



City of Newburgh Council Work Session
*Sesion de trabajo del Concejal de la
Ciudad de Newburgh*
August 4, 2016
6:00 PM

Council Meeting Presentations

1. Certificates of Appreciation - Coloring Book Police Department
Certificates of Appreciation will be presented for the outstanding efforts in creating a Police Department Coloring book. (Chief Dan Cameron)

Work Session Presentations

2. Trestle Inc. Mural Project
(Michael Fogerty President from Trestle Inc.)

Engineering/Ingeniería

3. Lake Drive Bridge Replacement Project NYSDOT Contract
Resolution Authorizing the City Manager to Execute a Master Federal-Aid Local Project Agreement with the New York State Department of Transportation to Fund in the first instance 100% of the Federal-Aid and Non-Federal Aid Eligible Costs for the Design and Construction for the Replacement of the Lake Drive Bridge. (Jason Morris)
4. Lake Street (Route 32) Bridge NYSDOT Grant Application
Resolution Authorizing the City Manager to apply for and accept if awarded a New York State Department of Transportation Bridge NY 2016 Program Grant BIN No. 2022260 for the Rehabilitation of the Lake Street Bridge in an amount not to exceed \$1,000,000.00 with No Local Match Required. (Jason Morris)
5. SEQRA Type-II Action - Liberty Street Streetscape Project
Resolution of the City Council of the City of Newburgh Assuming Lead Agency Status under State Environmental Quality Review Act (SEQRA) for the Liberty Street Streetscape Improvement Project, Declaring the Project to be a Type II

Action, Finding No Significant Adverse Impact on the Environment and Authorizing the City Manager to Execute all SEQRA Documents. (Jason Morris)

6. Reject Bids for the Liberty Street Streetscape Improvements Project
(Jason Morris)

Finance/Finanza

7. Award Winning RFP for Carnival Rides @ International Festival
(Katie Mack)
8. Duncan Solutions - Contract Renewal
Resolution Authorizing the City Manager to enter into an Agreement with Professional Account Management, LLC for Municipal Parking Services and Related Equipment. (Katie Mack)
9. Information Use Agreement - DMV Virginia
Resolution Authorizing the City Manager to Execute an Information Use Agreement and Addendum with the Commonwealth of Virginia Department of Motor Vehicles for Access to Motor Vehicle Records. (Katie Mack)
10. Budget Transfer Sewer Fund
Resolution Amending Resolution No: 300-2015, the 2016 Budget for the City of Newburgh, New York to Transfer \$60,500 from Sewer Fund Contingency to Wastewater Treatment Plant - Other Services - Severn Trent for Additional Funding for Repair and Maintenance. (Katie Mack)
11. NYS DEC Water Agreement
Resolution Authorizing the City Manager to enter into an Agreement with the New York State Department of Environmental Conservation for Reimbursement of the cost of Water Purchased from the New York City Catskill Aqueduct. (Katie Mack, Michelle Kelson and Jason Morris)

12. Resolution to Transfer Funds

Resolution Amending Resolution No. 300-2015, the 2016 Budget for the City of Newburgh, New York to transfer \$1,160.00 from Legislative Body-Travel and Conference and \$600.00 from Legislative Body-Education to Recreation – Other Equipment and Celebrations – International Festival. (Katie Mack)

Water Department/ Departamento de Aqueductos

13. NY Mutual Aid and Assistance Agreement for Water/Wastewater Providers

Resolution Authorizing the City Manager to enter into the New York Mutual Aid and Assistance Agreement for Water/Wastewater Providers. (Wayne Vradenburgh)

Planning and Economic Development/Planificación y Desarrollo Económico

14. Res and satisfaction of mortgage for 98 Grand Street

A Resolution authorizing the City Manager to execute a Satisfaction in connection with a mortgage issued to 98 Grand Street Corporation for premises located at 98 Grand Street (Section 24, Block 11, Lot 26) (Deirdre Glenn)

15. Purchase of 130 & 132 Third Street

Resolution to Authorize the Conveyance of Real Property known as 130 Third Street (Section 18, Block 9, Lot 13) and 132 Third Street (Section 18, Block 9, Lot 14) at Private Sale to James Gibbons for the Amount of \$7,895.00. (Deirdre Glenn)

16. License Agreement with Habitat for Humanity to Allow Access to 20 South Miller Street to Perform Structural Evaluation and Environmental Testing

Resolution Authorizing the City Manager to Execute a License Agreement with Habitat for Humanity of Greater Newburgh, Inc. to Permit Access to City Owned Property Located at 20 South Miller Street (Section 30, Block 2, Lot 37) for the Purpose of Performing Certain Predevelopment Activities. (Deirdre Glenn)

17. Purchase of 28 Courtney Avenue

Resolution to Authorize the Conveyance of Real Property known as 28 Courtney Avenue (Section 48, Block 3, Lot 24) at Private Sale to Archie Logan for the amount of \$2,000.00. (Deirdre Glenn)

18. Purchase of 57-58 Williamsburg Drive

Resolution to Authorize the Conveyance of Real Property known as 57-58 Williamsburg Drive (Section 1, Block 2, Lot 29) at Private Sale to Natalya Fredericks for the amount of \$35,000.00. (Deirdre Glenn)

19. Purchase of 1 Lincoln Terrace

Resolution to Authorize the Conveyance of Real Property known as 1 Lincoln Terrace (Section 21, Block 4, Lot 7) at Private Sale to Victoria Gallo for the amount of \$52,000.00. (Deirdre Glenn)

Recreation/Recreation

20. OC Youth Bureau Grant 2nd Submission

Resolution Authorizing the City Manager to apply for and accept if awarded an Orange County Youth Bureau Grant in an amount not to exceed \$11,000.00 requiring no City Match to Support Programs Designed to Improve Youth and Community Outcomes in the Life Areas Outlined by the Touchstones Framework. (Derrick Stanton)

Police Department

21. Amend 2016 Personnel Book to change title of IT Assistant to Information Technology Specialist

Resolution Amending the 2016 Personnel Analysis Book Authorizing a Change in Job Title from IT Assistant to Information Technology Specialist in the Police Department. (Chief Dan Cameron & Katie Mack)

Discussion Items/Temas de Discusión

22. Impound Lot Management
(Chief Dan Cameron)
23. State Education Department Family and Community Engagement Program Grant
Resolution Authorizing the City Manager to execute a Partnership Agreement with the Newburgh Enlarged City School District in connection with the Application to the New York State Education Department for a Family and Community Engagement Program Grant. (Michelle Kelson)
24. Street Intersection Data
(Chief Dan Cameron)
25. Comptroller Report Feedback from Council
(Katie Mack)
26. CDBG Budget
(Deirdre Glenn)
27. City Cash Collection Procedures and Protocols
(Councilwoman Rayford)
28. Transportation, Traffic and Parking Advisory Committee Members sought
(Ali Church and Deirdre Glenn)
29. PCRRB Status
A discussion regarding the need for City Council to appoint new, committed members. (Michelle Kelson)
30. Civil Service Commission Candidates
Civil Service Candidates: Vera Best, Austin DuBois, Catherine Sklarz, John Powell and Jack Penny.

31. 104 South Lander St.
(Councilwoman Genie Abrams)

Executive Session/ Sesión Ejecutiva

32. Executive Session
1. pending litigation
 2. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;

RESOLUTION NO.: _____ - 2016

OF

AUGUST 8, 2016

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A MASTER FEDERAL-AID LOCAL PROJECT AGREEMENT
WITH THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION
TO FUND IN THE FIRST INSTANCE 100% OF THE FEDERAL-AID AND NON-
FEDERAL AID ELIGIBLE COSTS FOR THE DESIGN AND CONSTRUCTION
FOR THE REPLACEMENT OF THE LAKE DRIVE BRIDGE**

WHEREAS, a Project for the Bridge Replacement of Lake Drive over Quassaick Creek (BIN 2223630) in the City of Newburgh, Orange County, PIN 8761.39 (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 80% federal funds and 20% non-federal funds; and

NOW, THEREFORE, the Newburgh City Council duly convened does hereby

RESOLVE, that the Newburgh City Council hereby approves the above-subject project; and it is hereby further

RESOLVED, that the Newburgh City Council hereby authorizes the City of Newburgh to pay in the first instance 100% of the federal and non-federal share of the cost of preliminary engineering and right-of-way incidental work for the Project or portions thereof; and it is further

RESOLVED, that the sum of \$385,000.00 is hereby appropriated from the 2016 BAN 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 Newburgh City Council shall convene as soon as possible to appropriate said excess amount immediately upon notification by the City Manager thereof, and it is further

RESOLVED, that the Newburgh City Manager be and he is hereby authorized to execute all necessary Agreements, certifications or reimbursement requests for Federal Aid and/or applicable Marchiselli Aid on behalf of the City of Newburgh 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

STATE OF NEW YORK)
COUNTY OF ORANGE) ss:

WITNESS My Hand and the Official Seal of the City of Newburgh, New York, this _____ day of _____, 2016.

Clerk, City of Newburgh



Department of
Transportation



ANDREW M. CUOMO
Governor

MATTHEW J. DRISCOLL
Commissioner

TODD WESTHUIS, P.E.
Regional Director

June 27, 2016

Mr. Jason Morris, PE
City of Newburgh
83 Broadway
Newburgh, NY 12550

RE: PIN 8761.39, LAKE DRIVE/QUASSAICK CREEK
CITY OF NEWBURGH, ORANGE COUNTY

Dear Mr. Morris:

Per a meeting with Martin Evans of this office on Friday, June 24, 2016, enclosed are eight (8) **Master Federal-Aid Local Project Agreements** for the project referenced above. Please return seven (7) copies of the locally executed agreement to this office as soon as possible for execution by New York State. Each of the seven (7) locally executed agreements must contain original signatures, notarizations, and certified seal-stamped resolutions. A sample resolution is attached.

When executing the agreement, please be sure to:

- fill in the Resolution number, date of the meeting at which the resolution was passed, and the title of the person authorized to sign the agreement on behalf of the local agency in eighth paragraph beginning with "Whereas".
- make sure the agreement is signed by the person authorized to sign the agreement on behalf of the local agency, by the agency's legal counsel, and by a notary public.

As the project progresses, for civil rights purposes, the sponsor will need to agree to comply with the terms and conditions to access and use NYSDOT's current reporting software. Within the attached Resolution is a WHEREAS clause that enables various municipal employee titles authorization to execute various agreements and certifications throughout the life of the project. It is imperative that this paragraph remain within the resolution and include the various titles. Please modify the titles as needed though.

To expedite State execution of the agreement, the language in the agreement and sample resolution should be used without addition or modification. If any additions or modifications to either the agreement or resolution language are desired, please contact me prior to making any changes to the documents.

Mr. Jason Morris
June 27, 2016
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Per the Federal Highway Administration (FHWA) the funding for the phases within this agreement cannot be obligated until the agreement is returned to this office locally-executed and the Initial Project Proposal (IPP) is approved. The ability to obtain federal authorization will lapse as of September 15, therefore, this agreement needs to be returned to this office **by August 30th**. Your assistance in having the resolution passed and the agreement signed is appreciated.

Please note that under the terms of the agreement, the City of Newburgh is responsible for progressing the project in accordance with the manual entitled "Procedures for Locally-Administered Federal Aid Projects", including paying project related expenses first and then applying to the NYSDOT for reimbursement. Reimbursement can be made by the NYSDOT periodically. Reimbursement of project costs will be made by the Office of the State Comptroller as reimbursement requests are processed.

CONSULTANT PROCUREMENT:

Should the need arise to acquire professional consultant assistance to progress this project, procurement of an appropriate firm must be done in accordance with Chapter 6 of the manual entitled "Procedures for Locally Administered Federal Aid Projects." Responsibility for selecting a consultant following federal rules, negotiating and executing a contract with the designated consultant, and managing the consultant throughout the project rests solely with the administering agency. Agreements between Sponsors and consultants are not subject to NYSDOT approval to qualify for federal reimbursement although they must include all federal requirements. Federal aid is contingent on meeting federal requirements and may be withdrawn if the procedures are not followed and documented. The Sponsor's files must be maintained in a manner which facilitates future FHWA/NYSDOT process review.

Attached are the following documents to assist in the Procurement of a Consultant:

- Consultant Procurement Process Helpful Notes
- Guidelines for Selecting a Consultant from the County Highway Superintendent Association (CHSA) Local Design Service Agreement (LDSA) List
- CHSA LDSA List of Consultant Firms
- Project Specific - Sample Letter to LDSA list Consultants for Request for Qualifications
- Project Specific - Sample Format of Request for Qualifications from LDSA list consultants
- Consultant Procurement Process Submittal Check List
- Certification for Consultant Procurement – to be returned
- Certification for Consultant Selection – to be returned
- Certification for Consultant Contract Costs – to be returned
- Local Project Unit (LPU) Cover Sheet to a Consultant Agreement Submittal – to be returned

EBO: The New York State Department of Transportation approved civil rights reporting software is called EBO (Equitable Business Opportunities) and is required for use on all federal aid projects. It is the sponsor's responsibility to monitor the use of this reporting system for both consultants and contractors.

Mr. Jason Morris
June 27, 2016
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To initiate access to EBO for both Sponsor and consultant for this project:

- Sponsor – complete the “Local project Consultant Agreement EBO Data Entry Form” (enclosed) after fully-executed a consultant agreement and receiving the “Consultant Information Request Form for EBO” from the consultant. (Some information will need to be filled out by the LPU).
- Sponsor – if do not have existing access to EBO, will need to submit a Sponsor access request; which can be found at <https://www.dot.ny.gov/dotapp/ebo>.
- Consultant - if do not have existing access to EBO, will need to submit a “Consultant Information Request Form for EBO” (enclosed).
- Sponsor - Submit all completed forms to the Local Projects Unit.
 - Once the project is set up in EBO, the Sponsor and Consultant will receive an e-mail notification of access to EBO.

ALL DBE and EEO REPORTING WILL BE DONE IN EBO. Sponsor and/or Agent **must** monitor EEO goals on a monthly basis and take corrective action if goals are not being met; reference NYSDOT Standard Specifications Section 102-11, Equal Employment Opportunity Requirements. **Sponsor will include a copy of the “Monthly Utilization Report” and “D/M/WBE Attainments Report” from EBO, including any corrective action taken, with each request for reimbursement.**

While primary responsibility for progression of this project lies with the City of Newburgh, the Region 8 Local Projects Unit is available to provide guidance as you progress your local project, and will monitor your activities for compliance with federal and state requirements. Questions concerning project development should be directed to the appropriate person in the Local Projects Unit:

Doreen Holsopple	(845) 431-5977	doreen.holsopple@dot.ny.gov
	funding, agreements, reimbursement requests & consultant procurement	
Lance Gorney	(845) 431-5856	lance.gorney@dot.ny.gov
	preliminary design, detailed design, environmental procedures	
Noel Harris	(845) 431-5717	noel.harris@dot.ny.gov
	bidding and construction / inspection procedures/Civil Rights Compliance	
Barbara Knisell	(845) 431-5817	barbara.knisell@dot.ny.gov
	bidding and award documentation	

Sincerely,



Doreen Holsopple
Administrative & Financial Advisor
Local Projects Unit

Enclosures

SAMPLE RESOLUTION BY MUNICIPALITY
(Locally Administered Project)
RESOLUTION NUMBER: _____

Authorizing the implementation, and funding in the first instance 100% of the federal-aid and non-federal aid eligible costs, of a transportation federal-aid project, and appropriating funds therefore.

