for Partial or Total Waiver

If applicable, to be submitted by the Contractor to the MBO at any time during the term of the Contract, but not later than prior to the submission of a request for final payment on the Contract. This form is attached hereto as Attachment 4. See Required Contract Language, Section 1(III)(C).

3. Monthly MWBE Contractor Compliance Report ("Monthly MWBE Report")

To be submitted by the Contractor to the MBO by the third business day following the end of each month over the term of the Contract. This form is attached hereto as Attachment 5. See Required Contract Language, Section 1(III)(D).

II. Business Participation Opportunities for MWBEs

A. Contract Goals

The goals provided herein (Required Contract Language, Section 1(III)(A)) are effective as of October 1, 2017. MWBE participation goals for a contract will be based on the goals in place at the time of the execution date of each respective contract, unless otherwise specified. In certain instances, the goals may vary, such as with projects co-funded by EFC and other state/federal agencies. With some co-funded projects, EFC may defer to the MBE and WBE participation goals and program established by those agencies.

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

B. Good Faith Efforts

The Contractor must make good faith efforts to develop an adequate MWBE Utilization Plan and must continue such good faith efforts in order to meet applicable MWBE participation goals. The Contractor shall maintain documentation of good faith efforts to solicit participation of MWBE firms for State financial assistance projects. If a Contractor is unable to meet contract MWBE participation goals, and submits a Request for Waiver, documentation of such good faith efforts must accompany the request. See Required Contract Language, Section 1(III)(C).

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

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

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

Date	M/WBE Type	Company	Scope of work	Contact Name	Phone/ Email	Solicitation Format	MWBE Response	Negotiation Required?	Selected? If not, Explain

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

- Copies of any advertisements of sufficient duration to effectively seek participation of certified MBE and WBEs timely published in appropriate general circulation, trade and MWBE oriented publications, together with listing and dates of publication of such advertisements. EFC recommends the use of the NYS Contract Reporter that is free to all Contractors - <https://www.nyscr.ny.gov/>. A log should be kept of the responses to the ads, similar to the log for MWBE firm solicitation and should include

the non-MWBE firms that responded and the bid prices. Any negotiations should be documented in the log.

- Documents demonstrating that insufficient MBEs or WBEs are reasonably available to perform the work.
- A written demonstration that the Contractor offered to make up any inability to meet the project MWBE participation goals in other contracts and/or agreements performed by the Contractor on another State financial assistance project.
- The date of pre-bid, pre-award, or other meetings scheduled by the Recipient, if any, and the contact information of any MBEs and WBEs who attended and are capable of performing work on the project.
- Any other information or documentation that demonstrates the Contractor conducted good faith efforts to provide opportunities for MWBE participation in their work. For instance, Prime Contractors and MBOs should develop a list of MWBE firms that have expressed interest in working on State financial assistance projects

C. MWBE Utilization Plan

1. The MWBE Utilization Plan must be submitted to the Recipient's MBO after the bid opening, but in no case more than ten (10) business days after the Contractor receives notice from the Recipient that the Contractor has submitted a low bid.
2. The MBO will evaluate a completed MWBE Utilization Plan. If the MBO finds the Utilization Plan sufficient, it will be forwarded to EFC for review. If the MBO finds the Utilization Plan insufficient, the MBO will work with the Contractor to address deficiencies before submitting to EFC for review. A written notice of acceptance or deficiency will be issued by EFC within 20 business days of receipt of the Utilization Plan. Upon receipt of a notice of deficiency from either the MBO or EFC, the Contractor shall respond with a written remedy to such notice within seven (7) business days of receipt.
3. In coordination with the MBO, EFC will accept an MWBE Utilization Plan upon consideration of many factors, including the following:
 - a. The MWBE Utilization Plan indicates that the proposed goals for the project will be achieved;
 - b. A Contractor, who is a certified MBE or WBE, will be credited for up to 100% of the category of their certification. However, good faith efforts to seek participation in the other category are also required; and,
 - c. Adequate documentation to demonstrate good faith efforts and/or support a specialty equipment/services waiver as described below in Section III(E).
4. EFC reserves the right to request additional information and/or documentation to support the adequacy of the MWBE Utilization Plan.
5. Within 10 days of EFC's acceptance of a MWBE Utilization Plan, EFC will post the approved Utilization Plan on the EFC website.
6. In coordination with the MBO, EFC may issue conditional acceptance of Utilization Plans pending submission of additional documentation that demonstrates there will be an increase in MWBE participation.

D. Eligibility for MWBE Participation Credit

1. To receive MWBE participation credit, Contractors or Subcontractors performing work that have been identified in an approved MWBE Utilization Plan must be certified as an MBE or WBE by ESD.
2. Prime Contractors may also include second or lower tier Subcontractors (Subcontractors hired by Subcontractors) on their MWBE Utilization Plan.
3. Credit for MWBE participation shall be granted only for MWBE firms performing a commercially useful business function according to custom and practice in the industry.

- a. Factors to be used in assessing whether an MWBE is performing a commercially useful function include:
 - i. The amount of work subcontracted;
 - ii. Industry practices;
 - iii. Whether the amount the MWBE is to be paid under the contract is commensurate with the work it is to perform;
 - iv. The credit claimed towards MWBE utilization goals for the performance of the work by the MWBE; and,
 - v. Any other relevant factors.
 - b. "Commercially useful functions" normally include:
 - i. Providing technical assistance to a purchaser prior to a purchase, during installation, and after the supplies or equipment are placed in service;
 - ii. Manufacturing or being the first tier below the manufacturer of supplies or equipment;
 - iii. Providing functions other than merely accepting and referring requests for supplies or equipment to another party for direct shipment to a Contractor; or,
 - iv. Being responsible for ordering, negotiating price, and determining quality and quantity of materials and supplies.
 - c. For construction Contracts or Subcontracts, the following rules apply when calculating MWBE utilization:
 - i. The portion of a Contract or Subcontract with an MWBE serving as a manufacturer that shall be deemed to represent the commercially useful function performed by the MWBE shall be 100% of the total value of the Contract or Subcontract.
 - ii. the portion of a Contract or Subcontract with an MWBE serving as a supplier (as denoted by a NAICS code beginning with 423 or 424, or a NIGP code that does not begin with the number 9), and so designated in ESD's Directory, that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the Contract or Subcontract.
 - iii. the portion of a Contract or Subcontract with an MWBE serving as a broker (as denoted by NAICS code 425120) that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.
4. No credit will be granted for MWBEs that do not perform a commercially useful function. An MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation.

E. Requests for Waiver

1. If the Contractor's application of good faith efforts does not result in the utilization of MWBE firms to achieve the aforementioned goals or a specialty equipment/service waiver is requested, the Contractor may request a full or partial waiver of MWBE participation goals by completing a Request for Waiver form, attaching appropriate documentation of good faith efforts, and submitting same to the MBO. See also Required Contract Language, Section 1(III)(C). Even if an MWBE waiver is granted, EEO information must still be submitted.
2. The MBO and EFC will review each waiver request based on the good faith effort criteria presented above and the documentation submitted with the waiver request. EFC will not issue any automatic waivers from MWBE responsibilities.
3. In cases where EFC accepts a full or partial waiver of MWBE participation goals, the waiver request will be posted to EFC's website.
4. Specialty Equipment/Service Waiver: A specialty equipment/service waiver may be granted in cases where:

- a. equipment is made by only one non-MWBE manufacturer,
- b. the technical specifications call for equipment that is not available through an MWBE supplier;
- c. the equipment is constructed on site by specially trained non-MWBE labor;
- d. the service is not available through an MWBE (such as work done by National Grid);
- e. the service is proprietary in nature (such as use of certain computer software necessary for control systems); or,
- f. the service cannot be subcontracted (such as litigation services).

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

Example:

$$\begin{array}{rcl} \$200,000 & - & \$50,000 & = & \$150,000 \\ \text{(Contract)} & & \text{(Specialty equipment/service)} & & \text{(MWBE Eligible Amount)} \end{array}$$
 The MWBE goal is applied to the MWBE Eligible Amount.

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

III. Subcontractor's Responsibilities

Subcontractors should:

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

IV. Protests/Complaints

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

V. Waste, Fraud and Abuse

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

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

I. Summary of SDVOB Forms

A. Forms to be Submitted Prior to Contract Execution

1. SDVOB Utilization Plan

To be submitted by the Contractor to the MBO after the bid opening, but in no case more than ten (10) business days after the Contractor receives notice from the Recipient that the Contractor has submitted a low bid. This form is attached hereto as Attachment 6. See Required Contract Language, Section 2(III).

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

1. Request for Partial or Total Waiver

If applicable, to be submitted by the Contractor to the MBO at any time during the term of the Contract, but not later than prior to the submission of a request for final payment on the Contract. This form is attached hereto as Attachment 7. See Required Contract Language, Section 2(IV).

2. Monthly SDVOB Contractor Compliance Report (“Monthly SDVOB Report”)

To be submitted by the Contractor to the MBO by the third business day following the end of each month over the term of the Contract. This form is attached hereto as Attachment 5. See Required Contract Language, Section 2(V).

II. SDVOB Participation Opportunities

A. Contract Goals

The goals provided herein (Required Contract Language, Section 2(II)(A)) are effective as of October 1, 2017. SDVOB participation goals for a contract will be based on the goals in place at the time of the execution date of each respective contract, unless otherwise specified. Following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

B. Good Faith Efforts

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

Contractor should also continue good faith efforts to seek opportunities for SDVOB participation

during the life of the contract even if proposed goals have been achieved.

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

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

Date	Company	Scope of work	Contact Name	Phone/ Email	Solicitation Format	SDVOB Response	Negotiation Required?	Selected? If not, Explain

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

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

instance, Prime Contractors and MBOs should develop a list of SDVOB firms that have expressed interest in working on State financial assistance projects

C. SDVOB Utilization Plan

1. The SDVOB Utilization Plan must be submitted to the Recipient's MBO after the bid opening, but in no case more than ten (10) business days after the Contractor receives notice from the Recipient that the Contractor has submitted a low bid.
2. The MBO will evaluate a completed SDVOB Utilization Plan. If the MBO finds the Utilization Plan sufficient, it will be forwarded to EFC for review. If the MBO finds the Utilization Plan insufficient, the MBO will work with the Contractor to address deficiencies before submitting to EFC for review. A written notice of acceptance or deficiency will be issued by EFC within 20 business days of receipt of the Utilization Plan. Upon receipt of a notice of deficiency from either the MBO or EFC, the Contractor shall respond with a written remedy to such notice within seven (7) business days of receipt.
3. EFC reserves the right to request additional information and/or documentation to support the adequacy of the SDVOB Utilization Plan.
4. Within 10 days of EFC's acceptance of a SDVOB Utilization Plan, EFC will post the approved Utilization Plan on the EFC website.
5. In coordination with the MBO, EFC may issue conditional acceptance of Utilization Plans pending submission of additional documentation that demonstrates there will be an increase in SDVOB participation.

