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KATHY HOCHUL
Governor

MARIE THERESE DOMINGUEZ
Commissioner

JAMES P. RUSAK, P.E.
Regional Director

June 21, 2023

Department of
Transportation



Mr. Cameron Williams
Village of Endicott
Engineering Department
1009 East Main Street
Endicott, NY 13760

Dear Mr. Williams:

RE: PIN 9754.64, D036293
ENDICOTT PEDESTRIAN SAFETY IMPROVEMENTS
VILLAGE OF ENDICOTT, COUNTY OF BROOME

Enclosed for processing are two copies of Supplemental Agreement #2 to the Master Federal Aid Local Project Agreement (D036293) to perform the Preliminary Engineering/Design and Construction, Construction Support and Construction Inspection work. The work involves the improvement of pedestrian safety on multiple roadways within the Village of Endicott, County of Broome. This is a Locally Administered Project.

Both copies must have original signatures and both copies must be notarized. In addition, two certified copies of the necessary Village Resolution must accompany the Agreements (a sample resolution is included in the agreement). Please return both copies to our Regional Office at 44 Hawley Street, Binghamton, New York 13901 for further processing. A completed copy will be returned to you once the agreement has been fully executed.

The estimated cost for the Construction, Construction Support and Construction Inspection work has increased from \$514,846 to \$570,346. The Village will be reimbursed 100% of \$570,346 with Federal funds. Therefore, the necessary Village Resolution must authorize an additional \$55,500 for this phase of the project.

If you have any questions or need assistance in this matter, please contact Kahna Beers in our Regional Planning and Program Management Office at (607) 217-6571.

Sincerely,

Kahna Beers

Andrew D. Stiles, P.E.

Regional Planning & Program Manager

for

SAMPLE RESOLUTION BY MUNICIPALITY

(Locally Administered Project)

RESOLUTION NUMBER: _____

Authorizing the implementation, and funding in the first instance 100% of the Federal-aid and State "Marchiselli" Program-aid eligible costs, of a transportation Federal-aid project, and appropriating funds therefore.

WHEREAS, a Project for the **Village of Endicott Pedestrian Safety Improvements, P.I.N. 9754.64** (the Project") is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs such program to be borne at the ratio of **100%** Federal funds and **0%** non-Federal funds; and

WHEREAS, the **Village of Endicott** desires to advance the Project by making a commitment of 100% of the Federal and non-Federal share of the costs of the **Preliminary Engineering/Design work and Construction, Construction Support and Construction Inspection** work.

NOW, THEREFORE, the **Board of Trustees**, duly convened does hereby

RESOLVE, that the **Board of Trustees** hereby approves the above-subject project; and it is hereby further

RESOLVED, that the **Board of Trustees** hereby authorizes the **Village of Endicott** to pay in the first instance 100% of the Federal and non-Federal share of the increased cost of the **Construction, Construction Support, and Construction Inspection** work for the Project or portions thereof; and it is further

RESOLVED, that the additional sum of **\$55,500.00** is hereby appropriated from _____ [or, appropriated pursuant to _____] and made available to cover the cost of participation in the above phase of the Project; and it is further

RESOLVED, that in the event the full Federal and non-Federal share costs of the project exceeds the amount appropriated above, the **Board of Trustees** shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the New York State Department of Transportation thereof, and it is further

RESOLVED, that the _____ of the **Village of Endicott** be and is hereby authorized to execute all necessary Agreements, certifications or reimbursement requests for Federal Aid and/or Marchiselli Aid on behalf of the **Village of Endicott** with the New York State Department of Transportation in connection with the advancement or approval of the Project and providing for the administration of the Project and the municipality's first instance funding of project costs and permanent funding of the local share of Federal-aid and State-aid eligible Project costs and all Project costs within appropriations therefore that are not so eligible, and it is further

RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project, and it is further

RESOLVED, this Resolution shall take effect immediately.

Sponsor: Village of Endicott
PIN: 9754.64 BIN: NA
Comptroller's Contract No. D036293
Supplemental Agreement No. 2
Date Prepared: 06/21/2023 By: KB

Press F1 for instructions in the blank fields:

SUPPLEMENTAL AGREEMENT NO. 2 to D036293 (Comptroller's Contract No.)

This Supplemental Agreement is by and between:

the New York State Department of Transportation ("NYSDOT"), having its principal office at 50 Wolf Road, Albany, NY 12232, on behalf of New York State ("State")
and

the Village of Endicott (the Sponsor)
Acting by and through the **Board of Trustees**
with its office at **1009 East Main Street, Endicott, New York 13760.**

This amends the existing Agreement between the parties in the following respects only:
Amends a previously adopted Schedule A by (check as applicable):

amending a project description

amending the contract end date

amending the scheduled funding by:

adding additional funding (check and enter the # phase(s) as applicable):

adding phase _____ which covers eligible costs incurred on/after / /

adding phase _____ which covers eligible costs incurred on/after / /

increasing funding for a project phase(s) (.321)

adding a pin extension

change from Non-Marchiselli to Marchiselli

deleting/reducing funding for a project phase(s)

other ()

Amends a previously adopted Schedule "B" (Phases, Sub-phase/Tasks, and Allocation of Responsibility)

Amends a previously adopted Agreement by replacing the Appendix A dated October 2019 with the Appendix A dated June 2023.