WHEREAS, a Project for the **Bridge Replacement of Lake Drive over Quassaick Creek (BIN 2223630) in the City of Newburgh, Orange County, PIN 8761.39** (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 80% Federal funds and 20% non-federal funds; and

NOW, THEREFORE, the Newburgh City Council duly convened does hereby

RESOLVE, that the Newburgh City Council hereby approves the above-subject project; and it is hereby further

RESOLVED, that the Newburgh City Council hereby authorizes the City of Newburgh to pay in the first instance 100% of the federal and non-federal share of the cost of preliminary engineering and right-of-way incidental work for the Project or portions thereof; and it is further

RESOLVED, that the sum of **\$385,000** 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 Newburgh City Council shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the City Manager thereof, and it is further

RESOLVED, that the Newburgh City Manager be and is hereby authorized to execute all necessary Agreements, certifications or reimbursement requests for Federal Aid and/or applicable Marchiselli Aid on behalf of the City of Newburgh 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 in addition to the City Manager the following municipal titles: Mayor, Deputy Mayor, Commissioner of Public Works, City Engineer, City Comptroller, _____ are also hereby authorized to execute any necessary Agreements or certifications on behalf of the Municipality/Sponsor, with NYSDOT in connection with the advancement or approval of the project identified in the State/Local Agreement;

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.

STATE OF NEW YORK)
) SS:
COUNTY OF ORANGE)

I, _____, Clerk of the City of Newburgh, New York, do hereby certify that I have compared the foregoing copy of this Resolution with the original on file in my office, and that the same is a true and correct transcript of said original Resolution and of the whole thereof, as duly adopted by said _____ at a meeting duly called and held at the _____ on _____ by the required and necessary vote of the members to approve the Resolution.

WITNESS My Hand and the Official Seal of the City of Newburgh, New York, this _____ day of _____, 2016.

Clerk, City of Newburgh

LOCAL PROJECT CONSULTANT AGREEMENT EBO DATA ENTRY FORM

1. CONVENTIONAL: XXX
2. SPONSOR: _____ REGION: 8 COUNTY: _____
3. STATE-LOCAL AGREEMENT NO.: _____ PIN: _____
(see Example below)
- 3 SUPPLEMENTAL NO. _____
- 4 FEDERAL AID NUMBER OF PROJECT: FA _____
- 5 PRIME CONSULTANT: _____
- 6 PRIME TAX ID#: _____
- 7 SUB-CONSULTANT: _____ None _____ See pg. 2 (Reverse side)
- 8 Agreement DATE (DATE THAT SPONSOR AWARDS CONTRACT): _____
- 9 MAXIMUM AMOUNT PAYABLE(\$): _____
- 10 FEDERAL AID %: _____
- 11 DBE GOAL %: _____
- 12 PROJECT DESCRIPTION: _____

LOCAL AGREEMENT NUMBER EXAMPLE:

CONSULTANT CONTRACT

LD034723_C1 for DESIGN & ROW

_C2 for CONSTRUCTION INSPECTION

_C3 for OTHER design work if needed

Note: Last 2 characters represent Work Type

(OVER FOR MULTIPLE SUB DATA)

[illegible]

CONSULTANT INFORMATION REQUEST FORM FOR EBO (10/2013)

(Failure to submit: EBO system Log-in/Password would be denied)

VENDOR NAME: _____ MALE: _____ FEMALE: _____ RACE: _____

TAX ID: _____

ADDRESS 1: _____

ADDRESS 2: _____

ADDRESS 3: _____

ADDRESS 4: _____

CITY: _____ COUNTY: _____ STATE: _____ ZIP CODE: _____

PRIMARY CONTACT: _____ PRIMARY PHONE: _____

WEB PAGE: _____ EMAIL: _____

PRIMARY WORK CATEGORY: 1. CONSTRUCTION INSPECTION
2. DESIGN
3. BOTH

GROSS RECEIPTS: \$ _____

SELECT ALL THAT APPLY: 1. MBE
2. WBE
3. DBE
4. NONE

Consultant Procurement Process - Submittal Check List

As stated in Chapter 6 of the "Procedure's for Locally Administered Federal Aid Projects" (PLAFAP) manual: "Agreements between Sponsors and consultants are not subject to NYSDOT approval to qualify for federal reimbursement, although they must include all federal requirements. Federal aid is contingent on meeting federal requirements and may be withdrawn if the procedures are not followed and documented. The Sponsor's files must be maintained in a manner which facilitates future FHWA and/or NYSDOT process review." The use of all the Sample documents within Chapter 6 will assure that you have complied with the Federal requirements for Consultant Procurement.

To assist you in providing the Local Project's Unit with the proper documentation, the Sponsor should submit the following:

- ☐ LPU Cover sheet
- ☐ If not using the LDSA – the Advertisement (Sample "PLAFAP Appendix 6-2")
- ☐ If using the LDSA – "PLAFAP Chapter 6.3.2" (Region 8 Sample provided with your Authorization to Proceed with Preliminary Design letter)
- ☐ Selection Committee Score Sheet (Sample "PLAFAP Appendix 6-8")
- ☐ Summary Indicating the Final Rating and Ranking of firms
- ☐ Certification of Consultant Selection (Region 8 Format provided with your Authorization to Proceed with Preliminary Design letter)
- ☐ Fully-executed Consultant Agreement from PLAFAP in the following format:
 - Appendix 6-5 - Consultant Contract (Federal Language)
 - Attachment A – Project Description and Funding (Part of Appendix 6-5)
 - Appendix 6-4 - Scope of Services
 - Appendix 6-6 - Cost Proposal
 - DBE Participation level and documentation of DBE consultant tasks should be included in the Consultant Agreement.
- ☐ Certification of Consultant Contract Costs - Reference PLAFAP Section 6.5.6
- ☐ Certification of Consultant Procurement – References several PLAFAP Sections (Region 8 Format provided with your Authorization to Proceed with Preliminary Design letter.)
- ☐ Documentation of DBE Solicitation Good Faith Effort (Reference PLAFAP 6.2.6) (To be provided if DBE Level of Utilization is below 20% participation level)

MUNICIPAL LETTERHEAD

<Date>

<Consultant Firm from LDSA List>

Address

City, State, Zip

RE: Request for Qualifications (RFQ) for
{Choose applicable phrase Preliminary Engineering,
Detailed Design Service, Right of Way Incidentals,
Right of Way Acquisition, Construction, Construction
Support and/or Inspection}
PIN xxxx.xx (Project Description)

Dear <Name>:

The <Municipality Name> seeks to obtain the services of a professional consulting civil engineering firm from the Region 8 LDSA list to <choose applicable phrase> *prepare preliminary and final plans and specifications, and provide construction inspection, ROW incidental, ROW acquisition services* for a Federal Aid project in <Name of Municipality>, New York, as referenced in the subsequent pages.

Each company, if interested, should respond to this Request for Qualifications. The <Municipality> will select one qualified engineering firm and will enter into a negotiated contract to perform the work.

Responses are due by <Date>. Responses and/or questions shall be submitted to:

<Name of Municipal Contact>

Address

City, State, Zip

We look forward to a response from your firm.

Sincerely,

<Municipal Contact>

Request for Qualifications (RFQ)

PIN xxxx.xx, <Municipality, NY>

<Project Description>

<Phase of work seeking to contract for, i.e., preliminary engineering, etc.>

Selection Procedure

Based on a review and evaluation of the information provided in items 1 through 7 above the <municipality> will rank the firms that respond and select the firm, ranked as most qualified to meet the <municipality> and project needs. Contract negotiations will commence with the most qualified firm to establish an acceptable scope of service, total fee and project schedule. If the <municipality> and the most qualified firm cannot agree the <municipality>, at its sole discretion, can start negotiations with the second ranked firm, and so on through the top three ranked firms.

All questions and/or requests for clarifications must be submitted in writing to the project administrator <contact name>. All such questions and responses will be sent to all firms responding to this EOI request. All such inquiries must be submitted and received by the <municipality> by the close of business <date>.

The <municipality> retains the right to request further information from all respondents and reject all EOI responses at its sole discretion.

If determined necessary by the <municipality>, oral interviews can be requested with the top-ranked consultant(s).

The ranking and selection will be based on a committee evaluation of the firms that submit the required EOI information as outline in this solicitation. All ranking documentation will be sent to NYSDOT Region 8 for review and procedural concurrence.

The following factors will be considered by the committee in ranking the responding firms:

1. Understanding of the work to be done
2. Experience with similar kinds of projects and/or work
3. Quality of staff for work to be done
4. Familiarity with Federal and State requirements
5. Organization and financial responsibility
6. Logistics and familiarity with the project area

Request for Qualifications (RFQ)

PIN xxxx.xx, <Municipality, NY>

<Project Description>

<Phase of work seeking to contract for, i.e., preliminary engineering, etc.>

Submission Requirements

The <municipality> will be using the NY State County Highway Superintendents Association (NYSCHSA) Locally Driven Selection Arrangement (LDSA) procedures and list for Region 8 to select a consultant for this project. All consultants on the Region 8 LDSA list are being contacted to:

- A. Determine the firm's interest in performing the work.
- B. Determine the firm's ability to perform the work.
- C. Determine the firm's ability to meet the project schedule based on workload analyses.
- D. Determine the most qualified firm to perform the work.

In order to make these determinations, the following information must be submitted by <DATE>. Three (3) copies of the information must be provided as follows:

- 1. Statement indicating your interest in providing design and construction services for the project as defined in this Expression of Interest (EOI) solicitation.
- 2. Firm brochure outlining the firm's background and experiences. If sub-consultants are proposed, a similar brochure shall be submitted.
- 3. A listing and brief narrative description of no more than 5 projects involving similar type services provided to public or private clients within the last 5 years. References with names and telephone numbers must be included for the projects.
- 4. A project organization chart indicating Key personnel to be assigned to the project. Sub-consultant personnel should be included as appropriate. Limit Key personnel to no more than 7 names.
- 5. Include resumes of all personnel noted on the project organization chart. Also, indicate current and project workload of the Key personnel included. Time frame for workload should be from <date> through <date>.
- 6. Include a maximum of 1 page outlining a Project Approach for the project. (Please use standard #12 font for this statement.)
- 7. Indicate, in a brief summary, information about the firm, or sub-consultants, regarding Disadvantaged Business Enterprise (DBE) designation and/or the firm's equal opportunity, affirmative action plan/policy.

Request for Qualifications (RFQ)

PIN xxxx.xx, <Municipality, NY>

<Project Description>

<Phase of work seeking to contract for, i.e., preliminary engineering, etc.>

Project Description

PIN xxxx.xx

<Project description>

The project will be funded with <type of Federal funds> provided via NYSDOT Region 8 with the <municipality> as sponsor. The project includes **[insert your project's description from IPP]**. Design features and standards for the project include:

<Example of Design features & standards>

- Streetscape
- Landscaping
- Architectural lighting
- Water features (fountain)
- Brick pavers
- Colored, stamped concrete applications
- Integrated environmental and sustainable design features
- Life cycle cost considerations
- Solar energy considerations

Local Project Unit Cover Sheet to a Consultant Agreement Submittal

Dated: _____

(To be provided at the time of the submittal of a fully-executed consultant agreement.)

PIN: _____ Project: _____

Sponsor: _____

Consultant Firm Selected: _____

Date Selected: _____

Master Consultant Agreement

Start Date - _____

Completion/Expiration Date - _____

Indicate the phases the Consultant Was selected for:		Indicate the costs for each phase the consultant was selected for:	STIP Phase
x			
	Preliminary Design (Tasks 1-4)	\$	P – Preliminary Design
	Detailed Design (Tasks 6 & 7)	\$	D – Detailed Design
	ROW Incidentals (Tasks 5.01 – 5.08)	\$	N – ROW Incidental
	ROW Acquisition (Tasks 5.09 -5.11)	\$	R – ROW Acquisition
	Construction Support (Task 8)	\$	C – Construction
	Construction Inspection (Task 9) *	\$	CI – Construction Inspection
	TOTAL AGREEMENT: \$		

* Costs for Construction Inspection to be negotiated at a later date - ☐Yes ☐No

NOTE: If consultant selection did not include a specific phase, the selected consultant cannot participate in a future solicitation for this project.

Supplemental Consultant Agreement No _____

Start Date - _____

Completion/Expiration Date - _____

Phases "Supplemented":		Cost:	STIP Phase
x			
	Preliminary Design (Tasks 1-4)	\$	P – Preliminary Design
	Detailed Design (Tasks 6 & 7)	\$	D – Detailed Design
	ROW Incidentals (Tasks 5.01 – 5.08)	\$	N – ROW Incidental
	ROW Acquisition (Tasks 5.09 -5.11)	\$	R – ROW Acquisition
	Construction Support (Task 8)	\$	C – Construction
	Construction Inspection (Task 9) *	\$	CI – Construction Inspection
	TOTAL AGREEMENT: \$		

On a separate sheet indicate what work by task has been either added or eliminated from the Master Consultant Agreement.

Guidelines for Selecting a Consultant from the CHSA LDSA List

Consultants can be selected from the CHSA LDSA list from April 1, 2016 to March 31, 2019.

The New York State County Highway Superintendents Association (NYSCHSA) facilitated the selection of engineering firms to perform design and construction inspection services for Federal and/or State aid projects. The County Highway Superintendents, along with representatives from municipalities with multiple federal aid projects, in each DOT Region collaborated to form their own Regional list of up to 15 consultant firms. To create the Regional list, each County Highway Superintendent's scores were given equal weight. The resulting Region 8 (Columbia, Dutchess, Orange, Putnam, Rockland, Ulster and Westchester Counties) firms are:

AECOM
Barton & Loguidice
Bergmann Associates
C & S Engineers, Inc.
CDM Smith
Clough Harbour and Associates, LLP
Clark Patterson Lee
Creighton Manning Eng., LLP
Greenman-Pederson, Inc.
Hudson Valley Engineering Associates
Lochner Engineering, P.C.
Modjeski and Masters
Stantec Consulting
Tectonic Engineering
WSP Sells

Using the CHSA LDSA List

Use of the CHSA LDSA List is not mandatory. A county, city, village, town, or other State agency may contract with a consultant firm that appears on the CHSA LDSA list or perform their own project specific selection process in accordance with Chapter 6 of the manual entitled "Procedures for Locally Administered Federal Aid Projects."

The following rules apply to the CHSA LDSA:

- Cities, villages, towns, not-for-profit organizations and other State agencies who want to use the CHSA LDSA but did not create a short list can only select from the appropriate Regional List by following the Regional List Selection Procedures described below.
- A county or municipality that created a short list can select a firm from its Individual Short List by following the Individual Short List Selection Procedures described below. Alternatively, with reasonable, written justification, a county or municipality that has created a short list can select a firm from the Regional List following Regional List Selection Procedures.

Regional List Selection Procedures

- Project sponsor reviews the Expressions of Interest (EOI) submitted by each firm as part of the original selection process. EOIs can be reviewed at the Region 8 Local Projects Unit's office in Poughkeepsie and/or at each County Highway Superintendent's office.
- Project sponsor contacts each firm to:
 - Determine the firm's interest in performing the work
 - Determine the firm's ability to perform the work
 - Determine the firm's ability to meet the project schedule by analyzing the firm's workload
 - Determine the specific personnel that the firm will assign to the project
 - Provide the firm with the opportunity to supply additional information regarding their expertise and experience with similar projects or work

- Provide a supplemental 1-2 page EOI addressing the specific project (this is an option, but it is an all-or-nothing option – that is, if a supplemental EOI is desired, all firms must be advised of this requirement)
- Project sponsor rates and ranks firms under consideration based upon selection criteria identified for the project (see Chapter 6 of the “Procedures for Locally Administered Federal Aid Projects” manual, particularly Figure 6-4)
- At the discretion of the project sponsor, the project sponsor conducts oral interviews with the top-ranked consultant(s)
- Final selection is made and documentation of selection is sent to the Region 8 Local Projects Unit. Documentation consists of the final rank list and the final score sheets.
- Project sponsor begins task list preparation and negotiation of costs with selected consultant.