D. Eligibility for SDVOB Participation Credit

1. To receive SDVOB participation credit, Contractors or Subcontractors performing work that have been identified in an approved SDVOB Utilization Plan must be certified as an SDVOB by the Office of General Services' Division of Service-Disabled Veterans' Business Development.
2. Prime Contractors may also include second or lower tier Subcontractors (Subcontractors hired by Subcontractors) on their SDVOB Utilization Plan.
3. Credit for SDVOB participation shall be granted only for SDVOB firms performing a commercially useful business function according to custom and practice in the industry.
 - a. Factors to be used in assessing whether an SDVOB is performing a commercially useful function include:
 - i. The amount of work subcontracted;
 - ii. Industry practices;
 - iii. Whether the amount the SDVOB is to be paid under the contract is commensurate with the work it is to perform;
 - iv. The credit claimed towards SDVOB utilization goals for the performance of the work by the SDVOB; and,
 - v. Any other relevant factors.
 - b. "Commercially useful functions" normally include:
 - v. Providing technical assistance to a purchaser prior to a purchase, during installation, and after the supplies or equipment are placed in service;
 - vi. Manufacturing or being the first tier below the manufacturer of supplies or equipment;
 - vii. Providing functions other than merely accepting and referring requests for supplies or equipment to another party for direct shipment to a Contractor; or,
 - viii. Being responsible for ordering, negotiating price, and determining quality and quantity of materials and supplies.
4. No credit will be granted for SDVOBs that do not perform a commercially useful function. An SDVOB does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation.
5. A Contractor or subcontractor who is certified as both an SDVOB and MWBE may receive participation credit under both programs for its work on a contract or subcontract.

E. Requests for Waiver

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

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

Example:

\$200,000	-	\$50,000	=	\$150,000
(Contract)		(Specialty equipment/service)		(SDVOB Eligible Amount)

The SDVOB goal is applied to the SDVOB Eligible Amount.

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

III. Subcontractor's Responsibilities

Subcontractors should:

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

IV. Protests/Complaints

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

V. Waste, Fraud and Abuse

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

SECTION 3 GUIDANCE FOR APPLICABLE LABOR STANDARDS

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

SECTION 4 GUIDANCE FOR REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT

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

A list of contractors deemed ineligible to submit a bid is maintained by Empire State Development's Division of Minority and Women's Business Development.

SECTION 5 SUMMARY OF CONTRACTOR REQUIREMENTS FOR STATE FINANCIAL ASSISTANCE PROJECTS

Forms can be found as attachments to this document or online at www.efc.ny.gov

Forms should be submitted electronically via email or through EFC's [dropbox](#)

To be submitted with this bid:

- EEO Policy Statement

**Refer to Part 3
Guidance Section
Section 1**

To be submitted prior to or upon Contract award:

- Executed Contracts, Subcontracts, agreements, and purchase orders
- MWBE Utilization Plan and/or Waiver Request
- SDVOB Utilization Plan and/or Waiver Request

Section 1
Section 2

Tasks for construction start:

- Ensure that all Subcontracts contain Part 2: Required Contract Language
- Pay the higher of applicable prevailing state or local wages including benefits

Section 3

Ongoing documentation & tasks:

- EEO Workforce Utilization Report
- Submit Monthly MWBE Reports to MBO
- Submit Monthly SDVOB Reports to MBO
- Maintain proof of payments for MWBE Subcontractors
- Maintain proof of payments for SDVOB Subcontractors

Section 1
Section 1
Section 2
Section 1
Section 2

Attachment 1
New York State Environmental Facilities Corporation
EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT
NEW YORK STATE FINANCIAL ASSISTANCE PROGRAMS

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

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

X

Contractor/Service Provider Representative

Attachment 2 Instructions for Completing and Submitting the Equal Employment Opportunity Workforce Utilization Report

The Equal Employment Opportunity (“EEO”) Workforce Utilization Report (“Report”) is used by contractors and subcontractors to report the actual workforce utilized in the performance of the contract broken down by job title for a particular reporting period. When the workforce utilized in the performance of the contract can be separated out from the contractor’s and/or subcontractor’s total workforce, the contractor and/or subcontractor shall submit a Report of the workforce utilized on the contract. When the workforce to be utilized on the contract cannot be separated out from the contractor’s and/or subcontractor’s total workforce, information on the contractor’s and/or subcontractor’s total workforce shall be included in the Report.

Instructions for Completing the Report

1. **Reporting Entity.** Check off the appropriate box to indicate if the entity completing the Report is the contractor or a subcontractor.
2. **Federal Employer Identification Number (“FEIN”).** Enter the FEIN assigned by the Internal Revenue Service (“IRS”) to the contractor or subcontractor for which the Report has been prepared. If the contractor or subcontractor uses a social security number instead of a FEIN, leave this field blank. The contractors and subcontractors for recipients of a grant only (such as an Engineering Planning Grant (EPG), a Water Infrastructure Improvement Act (WIIA) grant, or an Intermunicipal Grant Program (IMG) grant) do not need to fill out this section of the Report.
3. **Name.** Enter the name of the contractor or subcontractor for which the Report has been prepared.
4. **Address.** Enter the address of the contractor or subcontractor for which the Report has been prepared.
5. **Contract Number.** Enter the number of contract that the Report applies to, if applicable.
6. **Reporting Period / Month.** Check off the box that corresponds to the applicable quarterly or monthly (not both) reporting period for this Report. The Report is to be submitted on a monthly basis for construction contracts, and a quarterly basis based on the calendar quarter for all other contracts, during the life of the contract.
7. **Workforce Identified in Report.** Check off the appropriate box to indicate if the workforce being reported is just for the contract or the contractor’s or subcontractor’s total workforce.
8. **Preparer’s Name, Preparer’s Title, Date.** Enter the name and title for the person completing the Report, enter the date upon which the Report was completed, and check the box accepting the name entered into the Report as the digital signature of the preparer.
9. **Occupation Classifications (SOC Major Group) and SOC Job Title.** First, enter the applicable Occupation Classification (SOC Major Group) so a dropdown menu appears under SOC Job Title. Choose the SOC Job Title that best describes the worker.
10. **EEO Job Title and SOC Job Code.** The EEO Job Title and the SOC Job Code will automatically populate in the spreadsheet based upon the Occupation Classifications (SOC Major Group) and SOC Job Title selected. Please do not modify the information populated in these fields.

11. **Race/Ethnic Identification.** Race/ethnic designations do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this Report are:
- **WHITE** (not of Hispanic origin) all persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
 - **BLACK/AFRICAN AMERICAN** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
 - **HISPANIC/LATINO** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
 - **ASIAN, NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
 - **NATIVE AMERICAN/ALASKAN NATIVE** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.
12. **Number of Employees and Number of Hours.** Enter the number of employees and the total number of hours worked by such employees for each SOC Job Title under the columns corresponding to the gender and racial/ethnic groups with which the employees most closely identify.
13. **Total Compensation.** Enter the total compensation paid to all employees for each SOC Job Title, each gender, and each racial/ethnic group. Contractors and subcontractors should report only compensation for work on the contract paid to employees during the period covered by the Report. Compensation should include only sums which must be reported in Box 1 of IRS Form W-2. The contractors and subcontractors for recipients of a grant only (such as an EPG, a WIIA, or an IMG grant) do not need to fill out this section of the Report.
14. **For EFC Use Only.** This section is for EFC use only and does not need to be filled out by the contractor/subcontractor.

Instructions for Submitting the Report

The Report is to be submitted on a monthly basis for construction contracts, and a quarterly basis based on the calendar quarter for all other contracts, during the life of the contract.

EFC will provide a Report form in Excel format to the Recipient's Minority Business Officer ("MBO"). The Recipient's MBO is responsible for providing the Report form to all contractors. Each contractor is responsible for providing the Report form to all subcontractors.

Reports are to be submitted electronically in Excel format, using the Report form provided, within ten (10) days of the end of each month or quarter, whichever is applicable. For example, the January monthly Report for a construction contract is due by February 10th and the January – March quarterly Report for a non-construction contract is due by April 10th.

Once the Report form has been completed, each contractor/subcontractor must submit the Report form to EFC and the Recipient's MBO. The Report form must be submitted to EFC according to the following instructions:

1. Go to www.efc.ny.gov/eeoreporting.
2. Enter the requested information pursuant to the instructions on the page. Make sure to choose the correct applicable funding program (Clean Water State Revolving Fund (SRF), Drinking Water SRF, non-SRF Grant Only (e.g. EPG, WIIA, IMG)) and the correct reporting period (reporting

quarter for non-construction OR reporting month for construction). Enter the reporting period of the data, not the date it's submitted.

3. Submit your Report(s) pursuant to the instructions on the page.
4. If you are a contractor, use the naming convention provided by EFC (in the "For EFC Use Only" section of the Report form) for naming the file for upload (i.e., Funding Program – Project Number– Contractor short name (up to fifteen characters) – MWBE ID). The funding programs include CW (clean water SRF), DW (drinking water SRF), and GO (non-SRF grant only). If you are a subcontractor, use the naming convention provided by EFC and replace the contractor's short name with the first fifteen characters of the subcontractor's name, omitting any spaces or special characters.

Questions

If you have questions about or require assistance completing or submitting the Report, please contact EFC at mwbe@efc.ny.gov or 518-402-6924.

Attachment 3
NYS Environmental Facilities Corporation
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan

Instructions for Contractors & Service Providers:

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

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

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

See the Bid Packet at www.efc.ny.gov or consult your designated MBO for further guidance.

Instructions for Minority Business Officers (MBO):

The MBO must complete Section 1. The MBO may designate an Authorized Representative to complete and submit quarterly payment reports on its behalf, and, if so designated, the MBO's Authorized Representative must also complete Section 1. The Authorized Representative may only submit quarterly payment reports on behalf of the MBO and may not submit any other required forms or reports for the MBO. The MBO must complete Section 1 even if designating an Authorized Representative. **Submit the completed, signed (electronic signature box checked and dated) form in Microsoft Word format via e-mail to your EFC MWBE Representative.**

The subject heading of the e-mail to the EFC MWBE Representative should follow the format "UP, Project Number, Contractor." EFC will review the Utilization Plan and notify the MBO via e-mail of its acceptance or denial.

Within 10 days of EFC's acceptance of a Utilization Plan, EFC will post the approved Utilization Plan on the EFC website.