Amends a previously adopted Agreement by adding:

Appendix B M/WBE/SDVOB.

Retention Exhibit.

Other: _____

Amends the text of the Agreement as follows (insert text below):

Sponsor: Village of Endicott PIN: 9754.64 BIN: NA
 Comptroller's Contract No. D036293
 Supplemental Agreement No. 2
 Date Prepared: 06/21/2023 By: KB Initials

Press F1 for instructions in the blank fields:
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officials as of the date first above written.

SPONSOR:

SPONSOR ATTORNEY:

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

STATE OF NEW YORK

COUNTY OF Broome

) ss.:

On this _____ day of _____, 2023 before me personally came _____ to me known, who, being by me duly sworn did depose and say that he/she resides at _____; that he/she is the _____ of _____ the Municipal/Sponsor Corporation described in and which executed the above instrument; (except New York City) that it was executed by order of the _____ of said Municipal/Sponsor Corporation pursuant to a resolution which was duly adopted on _____ and which a certified copy is attached and made a part hereof; and that he/she signed his/her name thereto by like order.

Notary Public

APPROVED FOR NYSDOT:

APPROVED AS TO FORM:

STATE OF NEW YORK ATTORNEY GENERAL

By: _____

For Commissioner of Transportation

Agency Certification: In addition to the acceptance of this contract I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

By: _____

Assistant Attorney General

COMPTROLLER'S APPROVAL:

Date: _____

By: _____
 For the New York State Comptroller
 Pursuant to State Finance Law § 112

NYS DOT/State-Local Agreement – Schedule A PIN 9754.64

B. Local Deposit(s) from Section A:	\$ 0.00
Additional Local Deposit(s)	\$0.00
Total Local Deposit(s)	\$ 0.00

C. Total Project Costs All totals will calculate automatically.			
Total FEDERAL Cost	Total STATE Cost	Total LOCAL Cost	Total ALL SOURCES Cost
\$625,346.00	\$ 0.00	\$ 0.00	\$625,346.00

D. Point of Contact for Questions Regarding this Schedule A (Must be completed)	Name: Kahna Beers Phone No: 607-217-6571
--	--

See Agreement (or Supplemental Agreement Cover) for required contract signatures.

Footnotes: (See LFB's SharePoint for link to sample footnotes)

*Multiple roadways to include the following:

Countdown Timers:

- North Street/Washington Street
- North Street/Oak Hill Avenue/Madison Avenue
- North Street/Lincoln Avenue
- North Street/Vestal Avenue
- North Street/Mckinley Avenue
- Mckinley Avenue/Monroe Street

Pedestrian Signals:

- Washington Avenue/Broad Street
- Washington Avenue/Monroe Street

Mid-Block Crosswalks:

- North Street between Grand Avenue and Garfield Avenue
- Washington Avenue between Monroe Street and North Street
- Mckinley Avenue between North Street and Watson Boulevard
- Watson Boulevard between Bermond Avenue and Oak Hill Avenue
- Jenkins Street between Bermond Avenue and Oak Hill Avenue
- Park Street between Madison Avenue and Jefferson Avenue

Intersection Crosswalks:

- Park Street/Madison Avenue
- Park Street/Jefferson Avenue
- Lincoln Avenue/Park Street
- North Street/Jefferson Avenue
- Vestal Avenue/Central Street
- Mckinley Avenue/Witherill Street
- Mckinley Avenue/Jenkins Street
- Bermond Avenue/Witherill Street
- Hannah Street/South Oak Avenue
- South Loder Avenue/Hannah Street
- South Loder Avenue/East Linton Street

- East Union Street/South Liberty Avenue
- Broad Street/Jefferson Avenue
- Jenkins Street/Bermond Avenue
- Oak Hill Avenue/Jenkins Street
- Monroe Street/Jefferson Avenue
- Jenkins Street/Robbie Avenue
- Witherill Street/Odell Avenue
- Jenkins Street/Odell Avenue
- Broad Street/Cleveland Avenue
- Harrison Street/Broad Street
- Monroe Street/Cleveland Avenue
- Harrison Street/Monroe Street
- Garfield Avenue/Broad Street
- Grant Avenue/Broad Street
- Monroe Street/Garfield Avenue
- Monroe Street/Grant Avenue
- Mersereau Avenue/Edwards Street/River Terrace
- South Loder Avenue/Edwards Street
- Edwards Street/South Liberty Avenue
- Exchange Avenue/Edwards Street

- PIN 9754.64.121 – Authorized for Preliminary Design and Final Design.