CHSA LDSA LIST OF CONSULTANT FIRMS – USE APRIL 1, 2016 THROUGH MARCH 31, 2019

REGION 8

AECOM

40 British American Blvd.
Latham, NY 12110-1421

Barton & Loguidice, PC

10 Airline Drive
Suite 200
Albany, New York 12205

Bergmann Associates

28 Crossway Rd.
Beacon, NY 12508

C & S Engineers, Inc.

499 Col Eileen Collins Blvd.
Syracuse, NY 13212

CDM Smith

112 Delafield Street, Suite 300
Poughkeepsie, NY 12601

OR

11 British American Boulevard, Suite 200
Latham, NY 12110

Clough Harbour Associates, LLP

III Winners Circle
PO Box 5269
Albany, NY 12205-0269

Clark Patterson Lee

103 Executive Drive, Suite 202
New Windsor, NY 12553

Creighton Manning Eng., LLP

40 Garden St.
Poughkeepsie, NY 12601

GPI (Greenman-Pederson, Inc.)

80 Wolf Road, Suite 300
Albany, NY 12205

Hudson Valley Engineering Associates

560 Route 52, Suite 201
Beacon, NY 12508

Lochner Engineering, P.C.

310 Fullerton Avenue, Suite 200
Newburgh, NY 12550

Modjeski & Masters

301 Manchester Road, Suite 102
Poughkeepsie, NY 12603

Stantec Consulting

3 Columbia Circle
Suite 6
Albany, New York 12203-5158

OR

50 West 23rd Street, 8th Floor
New York, NY 10010

Tectonic Engineering

70 Pleasant Hill Road
Mountainville, NY 10953

WSP Sells

512 Seventh Avenue
New York, NY 10018

Consultant Procurement Process Helpful NOTES

Guidelines are in Chapter 6 and Appendix to Chapter 6 – Procedures for Locally Administered Federal Aid Projects. Use website www.nysdot.ny.gov for most current version.

In order to receive federal reimbursement, Chapter 6 should be followed.

Selection is **qualifications based**.

Solicitation can be for all phases (preliminary engineering, right-of-way incidental, right-of-way acquisition, construction support) or single phase.

Two common methods are: **Project Specific** or **CHSA/LDSA list**:

Selection Committee established by Sponsor (we do not sit on committee).

Using the project specific methods requires widespread advertisement by placing an ad in the contract reporter and official local newspaper. Sample ad in Chapter 6 (Appendix 6-2)

Using the CHSA/LDSA list requires all 15 firms be contacted by Sponsor requesting EOI for the particular project. Sample letter & RFQ included in package.

Using the CHSA/LDSA Short List of 5 firms (only City Poughkeepsie, Orange County & Ulster County for the 2013—2015 list) permits Sponsor at its discretion to contact the firms, conduct interviews, or just select based on review of Expression of Interest on file.

Selection Committee should complete the Short List Documentation form. No need to rate and rank.

Once the firms respond, the Selection Committee:

Rates and ranks each firm based on selection criteria outlined in solicitation. (Appendix 6-8)

Interview top ranked firms (Sponsor discretion)

Select – Based on ranking forms completed by committee...or summary of forms

Negotiate – develop scope of services / task list. Sponsor must have an **independent estimate** to be used as a tool during negotiations (requirement of federal funds). IF negotiations break down with #1 firm, sponsor can go to #2 firm but can not go back to #1. Follow Chapter 6 – Termination of a Consultant 6.5.5 for guidance.

Consultant Agreement – Follow Chapter 6 format. Agreement sequence: Federal Language & Attachment A Project Description & Funding (Appendix 6-5); Scope of Services (Appendix 6-4); Cost Proposal, Staffing Table, Direct Non-Salary Costs, Summary of all costs (Appendix 6-6). Additional tasks/costs (such as CS/CI) can be added by supplemental agreement.

Pre-Negotiation Audit – "Sponsor's responsibility".

If using LDSA list, audit should be on file – Sponsor to ask firm for copy.

Audit is to determine if:

- consultant's accounting & internal controls are adequate to support cost reimbursement type
- Proper justification exists for rates to be charged
- Consultant is aware of FHWA's cost eligibility & documentation requirements

(On sponsor's letterhead)

CERTIFICATION for Consultant Procurement

PIN 8 _ _ _ . _ _ _
[Name of Project]
[Municipality, County]

I, **[name of person]**, **[title]**, being the Responsible Local Official for the above-referenced locally administered federal aid project(s), hereby certify that **[name of administering agency]** has procured the services of **[name of firm]** for the above-referenced project(s) in accordance with Chapter 6 of the manual entitled "Procedures for Locally Administered Federal Aid Projects", including:

- ensuring that a pre-negotiation audit has been performed for the prime consultant and all sub-consultants as described in Section 6.3.
- preparing a task list and independent estimate as described in Section 6.2.
- negotiating fair and reasonable costs for services as described in Section 6.5, including obtaining the necessary certifications from the prime and sub-consultants regarding salary rates and overhead multipliers and verifying that fees (profit) are reasonable.
- ensuring appropriate DBE participation as described in Section 6.2.6.
- making the required federal language contained in Appendix 6-5, project specific task list(s), and the cost information contained in Appendix 6-6 part of the executed contract between **[name of administering agency]** and **[name of firm]**.
- completing the "Contract Administrator's Checklist" (Appendix 6-1), and filing it in the appropriate project file(s).
- transmitting a copy of the executed contract between the **[name of administering agency]** and **[name of firm]** to the Region 8 Local Projects Unit.

SIGNATURE

PRINTED NAME

DATE

*(This Certification, along with the Certification for Consultant Selection,
replaces the Local Agency Certification found in Appendix 6-7)*

(On administering agency's letterhead)

**CERTIFICATION
for Consultant Selection**

PIN 8 ____ . ____
[Name of Project]
[Municipality, County]

I, **[name of person]**, **[title]**, being the Responsible Local Official for the above-referenced locally administered federal aid project(s), hereby certify that **[name of administering agency]** has selected **[name of firm]** to provide **[design, right-of-way (property) acquisition, and construction inspection]** services for the above-referenced project(s) in accordance with the appropriate selection procedures described in Section 6.4 of Chapter 6 of the manual entitled "Procedures for Locally Administered Federal Aid Projects," and as identified below:

- ☐ Project-specific selection process
 - the placement of an advertisement soliciting interested consultants in the NYS Contract Reporter, the **[name of administering agency's official newspaper]** and other technical and/or trade journals as appropriate
 - the ranking of consultants by a committee appointed by the **[name of administering agency]** in accordance with the criteria printed in the advertisement
- ☐ Regional Design Service Agreement (RDSA)
- ☐ Locally Driven Selection Arrangement (LDSA)
- ☐ Alternate process developed by sponsor
- ☐ Selection process for non-A/E services
- ☐ Procurement using small purchase procedures
- ☐ Non-competitive negotiations (sole source)
- ☐ Selection method for locally-funded services

SIGNATURE

PRINTED NAME OF RLO

DATE

**(This Certification along with the Certification for Consultant Procurement,
replaces the Local Agency Certification found in Appendix 6-7)**

(On consultant's letterhead)

CERTIFICATION of Consultant Contract Costs

I, **[name of person]**, **[title - e.g., partner, principal, etc.]** with **[name of firm]**, hereby certify that to the best of my knowledge and belief

[choose the applicable completion to the statement above]

- ☐ the salary rates and overhead multiplier used in the attached contract between **[name of administering agency]** and **[name of firm]** conform to the most recent certified salary roster submitted by **[name of firm]** to NYSDOT on **[date]**.

OR

- ☐ the salary rates and overhead multiplier used in the attached contract between **[name of administering agency]** and **[name of firm]** are the lowest salary and overhead rates that **[name of firm]** charges clients for similar services and these rates are in conformance with the Federal Acquisition Regulations (48 CFR, Part 31). *{Applies only to services provided by the consultant valued at less than \$250,000.}*

OR

- ☐ the salary rates and overhead multiplier used in the attached contract between **[name of administering agency]** and **[name of firm]** conform to the certified salary roster and audited overhead rate submitted to the NYSDOT and **[name of administering agency]** on **[date]**.

SIGNATURE

PRINTED NAME

DATE

Federal-Aid Local Project Agreement

COMPTROLLER'S CONTRACT NO _____

This 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,

City of Newburgh (the "Municipality/Sponsor")
acting by and through the **City Manager**
with its office at 83 Broadway, Newburgh, Orange County, NY

This Agreement covers eligible costs incurred on or after _____

This Agreement identifies the party responsible for administration, and establishes the method or provision for funding, of applicable phases of a Federal-aid project for the improvement of a street or highway not on the State highway system, as such project and phases are more fully described by Schedule A annexed to this Agreement or one or more Supplemental Schedule(s) A to this Agreement duly executed and approved by the parties hereto. The phases that are potentially the subject of this Agreement, as further enumerated below, are: Preliminary Engineering ("PE") and Right-of-Way Incidental ("ROW Incidentals") work; Right-of-Way Acquisition; Construction; and/or Construction Supervision and Inspection. The Federal-aid project shall be identified for the purposes of this Agreement as **PIN 8761.39, Lake Drive over Quassaick Creek (BIN 2223630) Bridge Replacement in the City of Newburgh, Orange County** (as more specifically described in such Schedule A, the "Project").

WITNESSETH:

WHEREAS, the United States has provided for the apportionment of Federal-aid funds to the State for the purpose of carrying out Federal-aid highway projects pursuant to the appropriate sections of Title 23 U.S. Code as administered by the Federal Highway Administration ("FHWA"); and

WHEREAS, the New York State Highway Law authorizes the Commissioner of Transportation (hereinafter referred to as "Commissioner") to use Federal aid available under the Federal-aid highway acts and provides for the consent to and approval by the Municipality/Sponsor of any project under the Federal-aid highway program which is not on the State highway system before such Project is commenced; and

WHEREAS, pursuant to Highway Law §10(34-a) and section 15 of Chapter 329 of the Laws of 1991 as amended by section 9 of Chapter 330 of the Laws of 1991, as further amended by Chapter 57 of the Laws of New York of 2014, the State established the "Marchiselli" Program, that provides certain State aid for Federal aid highway projects not on the State highway system; and

WHEREAS, funding of the "State share" of projects under the Marchiselli Program is administered through the New York State Office of the Comptroller ("State Comptroller"); and

WHEREAS, Highway Law §80-b authorizes the funding of eligible costs of Federal aid Municipal/Sponsor streets and highway projects using State-aid and Federal aid; and

WHEREAS, projects eligibility for Marchiselli Program funds is determined by NYSDOT; and

WHEREAS, pursuant to authorizations therefore, NYSDOT and the Municipality/Sponsor are desirous of progressing the Project under the Federal-aid and, if applicable, Marchiselli-aid Programs; and

WHEREAS, the Legislative Body of the Municipality/Sponsor by Resolution No. _____ adopted at meeting held on _____ approved the Project, the Municipality/Sponsor's entry into this Agreement, has appropriated necessary funds in connection with any applicable Municipal/Sponsor Deposit identified in applicable Schedules A and has further authorized the _____ of the Municipality/Sponsor to execute this Agreement and the applicable Schedule A on behalf of the Municipality/Sponsor and a copy of such Resolution is attached to and made a part of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. *Documents Forming this Agreement.* The Agreement consists of the following:

- Agreement Form - this document titled "Federal Aid Local Project Agreement";
- Schedule "A" - Description of Project phase, Funding and Deposit Requirements;
- Schedule "B" - Phases, Subphase/Tasks, and Allocation of Responsibility
- Appendix "A" - Standard Clauses for New York State Contracts
- Appendix "A-1" – Supplemental Title VI Provisions (Civil Rights Act)
- Appendix "B" – U.S. government Required Clauses
- Municipal/Sponsor Resolution(s) – duly adopted Municipal/Sponsor resolution authorizing the appropriate Municipal/Sponsor official to execute this Agreement on behalf of the Municipality/Sponsor and appropriating the funding required therefore.

2. *General Description of Work and Responsibility for Administration and Performance.* Subject to the allocations of responsibility for administration and performance thereof as shown in Schedule B (attached), the work of the Project may consist generally of the categories of work marked and described in Schedule B for the scope and phase in effect according to Schedule A (attached) or one or more Supplemental Schedule(s) A as may hereafter be executed and approved by the parties hereto as required for a State contract, and any additions or deletions made thereto by NYSDOT subsequent to the development of such Schedule(s) A for the purposes of conforming to New York State or to Federal Highway Administration requirements.

The Municipality/Sponsor understands that funding is contingent upon the Municipality/Sponsor's compliance with the applicable requirements of the Procedures for Locally Administered Federal Aid Projects (PLAFAP) Manual (available through NYSDOT's web site at: <https://www.dot.ny.gov/plafap>, and as such may be amended from time to time.

3. *Municipal/Sponsor Deposit.* Where the work is performed by consultant or construction contract entered by NYSDOT, or by NYSDOT forces, and unless the total non-Federal share of the Project phase is under \$5,000, the Municipality/Sponsor shall deposit with the State Comptroller, prior to the award of NYSDOT's contract or NYSDOT's performance of work by its own forces, the full amount of the non-Federal share of the Project costs due in accordance with Schedule A.

4. *Payment or Reimbursement of Costs.* For work performed by NYSDOT, NYSDOT will directly apply Federal aid and the required Municipal/Sponsor Deposit for the non-Federally aided portion, and, if applicable, shall request State Comptroller funding of Marchiselli aid to the Municipality/Sponsor as described below. For work performed by or through the Municipality/Sponsor, NYSDOT will reimburse the Municipality/Sponsor with Federal aid and, if applicable, Marchiselli aid as described below. NYSDOT will make reimbursements periodically upon request and certification by the Sponsor. The frequency of billing must be in conformance with that stipulated in the *NYSDOT Standard Specifications; Construction and Materials (section 109-06, Contract Payments)*. NYSDOT recommends that bills not be submitted more frequently than monthly for a typical project. In all cases, bills must be submitted at least once every six months.

4.1. *Federal Aid.* NYSDOT will administer Federal funds for the benefit of the Municipality /Sponsor for the Federal share and will fund the applicable percentage designated in Schedule A of Federal-aid participating costs incurred in connection with the work covered by this Agreement, subject to the limitations set forth on Schedule A. For work performed by or through the Municipality/Sponsor, NYSDOT will reimburse Federal-aid-eligible expenditures in accordance with NYSDOT policy and procedures.

4.1.1 *Participating Items.* NYSDOT shall apply Federal funds only for that work and those items that are eligible for Federal participation under Title 23 of U.S. code, as amended, that requires Federal-aid-eligible projects to be on the Federal Aid Highway System ("FAHS"), except for bridge and safety projects that can be off the FAHS. Included among the Federal participating items are the actual cost of employee personal services, and leave and fringe benefit additives. Other participating costs include materials and supplies, equipment use charges or other Federal Participating costs directly identifiable with the eligible project.

4.2. *Marchiselli Aid (if applicable).* NYSDOT will request State Comptroller reimbursement to the Municipality/Sponsor of the upset amount and designated percentage in Schedule A of the non-overmatched non-Federal share of Federal participating cost, (the "State share"), incurred in connection with the work covered by this Agreement, subject to the limitations set forth in Schedule A. Not all Federal-aid-eligible participating costs are eligible for Marchiselli aid. Only "Eligible Project Costs" (as defined in Marchiselli Program instructions issued by NYSDOT) incurred after April 1, 1991 are reimbursable.

4.2.1 *Marchiselli Eligible Project Costs.* To be eligible for Marchiselli Aid Project costs must: (a) be eligible for Federal participation as described under '4.1; (b) be for work which, when completed, has a certifiable service life of at least 10 years; and (c) be for a work type that relates directly and exclusively to a municipally-owned highway, bridge or highway-railroad crossing off the State Highway System.