Attachment 3
NYS Environmental Facilities Corporation
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan

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

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

**Attachment 3
NYS Environmental Facilities Corporation
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan**

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

**Attachment 3
NYS Environmental Facilities Corporation
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan**

SECTION 3: M/WBE SUBCONTRACTOR INFORMATION continued				
Name:	Fed. Employer ID#:			
Address:	Phone #:			
Scope of Work:	Email:			
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	Start Date:			
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:			
Full Contract Amount: \$				
Name:	Fed. Employer ID#:			
Address:	Phone #:			
Scope of Work:	Email:			
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	Start Date:			
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:			
Full Contract Amount: \$				
Name:	Fed. Employer ID#:			
Address:	Phone #:			
Scope of Work:	Email:			
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	Start Date:			
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:			
Full Contract Amount: \$				
Name:	Fed. Employer ID#:			
Address:	Phone #:			
Scope of Work:	Email:			
Select Only One: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other:	Start Date:			
Select Only One: <input type="checkbox"/> Broker ___% <input type="checkbox"/> Supplier <input type="checkbox"/> N/A	Completion Date:			
Full Contract Amount: \$				
SIGNATURE				

Attachment 3
NYS Environmental Facilities Corporation
Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan

Electronic Signature of Contractor: I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and that all MWBE subcontractors will perform a commercially useful function.

Name (Please Type):

Date:

Attachment 4
New York State Environmental Facilities Corporation
Minority & Women Owned Business Enterprise (MWBE) Waiver Request Form

Instructions for Contractors & Service Providers:

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

See the Bid Packet at www.efc.ny.gov or consult your designated MBO for further guidance.

Instructions for Minority Business Officers (MBO):

The MBO must complete Section 1. **Submit the completed, signed (electronic signature box checked and dated) form in Microsoft Word format via e-mail to your EFC MWBE Representative.** The subject heading of the e-mail to the EFC MWBE Representative should follow the format "Waiver Request, Project Number, Contractor." EFC will review and notify the MBO via e-mail of its acceptance or denial.

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

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

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

Attachment 4
New York State Environmental Facilities Corporation
Minority & Women Owned Business Enterprise (MWBE) Waiver Request Form

SECTION 3: TYPE OF MWBE WAIVER REQUESTED

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

PROPOSED MWBE Participation

MBE: % \$

WBE: % \$

Total: % \$

3. **Specialty Equipment/Services Waiver** (Must be of SIGNIFICANT cost - list of equipment and cost must be attached in addition to the supporting documentation outlined below)

SECTION 4: SUPPORTING DOCUMENTATION

To be considered, the Request for Waiver Form must be accompanied by the documentation requested in items 1 – 9, as listed below. If a Specialty Equipment Waiver is requested, it must be accompanied by the documentation requested in items 1 - 13. If a Specialty Services Waiver is requested, it must be accompanied by the items requested in items 1 – 9 and item 14. Copies of the following information and all relevant supporting documentation must be submitted along with the request. Please contact EFC for assistance, including sample documentation.

1. A letter of explanation setting forth your basis for requesting a partial or total waiver and detailing the good faith efforts that were made.
2. Copies of advertisements in any general circulation, trade association, and minority- and women-oriented publications in which you solicited MWBEs for the purposes of complying with your participation goals, with the dates of publication.
3. Screenshots of search results (by business description or commodity code) from Empire State Development Corporation's (ESD) MWBE Directory of all certified MWBEs that were solicited for purposes of complying with your MWBE participation goals.
4. Copies of faxes, letters, or e-mails sent to MWBE firms to solicit participation and their responses.
5. A log of solicitation results, consisting of the list of MWBE firms solicited for the contract and the outcome of the solicitations. The log should be broken out into separate areas for each task that is solicited (e.g., trucking, materials, electricians) and clearly provide a rationale for firms included on the completed Utilization Plan as well as for those not chosen. The log should show: that each MWBE firm was contacted twice by two different methods (e.g., fax and phone); who was spoken to; what was said; and the final outcome of the solicitation.
6. A description of any contract documents, plans, or specifications made available to MWBEs for purposes of soliciting their bids and the date and manner in which these documents were made available. Specifically, include information on the scope of work in the contract and a breakout of tasks or equipment, such as

Attachment 4
New York State Environmental Facilities Corporation
Minority & Women Owned Business Enterprise (MWBE) Waiver Request Form

a schedule of values for a construction contract or a proposal or excerpt from a professional services agreement.

7. Documentation of any negotiations between you, the Contractor, and the MWBEs undertaken for purposes of complying with your MWBE participation goals.
8. Any other information you deem relevant which may help us in evaluating your request for a waiver. Examples may include sign-in sheets from any pre-bid meetings where MWBE firms were invited, attendance at MWBE forums, etc.
9. EFC and the MBO reserve the right to request additional information and/or documentation.

Additional Documentation for Requests for Specialty Equipment Waivers:

10. Copies of the appropriate pages of the technical specification related to the equipment showing the choices for manufacturers or other information that limits the choice of vendor.
11. Letter, e-mail or screenshot of website from the manufacturer listing their distributors in NYS and the locations.
12. Screenshots of ESD's MWBE Directory searches for the manufacturer and distributor showing that they are not found in the Directory.
13. An invoice or purchase order showing the value of the equipment.

Additional Documentation for Requests for Specialty Service Waivers:

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

Note: Unless a Total Waiver has been granted, Firms will be required to submit all reports and documents pursuant to the provisions set forth in the procurement and/or contract, as deemed appropriate by EFC, to determine MWBE compliance. In cases where EFC accepts a full or partial waiver of MWBE participation goals, the waiver request will be posted to EFC's website.

SIGNATURE

Electronic Signature of Contractor:

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

Name: (Please Type):

Date:

Attachment 5
New York State Environmental Facilities Corporation
Monthly Minority- & Women- Owned Business Enterprise (MWBE) Contractor Compliance Report
("Monthly MWBE-SDVOB Report")

Instructions:

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

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

Attachment 5
New York State Environmental Facilities Corporation
Monthly Minority- & Women- Owned Business Enterprise (MWBE) Contractor Compliance Report
("Monthly MWBE-SDVOB Report")

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

Attachment 5
New York State Environmental Facilities Corporation
Monthly Minority- & Women- Owned Business Enterprise (MWBE) Contractor Compliance Report
("Monthly MWBE-SDVOB Report")

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

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

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

Attachment 6
NYS Environmental Facilities Corporation
Service Disabled Veteran-Owned Business (SDVOB) Utilization Plan

Instructions for Contractors & Service Providers:

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

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

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

See the Bid Packet at www.efc.ny.gov or consult your designated MBO for further guidance.

Instructions for Minority Business Officers (MBO):

The MBO must complete Section 1. The MBO may designate an Authorized Representative to complete and submit quarterly payment reports on its behalf, and, if so designated, the MBO's Authorized Representative must also complete Section 1. The Authorized Representative may only submit quarterly payment reports on behalf of the MBO and may not submit any other required forms or reports for the MBO. The MBO must complete Section 1 even if designating an Authorized Representative. **Submit the completed, signed (electronic signature box checked and dated) form in Microsoft Word format via e-mail to your EFC MWBE-SDVOB Representative.**

The subject heading of the e-mail to the EFC MWBE-SDVOB Representative should follow the format "UP, Project Number, Contractor." EFC will review the Utilization Plan and notify the MBO via e-mail of its acceptance or denial.

Within 10 days of EFC's acceptance of a Utilization Plan, EFC will post the approved Utilization Plan on the EFC website.

Attachment 6
NYS Environmental Facilities Corporation
Service Disabled Veteran-Owned Business (SDVOB) Utilization Plan

SECTION 1: MUNICIPAL INFORMATION

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

SECTION 2: PRIME CONTRACTOR / SERVICE PROVIDER INFORMATION

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

**Attachment 6
NYS Environmental Facilities Corporation
Service Disabled Veteran-Owned Business (SDVOB) Utilization Plan**

SECTION 3: SDVOB SUBCONTRACTOR INFORMATION

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

Attachment 6
NYS Environmental Facilities Corporation
Service Disabled Veteran-Owned Business (SDVOB) Utilization Plan

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

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

Attachment 7
NYS Environmental Facilities Corporation
Service Disabled Veteran Owned Business (SDVOB) Waiver Request Form

Instructions for Contractors & Service Providers:

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

See the Bid Packet at www.efc.ny.gov or consult your designated MBO for further guidance.

Instructions for Minority Business Officers (MBO):

The MBO must complete Section 1. **Submit the completed, signed (electronic signature box checked and dated) form in Microsoft Word format via e-mail to your EFC MWBE-SDVOB Representative.** The subject heading of the e-mail to the EFC MWBE-SDVOB Representative should follow the format "Waiver Request, Project Number, Contractor." EFC will review and notify the MBO via e-mail of its acceptance or denial.

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

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

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

Attachment 7
NYS Environmental Facilities Corporation
Service Disabled Veteran Owned Business (SDVOB) Waiver Request Form

SECTION 3: TYPE OF SDVOB WAIVER REQUESTED

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

PROPOSED SDVOB Participation

Total: % \$

3. **Specialty Equipment/Services Waiver** (Must be of SIGNIFICANT cost - list of equipment and cost must be attached in addition to the supporting documentation outlined below)

SECTION 4: SUPPORTING DOCUMENTATION

To be considered, the Request for Waiver Form must be accompanied by the documentation requested in items 1 – 9, as listed below. If a Specialty Equipment Waiver is requested, it must be accompanied by the documentation requested in items 1 - 13. If a Specialty Services Waiver is requested, it must be accompanied by the items requested in items 1 – 9 and item 14. Copies of the following information and all relevant supporting documentation must be submitted along with the request. Please contact EFC for assistance, including sample documentation.

1. A letter of explanation setting forth your basis for requesting a partial or total waiver and detailing the good faith efforts that were made.
2. Copies of advertisements in any general circulation, trade association, in which you solicited SDVOBs for the purposes of complying with your participation goal, with the dates of publication.
3. A list of firms found as a result of a search (by business description or commodity code) of OGS's SDVOB Directory and solicited for purposes of complying with your SDVOB participation goal.
4. Copies of faxes, letters, or e-mails sent to SDVOB firms to solicit participation and their responses.
5. A log of solicitation results, consisting of the list of SDVOB firms solicited for the contract and the outcome of the solicitations. The log should be broken out into separate areas for each task that is solicited (e.g., trucking, materials, electricians) and clearly provide a rationale for firms included on the completed Utilization Plan as well as for those not chosen. The log should show: that each SDVOB firm was contacted twice by two different methods (e.g., fax and phone); who was spoken to; what was said; and the final outcome of the solicitation.
6. A description of any contract documents, plans, or specifications made available to SDVOBs for purposes of soliciting their bids and the date and manner in which these documents were made available. Specifically, include information on the scope of work in the contract and a breakout of tasks or equipment, such as a schedule of values for a construction contract or a proposal or excerpt from a professional services agreement.