-
-
-
-
-

Instructions: Identify the responsibility for each applicable Sub-phase task by entering X in either the *NYS DOT* column to allocate the task to State labor forces or a State Contract, or in the *Sponsor* column indicating non-State labor forces or a locally administered contract.

A1. Preliminary Engineering ("PE") Phase

Phase/Sub-phase/Task	Responsibility: NYS DOT	Sponsor
1. Scoping: Prepare and distribute all required project reports, including an Expanded Project Proposal (EPP) or Scoping Summary Memorandum (SSM), as appropriate.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Perform data collection and analysis for design, including traffic counts and forecasts, accident data, Smart Growth checklist, land use and development analysis and forecasts.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Smart Growth Attestation (NYS DOT ONLY).	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Preliminary Design: Prepare and distribute Design Report/Design Approval Document (DAD), including environmental analysis/assessments, and other reports required to demonstrate the completion of specific design sub-phases or tasks and/or to secure the approval/authorization to proceed.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Review and Circulate all project reports, plans, and other project data to obtain the necessary review, approval, and/or other input and actions required of other NYS DOT units and external agencies.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Obtain aerial photography and photogrammetric mapping.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Perform all surveys for mapping and design.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Detailed Design: Perform all project design, including preparation of plan sheets, cross-sections, profiles, detail sheets, specialty items, shop drawings, and other items required in accordance with the Highway Design Manual, including all Highway Design, including pavement evaluations, including taking and analyzing cores; design of Pavement mixes and applications procedures; preparation of bridge site data package, if necessary, and all Structural Design, including hydraulic analyses, if necessary, foundation design, and all design of highway appurtenances and systems [e.g., Signals, Intelligent Transportation System (ITS) facilities], and maintenance protection of traffic plans. Federal Railroad Administration (FRA) criteria will apply to rail work.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Perform landscape design (including erosion control).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Design environmental mitigation, where appropriate, in connection with: Noise readings, projections, air quality monitoring, emissions projections, hazardous waste, asbestos, determination of need of cultural resources survey.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Phase/Sub-phase/Task **Responsibility: NYS DOT Sponsor**

11. Prepare demolition contracts, utility relocation plans/contracts, and any other plans and/or contract documents required to advance, separate, any portions of the project which may be more appropriately progressed separately and independently.
-

12. Compile PS&E package, including all plans, proposals, specifications, estimates, notes, special contract requirements, and any other contract documents necessary to advance the project to construction.
-

13. Conduct any required soils and other geological investigations.
-

14. Obtain utility information, including identifying the locations and types of utilities within the project area, the ownership of these utilities, and prepare utility relocations plans and agreements, including completion of Form HC-140, titled Preliminary Utility Work Agreement.
-

15. Determine the need and apply for any required permits, including U.S. Coast Guard, U.S. Army Corps of Engineers, Wetlands (including identification and delineation of wetlands), SPDES, NYS DOT Highway Work Permits, and any permits or other approvals required to comply with local laws, such as zoning ordinances, historic districts, tax assessment and special districts.
-

16. Prepare and execute any required agreements, including:
- Railroad force account
 - Maintenance agreements for sidewalks, lighting, signals, betterments
 - Betterment Agreements
 - Utility Work Agreements for any necessary Utility Relocations of Privately owned Utilities
-

17. Provide overall supervision/oversight of design to assure conformity with Federal and State design standards or conditions, including final approval of PS&E (Contract Bid Documents) by NYS DOT.
-

A2. Right-of-Way (ROW) Incidentals

Phase/Sub-phase/Task **Responsibility: NYS DOT Sponsor**

1. Prepare ARM or other mapping, showing preliminary taking lines.
-
2. ROW mapping and any necessary ROW relocation plans.
-
3. Obtain abstracts of title and certify those having an interest in ROW to be acquired.
-
4. Secure Appraisals.
-
5. Perform Appraisal Review and establish an amount representing just compensation.
-

Phase/Sub-phase/Task **Responsibility: NYS DOT** **Sponsor**

6. Determination of exemption from public hearing that is otherwise required by the Eminent Domain Procedure Law, including *de minimis* determination, as may be applicable. If NYS DOT is responsible for acquiring the right-of-way, this determination may be performed by NYS DOT only if NYS DOT is responsible for the Preliminary Engineering Phase under Phase A1 of this Schedule B.

7. Conduct any public hearings and/or informational meetings as may be required by the Eminent Domain Procedure Law, including the provision of stenographic services, preparation and distribution of transcripts, and response to issues raised at such meetings.