4.3. In no event shall this Agreement create any obligation to the Municipality/Sponsor for funding or reimbursement of any amount in excess of:

- (a) the amount stated in Schedule A for the Federal Share or;
- (b) the amount stated in Schedule A as the State (Marchiselli) share or the amount stated in the Comprehensive List, whichever is lower.

4.4. All items included by the Municipality/Sponsor in the record of costs shall be in conformity with accounting procedures acceptable to NYSDOT and the FHWA. Such items shall be subject to audit by the State, the federal government or their representatives.

4.5. If Project-related work is performed by NYSDOT, NYSDOT will be paid for the full costs thereof. To effect such payment, the reimbursement to the Municipality/Sponsor provided for in sections 4.1 and 4.2 above may be reduced by NYSDOT by the amounts thereof in excess of the Municipal/Sponsor Deposit available for such payment to NYSDOT.

5. *Supplemental Agreement or Supplemental Schedule A.* Supplemental Agreements or Supplemental Schedule(s) A may be entered into by the parties, and must be executed and approved in the manner required for a State contract. A Supplemental Schedule A is defined as a Supplemental Agreement which revises only the Schedule A of a prior Agreement or Supplemental Agreement. In the event Project cost estimates increase over the amounts provided for in Schedule A, no additional reimbursement shall be due to the Municipality/Sponsor unless the parties enter into a Supplemental Agreement or Supplemental Schedule A for reimbursement of additional Eligible Project Costs.

6. *State Recovery of Ineligible Reimbursements.* NYSDOT shall be entitled to recover from the Municipality/Sponsor any monies paid to the Municipality/Sponsor pursuant to this Agreement which are subsequently determined to be ineligible for Federal Aid or Marchiselli Aid hereunder.

7. *Loss of Federal Participation.* In the event the Municipality/Sponsor withdraws its approval of the project, suspends or delays work on the Project or takes other action that results in the loss of Federal participation for the costs incurred pursuant to this Agreement, the Municipality/Sponsor shall refund to the State all reimbursements received from the State, and shall reimburse the State for 100% of all preliminary engineering and right-of-way incidental costs incurred by NYSDOT. The State may offset any other State or Federal aid due to the Municipality/Sponsor by such amount and apply such offset to satisfy such refund.

8. *Municipal/Sponsor Liability.*

8.1 If the Municipality/Sponsor performs work under this Agreement with its own forces, it shall be responsible for all damage to person or property arising from any act or negligence performed by or on behalf of the Municipality/Sponsor, its officers, agents, servants or employees, contractors, subcontractors or others in connection therewith. The Municipality/Sponsor specifically agrees that its agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

8.2 The Municipality/Sponsor shall indemnify and save harmless the State for all damages and costs arising out of any claims, suits, actions, or proceedings resulting from the negligent performance of work by or on behalf of the Municipality/Sponsor its officers, agents, servants, employees, contractors, subcontractors or others under this Agreement. Negligent performance of service, within the meaning of this section, shall include, in addition to negligence founded upon tort, negligence based upon the Municipality/Sponsor's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work.

8.3 The Municipality/Sponsor shall at all times during the Contract term remain responsible. The Municipality/Sponsor agrees, if requested by the Commissioner of Transportation or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organization and financial capacity.

8.4 The Commissioner of Transportation or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this contract, at any time, when he or she discovers information that calls into question the responsibility of the Municipality/Sponsor. In the event of such suspension, the Municipality/Sponsor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Municipality/Sponsor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Transportation or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

8.5 Upon written notice to the Municipality/Sponsor, and a reasonable opportunity to be heard with appropriate Department of Transportation officials or staff, the Contract may be terminated by the Commissioner of Transportation or his or her designee at the Municipality's/Sponsor's expense where the Municipality/Sponsor is determined by the Commissioner of Transportation or his or her designee to be non-responsible. In such event, the Commissioner of Transportation or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

9. *Maintenance.* The Municipality/Sponsor shall be responsible for the maintenance of the project at the sole cost and expense of the Municipality/Sponsor. If the Municipality/Sponsor intends to have the project maintained by another, any necessary maintenance Agreement will be executed and submitted to NYSDOT before construction of the Project is begun. Upon its completion, the Municipality/Sponsor will operate and maintain the Project at no expense to NYSDOT; and during the useful life of the Project the Municipality/Sponsor shall not discontinue operation and maintenance of the Project, nor dispose of the Project, unless it receives prior written approval to do so from NYSDOT.

9.1 The Municipality/Sponsor may request such approved disposition from NYSDOT where the Municipality/Sponsor either causes the purchaser or transferee to assume the Municipality/Sponsor's continuing obligations under this Agreement, or agrees immediately to reimburse NYSDOT for the pro-rata share of the funds received for the project, plus any direct costs incurred by NYSDOT, over the remaining useful life of the Project.

9.2 If a Municipality/Sponsor fails to obtain prior written approval from NYSDOT before discontinuing operation and maintenance of the Project or before disposing of the project, in addition to the costs provided, above in 9.1, Municipality/Sponsor shall be liable for liquidated damages for indirect costs incurred by NYSDOT in the amount of 5% of the total Federal and non-Federal funding provided through NYSDOT.

9.3 For NYSDOT-administered projects, NYSDOT is responsible for maintenance only during the NYS administered construction phase. Upon completion of the construction phase, the Municipality/Sponsor/s maintenance obligations start or resume.

10. *Independent Contractor.* The officers and employees of the Municipality/Sponsor, in accordance with the status of the Municipality/Sponsor as an independent contractor, covenant and agree that they will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be an officer or employee of the State by reason hereof, and that they will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the State, including, but not limited to, Workers Compensation coverage, Unemployment Insurance benefits, Social Security or Retirement membership or credit.

11. *Contract Executory; Required Federal Authorization.* It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the monies available to the State and no liability on account thereof shall be incurred by the State beyond monies available for the purposes hereof. No phase of work for the project shall be commenced unless and until NYSDOT receives authorization from the Federal government.

12. *Assignment or Other Disposition of Agreement.* The Municipality/Sponsor agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or of its right, title or interest therein, or its power to execute such Agreement to any person, company or corporation without previous consent in writing of the Commissioner.

13. *Term of Agreement.* As to the Project and phase(s) described in Schedule A executed herewith, the term of this Agreement shall begin on the date of this Agreement as first above written. This Agreement shall remain in effect so long as Federal aid and Marchiselli aid funding authorizations are in effect and funds are made available pursuant to the laws controlling such authorizations and availabilities. However, if such authorizations or availabilities lapse and are not renewed, continued or reenacted, as to funds encumbered or available and to the extent of such encumbrances or availabilities, this Agreement shall remain in effect for the duration of such encumbrances or availabilities. Although the liquidity of encumbrances or the availability of funds may be affected by budgetary hiatuses, a Federal or State budgetary hiatus will not by itself be construed to cause a lapse in this Agreement, provided any necessary Federal or State appropriations or other funding authorizations therefore, are eventually enacted.

14. *NYSDOT Obligations.* NYSDOT's responsibilities and obligations are as specifically set forth in this contract, and neither NYSDOT nor any of its officers or employees shall be responsible or liable, nor shall the Municipality/Sponsor assert, make, or join in any claim or demand against NYSDOT, its officers or employees, for any damages or other relief based on any alleged failure of NYSDOT, its officers or employees, to undertake or perform any act, or for undertaking or performing any act, which is not specifically required or prohibited by this Agreement.

15. *Offset Rights.* In addition to any and all set-off rights provided to the State in the attached and incorporated Appendix A, Standard Clauses for New York Contracts, NYSDOT shall be entitled to recover and offset from the Municipality/Sponsor any ineligible reimbursements and any direct or indirect costs to the State as to paragraph 6 above, as well as any direct or indirect costs incurred by the State for any breach of the term of this agreement, including, but not limited to, the useful life requirements in paragraph 9 above. At its sole discretion NYSDOT shall have the option to permanently withhold and offset such direct and indirect cost against any monies due to the Municipality/Sponsor from the State of New York for any other reason, from any other source, including but not limited to, any other Federal or State Local Project Funding, and/or any Consolidated Highway and Local Street Improvement Program (CHIPS) funds.

16. *Reporting Requirements.* The Municipality/Sponsor agrees to comply with and submit to NYSDOT in a timely manner all applicable reports required under the provisions of this Agreement, the "Procedures for Locally Administered Federal Aid Projects" manual and in accordance with current Federal and State laws, rules, and regulations.

17. *Notice Requirements.*

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

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

New York State Department of Transportation (NYSDOT)

Name: Martin S. Evans
Title: Local Projects Manager
Address: Eleanor Roosevelt State Building
4 Burnett Boulevard, Poughkeepsie, NY 12603
Telephone Number: 845-431-5788
Facsimile Number: 845-431-5988
E-Mail Address: Martin.Evans@dot.ny.gov or Doreen.Holsopple@dot.ny.gov

(Municipality/Sponsor): City of Newburgh
Name: Michael G. Ciaravino, City Manager
Address: 83 Broadway, Newburgh, NY 12550
Telephone Number: 845.569.7448
Facsimile Number: 845.569.7349
E-Mail Address: mciaravino@cityofnewburgh-ny.gov
or Jason Morris at jmorris@cityofnewburgh-ny.gov

17.2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States Mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice

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

18. *Electronic Contract Payments.* Municipality/Sponsor shall provide complete and accurate supporting documentation of eligible local expenditures as required by this agreement, NYSDOT and the State Comptroller. Following NYSDOT approval of such supporting documentation, payment for invoices submitted by the Municipality/Sponsor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The contracting local Municipality/Sponsor shall comply with the State Comptroller's procedures for all Federal and applicable State Aid to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, or by email at epunit@osc.state.ny.us. When applicable to State Marchiselli and other State reimbursement by the State Comptroller, registration forms and instructions can be found at the NYSDOT Electronic Payment Guidelines website. The Municipality/Sponsor herein acknowledges that it will not receive payment on any invoices submitted under this agreement if it does not comply with the applicable State Comptroller and/or NYS State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

19. *Compliance with Legal Requirements.* Municipality/Sponsor must comply with all applicable federal, State and local laws, rules and regulations, including but not limited to the following:

19.1 Title 49 of the Code of Federal Regulations Part 26 (49 CFR 26), *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*; Title 23 Code of Federal Regulations Part 230 (23 CFR 230), *External Programs*; and, Title 41 of the Code of Federal Regulations Part 60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, including the requirements there under related to utilization goals for contracting opportunities for disadvantaged business enterprises (DBEs) and equal employment opportunity.

19.1.1 If the Municipality/Sponsor fails to monitor and administer contracts funded in whole or in part in accordance with Federal requirements, the Municipality/Sponsor will not be reimbursed for ineligible activities within the affected contracts. The Municipality/Sponsor must ensure that the prime contractor has a Disadvantaged Business Enterprise (DBE) Utilization Plan and complies with such plan. If, without prior written approval by NYSDOT, the Municipality/Sponsor's contractors and subcontractors fail to complete work for the project as proposed in the DBE Schedule of Utilization, NYSDOT at its discretion may (1) cancel, terminate or suspend this agreement or such portion of this agreement or (2) assess liquidated damages in an amount of up to 20% of the pro rata share of the Municipality/Sponsor's contracts and subcontracts funded in whole or in part by this agreement for which contract goals have been established.

19.2 New York State Environmental Law, Article 6, the State *Smart Growth Public Infrastructure Policy Act*, including providing true, timely and accurate information relating to the project to ensure compliance with the Act.

20. *Compliance with Procedural Requirements* The Municipality/Sponsor understands that funding is contingent upon the Municipality/Sponsor's compliance with the applicable requirements of the Procedures for Locally Administered Federal Aid Projects (PLAFAP) Manual, which, as such, may be amended from time to time. Locally administered Federal-aid transportation projects must be constructed in accordance with the current version of *NYSDOT Standard Specifications; Construction and Materials*, including any and all modifications to the Standard Specifications issued by the Engineering Information Issuance System, and NYSDOT-approved Special Specifications for general use. (Cities with a population of 3 million or more may pursue approval of their own construction specifications and procedures on a project by project basis.)

NYSDOT # _____

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officials as of the date first above written.

Municipality/Sponsor

By: _____

*As per Resolution No. - 2016

Print Name: Michael G. Ciaravino

Title: City Manager

Municipality/Sponsor Attorney

By: _____

Print Name: _____

STATE OF NEW YORK)
)ss.:
COUNTY OF ORANGE)

On this _____ day of _____, 2016 before me personally came _____ to me known, who, being by me duly sworn did depose and say that s/he resides at _____; that s/he is the _____ of the Municipal/Sponsor Corporation described in and which executed the above instrument; 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 s/he signed his/her name thereto by like order.

Notary Public

Approved for NYSDOT:

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.

DATE: _____

Approved as to Form:

STATE OF NEW YORK ATTORNEY GENERAL

By: _____
Assistant Attorney General

COMPTROLLER'S APPROVAL:

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

07/2014 dh

SCHEDULE A – Description of Project Phase, Funding and Deposit Requirements
NYSDOT/ State-Local Agreement - Schedule A for PIN 8761.39

OSC Municipal Contract #: _____ **Contract Start Date:** ____/____/____ (mm/dd/yyyy) **Contract End Date:** 12/30/2019 (mm/dd/yyyy)
☐ Check, if date changed from the last Schedule A

Purpose: ☒ Original Standard Agreement ☐ Supplemental Schedule A No.

Agreement Type: ☒ Locally Administered Municipality/Sponsor (Contract Payee): City Of Newburgh
 Other Municipality/Sponsor (if applicable): _____

☐ State Administered List participating Municipality(ies) and the % of cost share for each and indicate by checkbox which Municipality this Schedule A applies.
☐ Municipality: _____ % of Cost share
☐ Municipality: _____ % of Cost share
☐ Municipality: _____ % of Cost share

Authorized Project Phase(s) to which this Schedule applies: ☒ PE/Design ☒ ROW Incidentals
☐ ROW Acquisition ☐ Construction/CI/CS

Work Type: BR REPLACE **County (If different from Municipality):** Orange County

Marchiselli Eligible ☐ Yes ☒ No (Check, if Project Description has changed from last Schedule A): ☐
Project Description: BIN 2223630 Lake Drive over Quassaick Creek, City of Newburgh, Orange County

Marchiselli Allocations Approved FOR ALL PHASES To compute Total Costs in the last row and column, right click in each field and select "Update Field."

Check box to indicate change from last Schedule A	State Fiscal Year(s)	Project Phase			TOTAL
		PE/Design	ROW (RI & RA)	Construction/CI/CS	
☐	Cumulative total for all prior SFYs	\$	\$	\$	\$ 0.00
☐	Current SFY	\$	\$	\$	\$ 0.00
Authorized Allocations to Date		\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

A. Summary of allocated MARCHISELLI Program Costs FOR ALL PHASES For each PIN Fiscal Share below, show current costs on the rows indicated as "Current.". Show the old costs from the previous Schedule A on the row indicated as "Old." To compute Total Current Costs in the last row, right click in each field and select "Update Field."

PIN Fiscal Share	"Current" or "Old" entry indicator	Federal Funding Program	Total Costs	FEDERAL Participating Share and Percentage	STATE MARCHISELLI Match	LOCAL Matching Share	LOCAL DEPOSIT AMOUNT (Required only if State Administered)
..	Current		\$	\$	\$	\$	\$
	Old		\$	\$	\$	\$	\$
..	Current		\$	\$	\$	\$	\$
	Old		\$	\$	\$	\$	\$
..	Current		\$	\$	\$	\$	\$
	Old		\$	\$	\$	\$	\$
..	Current		\$	\$	\$	\$	\$
	Old		\$	\$	\$	\$	\$
..	Current		\$	\$	\$	\$	\$
	Old		\$	\$	\$	\$	\$
TOTAL CURRENT COSTS:			\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

NYSDOT/State-Local Agreement – Schedule A

B. Summary of Other (including Non-allocated MARCHISELLI) Participating Costs FOR ALL PHASES For each PIN Fiscal Share, show current costs on the rows indicated as "Current.". Show the old costs from the previous Schedule A on the row indicated as "Old." To compute Total Current Costs in last row, right click in each field and select "Update Field."