Attachment 7
NYS Environmental Facilities Corporation
Service Disabled Veteran Owned Business (SDVOB) Waiver Request Form

7. Documentation of any negotiations between you, the Contractor, and the SDVOBs undertaken for purposes of complying with your SDVOB participation goal.
8. Any other information you deem relevant which may help us in evaluating your request for a waiver. Examples may include sign-in sheets from any pre-bid meetings where SDVOB firms were invited, attendance at SDVOB forums, etc.
9. EFC and the MBO reserve the right to request additional information and/or documentation.

Additional Documentation for Requests for Specialty Equipment Waivers:

10. Copies of the appropriate pages of the technical specification related to the equipment showing the choices for manufacturers or other information that limits the choice of vendor.
11. Letter, e-mail or screenshot of website from the manufacturer listing their distributors in NYS and the locations.
12. The name and federal employee identification number of the manufacturer and distributor for EFC to search the SDVOB Directory.
13. An invoice or purchase order showing the value of the equipment.

Additional Documentation for Requests for Specialty Service Waivers:

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

Note: Unless a Total Waiver has been granted, Firms will be required to submit all reports and documents pursuant to the provisions set forth in the procurement and/or contract, as deemed appropriate by EFC, to determine SDVOB compliance. In cases where EFC accepts a full or partial waiver of SDVOB participation goals, the waiver request will be posted to EFC's website.

SIGNATURE

Electronic Signature of Contractor:

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

Name: (Please Type):

Date:

APPENDIX N SUPPLEMENTAL ENGINEERING REPORT

**SUPPLEMENT TO THE UPGRADE OF THE ODOR CONTROL SYSTEMS AND
MISCELLANEOUS HEATING AND VENTILATION SYSTEM IMPROVEMENTS
DESIGN RECOMMENDATION REPORT DATED MAY 2017**

**ROCKLAND COUNTY SEWER DISTRICT NO. 1
WASTEWATER TREATMENT PLANT**

Prepared For

ROCKLAND COUNTY SEWER DISTRICT NO. 1

Prepared By



SEPTEMBER 2017

**SUPPLEMENT TO THE UPGRADE OF THE ODOR CONTROL SYSTEMS AND
MISCELLANEOUS HEATING AND VENTILATION SYSTEM IMPROVEMENTS
DESIGN RECOMMENDATION REPORT DATED MAY 2017**

**ROCKLAND COUNTY SEWER DISTRICT NO. 1
WASTEWATER TREATMENT PLANT**

**THIS SUPPLEMENT INCLUDES THE FOLLOWING UPDATED SECTIONS AND
ADDITIONAL INFORMATION:**

- 1. REVISED SECTION 3.2 EXISTING HEATING AND VENTILATION SYSTEMS**
- 2. REVISION TO TABLE 4-2**
- 3. REVISION TO TABLE 5 – 1, FOR SYSTEM B10 CHANGE 5,700 TO 7,400**
- 4. REVISION TO TABLE 5 – 2, SYSTEM BIO**
- 5. REVISED SECTION 5.1.15 B10 – B – SIDE SECONDARY PUMPING CHAMBER**
- 6. REVISED SECTION 5.2, HEATING AND VENTILATION SYSTEMS**
- 7. REVISED FIGURE 5 – B10**
- 8. REVISED APPENDIX C, TABLE B10**



September 2017

1. REVISED SECTION 3.2 EXISTING HEATING AND VENTILATION SYSTEMS

3.2 Existing Heating and Ventilation Systems

The existing heating and ventilation systems in the A-side and B-side Primary and Secondary Pumping Chambers and the Sludge Oxidation Building (Storage Building) were inspected to assess their physical condition, current operating status, adequacy to provide proper heating and ventilation of these areas and to determine the most efficient and effective way to direct the ventilation from these areas, with the exception of the Sludge Oxidation Building, to existing or new odor control systems. See **Figure 3-2**, Heating and Ventilation Systems Improvements Location Plan.

The heating requirements for the A-side Primary and Secondary Pumping Chambers are being provided by electric unit heaters.

The heating requirements for the B-side Primary and Secondary Pumping Chambers are being provided by a hot water loop.

The heating requirements for the Sludge Oxidation Building are being provided by electric unit heaters.

Ventilation for all of the above areas is being provided with roof and/or wall exhaust fans.

3.2.1 B-side Primary and Secondary Pumping Chambers

Heating hot water for the B-side Primary and Secondary Pumping Chambers is generated by (2) 10 section HB Smith “28 Series” cast iron sectional boilers. The boilers have been in operation for over 30 years. According to facility staff the boilers have been rebuilt since their initial installation and are currently in good working order, this was confirmed during our site inspection in February 2017. However, many of the pressure and temperature gauges throughout the facility were damaged at the time of our inspection, Hot Water Supply (HWS)/Hot Water Return (HWR) temperatures and pressures are believed to be approximately 186°F/50 PSI for supply and 170°F/15 PSI on the return side. There are (3) pumps which provide circulation through

the HWS/HWR loop. At the time of inspection (2) pumps were observed to be operating with their isolation valves half closed. Due to broken pressure gauges no definitive determination could be made as to why these pumps would be operated under these conditions. The third pump was off and its isolation valve was closed, this pump is assumed to be a standby pump to be utilized in the event of pump failure.

Upon review of the 1982 design drawings it was discovered that the initial HWS design setpoint temperature was 215°F and the initial HWR design setpoint temperature was 175°F. If this reduction in supply water temperature is accurate (which is uncertain due to numerous broken thermometers) it results in at least a 60% reduction in the heating capacity of the system. It is assumed that the reason for the deviation from the design setpoints is that since the piping to the 'B' Secondary building has been severed, and ventilation systems are not being run continuously as intended, there is a much lower heating demand.

Hot water supply and return piping serving the “B” Secondary Pumping Chamber has been disconnected where it leaves the scum handling building. It is believed, based on our discussions with facility staff and contractors familiar with the history of the site that this is due to damaged underground piping between the “B” Primary building and the “B” Secondary building.

There have been reports by facility staff that the HWS/HWR piping suffers from numerous leaks, not just in the interconnecting underground piping but inside the buildings themselves. During our inspection, the heating system was operational in portions of the facility. Hot water was flowing and the system was operational in the “B” Primary Building, no significant leaks were observed during our inspection.

Heat recovery coils are installed on the exhaust fans serving the “B” Primary and “B” Secondary Pumping Chambers for increased system efficiency. However, these heat recovery systems are currently nonfunctional and are beyond economical repair with corroded pipes and fittings, damaged insulation and significant corrosion on the heat recovery coils. Supplemental electric unit heaters have been installed throughout the buildings over the years due to reports of insufficient heat being delivered by the hot water system.

3.2.1.1 “B” Primary Pumping Chamber

Heat for the B Primary Pumping Chamber is provided by a floor mounted air handling unit with hydronic heat coils utilizing 100% outdoor air at a rate of 10,600 CFM. The existing AHU is coupled with a 10,600 CFM exhaust fan installed at the opposite end of the pump chamber. A hydronic heat recover coil is installed on the exhaust fan to increase system energy efficiency. The air handling units is functional, but due to be replaced. The heat recovery system is non-functional and in is beyond economical repair. The exhaust fan is not currently connected to an odor control system.

3.2.1.2 “B” Primary Electric Room

Heat for the “B” Primary Electric Room is provided by hydronic unit heaters. Ventilation is provided by an exhaust fan that vents to the atmosphere. Motorized louvers interconnected to the exhaust fans allow for the introduction of outdoor air. This equipment is at or has exceeded its useful life.

3.2.1.3 “B” Primary Odor Control Room

Heat for the “B” Primary Odor Control Room is provided by hydronic unit heaters. Ventilation is provided by an exhaust fan that vents to the atmosphere. Motorized louvers interconnected to the exhaust fan allow for the introduction of outdoor air. This equipment is at or has exceeded its useful life.

3.2.1.4 “B” Scum Handling Building (Maintenance Building)

Heat for the “B” Scum Handling Building is provided by hydronic unit heaters. Ventilation is provided by the “B” Primary Odor Control System. This equipment is at or has exceeded its useful life.

3.2.1.5 “B” Secondary Pumping Chamber

Heat for the B Secondary Pumping chamber was provided by a floor mounted air handling unit with hydronic heating coil utilizing 100% outdoor air at a rate of 7,400 CFM. The existing AHU is coupled with a 7,400 CFM exhaust fan installed at the opposite end of the pump chamber. A hydronic heat recovery coil is installed on the exhaust fan to increase system energy efficiency. The heat recovery system is non-functional and in is beyond economical repair. Hot water supply and return lines serving this building have been cut and capped in garage(scum handling building) of the “B” Primary building. The exhaust system is not currently connected to an odor control system.

3.2.1.6 “B” Secondary Electric Room

Heat for the B Secondary Electric Room is provided by (2) ceiling mounted hydronic unit heaters. Exhaust is provided by a roof mounted exhaust fan at a rate of 11,185 CFM. Outdoor air is introduced by a 60"x60" fixed louver installed over the entrance door with a net free area of 13.20 SF.

3.2.1.7 “B” Secondary Blower Room

Heat for the B Secondary Blower Room is provided by (2) ceiling mounted hydronic unit heaters. Exhaust is provided by a roof mounted exhaust fan at a rate of 8,500 CFM. Outdoor air is introduced by a 72" x 30" fixed louver installed over the entrance door with a net free area of 25.80 SF.

3.2.2 A-side Primary and Secondary Pumping Chambers

3.2.2.1 “A” Primary Pumping Chamber

Heat for the “A” Primary Pumping Chamber is provided by electric unit heaters. Ventilation is provided by exhaust fans that vent to atmosphere. Motorized louvers interconnected

to the exhaust fans allow for the introduction of outdoor air. This equipment is at or has exceeded its useful life.

3.2.2.2 “A” Primary Control Room & Electric Room

Heat for the “A” Primary Control & Electric Room is provided by electric unit heaters. Ventilation is provided by exhaust fans that vent to atmosphere. Motorized louvers interconnected to the exhaust fans allow for the introduction of outdoor air. This equipment is at or has exceeded its useful life. The control and electric room in this building is connected to the A Primary Pumping Chamber by an open stairway.

3.2.2.3 “A” Secondary Pumping Chamber

Heat for the “A” Secondary Pumping Chamber is provided by electric unit heaters. Ventilation is provided by exhaust fans that vent to atmosphere. Motorized louvers interconnected to the exhaust fans allow for the introduction of outdoor air. This equipment is at or has exceeded its useful life.

3.2.2.4 “A” Secondary Control & Electric Room

Heat for the “A” Secondary Control & Electric Room is provided by electric unit heaters. Ventilation is provided by exhaust fans that vent to atmosphere. Motorized louvers interconnected to the exhaust fans allow for the introduction of outdoor air. This equipment is at or has exceeded its useful life. The A Secondary Control and Electric Room in this building is connected to the A Secondary Pumping Chamber by an open stairway.