B. Right-of-Way (ROW) Acquisition

Phase/Sub-phase/Task **Responsibility: NYS DOT** **Sponsor**

1. Perform all Right-of-Way (ROW) Acquisition work, including negotiations with property owners, acquisition of properties and accompanying legal work, payments to and/or deposits on behalf of property owners; Prepare, publish, and pay for any required legal notices; and all other actions necessary to secure title to, possession of, and entry to required properties. If NYS DOT is to acquire property, including property described as an uneconomic remainder, on behalf of the Municipality/Sponsor, the Municipality/Sponsor agrees to accept and take title to any and all permanent property rights so acquired which form a part of the completed Project.

2. Provide required relocation assistance, including payment of moving expenses, replacement supplements, mortgage interest differentials, closing costs, mortgage prepayment fees.

3. Conduct eminent domain proceedings, court and any other legal actions required to acquire properties.

4. Monitor all ROW Acquisition work and activities, including review and processing of payments of property owners.

5. Provide official certification that all right-of-way required for the State or Local requirements and is available for use and/or making projections of when such property(ies) will be available if such properties are not in hand at the time of contract award.

6. Conduct any property management activities, including establishment and collecting rents, building maintenance and repairs, and any other activities necessary to sustain properties and/or tenants until the sites are vacated, demolished, or otherwise used for the construction project.

7. Subsequent to completion of the Project, conduct ongoing property management activities in a manner consistent with applicable Federal, State and Local requirements including, as applicable, the development of any ancillary uses, establishment and collection of rent, property maintenance and any other related activities.

C. Construction, Construction Support (C/S) and Construction Inspection (C/I) Phase

Responsibility: NYS DOT Sponsor

Phase/Sub-phase/Task	Responsibility: NYS DOT Sponsor
1. Advertise contract lettings and distribute contract documents to prospective bidders.	<input checked="" type="checkbox"/>
2. Conduct all contract lettings, including receipt, opening, and analysis of bids, evaluation/certification of bidders, notification of rejected bids/bidders, and awarding of the construction contract(s).	<input checked="" type="checkbox"/>
3. Receive and process bid deposits and verify any bidder's insurance and bond coverage that may be required.	<input checked="" type="checkbox"/>
4. Compile and submit Contract Award Documentation Package.	<input checked="" type="checkbox"/>
5. Review/approve any proposed subcontractors, vendors, or suppliers.	<input checked="" type="checkbox"/>
6. Conduct and control all construction activities in accordance with the plans and proposal for the project. Maintain accurate, up-to-date project records and files, including all diaries and logs, to provide a detailed chronology of project construction activities. Procure or provide all materials, supplies and labor for the performance of the work on the project, and insure that the proper materials, equipment, human resources, methods and procedures are used.	<input checked="" type="checkbox"/>
7a. For non-NHS or non-State Highway System Projects: Test and accept materials, including review and approval for any requests for substitutions.	<input checked="" type="checkbox"/>
7b. For NHS or State Highway System Projects: Inspection and approval of materials such as bituminous concrete, Portland cement concrete, structural steel, concrete structural elements and/or their components to be used in a federal aid project will be performed by, and according to the requirements of NYS DOT. The Municipality/Sponsor shall make or require provision for such materials inspection in any contract or subcontract that includes materials that are subject to inspection and approval in accordance with the applicable NYS DOT design and construction standards associated with the federal aid project.	<input type="checkbox"/>
7c. For projects that fall under both 7a and 7b above, check boxes for each.	<input type="checkbox"/>
8. Design and/or re-design the project or any portion of the project that may be required because of conditions encountered during construction.	<input checked="" type="checkbox"/>
9. Administer construction contract, including the review and approval of all contractor requests for payment, orders-on-contract, force account work, extensions of time, exceptions to the plans and specifications, substitutions or equivalents, and special specifications.	<input checked="" type="checkbox"/>
10. Review and approve all shop drawings, fabrication details, and other details of structural work.	<input checked="" type="checkbox"/>
11. Administer all construction contract claims, disputes or litigation.	<input checked="" type="checkbox"/>

Phase/Sub-phase/Task **Responsibility: NYSDOT** **Sponsor**

- 12. Perform final inspection of the complete work to determine and verify final quantities, prices, and compliance with plans specifications, and such other construction engineering supervision and inspection work necessary to conform to Municipal, State and FHWA requirements, including the final acceptance of the project by NYSDOT.
- 13. Pursuant to Federal Regulation 49 CFR 18.42(e)(1) The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

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

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

APPENDIX A

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

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

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

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

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

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

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

accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this

law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development
Division for Small Business and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnyscontracts.com/FrontEnd/searchcertifieddir/sector.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public

Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROcity AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include

analyses, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163(4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual

employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

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

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

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State

Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

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

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

seeking compliance, recovering damages, or declaring the Contractor in default.

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

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

SAMPLE RESOLUTIONS