Other PIN Fiscal Shares	'Current' or 'Old' entry indicator	Funding Source	TOTAL	Other FEDERAL	Other STATE	Other LOCAL
8761.39.121	Current	STP	\$365,000.00	\$292,000.00	\$73,000.00	\$0.00
	Old		\$	\$	\$	\$
8761.39.221	Current	STP	\$20,000.00	\$16,000.00	\$4,000.00	\$0.00
	Old		\$	\$	\$	\$
	Current		\$	\$	\$	\$
	Old		\$	\$	\$	\$
	Current		\$	\$	\$	\$
	Old		\$	\$	\$	\$
	Current		\$	\$	\$	\$
	Old		\$	\$	\$	\$
	Current		\$	\$	\$	\$
	Old		\$	\$	\$	\$
	Current		\$	\$	\$	\$
	Old		\$	\$	\$	\$
TOTAL CURRENT COSTS:			\$385,000.00	\$308,000.00	\$77,000.00	\$ 0.00

C. Total Local Deposit(s) Required for State Administered Projects:

\$0.00

D. Total Project Costs To compute Total Costs in the last column, right click in the field and select "Update Field."

Total FEDERAL Cost	Total STATE MARCHISELLI Cost	Total Other STATE Cost	Total LOCAL Cost	Total Costs (all sources)
\$308,000.00	\$0.00	\$77,000.00	\$0.00	\$385,000.00

E. Point of Contact for Questions Regarding this Schedule A (Must be completed)

 Name: Doreen Holsopple
 Phone No: 845-431-5977

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

- The non-federal share of these phases are being provided by "other" State Funds.

SCHEDULE B: Phases, Sub-phases/Tasks, and Allocation of Responsibility

Page 1 of 5 PIN 8761.39

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

PHASE/SUB-PHASE/TASK	Responsibility	
	NYSDOT	Sponsor
<u>XX</u> A1. Preliminary Engineering ("PE") Phase		
1. <u>Scoping</u> : Prepare & distribute all required project reports, including an Expanded Project Proposal (EPP) or Scoping Summary Memorandum (SSM), as appropriate.		X
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.		X
3. Smart Growth Attestation (NYSDOT ONLY).		
4. <u>Preliminary Design</u> : Prepare & 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.		X
5. Review & Circulate all project reports, plans, and other project data to obtain the necessary review, approval, and/or other input and actions required of other NYSDOT units and external agencies.	X	XX
6. Obtain aerial photography and photogrammetric mapping.		X
7. Perform all surveys for mapping and design.		X
8. <u>Detailed Design</u> : 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 <i>Highway Design Manual</i> , including all Highway Design, including pavement evaluations, 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.		X
9. Perform landscape design (including erosion control).		X
10. Design environmental mitigation, where appropriate, in connection with: Noise readings, projections, air quality monitoring, emissions projections, hazardous waste, asbestos, determination of need for cultural resources survey.		X
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.		X
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.		X

PHASE/SUB-PHASE/TASK	Responsibility	
	NYSDOT	Sponsor
13. Conduct any required soils and other geological investigations.		X
14. Obtain utility information, including identifying the locations and types of utilities within the project area, the ownership of these utilities, and prepare utility relocation plans and agreements, including completion of Form HC-140, titled Preliminary Utility Work Agreement.		X
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, NYSDOT 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.		X
16. Prepare and execute any required agreements, including: -- Railroad force account -- Maintenance agreements for sidewalks, lighting, signals, betterments. -- Betterment Agreements B Utility Work Agreements for any necessary Utility Relocations of Privately owned Utilities.		X
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 NYSDOT	X	XX
18. The American recovery and Reinvestment Act (ARRA) projects require additional extensive reporting. The Municipality/ Sponsor must include in its construction contract the additional ARRA reporting requirements related to the weekly employment during Construction or as modified by the Federal Highway Administration (FHWA).		N/A
19. Pursuant to Title IX, Section 902 of the ARRA, the U.S. DOT Comptroller General and his representatives are authorized to: 1) examine any records of the contractor, or any records of its subcontractors, that directly pertain to and involve transactions relating to the contract or subcontract, and 2) interview any officer or employee of the contractor or any of its subcontractors regarding such transactions.		N/A
XXX A2. Right-of-Way (ROW) Incidentals		
1. Prepare ARM or other mapping, showing preliminary taking lines.		X
2. Right-of-Way (ROW) mapping and any necessary right-of-way relocation plans.		X
3. Obtain abstracts of title and certify those having an interest in right-of-way to be acquired.		X
4. Secure Appraisals.		X
5. Perform Appraisal Review and establish an amount representing just compensation.		X
6. Determination of exemption from public hearing that is otherwise required by the Eminent Domain Procedure Law, including Ade minimus determination, as may be applicable. If NYSDOT is responsible for acquiring the right-of-way, this determination may be performed by NYSDOT only if NYSDOT is responsible for the Preliminary Engineering Phase under Phase A1 of this Schedule B.		X

PHASE/SUB-PHASE/TASK	Responsibility	
	NYSDOT	Sponsor
7. Conduct any public hearings and/or informational meetings as may be required by the Eminent Domain Procedures Law, including the provision of stenographic services, preparation and distribution of transcripts, and response to issues raised at such meetings.		X
8. The American recovery and Reinvestment Act (ARRA) projects require additional extensive reporting. The Municipality/ Sponsor must include in its construction contract the additional ARRA reporting requirements related to the weekly employment during Construction or as modified by the Federal Highway Administration (FHWA).		N/A
9. Pursuant to Title IX, Section 902 of the ARRA, the U.S. DOT Comptroller General and his representatives are authorized to: 1) examine any records of the contractor, or any records of its subcontractors, that directly pertain to and involve transactions relating to the contract or subcontract, and 2) interview any officer or employee of the contractor or any of its subcontractors regarding such transactions.		X
XXXX B. Right of Way (ROW) Acquisition		
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 NYSDOT 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.		X
2. Provide required relocation assistance, including payment of moving expenses, replacement supplements, mortgage interest differentials, closing costs, mortgage prepayment fees.		X
3. Conduct eminent domain proceedings, court, and any other legal actions required to acquire properties.		X
4. Monitor all ROW Acquisition work and activities, including review and processing of payments to property owners.		X
5. Provide official certification that all right-of-way required for the construction has been acquired in compliance with applicable Federal, 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.		X
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.		X
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.		X
8. The American Recovery and Reinvestment Act (ARRA) projects require additional extensive reporting. The Municipality/Sponsor must include in its construction contract the additional ARRA reporting requirements related to the weekly employment during Construction or as modified by the Federal Highway Administration (FHWA).		N/A

PHASE/SUB-PHASE/TASK	Responsibility	
	NYSDOT	Sponsor
9. Pursuant to Title IX, Section 902 of the ARRA, the U.S. DOT Comptroller General and his representatives are authorized to: 1) examine any records of the contractor, or any records of its subcontractors, that directly pertain to and involve transactions relating to the contract or subcontract, and 2) interview any officer or employee of the contractor or any of its subcontractors regarding such transactions.		X
XX C. Construction (C), Construction Support (C/S) and Construction Inspection (C/I) Phase		
1. Advertise contract lettings and distribute contract documents to prospective bidders.		X
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).		XX
3. Receive and process bid deposits and verify any bidder's insurance and bond coverage that may be required.		X
4. Compile and submit Contract Award Documentation Package.		X
5. Review/approve any proposed subcontractors, vendors, or suppliers.		X
6. Conduct & control all construction activities in accordance with the plans and proposal for the project. Maintain accurate, up-to-date project records & files, including all diaries & logs, to provide a detailed chronology of project construction activities. Procure or provide all materials, supplies & labor for the performance of the work on the project, & insure that the proper materials, equipment, human resources, methods and procedures are used.		X
7(a). For non-NHS or State Highway System Projects: Test and accept materials, including review and approval for any requests for substitutions. 7(b) 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 NYSDOT. 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 NYSDOT design and construction standards associated with the federal aid project. 7(c) For projects that fall under both 7a and 7b above, check boxes for each.	Inspection by NYSDOT	X Contractual reqs. of contractor and subs.
8. Design and/or re-design the project or any portion of the project that may be required because of conditions encountered during construction.		X
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.		X

PHASE/SUB-PHASE/TASK	Responsibility	
	NYSDOT	Sponsor
10. The American Recovery and Reinvestment Act (ARRA) projects require additional extensive reporting. The Municipality/Sponsor must include in its construction contract the additional ARRA reporting requirements related to the weekly employment during Construction or as modified by the Federal Highway Administration (FHWA).		X
11. Pursuant to Title IX, Section 902 of the ARRA, the U.S. DOT Comptroller General and his representatives are authorized to: 1) examine any records of the contractor, or any records of its subcontractors, that directly pertain to and involve transactions relating to the contract or subcontract, and 2) interview any officer or employee of the contractor or any of its subcontractors regarding such transactions.		X
12. Review and approve all shop drawings, fabrications details, and other details of structural work.		X
13. Administer all construction contract claims, disputes or litigation.		X
14. Perform final inspection of the completed 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.	X	XX
15. 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.	X	X

xx= Lead in task.
Schedule B Dec/2011

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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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, licenser, licensee, lessor, lessee or any other party):

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

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

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

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

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES (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 no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992 (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
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

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

The Omnibus Procurement Act of 1992 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) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health,

and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 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 Section 5-a, if the contractor fails to make the certification required by Tax Law Section 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:
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

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

APPENDIX A-1: SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

To be included in all contracts

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B
REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS
(April 2016)

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, the New York State Department of Transportation (NYSDOT) is responsible for the administration of transportation projects in New York State to which NYSDOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYSDOT delegates various elements of project and funding administration as described elsewhere in this Agreement. In undertaking a Federally aided project, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration agrees to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT, in cooperation with FHWA, has assembled the body of Federal-aid requirements, procedures and practices in its Procedures for Locally Administered Federal-Aid Projects Manual (available through NYSDOT's web site at: <http://www.dot.ny.gov/plafap>). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement for Federal-aid funding or project administration that enters into Federally aided project construction contracts is required to physically incorporate into all its Federally aided construction contracts and subcontracts there under the provisions that are contained in Form FHWA-1273 (available from NYSDOT or electronically at: <http://www.fhwa.dot.gov/programadmin/contracts/1273.htm>).

In addition to the referenced requirements, the attention of Municipality/Sponsor hereunder is directed to the following requirements and information:

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

The Municipality/Sponsor and its contractors agree to comply with Executive Order 11246, entitled "Equal Employment Opportunity" and United States Department of Transportation (USDOT) regulations (49 CFR Parts 21, 23, 25, 26 and 27) and the following:

1. **NON DISCRIMINATION**. No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.
2. **EQUAL EMPLOYMENT OPPORTUNITY**. In connection with the execution of this Agreement, the Municipality/Sponsors contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

3. **DISADVANTAGED BUSINESS ENTERPRISES.** In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work under this Agreement. Also, in this connection the Municipality or Municipality/Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49 CFR Part 26.

As a sub-recipient under 49 CFR Part 26.13, the Municipality/Sponsor hereby makes the following assurance.

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

FEDERAL SINGLE AUDIT REQUIREMENTS

Non-Federal entities that expend \$500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than \$500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency¹ the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO).

Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

¹ The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance (CFDA²), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

THE CFDA IDENTIFICATION NUMBER

OMB Circular A-133 requires all Federal-aid recipients to identify and account for awards and expenditures by CFDA Number. The Municipality/Sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

The most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205.

Additional CFDA numbers for other transportation and non-transportation related programs are:

20.215	Highway Training and Education
20.219	Recreational Trails Program
20.XXX	Highway Planning and Construction - Highways for LIFE;
20.XXX	Surface Transportation Research and Development;
20.500	Federal Transit-Capital Investment Grants
20.505	Federal Transit-Metropolitan Planning Grants
20.507	Federal Transit-Formula Grants
20.509	Formula Grants for Other Than Urbanized Areas
20.600	State and Community Highway Safety
23.003	Appalachian Development Highway System
23.008	Appalachian Local Access Roads

PROMPT PAYMENT MECHANISMS

In accordance with 49 CFR 26.29, and NY State Finance Law 139-f or NY General Municipal Law 106-b(2) as applicable:

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 calendar days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

² <http://www.cfda.gov/>

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

CARGO PREFERENCE ACT REQUIREMENTS – U.S. FLAG VESSELS

In accordance with 46 CFR 381, the contractor agrees:

- (a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (b) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- (c) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

RESOLUTION NO.: _____ - 2016

OF

AUGUST 8, 2016

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND
ACCEPT IF AWARDED A NEW YORK STATE DEPARTMENT OF
TRANSPORTATION
BRIDGE NY 2016 PROGRAM GRANT BIN NO. 2022260
FOR THE REHABILITATION OF THE LAKE STREET BRIDGE
IN AN AMOUNT NOT TO EXCEED \$1,000,000.00
WITH NO LOCAL MATCH REQUIRED**

WHEREAS, the City of Newburgh Engineering Department has advised that funding is available through the New York State Department of Transportation Bridge NY 2016 grant program; and

WHEREAS, the Bridge NY program provides enhanced assistance for local governments to rehabilitate and replace bridges and culverts and particular emphasis will be provided for projects that address poor structural conditions; mitigate weight restrictions or detours; facilitate economic development or increase competitiveness, and/or reduce the risk of flooding; and

WHEREAS, the City of Newburgh wishes to apply for and accept if awarded a grant entitled "Bridge NY 2016" Bin No. 2022260 in an amount not to exceed \$1,000,000.00 with no local match required for the rehabilitation of the Lake Street (Route 32) Bridge; and

WHEREAS, this Council has determined that applying for and accepting the grant funding if awarded is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a New York State Department of Transportation Bridge NY 2016 Program grant in an amount not to exceed \$1,000,000.00 with no local match required; and that the City Manager is authorized to execute all such contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the program funded thereby.



Department of Transportation

BRIDGE NY 2016 Application Information

Prior to completing the Bridge and/or Culvert Application form(s), please review the **Notice of Funding Availability Announcement** at www.dot.ny.gov/BRIDGENY.

COMPLETING THE APPLICATION(S):

For each Application, please be sure to complete all required fields.

For the Bridge Application form: Select the appropriate regional application that corresponds to the region in which the project will be completed. After completing the Project Sponsor and Contact Information sections, please enter the Bridge Identification Number (BIN). Certain fields will populate using BDIS data once the BIN number is entered. Fields identified with green shading are not pre-populated and are required to be completed by the project Sponsor. For the Bridge Application, required fields include:

- Project Sponsor: Municipality sponsoring the project; i.e. Albany County
- Name: Contact person for the project Sponsor
- Address, email & phone: Contact information for the project sponsor
- Project Priority: when multiple bridges are submitted by a project sponsor, each bridge should be ranked numerically with 1 being the highest priority project.
- Construction Cost: project construction cost
- Total Cost: Construction cost plus additional project cost including design, inspection and ROW.
- SFY Letting: The anticipated letting date; month/year
- PIN: to be assigned by the NYSDOT Regional Office
- Project Scope Description: Brief description of what the project will accomplish.
- Project Commentary: Description of the unique elements and important factors that are not readily captured by the available data.

In the event that you do not agree with a pre-populated value, please attach a brief narrative to the email submission explaining the justification(s) for the values you wish to substitute. Include the name, title and phone number of the person who can be contacted regarding the issues raised.