3.2.3 Storage Building

Heat for the Storage Building is provided by electric unit heaters. Ventilation is provided by exhaust fans that vent to atmosphere. Motorized louvers interconnected to the exhaust fans allow for the introduction of outdoor air. This equipment is at or has exceeded its useful life.

2. REVISION TO TABLE 4-2

Table 4-2

System ID	Existing Supply Register Area (SF)	Service Area Volume (CF)	Existing Exhaust Register Area (SF)	Existing Exhaust Register Average Velocity (ft/min)	Proposed Exhaust Register Area (SF)	Added Exhaust Register Area (SF)	Proposed Exhaust Register Average Velocity (ft/min)	Proposed Nominal Duct Diameter (inches)	Proposed System Average Duct Velocity (ft/min)	Proposed Odor Control System Rated Flow (cfm)
B10		73,410			13	13	570	28	1,730	7,400

3. REVISION TO TABLE 5-1, FOR SYSTEM B10 CHANGE 5,700 TO 7,400

Table 5-1

For System B10, change 5,700 to 7,400

4. REVISION TO TABLE 5-2 SYSTEM BIO:

Table 5-2

System ID	Flow Rate Per Vessel (cfm)	Has Existing Odor Control Bypass Ducting & Fan	Dual Bed Vessel		Radial Vessel		Choice of Carbon Vessel / Comments. (provide for both where possible)
			Diam. (ft)	Height (ft)	Diam. (ft)	Height (ft)	
B10 - B-side Secondary Pumping Chamber	7,400	NA	10.5	11	9	12	Both are possible

5. REVISED SECTION 5.1.15 B10 – B – SIDE SECONDARY PUMPING CHAMBER

5.1.15 B10 - B-Side Secondary Pumping Chamber

The calculated air volume for the B10 Odor Control System is 73,410 ft.³- see **Appendix C** for a list of included areas. With 6 acph, the resulting system flow rate is 7,400 cfm.

This would be a new system, the proposed location is shown on **Photo 5-3** and proposed conceptual layout on **Figure 5-B10**. The layout includes one (1) carbon vessel and blower, with one demister located on top of the operating deck at the North end of the Secondary Tanks. A new intake register is provided below the operating deck, and the 24-inch duct comes up through a core drilled hole. The air flows through the demister to the blower which forces the air through the carbon vessel.

For this size of odor control system, using a radial vessel would result in an approximate vessel diameter of 9'. A dual bed vessel would be approximately 10.5' diameter, and both systems can fit within the available space.

6. REVISED SECTION 5.2, HEATING AND VENTILATION SYSTEMS

5.2 Heating and Ventilation Systems

D&B evaluated several design alternatives for the heating and ventilation system improvements for the A-side and B-side Primary and Secondary Pumping Chambers and the Storage Building to mitigate cost as well as construction duration and disruption to the facility.

The A-side Primary and Secondary Pumping Chambers and the Storage Building are currently heated by electric unit heaters. It was determined that it would be more cost effective to continue to heat these areas with electric unit heaters than to expand and/or extend the existing HWS/HWR loop and install new hydronic air handling units and unit heaters, or to install separate gas-fired air handling units in these locations.

The alternatives analyzed for the B-side Primary and Secondary Pumping Chambers were as follows:

Option #1, abandonment of the existing B-Side HWS/HWR loop in place and removal of existing hydronic air handling units and unit heaters. Under this option heat for the B-Side would be provided by a combination of electric unit heaters and gas-fired air handling units. New underground gas piping to the B-Primary and B-Secondary pumping chambers was included in this option including all trenching and restoration of site upon completion of the project.

Option #2, partial restoration of the existing B-Side HW loop. Under this option the existing underground HWS/HWR piping would remain and only the interior HWS/HWR mains in B-Primary and B-Secondary Pumping Chambers would be replaced along with the existing hydronic air handling units and unit heaters.

Option #3, total restoration of the exiting B-Side HW loop. Under this option the entirety of the existing HWS/HWR supply main and branch piping, including all underground exterior piping and interior piping from the boiler room in the Digester Building to the B-Secondary Pumping Chamber, will be replaced. This option includes the replacement of the branch piping, hydronic air handling units, and hydronic unit heaters in the B-Primary and Secondary Pumping

Chambers, the B-Primary and B-Secondary Electric and Control Rooms, the B-Primary Odor Control Room, the B-Scum Handling Room(Maintenance Building), and the B-Secondary Blower Room. Branch piping from the B-Primary Pumping Chamber to the B-Sludge Thickener Building and to the Aerated Grit Chamber and hydronic air handling units and unit heaters in these buildings is not included in this option.

Due to the congestion of the site with underground utilities, the existing exterior underground HWS/HWR pipe routing shall be identified(underground utility mark out verified with test pits), carefully excavated and removed, and the new underground HWS/HWR piping shall be installed in the same trench to ensure a clear, unobstructed path to each building. Upon completion, the trenched areas shall be restored to match their adjacent surfaces.

After reviewing the options, RCSD decided to select Option #3 in order to maintain a centralized boiler plant in lieu of a de-centralized system with indirect gas-fired air handling units installed in the pumping chambers. Option #3 will have the added benefit of ensuring proper hot water flow to the other portions of the facility connected to the HWS/HWR loop but that are not included in this project.

In regards to heat recovery, it is not recommended to restore the heat recovery for the B-side of the WWTP, or to add it to the A-side, due to the cost of installation versus payback. For the pumping chambers, with their large volumes, RCSD may want to revisit the economics of heat recovery in the future.

In addition, the new odor control systems should be equipped with flow detection devices, connected to alarm signaling systems, in order to indicate inadequate ventilation and ventilation system failures in accordance with NFPA 820.

Ventilation rates are based on 6ACH per 10 States Standards and are listed below:

- A Primary Pump Chamber: 1,900 CFM
- A Primary Control Room & Electric Room: 900 CFM

Ventilation from the above locations is to be exhausted to Odor Treatment System A2.

- A Secondary Pump Chamber: 2,800 CFM
- A Secondary Control Room & Electric Room: 600 CFM

Ventilation from the above locations is to be exhausted to Odor Treatment System A4.

- B Primary Pump Chamber: 10,600 CFM

Ventilation from the above location is to be exhausted to Odor Treatment System B3.

- B Primary Electric Room: 972 CFM

Ventilation from the above location is to be provided by a separate exhaust fan vented to the atmosphere.

- B Primary Odor Control Room 3716 CFM

Ventilation from the above location is to be provided by a separate exhaust fan vented to the atmosphere.

- B Scum Handling Room 2019 CFM

Ventilation from the above location is to be exhausted to Odor Treatment System B4.

- B Secondary Pump Chamber: 7,400 CFM

Ventilation from the above location is to be exhausted to Odor Treatment System B10.

- B Secondary Electric Room: 1,650 CFM
- B Secondary Blower Room: 1,770 CFM

Ventilation from the above locations is to be provided by separate exhaust fans vented to the atmosphere.

- Storage Building: 5,500 CFM

Ventilation from the above location is to be provided by separate exhaust fans vented to the atmosphere.

Electric unit heaters are based on 3 kW units with an output of 10 MBH each, and 10 kW units with an output of 34 MBH each. Listed below are the number and sizes of electric unit heaters recommended per location area. Locations of electric unit heaters should be determined based on providing an efficient and effective supply of heat throughout each of the buildings/rooms.

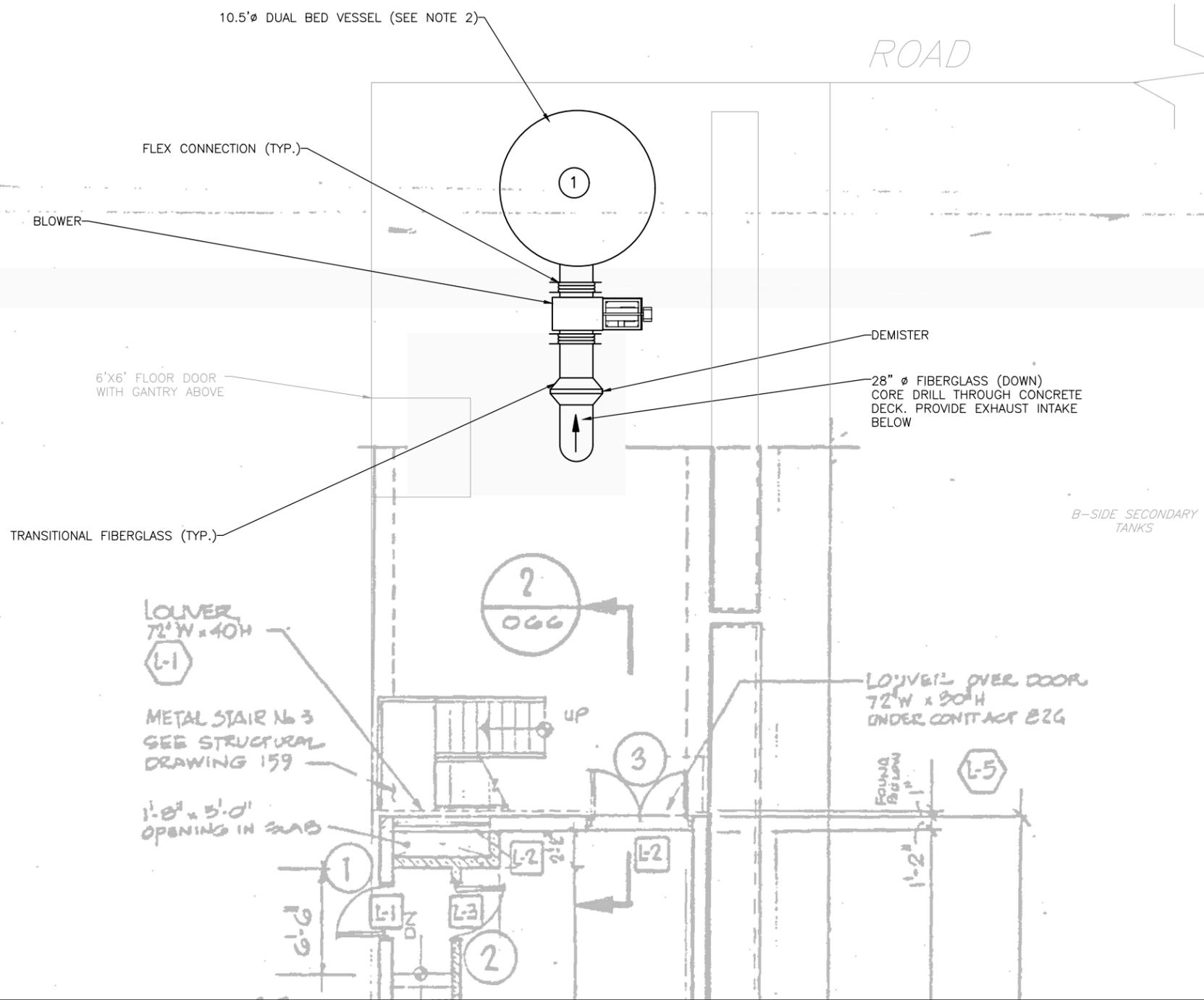
- A Primary Pump Chamber: (4) 10 kW units
- A Primary Control Room & Electric Room: (6) 3 kW units
- A Secondary Pump Chamber: (5) 10 kW units
- A Secondary Control Room & Electric Room: (4) 3 kW units
- Storage Building: (10) 10 kW Units

Hydronic Air Handling Units and Heaters shall be replaced as follows:

- B Primary Pump Chamber: 800 MBH HW AHU
- B Primary Control & Electric Room (2) 40 MBH HW Units Heaters
- B Primary Odor Control Room (4) 40 MBH HW Unit Heaters
- B Scum Handling Room (2) 40 MBH HW Unit Heaters

- B Secondary Pump Chamber: 400 MBH HW AHU
- B Secondary Control and Electric Room: (2) 20 MBH HW Units Heaters
- B Secondary Blower Room: (2) 20 MBH HW Units Heaters

7. REVISED FIGURE 5 – B10



BLOWER

FLEX CONNECTION (TYP.)

10.5' Ø DUAL BED VESSEL (SEE NOTE 2)

ROAD

DEMISTER

6'x6' FLOOR DOOR WITH GANTRY ABOVE

28" Ø FIBERGLASS (DOWN) CORE DRILL THROUGH CONCRETE DECK. PROVIDE EXHAUST INTAKE BELOW

TRANSITIONAL FIBERGLASS (TYP.)

B-SIDE SECONDARY TANKS

LOUVER
72' W x 40' H
L-1

METAL STAIR No. 3
SEE STRUCTURAL DRAWING 159

1'-8" x 5'-0" OPENING IN SLAB

LOUVER OVER DOOR
72' W x 90' H
UNDER CONTRACT B26

FOUND BILLOW

L-5

- NOTES:
1. THIS DRAWING REPRESENTS CONCEPTUAL DESIGN ONLY INSTRUMENTATION AND CONTROLS AS PER FIGURE 1-3
 2. THE RADIAL VESSEL WOULD BE 9' Ø.

B10 FLOW RATE = 7,400 CFM



db D&B ENGINEERS AND ARCHITECTS, P.C.
KNOWN AS DVIRKA AND BARTILUCCI CONSULTING ENGINEERS

ODOR TREATMENT SYSTEM B10 - B-SIDE SECONDARY PUMPING CHAMBER
ROCKLAND COUNTY SEWER DISTRICT No. 1 - Rockland County, New York
Wastewater Treatment Plant
Upgrade of the Odor Control Systems and Miscellaneous Heating and Ventilation System Improvements -
Design Recommendation Report

MAY 2017

FIGURE 5-B10

8. REVISED APPENDIX C, TABLE B10

Table B10-1: Ventilation Rates

Rockland County Sewer District No. 1 - Rockland County, New York
Wastewater Treatment Plant

$$\text{Volume_Box} = \text{Width} * \text{Length} * \text{Depth}$$

Area	Width (ft)	Length (ft)	Height (ft)	Volume (cf)	Assumptions
B-side Secondary	20	182	20	72,800	
Pumping Chamber	26	3.4	7	614	

$$V = 73,414 \text{ cf}$$

$$Q = 7,400 \text{ cfm}$$

$$\text{Ventilation Rate} = 6.05 \text{ acph}$$

$$\text{Recommended Ventilation Rate} = 6.00 \text{ acph}$$



Environmental Facilities Corporation

ANDREW M. CUOMO
Governor

SABRINA M. TY
President and CEO

November 16, 2018

County Executive Edwin Day
Rockland County
11 New Hempstead Road
New City, NY 10956

APPENDIX O NYS WATER INFRASTRUCTURE IMPROVEMENT ACT GRANT AWARD

Re: Project No. C3-5368-31-00
Odor Control and HVAC Improvements
Rockland County

Dear Mr. Day:

On behalf of Governor Andrew M. Cuomo, I am pleased to inform you that your community has been awarded a NYS Water Infrastructure Improvement Act (WIIA) grant for the above referenced project.

Your WIIA grant has been awarded in an amount not to exceed \$3,375,000, based on information provided in your application, including total estimated eligible project costs. The Environmental Facilities Corporation (EFC) will determine the actual amount of your grant when the project is complete and EFC confirms the final project costs. Your grant may be reduced if total project costs are less than anticipated, or if your project receives grant from another source.

Please confirm your acceptance of the grant award and intent to proceed with this project by completing and signing the enclosed form and e-mailing it to nyswatergrants@efc.ny.gov no later than **December 7, 2018**. Without your confirmation, we may bypass your project and award these grant funds to another community. If you choose to proceed with entering into a grant agreement with EFC, unless otherwise notified by the Corporation, the Town must execute a grant agreement no later than May 1, 2020 or the grant award may be forfeited. By confirming your intent to accept this grant, you are also confirming your intent to proceed without Clean Water State Revolving Fund (CWSRF) financial assistance.

Upon receipt of your confirmation, members of our EFC team will contact you to guide you through the program requirements and grant process and to answer any of your questions.

We appreciate your interest in the WIIA program. We look forward to working with you on your water quality improvement project.

Sincerely,

Sabrina M. Ty
President and CEO

Enclosure

cc.: Rockland County - Dianne Philipps, P.E.

ACKNOWLEDGEMENT AND ACCEPTANCE OF WIIA GRANT AWARD

Please confirm your community's acceptance of the WIIA grant and intent to proceed with the project without CWSRF financing by signing and providing the milestone information below. Please e-mail the completed form to nyswatergrants@efc.ny.gov no later than **December 7, 2018**.

ACKNOWLEDGED:

Rockland County
Odor Control and HVAC Improvements
Project No. C3-5368-31-00

The County intends to proceed with this project without CWSRF financing, based on the schedule below.

Dianne T. Philipps (Signature of Authorized Representative)
Dianne T. Philipps P.E. (Print Name)
Executive Director (Title) 12-3-18 (Date)

Project Milestones	Enter Date	Circle One
		A= Actual (Submitted) T= Tentative
Submit Project Plans & Specifications for Review & Approval	3/1/19	A <input checked="" type="radio"/> T
Advertisement	5/1/19	A <input checked="" type="radio"/> T
Construction Start	10/1/19	A <input checked="" type="radio"/> T
Construction Completion	4/1/21	A <input checked="" type="radio"/> T

APPENDIX P AIR PERMIT

RFP-RC-2020-028 APPENDICIES

New York State Department of Environmental Conservation Air Facility Registration Application



Department of Environmental Conservation

DEC ID:		Application type				Sheet <u>1</u> of <u>9</u>					
3	-	3	9	2	4	-	0	0	0	5	2
<input type="checkbox"/> New Facility		<input type="checkbox"/> Notification of Changes		<input checked="" type="checkbox"/> Renewal							
Facility Information											
Name Rockland County Sewer District No. 1											
Location Address 4 Route 340											
City Orangeburg			County Rockland			Township Orangetown			Zip 10962		
Facility Owner (Individual/Firm)										Taxpayer ID	
Name Rockland County Sewer District No. 1											
Street Address 4 Route 340											
City Orangeburg			State/Province NY			Country USA			Zip 10962		
Facility Contact											
Last Name Philipps				First Name Dianne				M.I. T.			
Street Address Executive Director, Rockland County Sewer District No. 1, 4 Route 340											
City Orangeburg			State/Province NY			Country USA			Zip 10962		
E-mail philippd@co.rockland.ny.us						Phone (845)365-6111			Fax (845)365-6686		
Facility Description								Number of Emission Points: <u>1</u>		<input type="checkbox"/> Continuation Sheet(s)	
SIC Code(s)		4952		NAICS Code(s)							
<p>Supplement #2 dated 3/16/2018</p> <p>Non Exempt sources: 1) a 5.579 MMBtu/hr engine/generator running on biogas/natural gas as a cogeneration unit, 2) a 1600 kW Demand Response Stationary EDG with varying hours of operation and de minimis emission, 3) 2 digester heat exchangers may operate on digester gas a limited number of hours a year but are being included as continuous yearly operations firing natural natural gas at nameplate capacity as a conservative approach, this accounts for 2 digester gas fired (1,125,000 Btu/hr @ 563 Btu/cf) Sludge Heat Exchangers firing on natural gas at full load nameplate capacity (2,038,000 Btu.hr) 8760 hrs/yr.</p> <p>Exempt sources: 1) 8 boilers, 2) 1 standby spare digester heat exchanger and 1 flare will no longer operate when engine generator is operating, 3) 3 hot water heaters, 4) 1 emergency diesel generator (EDG), 5) 1 two-stage odor control system (data attached)</p> <p>Attachments for Supplement #2 Facility Emissions Summary attached Sludge Heater Emissions Data Fired on Digester Gas Combustion Source Data</p>											
Applicable Federal and New York State Regulations at the Subpart Level											
200		201-4		227.2							

New York State Department of Environmental Conservation
Air Facility Registration Application



Department of Environmental Conservation

DEC ID
3 - 3 9 2 4 - 0 0 0 5 2

Sheet 2 of 9

Auto Body Shops

gallons of coatings/month: _____ gallons of solvents/month: _____

Facility Emissions Summary

Criteria Pollutants

CAS No.	Contaminant Name	Cap. by Rule	Actual (lbs/yr)	PTE (lbs/yr)
000630-08-0	Carbon Monoxide	<input type="checkbox"/>	12,951	
0NY998-00-0	Total Volatile Organic Compounds (VOC)	<input type="checkbox"/>	2,688	
0NY210-00-0	Oxides of Nitrogen	<input type="checkbox"/>	20,391	
0NY075-00-0	Total Particulate Matter (PM-10 and PM-2.5)	<input type="checkbox"/>	1,203	
007446-09-5	Sulfur Dioxide	<input type="checkbox"/>	106	
0NY100-00-0	Total Hazardous Air Pollutants (HAP)	<input type="checkbox"/>	1,868	
007439-92-1	Lead	<input type="checkbox"/>	2	
0NY750-00-0	Carbon Dioxide Equivalents	<input type="checkbox"/>	3,488,971	

Individual Hazardous Air Pollutants Continuation Sheet(s)

CAS No.	Contaminant Name	Cap. by Rule	Actual (lbs/yr)	PTE (lbs/yr)
		<input type="checkbox"/>		

Persistent, Bioaccumulative or Toxic Compounds Continuation Sheet(s)

CAS No.	Contaminant Name	Cap. by Rule	Actual (lbs/yr)	PTE (lbs/yr)

Certification

I certify the truth, accuracy, and completeness of the information contained in this application.