For the Culvert Application form: All fields are required fields. Data will need to be collected from Applicants, therefore, the form will not pre-populate.

ATTACHMENTS:

In addition to the required bridge and/or culvert application(s), project sponsors may also attach project budgets, plans, drawings, reports, environmental determinations or other supporting documentation as deemed appropriate. Attachments to the application should be included with the e-mail submission of



Department of Transportation

your application form. Attached files should be of common business formats such as PDF, JPG, MS Word, MS Excel, etc. There is no limit on file size for attachments; however, large attachments may affect your ability to submit your application.

SUBMITTING YOUR APPLICATION TO NYSDOT:

Completed Applications should be sent to: BRIDGENY@dot.ny.gov by no later than September 9, 2016.

For Bridge Applications: Be sure to include “BRIDGE NY 2016” followed by the BIN number, project priority number that you have assigned it and county in the subject line of the email (i.e. **BRIDGENY16-BIN3302115-01-Greene**).

For Culvert Applications: Be sure to include “BRIDGE NY 2016” followed by the word “Culvert,” project priority number that you have assigned it and county in the subject line of the email (i.e. **BRIDGENY16-CULVERT-01-Greene**).

Questions regarding the Application process can be addressed to: BRIDGENY@dot.ny.gov



Department of Transportation

NEW YORK STATE DEPARTMENT OF TRANSPORTATION BRIDGE NY NOTICE OF FUNDING AVAILABILITY July 5, 2016

Background

Pursuant to the new five-year State Transportation Plan, the New York State Department of Transportation (NYSDOT) is soliciting candidate projects for funding under the new BRIDGE NY program. The BRIDGE NY program provides enhanced assistance for local governments to rehabilitate and replace bridges and culverts. Particular emphasis will be provided for projects that address poor structural conditions; mitigate weight restrictions or detours; facilitate economic development or increase competitiveness; and/or reduce the risk of flooding.

Eligible Applicants

Any city, county, town, village or other political subdivision, including tribal governments and public benefit corporations, authorized to receive and administer State and federal transportation funding.

Eligible Projects

Bridge projects must be on a public roadway; eligible for federal aid; and shall follow the federal aid process. Culvert projects must be on a public highway and shall follow the State-aid process. The Department may consider bridge projects that incorporate sensors to monitor structural integrity.

Funding Availability

NYSDOT will be soliciting candidate projects for the first two years of the new BRIDGE NY program (State Fiscal Years 2016-17 and 2017-18). A total of \$200 million - \$100 million in each of the aforementioned fiscal years - in enhanced funding under BRIDGE NY will be awarded for local system projects during the two-year period. Of these amounts, no less than 10 percent of program funds shall be made available for culvert projects. Project sponsors will be required to submit a one-page summary for candidate

bridge and culvert projects detailing the scope, schedule and costs of the proposal. NYSDOT is committed to working with municipal sponsors to expedite this award process to ensure that the benefits of this investment accrue to the public as soon as possible.

Availability of Funds by Region

\$ in millions

	Bridges	Culverts
Upstate	\$108.7	—
Long Island	\$16.5	—
New York City	\$35.3	—
Hudson Valley	\$19.5	—
Statewide	—	\$20.0
Total	\$180.0	\$20.0

Maximum Award/Matching Funds/Eligibility

For bridge projects, the maximum project award shall not exceed \$5.0 million for any single project and may include design/engineering, right-of-way, construction and construction inspection costs. Any costs beyond an authorized project award shall be the sole responsibility of the project sponsor. NYSDOT will provide up to 95 percent of the project costs, not to exceed \$5.0 million.

For culvert projects, project awards shall be no less than \$100,000 and no greater than \$1.0 million for any single project and may include design/engineering, right-of-way, construction and construction inspection costs. In addition to rehabilitation and replacement, culvert relining projects may also be eligible. Any costs beyond an authorized project award shall be the sole responsibility of the project sponsor. NYSDOT will provide 100 percent of the project costs, not to exceed \$1.0 million.

Project Review Process

For bridge projects, candidate projects will be subject to a two-step review process, including an initial screening of data driven scoring followed by centralized expert review of unique project elements. The review teams will be comprised of NYSDOT structures experts, a representative of Empire State Development (ESD) and one representative each from the Town and County Highway Superintendents associations.

For culvert projects, candidate projects will be subject to a similar review process, however, since individual parameter data does not exist for culverts, project review teams will be charged with considering similar types of general categories as for bridges.

Review teams will submit a formal recommendation of project priorities to the Commissioner of Transportation.

Project Evaluation Criteria - Bridges

Step 1 - Data Driven Initial Ranking - The Bridge Priority Index (BPI), Figure I, is a data driven metric aimed at prioritizing capital bridge work based on the relative importance of the structure and condition. It is similar to the index used by NYSDOT in recent years, but has been modified to more accurately reflect the local bridge system. The BPI is comprised four categories including:

- Capital Need - Reflects the condition of the bridge and an engineering assessment of whether it needs to be rehabilitated or replaced.
- Facility Importance - Includes factors such as detour length, truck and traffic volumes.
- Restrictions - Measures economic relative importance of the structure/impacts on commerce.
- Risk/Resiliency - Includes factors such as hydraulic vulnerability and structural resiliency.

Figure I

LOCAL BRIDGE PRIORITY INDEX (0 to 100)			
CATEGORY	CATEGORY POINTS	INDIVIDUAL PARAMETER	PARAMETER POINTS
CAPITAL NEED	47.5	Condition Rating	27.5
		Structural Deficiency	5
		Bridge Needs Tool (Rehab/Replace)	15
FACILITY IMPORTANCE	27.5		
		AADT	7
		% Trucks	7
		Detour Length	13.5
RESTRICTIONS	5	Postings	5
RISK/RESILIENCY	20	Fracture Critical	5
		Material Type	5
		Design Type	5
		Hydraulic Vulnerability	5
TOTAL			100

Step 2- Review of Unique & Qualitative Factors – As noted above, NYSDOT structures experts, a representative of Empire State Development (ESD) and one representative each from the Town and County Highway Superintendents associations shall review the project rankings from Step 1 and recommend any modifications in rankings. This review will incorporate engineering judgment and a review of qualitative issues such as user benefits and context not fully captured by the available data in order to make a final recommendation regarding priorities to the Commissioner.

Project Evaluation Criteria - Culverts

While culverts face many of the same structural and hydraulic issues that bridges do, there is no analogous statewide database for local culverts. The project review teams will be charged with considering similar types of categories as for bridges (Figure II), but will not have the benefit of the data driven priority index step to inform this process. Instead, review team members will assign scores to each candidate project within the categories based on the information provided in the culvert application. This makes the qualitative, local knowledge evaluation more important for culvert projects.

Figure II

Simplified Culvert Rating Categories		
CATEGORY	CATEGORY POINTS	Review Criteria
CAPITAL NEED	50	This category reflects the condition of the culvert and an engineering assessment of whether it needs to be replaced. Culverts which appear to have significant remaining life should be rated low, while culverts which are at the end their useful life could earn the full 50 points.
FACILITY IMPORTANCE	25	This category is intended to reflect the importance of the culvert and route it carries within the transportation network. Factors to consider in this category include detour options and lengths, traffic volumes, nearby businesses and critical facilities such as hospitals, schools and emergency services.
POTENTIAL RISK	25	This category should include consideration of issues such as hydraulic vulnerability and structural resiliency. Structures with a history of overtopping during storms or those that are vulnerable to sudden failure should be given a higher score in this category.

Program Requirements/General Information

- All projects advanced through this process must:
 - o Conform to the NYSDOT Bridge Design Specifications and Standards;
 - o Have a service life appropriate for the level of work being performed:
 - 75 Years for bridge replacements;
 - 50 years for culvert replacements;
 - 30 years for major bridge rehabilitations; and
 - 10 years for culvert relining.
 - o Will be subject to the required federal DBE requirements for federal-aid projects or to the state MWBE requirements for state-funded projects;
 - o Begin construction no later than 18 months after award; and
 - o Be completed within three years of commencing construction.
- Projects sponsors may not substitute BRIDGE NY funds for the local match to a federally-aided project.
- For Federal Aid Projects, municipalities must also comply with [NYSDOT'S Procedures for Locally Administered Federal Aid Projects \(PLAFAP\) Manual](#).
- Applicants may submit up to two (2) applications for bridge projects and up to five (5) applications for culvert projects, however, only one (1) bridge project and up to three (3) culvert projects will be funded per year.
- Project sponsors will be required to submit applications to BRIDGENY@dot.ny.gov. Applications must be received by September 9, 2016.
- Once project selections are made, applicants will be notified that their project was either accepted as submitted or not selected.

Frequently Asked Questions - BRIDGENY

- **What is the Bridge NY Program?**

The new BRIDGE NY program provides enhanced assistance for local governments to rehabilitate and replace bridges and culverts. Particular emphasis will be provided for projects that address poor structural conditions; mitigate weight restrictions or detours; facilitate economic development or increase competitiveness; and/or reduce the risk of flooding.

- **Who can apply for this funding?**

Eligible Applicants (Project Sponsors) include any city, county, town, village or other political subdivision, including tribal governments and public benefit corporations, authorized to receive and administer State and federal transportation funding.

- **How many projects can be funded under this program per Applicant?**

Applicants (Project Sponsors) may submit up to two (2) applications for **bridge** projects and up to five (5) applications for **culvert** projects, however, only one (1) bridge project and up to three (3) culvert projects will be funded per year.

- **How much money is available to be used on my project?**

For bridge projects, the maximum project award shall not exceed \$5.0 million for any single project and may include design/engineering, right-of-way, construction and construction inspection costs. Any costs beyond an authorized project award shall be the sole responsibility of the project sponsor. NYSDOT will provide up to 95 percent of the project costs, not to exceed \$5.0 million.

For culvert projects, project awards shall be no less than \$100,000 and no greater than \$1.0 million for any single project and may include design/engineering, right-of-way, construction and construction inspection costs. In addition to rehabilitation and replacement, culvert relining projects may also be eligible. Any costs beyond an authorized project award shall be the sole responsibility of the project sponsor. NYSDOT will provide 100 percent of the project costs, not to exceed \$1.0 million.

- **How is the money for these projects going to be distributed across the types of projects?**

NYSDOT will be soliciting candidate projects for the first two years of the new BRIDGE NY program (State Fiscal Years 2016-17 and 2017-18). A total of \$200 million - \$100 million in each of the aforementioned fiscal years - in enhanced funding under BRIDGE NY will be awarded for local system projects during the two-year period. Of these amounts, no less than 10 percent of program funds shall be made available for culvert projects.

Frequently Asked Questions - BRIDGENY

- **What is the purpose of the Regional Map provided on the website?**

Applications for bridge projects will be pre-populated with data based on the Bridge Identification Number (BIN). Therefore, each region has its own unique application for bridge projects. The map is provided in order for you to determine which NYSDOT Region/County your project is located in. Complete the application which corresponds to the region in which your project is taking place.

- **Where should I address questions/inquiries related to this program?**

Please address all inquiries to BRIDGENY@dot.ny.gov.

RESOLUTION NO.: _____ - 2016

OF

AUGUST 8, 2016

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
ASSUMING LEAD AGENCY STATUS UNDER STATE ENVIRONMENTAL QUALITY
REVIEW ACT (SEQRA) FOR THE LIBERTY STREET STREETScape
IMPROVEMENT PROJECT, DECLARING THE PROJECT TO BE A TYPE II
ACTION,
FINDING NO SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT AND
AUTHORIZING THE CITY MANAGER TO EXECUTE ALL SEQRA DOCUMENTS**

WHEREAS, by Resolution No. 292-2015 of November 9, 2015, the City Council authorized the City Manager to execute a contract with Greenman-Pedersen, Inc., for professional services in connection with the design of the City of Newburgh Liberty Street Streetscape Improvement Project (the “Project”); and

WHEREAS, the Project involves the construction of sidewalk upgrades and green infrastructure improvements along Liberty Street as required by the Long Term Control Plan to reduce the frequency and duration of combined sewer overflows (CSO); and

WHEREAS, the City of Newburgh issued Bid#6.16 and intends to award a contract for the construction of the Project; and

WHEREAS, the City desires to comply with the New York State Environmental Quality Review Act (“SEQRA”) and the regulations contained within 6 NYCRR Part 617 (the “Regulations”) with respect to the Project; and

WHEREAS, under Section 617.5(c)(2) of the SEQRA Regulations, the replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, unless such action meets or exceeds any of the thresholds in Section 617.4, is defined as a Type II Action, and therefore, the Project is classified as a categorical exclusion to SEQRA;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York the Project constitutes a “Type II”, as the quoted term is defined in the SEQRA Regulations and that no further review for SEQRA purposes is required; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and hereby is authorized to sign and file any/and all other documents that may be necessary in connection with this SEQRA classification for the Project.

NOTICE TO BIDDERS
Liberty Street Streetscape Improvements
located at
Liberty Street, between Broadway and Ann Street
Bid No. 6.16
City of Newburgh, Orange County, New York

Sealed bids will be received by Kathryn Mack, Acting City Comptroller at: 83 Broadway, 4th Floor, Newburgh, NY 12550 until **11 a.m. (local time) Tuesday, August 2, 2016**, at which time they will be publicly opened and read.

The Work location is a section of Liberty Street between Broadway and Ann Street. Contract award is anticipated to be made at the end of August 2016 with a substantial completion date of October 31, 2016. The scope of work shall consist of all site work, construction, and finish work related to the reconstruction of a portion of Liberty Street that shall include green infrastructure, pedestrian friendly curb extensions, new curbs, sidewalks, and plantings, amongst other typical streetscape amenities. The work is subject to prevailing wage and the successful respondent is required to comply with HUD Section 3 requirements.

The work includes providing all labor, materials, machinery, tools, equipment and other means of construction necessary and incidental to the completion of the work shown on the plans and described in these specifications including, but not necessarily limited to the following: demolition, asphalt surfacing, specialty concrete work, granite curbing, bioswales with underdrains, and impervious surfaces, amongst other things. All work shall be in accordance with the plan set and specifications developed for the project.

Complete sets of the drawings, specifications and bid forms, becoming available to the public on Friday, July 15, 2016 may be viewed and downloaded at no charge by visiting the Empire State Purchasing Group website at: www.empirestatebidsystem.com, selecting the "Open Bids" tab and title of solicitation. Vendors may have to register if visiting this site for the first time.

All Bids must be made on the official Bid Form or an exact copy by reproduction thereof and enclosed in a sealed envelope. This is a lump sum bid as described in the Instructions to Bidders. No Bidder may withdraw his or her Bid within forty-five (45) calendar days after the actual date of the opening thereof. Each Bid must be accompanied by a bid security in the amount of five (5) percent of the base bid in accordance with the Instructions to Bidders.

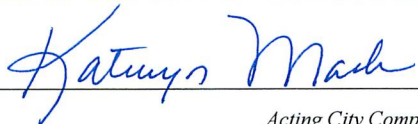
The successful Bidder will be required to furnish construction performance and payment bonds in the full amount of the contract price. The successful Bidder will be required to comply with all provisions of the Federal Government Equal Employment Opportunity clauses issued by the Secretary of Labor on May 21, 1968 and published in the Federal Register (41CFR Part 60-1, 33 F.2 7804).

OWNER reserves the right to reject any and all Bids, to waive any and all informalities and the right to disregard all nonconforming, non-responsive or Conditional Bids.