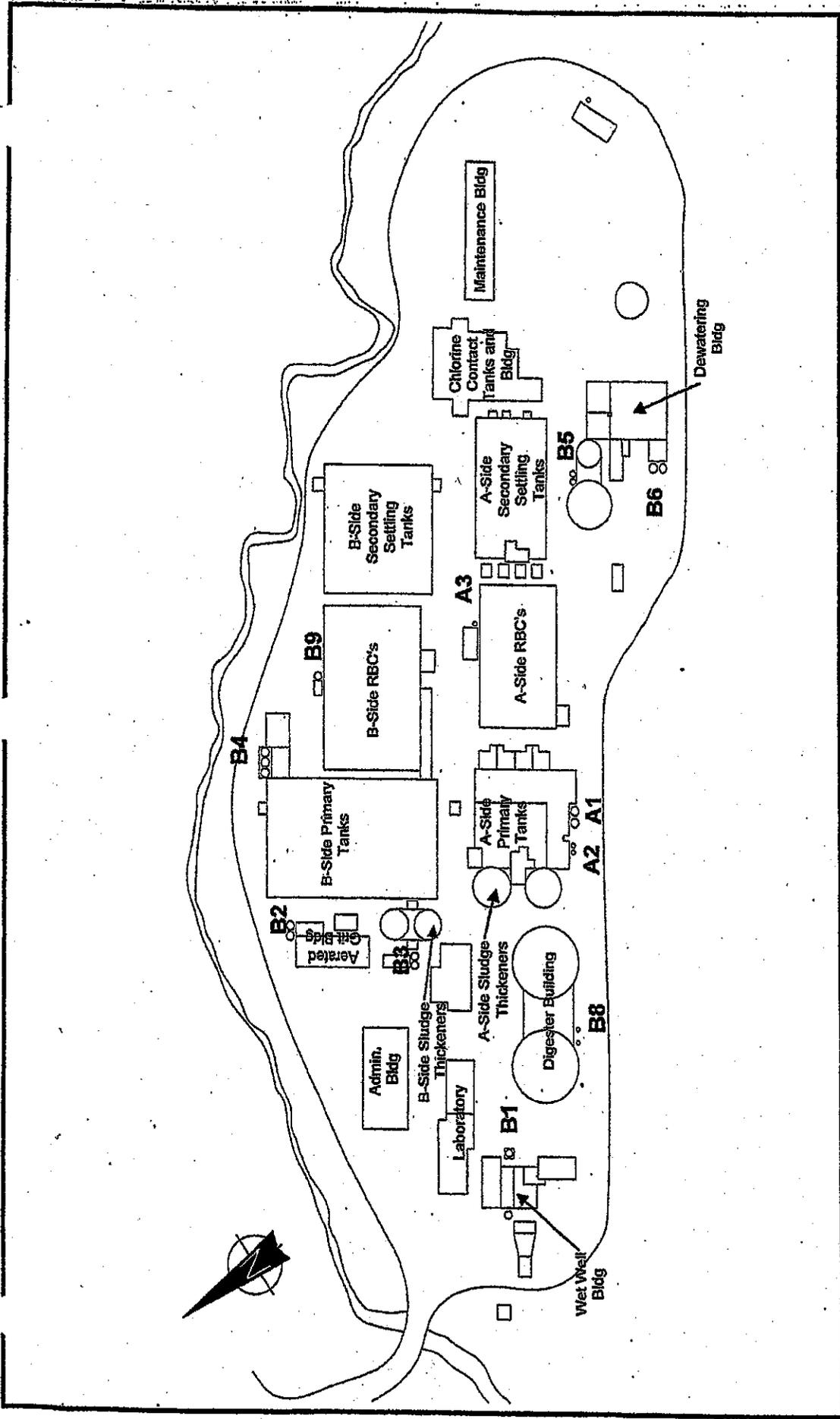
Responsible Official	Title
Signature	Date / /

Version 5 - 3/31/2015

J&B Engineers and Architects, P.C.

Table 1-1: Existing Odor Control System Descriptions
 Rockland County Sewer District No. 1 - Rockland County, New York
 Wastewater Treatment Plant
 Plant-Wide Odor Control Study
 October 2012

System ID	Total Flow Rate (cfm)	Existing System Description
A1 A-Side Primary Tanks	12,500	Wet Scrubber - Carbon Train (one operating, one standby)
A2 A-Side Thickeners	3,000	Wet Scrubber - Carbon Train (one operating, one standby)
A3 A-Side RBC's	3,000	Wet Scrubber - Carbon Train (one operating continuously)
B1 Wet Well Building	6,000	Wet Scrubber - Carbon Train (one operating, one standby)
B2 Aerated Grit Building	14,500	Wet Scrubber - Carbon Train (one operating, one standby)
B3 B-Side Sludge Thickeners	5,200	Wet Scrubber - Carbon Train (one operating, one standby)
B4 B-Side Primary Tanks	17000 (8,600 each train of 3)	Wet Scrubber - Carbon Train (two operating, one standby)
B5 Link Bldg	5,000	Wet Scrubber - Carbon Train (one operating, one standby)
B6 Dewatering Bldg	11,500	Wet Scrubber - Carbon Train (one operating, one standby)
B8 Digester Bldg	2,500	Carbon Train (one operating, one standby)
B9 B-Side RBC's	6,000	Wet Scrubber - Carbon Train (one operating continuously)



October 2012

SITE PLAN

Rockland County Sewer District No. 1 -Rockland County, New York
 Wastewater Treatment Plant
 Plant Wide Odor Control Study

DVIRKA AND BARTILUCCI
 CONSULTING ENGINEERS
 A DIVISION OF INER ENGINEERS AND ARCHITECTS, P.C.

FIGURE 1-2

FACILITY EMISSIONS SUMMARY
Supplement #2 - 3_16_2018

Pollutant	Emission Units 1-5 (TPY)	Emission Unit 6 (TPY)	Total (TPY)
Particulates (2)	0.40	0.20	0.60
Sulfur Dioxide (3)	0.03	0.02	0.05
Oxides of Nitrogen (4)	5.28	4.92	10.20
Carbon Monoxide (5)	4.43	2.05	6.48
Lead (6)	0.00	0.00	0.00
VOCs (7)	0.40	0.94	1.34
HAPs (8)	0.40	0.53	0.93
CO2 Equivalent (9)	1024	720	1744

(1) Total emissions are based on the utilization of 1 boiler in each building (of the 2 available, except in Administration Building, where both boilers are utilized and if boilers are not identical, other than in Administration Building, the larger is used in the calculations) and 2 digester gas fired (1,125,000 Btu/hr) Sludge Heat Exchangers firing on natural gas at nameplate capacity (2,038,000 Btu/hr) denoted as EU 1-5 operating at full load 8760 hrs/yr. Emission factors for boilers from USEPA AP42. For GE Jembacher engine (EU 6) emission factors are from manufacturers guarantee when available. Emissions from 1600kW Demand Response Stationary EDG with varying operating hours are de minimis.

(2) Particulate emissions for boilers and engine is 7.6 lb/MMscf with natural gas.

(3) Sulfur dioxide emissions for boilers and engine is 0.6 lb/MMscf with natural gas

(4) Oxides of nitrogen emissions are 100 lb/MMscf for the boilers with natural gas and 0.6 g/bhph for the 849 bhp engine.

(5) Carbon monoxide emissions are 84 lb/MMscf with natural gas for the boilers and 0.25 g/bhph for the engine.

(6) Lead emissions are 0.0005 lb/MMscf for the boilers and the engine.

(7) VOC emissions are 5.5 lb/MMscf with natural gas for the boilers and 0.115 g/bhph for the engine.

(8) Total HAPs taken as total VOCs for the boilers and 0.065 g/bhph for the engine.

(9) CO2 equivalents emissions are 120,000 lb/MMscf for boilers and engine.

SUPPLEMENT #2 - 3/16/18

SLUDGE HEATER EMISSIONS DATA FIRED ON NATURAL GAS AND DIGESTER GAS

Rockland County Sewer District No. 1 CHP Air Registration Sludge Heater Supplement #2					
Sludge Heaters Firing at Nameplate Capacity on Natural Gas (NG)					
RCSD#1 Data			Sludge Heater Operating Data		
Number of Sludge Heaters Operating	2		NG Heating Value Btu/scf	1,050	
Thermal Output Capacity of Sludge Heater	2,038,000	Btu/hr	Sludge Heater MMscf/hr	0.0024	
Thermal Efficiency of Sludge Heater	80%	%	Number of Days of Operation	365	

	Emissions Factor lb/MMscf	Sludge Heater Emissions per Heater lb/yr	Yearly Total lbs.	Yearly Total tons
CRITERIA POLLUTANTS				
Carbon Monoxide	84	1,785	3,571	1.79
Total Volatile Organic Compounds (VOC)	11	234	468	0.23
Oxides of Nitrogen	100	2,125	4,251	2.13
Total Particulate Matter	7.6	162	323	0.16
Sulfur Dioxide	0.6	13	26	0.01
Total Hazardous Air Pollutants	11	234	468	0.23
Carbon Dioxide Equivalents	164	3,486	6,971	3.49

Air Registration Submitted 2/5/18 plus-NG Nameplate Sludge Heater Emissions						
	Original Facility Emissions 2/5/18 Submittal EU 1-4 TPY	Additional Sludge Heater Emissions EU 5 TPY	Total Facility Emissions 3/15/18 Submittal EU 1-5 TPY	Jenbacher Emissions Unit 6 TPY	Total TPY	Total lbs./yr
CRITERIA POLLUTANTS						
Carbon Monoxide	2.64	1.79	4.43	2.05	6.48	12,951
Total Volatile Organic Compounds (VOC)	0.17	0.23	0.40	0.94	1.34	2,688
Oxides of Nitrogen	3.15	2.13	5.28	4.92	10.20	20,391
Total Particulate Matter	0.24	0.16	0.40	0.20	0.60	1,203
Sulfur Dioxide	0.02	0.01	0.03	0.02	0.05	106
Total Hazardous Air Pollutants	0.17	0.23	0.40	0.53	0.93	1,868
Carbon Dioxide Equivalents	1,021	3.49	1,024	720	1,744	3,488,971

Rockland County Sewer District No. 1 CHP Air Registration Sludge Heater Supplement #2						
Sludge Heaters Firing at 1,125,000 Btu/hr on Digester Gas (DG) at 563 Btu/cf						
RCSD#1 Data			Sludge Heater Operating Data			
Number of Sludge Heaters Operating	2		NG Heating Value Btu/scf		1,050	
Thermal Output Capacity of Sludge Heater			Sludge Heater MMscf/hr		0.0013	
Firing on Digester Gas @ 563 Btu/cf	1,125,000	Btu/hr	Number of Days of Operation		365	
Thermal Efficiency of Sludge Heater	80%	%				

	Emissions Factor lb/MMscf	Sludge Heater Emissions per Heater lb/yr	Yearly Total lbs.	Yearly Total tons
CRITERIA POLLUTANTS @ NG Equivalent				
Carbon Monoxide	84	986	1,971	0.99
Total Volatile Organic Compounds (VOC)	11	129	258	0.13
Oxides of Nitrogen	100	1,173	2,346	1.17
Total Particulate Matter	7.6	89	178	0.09
Sulfur Dioxide	0.6	7	14	0.01
Total Hazardous Air Pollutants	11	129	258	0.13
Carbon Dioxide Equivalents	164	1,924	3,848	1.92

Air Registration Submitted 2/5/18 plus DG @ 1,125,00 Thermal Output Sludge Heater Emissions						
	Original Facility Emissions 2/5/18 Submittal EU 1-4 TPY	Additional Sludge Heater Emissions EU 5 TPY	Total Facility Emissions 3/15/18 Submittal EU 1-5 TPY	Jenbacher Emissions Unit 6 TPY	Total TPY	Total lbs./yr
CRITERIA POLLUTANTS						
Carbon Monoxide	2.64	0.99	3.63	2.05	5.68	11,351
Total Volatile Organic Compounds (VOC)	0.17	0.13	0.30	0.94	1.24	2,478
Oxides of Nitrogen	3.15	1.17	4.32	4.92	9.24	18,486
Total Particulate Matter	0.24	0.09	0.33	0.20	0.53	1,058
Sulfur Dioxide	0.02	0.01	0.03	0.02	0.05	94
Total Hazardous Air Pollutants	0.17	0.13	0.30	0.53	0.83	1,658
Carbon Dioxide Equivalents	1,021	1.92	1,023	720	1,743	3,485,848

SUPPLEMENT #2 - 3/16/18 - COMBUSTION SOURCE DATA**Non-Exempt Combustion Sources**

Drawing Identifier	Site Location	Unit Type	Unit Name	Rating Btu/hr	Firing Rate	Fuel Type
					Scf/hr	
C	Digester Building	Engine Generator	GE Jenbacher JMS 312 - 633 kW	5,579,000	6,083.9	Biogas/NG
E	Heat Exchanger Building	Heat Exchanger*	Siemens #1 Model 1126 HX	2,038,000	1,998.0	DG/NG
		Heat Exchanger*	Siemens #2 Model 1126 HX	2,038,000	1,998.0	DG/NG
F	1600 kW EDG Stationary**	Diesel Generator	Detroit Diesel Spectrum	5,455,188	39.0	Diesel

*E - Heat Exchanger thermal output firing digester gas (DG) is 1,125,000 Bth/hr @ 563 Btu/cf and firing natural gas (NG) is 2,038,000 Btu/hr

** F - This emergency diesel generator is part of a Demand Response Program with varying hours of operation and de minimis emissions.

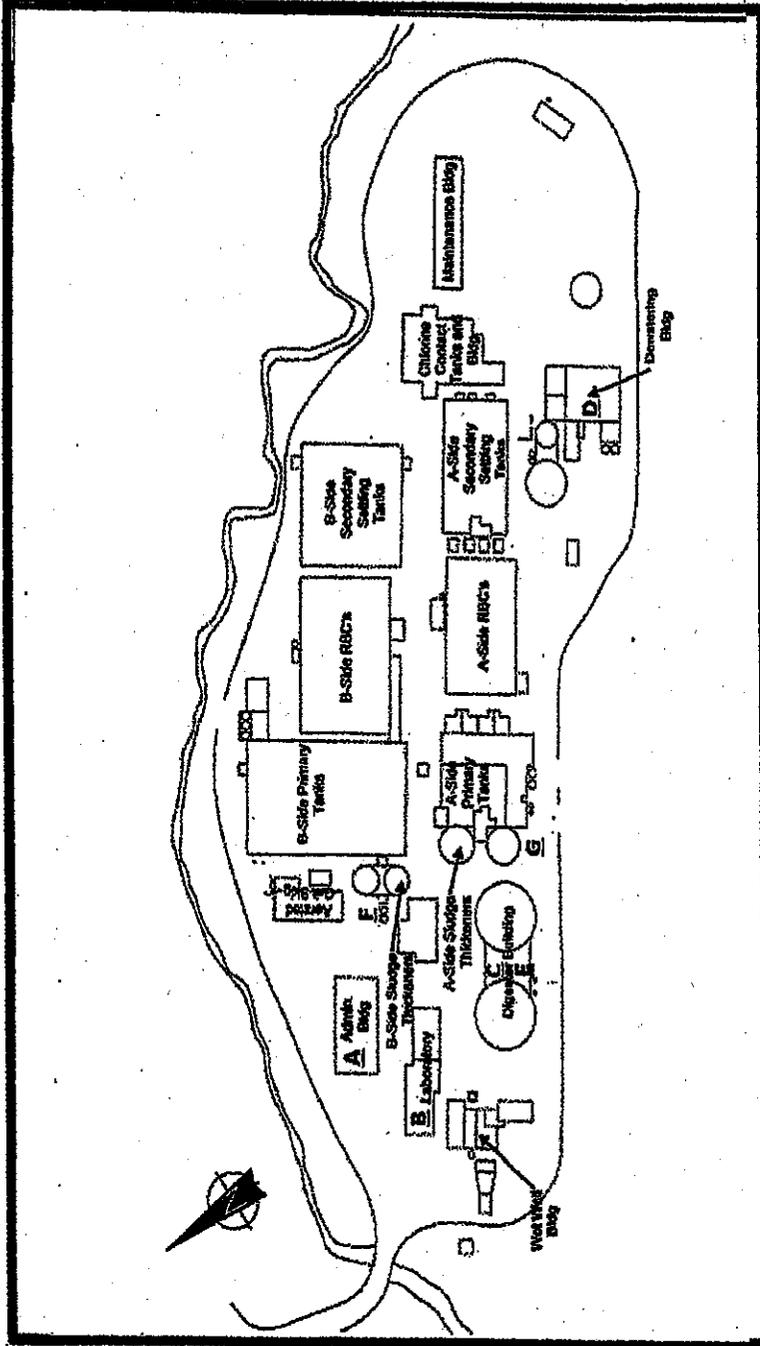
Exempt Combustion Sources

Drawing Identifier	Site Location	Unit Type	Unit Name	Rating Btu/hr	Firing Rate	Fuel Type
					Scf/hr	
A	Administration Building	Boiler	Hydrotherm Unit #1	240,000	235.0	NG
		Boiler	Hydrotherm Unit #2	240,000	235.0	NG
		HW Heater	Rheem	38,000	37.3	NG
B	Plant Operations Building	Boiler Burner 1	Model 400 Base	400,000	392.0	NG
		Burner 2	Model 500 Base	500,000	490.0	NG
		HW Heater	Bradford White	85,000	83.3	NG
		HW Heater	Rheem Rudd	125,000	123.0	NG
C	Digester Building	Boiler	HB Smith #1	3,080,000	3,020.0	NG
		Boiler	HB Smith #2	3,080,000	3,020.0	NG
D	Sludge Dewatering Building	Boiler	Weil-McLain #1	3,103,000	3,042.0	NG
		Boiler	Weil-McLain #2	3,103,000	3,042.0	NG
E	Heat Exchanger Building	Heat Exchanger***	Siemens #3 Model 1126 HX Standby	2,038,000	1,998.0	DG/NG
G	510 kW EDG Portable	Diesel Generator	Marathon Magna One	3,892,000	28.0	Diesel

***E - Heat Exchanger thermal output firing digester gas (DG) is 1,125,000 Bth/hr @ 563 Btu/cf and firing natural gas (NG) is 2,038,000 Btu/hr

December 27, 2017

Site Combustion PointSources



New York State Department of Environmental Conservation



Registration ID: 3-3924-00052/00025

Facility DEC ID: 3-3924-00052

AIR FACILITY REGISTRATION CERTIFICATE
in accordance with 6 NYCRR Subpart 201-4

Registration Issued to: ROCKLAND COUNTY
 23 NEW HEMPSTEAD RD
 NEW CITY, NY 10956

Contact: DIANNE T PHILIPPS
 ROCKLAND COUNTY SEWER
 DISTRICT NO 1
 4 ROUTE 340
 ORANGEBURG, NY 10962-2221
 (845) 365-6111

Facility: ROCKLAND COUNTY SEWER DISTRICT NO 1
 4 RTE 340
 ORANGEBURG, NY 10962

Description:

The facility is a sewage treatment plant with a potential flow of 28.9 gallons per day. The emission points are from (1) a 5.571 million BTU per hour engine operating on biogas or natural gas as a cogeneration unit, (2) a 1600 KW diesel generator used in a demand response program, and (3) an odor control system (with scrubbers and carbon filters) serving various plant locations.

The emission points which are exempt from permitting are from 8 boilers, 3 digester heat exchangers, 3 hot water heaters, and an emergency generator.

Total NOx emissions from the facility are limited to 12.5 tons per year.

Total Number of Emission Points: 13 **Cap By Rule:** Yes

Authorized Activity By Standard Industrial Classification Code:

4952 - SEWERAGE SYSTEMS

Registration Effective Date: 03/08/2019**Registration Expiration Date:** 03/08/2029**List of Regulations in Application:**

6 NYCRR Part 200	General Provisions
6 NYCRR Part 201	Permits and Registrations
6 NYCRR Part 211	General Prohibitions
6 NYCRR Part 212	Process Operations
6 NYCRR Part 225	Fuel Composition and Use

New York State Department of Environmental Conservation



Registration ID: 3-3924-00052/00025

Facility DEC ID: 3-3924-00052

AIR FACILITY REGISTRATION CERTIFICATE
in accordance with 6 NYCRR Subpart 201-4

List of Regulations in Application:

6 NYCRR Part 227

Stationary Combustion Installations

GEORGE A SWEIKERT
REGION 3 AIR POLLUTION CONTROL ENGINEER
NYSDEC - REGION 3
21 S PUTT CORNERS RD
NEW PALTZ, NY 12561-1696

This registrant is required to operate this facility in accordance with all air pollution control applicable Federal and State laws and regulations. Failure to comply with these laws and regulations is a violation of the ECL and the registrant is subject to fines and/or penalties as provided by the ECL. If ownership of this facility changes, the registrant is required to notify the Department at the address shown above using the appropriate forms and procedures within 30 days after the transfer takes place. The present registrant will continue to be responsible for all fees and penalties until the Department has been notified of any change in ownership.

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