OWNER:	Contact:	Design Firm:	Contact:
City of Newburgh 83 Broadway Newburgh, New York 12550	Chad M. Wade, R.L.A. Asst. City Engineer (845) 569-7447	Greenman-Pedersen, Inc. 1607 Route 300, Suite 101 Albany, New York	John Montange, R.L.A. Associate (845) 569-7447

BY ORDER OF THE CITY OF NEWBURGH

By:



Acting City Comptroller

Dated:

7/7/16

"An equal opportunity affirmative action employer"

RESOLUTION NO.: _____ - 2016

OF

AUGUST 8, 2016

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH
PROFESSIONAL ACCOUNT MANAGEMENT, LLC
FOR MUNICIPAL PARKING SERVICES AND RELATED EQUIPMENT**

WHEREAS, the City of Newburgh previously issued a Request for Proposals in 2013 for Municipal Parking Services and Related Equipment; and

WHEREAS, Professional Account Management LLC (“PAM”) was determined to have submitted the proposal that would most benefit the City of Newburgh; and

WHEREAS, by Resolution No. 217-2013 of October 28, 2013, the City Council approved an agreement with PAM for Municipal Parking Services and Related Equipment; and

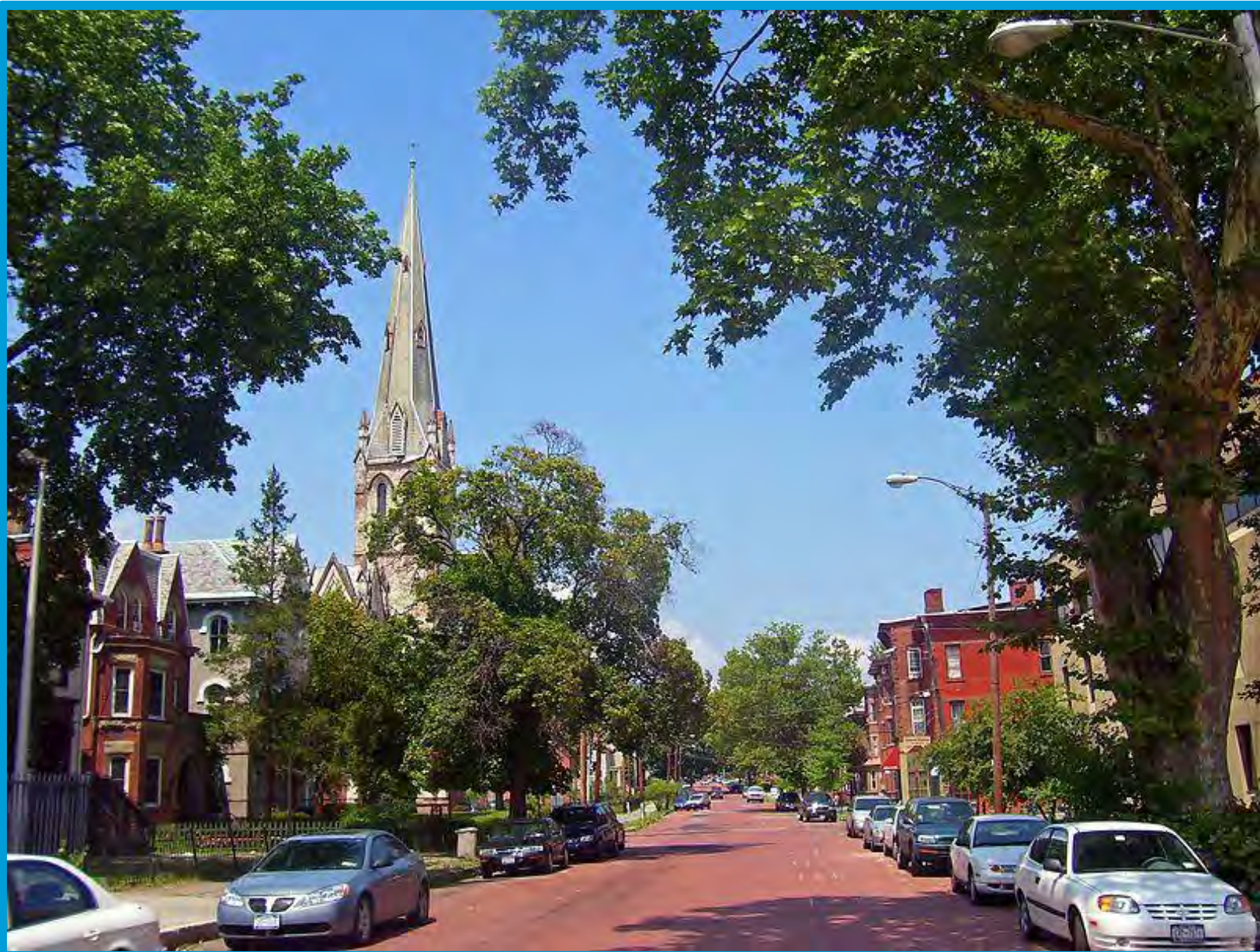
WHEREAS, PAM has proposed to renew the agreement with the City with additional features at no additional cost to the City and the renewal agreement is attached hereto and made a part of this resolution; and

WHEREAS, the City Council finds that renewing the agreement with PAM is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to enter into an agreement with Professional Account Management LLC in accordance with the proposal with all such terms and conditions as may be required by the Corporation Counsel for the Municipal Parking Services and Related Equipment.

The City of
Newburgh

New York



Proposal for Technology Enhancements and Contract Extension:

Parking Citation and Collection Management System

July 27, 2016



Professional Account Management, LLC

Portions of this proposal contain valuable and protected information, ideas, know-how, concepts, processes and trade secrets that are the sole property of Duncan Solutions, Inc. and its affiliates. This protected data shall not be disclosed outside the proposal evaluation team and shall not be duplicated, used or disclosed in whole or in part for any purpose except the procurement process related to the subject Request for Proposals (RFP).

Release of confidential information may place Duncan Solutions at serious and irreparable competitive disadvantage in future procurements by providing our competitors with sensitive, confidential and proprietary information that would be unavailable to any third party but for the disclosure of this proposal. In the event that a third party makes a request for disclosure, please notify Duncan Solutions immediately in writing, so that we may have the opportunity to participate in any disclosure discussions and decisions.

This response is presented by
Professional Account Management, LLC
a wholly owned and controlled subsidiary of Duncan Solutions, Inc.
For simplicity, we routinely refer to our company as
“Duncan Solutions” or “Duncan.”

July 27, 2016

Ms. Kathryn Mack
City of Newburgh
83 Broadway
Newburgh, New York 12550

Re: *Proposal for Contract Extension: Parking Citation and Collection Management System*

Dear Ms. Mack:

Since fall of 2013, Professional Account Management, LLC, a Duncan Solutions company (Duncan), has been honored to serve the City of Newburgh as its partner providing services and technology in support of the City's parking citation issuance and processing program. We are pleased to report that this collaboration has been exceptionally successful, producing program efficiencies that have allowed the program to produce increased revenues for the City.

The program's success is a testament to the leadership and hard work that you and your colleagues at the city invest into the program on a daily basis. Furthermore, we believe that this program has been a genuine partnership, and we are proud to promote it as a model nationally.

To ensure this track record of success continues without disruption, we propose to extend the current contract and to provide several additional technology upgrades and enhancements at **no cost to the City**. As described in this document, these upgrades include the provision of new handheld ticket issuance printers, as well as enhanced capabilities for providing adjudication via the internet.

We are eager to discuss this proposal with you at your convenience, and to address any questions you or your colleagues may have. Jon Kuehn—Newburgh's designated Regional Manager for this contract—has been authorized to represent Duncan on all matters related to these discussions. Jon can be reached by phone at (920) 382-4071 or by email at jkuehn@DuncanSolutions.com.

On behalf of all of my colleagues at Duncan Solutions, thank you for your consideration of this proposal and for your years of partnership and collaboration so far.

Sincerely,



Tim Wendler
CEO

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Extension & Enhancement Proposal

Since the end of 2013, Duncan's Professional Account Management, LLC has been proud to provide comprehensive technology and support services in support of the City of Newburgh's parking citation management system, including the provision of hardware, software, and related services required to process parking citations. The current solution includes:

- Ticket issuance technology and consumables, including ruggedized handheld computers, all ticket stock and envelopes, hosted system services, and extended warranty and support services
- Ticket processing and data management, including access to Duncan's state-of-the-art AutoPROCESS system which facilitates ticket upload, manual ticket imaging and data entry, payment processing, interface management, court scheduling, adjudication management, and management reporting
- DMV data acquisition (for both in-state and out-of-state license plates)
- Notice generation and mailing
- Boot and tow program support, including a nightly "scofflaw list"
- Customer service, including recording of calls and imaging of in-bound and out-bound written correspondence to ensure quality assurance
- Administration of contested citations, including court scheduling
- Processing, deposit and disbursement of payments, including mail/lockbox, internet and phone (IVR) payments
- Delinquent collections services for any citations that go unpaid after 120 days

At the outset of our contract, Duncan stated that revenue performance would increase under our solution when compared to our predecessor service provider. Not only are we pleased to report that we have achieved that goal but, we are further pleased to point out that collections under our solution has increased to over \$425,000 in 2015.

This record of revenue performance is a direct result of Duncan's and the City's efforts to promote compliance and to hold motorists accountable for parking tickets while ensuring professional, convenient service at all times. The most direct performance factor that promotes this level of revenue improvement has been the consistent mailing of the City's delinquent notices. Prior to being with Duncan, delinquent notices were often sent inconsistently which not only resulted in missed or delayed revenue, but also peaks and valleys on customer service inquiries.

In this document, Duncan presents a proposal that will lock in the benefits of this exceptional level of performance moving forward even as we further invest in program improvements and reduce the City's program costs. These proposed program enhancements include:

- Two (2) Additional Motorola 9500 Handheld Units
- New Handheld Ticket Issuance Printers
- An On-line Adjudication website

- Mobile-Friendly Website
- Redesign of the City's Ticket Stock and Delinquent Notices

New Handheld Ticket Issuance Printers

In reviewing the Newburgh contract history, Duncan identified the enforcement printers of the existing enforcement operation as a possible area for improvement. In the fall of 2013, Duncan provided the City with new Motorola 9500 handheld devices which were paired via Bluetooth to a separate Zebra iMZ 320 printer.



Since 2013, more reliable and durable printers have become available within the marketplace and as a result Duncan is proposing to replace the City's existing enforcement handheld printers at no charge to the City. The existing printers would be replaced with new Zebra ZQ 510 which are still compatible with the City's Motorola 9500 handhelds.

Online Adjudication



Duncan will provide our hearing & adjudication solution to streamline the hearing and review request process.

The public's perception of a City's overall parking operation is, in part, attributable to the fairness and efficiency of the adjudication process, and providing this service via the web is an exceptional customer service offering. Duncan provides online ticket administrative review and administrative hearing request solutions that meet will the City's requirements and we have done so in places like Pittsburgh, PA and Raleigh, NC with great success. On an annual basis, our solution manages over 100,000 hearings for our clients.

The AutoPROCESS Reviews, Hearing Scheduling and Reporting module provides the ability to capture data from administrative reviews, create a court calendar, schedule hearings for individuals, produce a court docket, record hearing outcomes and provide a variety of reporting. During the review or hearing process, citations are automatically suspended from further action by the system.

Our convenient customer facing website solution provides the ability for a motorist to identify their citation(s), review photos, elect to pay online, select the administrative review or the administrative hearing request process. If the review or hearing options are selected, AutoPROCESS automatically verifies the ticket eligibility for adjudication according to the City's business rules. If the ticket is deemed eligible for the adjudication type requested, the system will prompt the user to enter any required information for the adjudication request. The user may also attach any supporting documents that would be applicable for the adjudication process to the web page.

The reviewers and the adjudicators are able to complete their reviews using our workflow and adjudication functions, which enhances the overall efficacy of initial reviews with the intent of reducing in-person hearings. This process significantly streamlines a City's adjudication process and can reduce or eliminate any case backlogs by enabling reviewers and adjudicators to quickly render and record decisions directly within AutoPROCESS.

Client Benefits:

- Increased customer convenience
- Reduced correspondence times
- Web-based solutions for request management and document uploads
- Workflow management tools to expedite administration
- Complete process automation and transparency

Mobile-Friendly Payment Website

In 2015 Duncan processed nearly 3,000 Visa and MasterCard credit-card payments through our payment website linked to the City's website. The payment website is fully integrated with AutoPROCESS, posting payments in real-time to the citation record.

In an effort to become more proactive with enhancing customer service for our clients, Duncan is in the process of upgrading all of our payment websites to become more "mobile-friendly". As you are already aware, people do everything on their cell phones these days. As such, Duncan is proposing an updated website that is mobile-device friendly for customers who prefer to make payments using their smartphone or tablet. The new website will include the City's banner and be configured to apply the City's business rules as it does now.

Redesign of Notices and Ticket Stock

Minor alterations on delinquent citation notices can yield significant increases in payments. That's why late last year Duncan began evaluating our current notices to see if there are opportunities for us to improve our clients' liquidation rates while maintaining FDCPA compliance. Should the City be interested, we could redesign their notices and ticket stock to match industry best practices based on the City's business practices.

Formal Contract Proposal & Pricing

Per the existing contract, the City and Duncan have the right to extend the current contract by mutual agreement of both parties.

In exchange for a 36-month contract extension, Duncan would provide the following system enhancements at **no additional cost to the City**.

- Two (2) Additional Motorola 9500 Handheld Units
- New Handheld Enforcement Printers
- An On-line Adjudication website
- Mobile-Friendly Website
- Redesign of the City's Ticket Stock and Delinquent Notices

In this option, Duncan is proposing a nominal increase to the web & IVR credit card convenience fee in order to pay for the capital investment required to develop the online adjudication website and to replace the City's existing ticket issuance printers. The increase would be adjusted from \$2.95 per citation to \$3.50 per citation however this fee is passed onto the citizen and as a result the City would not incur any additional charges. This proposed increase is in keeping with industry standards and cost of living adjustments.

RESOLUTION NO.: _____ - 2016

OF

AUGUST 8, 2016

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO
EXECUTE AN INFORMATION USE AGREEMENT AND ADDENDUM WITH THE
COMMONWEALTH OF VIRGINIA DEPARTMENT OF MOTOR VEHICLES
FOR ACCESS TO MOTOR VEHICLE RECORDS**

WHEREAS, the City of Newburgh wishes to enter into an Information Use Agreement with the Commonwealth of Virginia Department of Motor Vehicles (“DMV”) to allow access of Motor Vehicle records; and

WHEREAS, the Information Use Agreement and Addendum would allow the City’s current Parking Enforcement Software Company, Professional Account Management LLC (“PAM”), to access DMV’s information regarding owner registration based on the license plate; and

WHEREAS, the term of the agreement shall continue for a period of two years, commencing on July 7, 2016 ending on July 6, 2018 with the ability to be renewed for successive two-year periods with written notice of DMV’s intention to renew approximately sixty days prior to expiration of each contract period; and

WHEREAS, this Council has reviewed such agreement and has determined that entering into a contract upon such terms is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute an Information Use Agreement and Addendum with the Commonwealth of Virginia Department of Motor Vehicles for access to motor vehicle records in substantially the same form as annexed hereto and subject to such other terms and conditions as may be required by Counsel.

RESOLUTION NO.: _____ - 2016

OF

AUGUST 8, 2016

**RESOLUTION AMENDING RESOLUTION NO: 300-2015,
THE 2016 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$60,500 FROM SEWER FUND CONTINGENCY
TO WASTEWATER TREATMENT PLANT – OTHER SERVICES – SEVERN TRENT
FOR ADDITIONAL FUNDING FOR REPAIR AND MAINTENANCE**

WHEREAS, Severn Trent in accordance with the current agreement has made the City aware that 80% of the Repairs and Maintenance Budget has been expended; and

WHEREAS, Severn Trent has submitted an estimate of anticipated expenditures through December 2016; and

WHEREAS, it is necessary to reallocate funds through a budget amendment to cover the expenditures for repair and maintenance; the same being in the best interest of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newburgh that Resolution No.: 300-2015, the 2016 Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
G.1990.1990 Contingency Emergency	\$60,500.00	
G.8130.0448 Other Services – Severn Trent		<u>\$60,500.00</u>
TOTALS:	\$60,500.00	\$60,500.00

RESOLUTION NO.: _____ - 2016

OF

AUGUST 8, 2016

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO
AN AGREEMENT WITH THE NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION FOR REIMBURSEMENT OF THE COST
OF
WATER PURCHASED FROM THE NEW YORK CITY CATSKILL AQUEDUCT**

WHEREAS, perfluorooctane sulfonic acid (PFOS) has been detected in the City of Newburgh's water supply at levels in excess of the Environmental Protection Agency's recently released lifetime health advisory level; and

WHEREAS, it has been determined by Legislative findings under Article 15 of the Environmental Conservation Law (ECL) that the State has the sovereign power to regulate and control the water resources of the State; and

WHEREAS, in recognition of power under ECL § 15-0105.5, the use of water for domestic and municipal purposes shall have priority over all other purposes; and

WHEREAS, there is a need to provide a temporary alternate source of drinking water to residents of the City of Newburgh, which has access to New York City's Catskill Aqueduct as a backup source of drinking water; and

WHEREAS, after fully examining all of its internal capabilities and thoroughly investigating possible alternative approaches, the Department of Environmental Conservation has determined that this can best be accomplished through a Contract; and

WHEREAS, the City Council of the City of Newburgh has determined that entering into a Contract with the Department of Environmental Conservation for reimbursement of the costs associated with providing a temporary alternate source of drinking water to City residents through the New York City Catskill Aqueduct is in the best interest of the City of Newburgh and its residents;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to enter a Contract with the New York State Department of Environmental Conservation for reimbursement for the actual cost of water purchased from the New York City Catskill Aqueduct.

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CONTRACT C010219**

THIS CONTRACT is entered into by and between the New York State Department of Environmental Conservation (hereinafter referred to as the Department), having offices at 625 Broadway, Albany, New York 12233 and the City of Newburgh (hereinafter referred to as Newburgh), having offices at 83 Broadway, Newburgh, New York 12550.

WITNESSETH:

WHEREAS, perfluorooctane sulfonic acid (PFOS) has been detected in Newburgh's water supply at levels in excess of the Environmental Protection Agency's (EPA) recently released lifetime health advisory level; and,

WHEREAS, it has been determined by Legislative findings under Article 15 of the Environmental Conservation Law (ECL) that the State has the sovereign power to regulate and control the water resources of the State; and,

WHEREAS, in recognition of power under ECL §15-0105.5, the use of water for domestic and municipal purposes shall have priority over all other purposes; and,

WHEREAS, there is a need to provide a temporary alternate source of drinking water to residents of Newburgh; and,

WHEREAS, Newburgh has access to New York City's Catskill Aqueduct as a backup source of drinking water; and,

WHEREAS, after fully examining all of its internal capabilities and thoroughly investigating possible alternative approaches, the Department has determined that this can best be accomplished through a Contract.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

ARTICLE 1: SCOPE

- A. Newburgh agrees to obtain water from the Catskill Aqueduct for the use of its customers. Payment for the water will be made by Newburgh to New York City pursuant to a separate agreement between Newburgh and New York City.
- B. The Department agrees to pay Newburgh for the actual cost of purchasing water from New York City as a temporary alternative water supply. Payment shall be based upon Article 2 of this Contract.

ARTICLE 2: PAYMENT

- A. The Department shall pay to Newburgh and Newburgh shall accept from the Department as full compensation for the purchase of Catskill Aqueduct water an amount not to exceed \$11,500,000.
- B. Payment will be made to Newburgh at the established New York City Water Board rates in effect at the time of usage.
- C. Upon approval of the contract by the Office of the State Comptroller, the Department will make an advance payment of \$2,400,000 to Newburgh.
- D. Newburgh shall submit invoices to the Department quarterly, with supporting documentation demonstrating the actual costs incurred and paid by Newburgh during the previous quarter for the purchase of New York City water. The Department will reimburse Newburgh for the actual costs incurred and paid by Newburgh for the purchase of New York City water.
- E. The Department will authorize payment within 10 days of receipt of invoices and supporting documentation submitted per paragraph D of this article. The Department will make best efforts to arrange payment within 30 days of receipt of those invoices and supporting documentation.
- F. At the end of the contract, the Department will perform a final reconciliation and Newburgh shall return unused advance funds, if any, to the Department within 30 days from the Department's notice to Newburgh of any overpayment.
- G. Newburgh will submit requests for payment, together with supporting documentation, to the Department. Request for payment must be submitted within 45 days of the end of each State fiscal year which is March 31. Failure to comply with this request or notify the Department in writing prior to March 31st regarding billing problems shall operate as a waiver by Newburgh for reimbursement by the Department.
- H. If the term of this Contract encompasses more than one State fiscal year, Newburgh shall incur no costs hereunder in subsequent fiscal years without the express written authority of the Department.
- I. Payments for expenditures incurred under this contract will be rendered electronically to Newburgh unless payment by paper check is expressly authorized by the Commissioner of the Department (Commissioner), in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. Newburgh shall comply with the Office of the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the Comptroller's website at www.osc.state.ny.us/epay/index.htm, or by e-mail at epayments@osc.state.ny.us. Newburgh acknowledges that it will not receive payment under this Contract if it does not comply with the Office of the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

ARTICLE 3: TERM

- A. The term of this Contract shall be from June 1, 2016 to October 31, 2017. The Contract shall be effective upon approval by the Office of the State Comptroller.
- B. This Contract may be extended for a maximum of two one-year periods upon the mutual written consent of both parties and the approval of the Office of the State Comptroller.
- C. Amendments other than exercising the term options above must be in writing and submitted to the Attorney General and the Office of the State Comptroller for approval.

ARTICLE 4: NOTICES

Wherever it is provided in this Contract that notice shall be given or other communications sent to the Department or Newburgh, such notices or communications shall be delivered or sent by First Class Mail to:

Department:
George Heitzman
Director, Remedial Bureau C
Division of Environmental Remediation
NYS Department of Environmental Conservation
625 Broadway
Albany, NY 12233-7014
Telephone Number: (518) 402-9662
E-Mail: george.heiztman@dec.ny.gov

Newburgh:
Kathryn Mack
City of Newburgh Comptroller
83 Broadway
Newburgh, NY 12550
Telephone Number: (845) 569-7360
E-Mail: kmack@cityofnewburgh-ny.gov

ARTICLE 5: LIABILITY

Newburgh shall be responsible for all damage to life and property due to activities of Newburgh, its subcontractors, agents, or employees, in connection with its Services under this Contract, and this obligation is in no way limited by the enumeration of insurance coverages hereunder. Further, it is expressly understood that Newburgh shall indemnify and save harmless the Department, its officers, employees, agents, and assigns in accordance with the provisions of Appendix B, Clause II.

Nothing in this Contract is intended to obligate Newburgh to indemnify the State or any other party with respect to the PFOS contamination.

Nothing in this Article or in this Contract shall create or give to third parties any claim or right of action against Newburgh or the State of New York beyond such as may legally exist irrespective of this Article or this Contract.

ARTICLE 6: DEFAULT AND TERMINATION

- A. The Department shall have the right to postpone, suspend, abandon, or terminate this Contract, and such actions shall in no event be deemed a breach of Contract. In any of these events, the Department shall make settlement with Newburgh upon an equitable basis as determined by the Department, which shall fix the value of the work which was performed by the Newburgh prior to the postponement, suspension, abandonment, or termination of the Contract.
- B. The State shall have the right to terminate this Contract for:
 - 1) unavailability of funds
 - 2) cause
 - a) If the Department determines that Newburgh has breached a material term of this Contract, it shall issue a written notice, providing Newburgh with 10 days to correct the defect. If Newburgh fails to correct the defect within this time period, or fails to make a good faith effort to do so as determined by the Department, the Department may terminate this Contract for cause.
 - 3) convenience
 - a) If the termination is for the convenience of the Department, and is not brought about as a result of unsatisfactory performance on the part of Newburgh, the Department shall pay for the usage incurred up to the date of termination.

ARTICLE 7: STANDARD CONTRACT CLAUSES

Newburgh will be required to comply with all of the mandatory New York State and Department contracting provisions contained in the following two attached documents:

Appendix A - Standard Clauses for All New York State Contracts;
Appendix B - Standard Clauses for All NYSDEC Contracts.

ARTICLE 8: ENTIRE CONTRACT

This Contract consists of the following documents in the following order of precedence.

- 1. Appendix A
- 2. Appendix B
- 3. The Contract

ARTICLE 9: AFFIRMATIVE ACTION REQUIREMENTS

Newburgh must make good faith efforts to subcontract an overall goal of 0% of the contract amount to Minority and Women Owned Business Enterprises (MWBE's). Newburgh must make good faith efforts to employ 10 % minority group members and 10 % women for a portion of any workforce hours required to perform the work under this contract. Appendix B further defines the M/WBE and EEO provisions required by Executive Law, Article 15A.

ARTICLE 10: INSURANCE CONSIDERATIONS

Newburgh agrees to procure and maintain at its own expense and without expense to the Department Worker's Compensation Insurance and Disability Benefits by insurance companies licensed to do business in the State of New York, covering all operations under this Contract.

Newburgh shall furnish a certificate or certificates showing that it has complied with the Worker's Compensation and Disability Benefits requirements of this Article detailed below. The certificate or certificates shall provide that:

- Policies shall not be changed or canceled until thirty (30) days prior written notice has been given to the Department.
- Worker's Compensation and Disability Benefits certificates shall name the New York State Department of Environmental Conservation, Division of Environmental Remediation, Bureau of Program Management, 625 Broadway, Albany, NY 12233-7012, as certificate holder.
- This Contract shall be void and of no effect unless Newburgh procures the required insurance policies and maintains them until acceptance/completion of the work, whichever event is later.
- Newburgh shall require that any subcontractors hired, carry insurance with the same provisions as provided herein. Newburgh will maintain the certificate or certificates for all subcontractors hired as part of Newburgh's records.

The Department has reviewed the scope of work being accomplished under this contract and has determined that it will rely on the standard operating procedures and good business practices of Newburgh with respect to securing all appropriate types and amounts of liability insurance and appropriate endorsements. The Department waives its standard requirements for liability insurance certificates, endorsements, and supporting documentation for this Contract.

The following types of insurance are required for this Contract:

1. Workers' Compensation:

For work to be performed in New York State, Newburgh shall provide and maintain full New York State (NYS listed in item 3a of the policy's Information Page) coverage during the life of this contract for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law.

If the agreement involves work on or near a shoreline, a U.S. Longshore and Harbor Workers' Compensation Act and/or Jones Act policy as applicable must be provided. Any waiver of this requirement must be approved by the Agency and will only be granted in unique or unusual circumstances.

Evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

FORM #	FORM TITLE
C-105.2	Certificate of Workers' Compensation Insurance (September 2007, or most current version)
U-26.3	State Insurance Fund Version of the C-105.2 form
SI-12/ GSI-105.2	Certificate of Workers' Compensation Self-Insurance
CE-200	Certificate of Attestation of Exemption (when Contractor meets the requirements.)

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

Please note that ACORD forms are NOT acceptable proof of New York State Workers' Compensation Insurance coverage.

Additional information can be obtained at the Workers' Compensation website:

<http://www.wcb.ny.gov/content/main/Employers/Employers.jsp>

2. Disability Benefits:

For work to be performed in New York State, Newburgh 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 New York State Disability Benefits Law. Any waiver of this requirement must be approved by the Department of Environmental Conservation and will only be granted in unique or unusual circumstances.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

FORM #	FORM TITLE
DB-120.1	Certificate of Insurance Coverage under the New York State Disability Benefits Law
DB-155	Certificate of Disability Self-Insurance

CE-200	Certificate of Attestation of Exemption (when Contractor meets the requirements.)
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All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

Please note that ACORD forms are NOT acceptable proof of New York State Disability Benefits Insurance coverage.

Additional information can be obtained at the Workers' Compensation website:
<http://www.wcb.ny.gov/content/main/Employers/Employers.jsp>

ARTICLE 11: SEVERABILITY

If any part of this Contract is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Contract, and the remaining parts of this Contract shall be enforced as if the invalid, illegal or unenforceable part were not contained therein.

ARTICLE 12: FORCE MAJEURE

Neither party shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of lands or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, strikes or the delay or failure to perform by any subcontractor by reason of any cause or circumstances beyond the reasonable control of such subcontractor.

ARTICLE 13: COMPLIANCE WITH LAWS

Newburgh agrees to comply with the provisions of the Labor Law and all State and Federal laws, local statutes, ordinances, and regulations that are applicable to the performance of this Contract.

SIGNATURE PAGE
Contract C010219

IN WITNESS WHEREOF, this Contract has been duly executed by the parties hereto on the day and year appearing following their respective signatures.

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."

NEWBURGH SIGNATURE
By: _____
Print Name: _____
Title: _____
Dated: _____

DEPARTMENT SIGNATURE
By: _____
Print Name: _____
Title: _____
Dated: _____

ATTORNEY GENERAL SIGNATURE
Approved as to Form: _____
Dated: _____

COMPTROLLER SIGNATURE
Approved: Thomas P. DiNapoli State Comptroller
Dated: _____

Newburgh Acknowledgement
State of _____) County of _____) ss.: _____
On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.
Notary Public

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

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

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

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

~~The Omnibus Procurement Act of 1992 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) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 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 Section 5-a, if the contractor fails to make the certification required by Tax Law Section 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:
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

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

APPENDIX B

Standard Clauses for All New York State Department of Environmental Conservation Contracts

The parties to the attached contract, license, lease, grant, 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 to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. **Postponement, suspension, abandonment or termination by the Department:**

The Department shall have the right to postpone, suspend, abandon or terminate this contract, and such actions shall in no event be deemed a breach of contract. In the event of any termination, postponement, delay, suspension or abandonment, the Contractor shall immediately stop work, take steps to incur no additional obligations, and to limit further expenditures. Within 15 days of receipt of notice, the Contractor shall deliver to the Department all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to source codes and specifications, guarantees, warranties, as-built plans and shop drawings. In any of these events, the Department shall make settlement with the Contractor upon an equitable basis as determined by the Department which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions applicable to postponement, suspension or termination of the contract.

II. **Indemnification and Hold harmless** The Contractor agrees that it will indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it by reason of any omission or tortious act of the Contractor, its agents, employees, suppliers or subcontractors in the performance of this contract. The Department and the State of New York may retain such monies from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like, which is asserted against the Department and/or the State of New York.

III. **Conflict of Interest**

(a) **Organizational Conflict of Interest.** To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the Department.

(1) An organizational conflict of interest exists when the nature of the work to be performed under this contract may,

without some restriction on future activities, impair or appear to impair the Contractor's objectivity in performing the work for the Department.

(2) The Contractor agrees that if an actual, or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to the Department. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Department, to avoid, mitigate, or minimize the actual or potential conflict.

(3) To the extent that the work under this contract requires access to personal, proprietary or confidential business or financial data of persons or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(b) **Personal Conflict of Interest:** The following provisions with regard to management or professional level employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

(1) A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Contractor agrees to notify the Department immediately of any actual or potential personal conflict of interest with regard to any such person working on or having access to information regarding this contract, as soon as Contractor becomes aware of such conflict. The Department will notify the Contractor of the appropriate action to be taken.

(2) The Contractor agrees to advise all management or professional level employees involved in the work of this contract, that they must report any personal conflicts of interest to the Contractor. The Contractor must then advise the Department which will advise the Contractor of the appropriate action to be taken.

(3) Unless waived by the Department, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, as defined herein, have been reported to the Department. Such certification must be signed by a senior executive of the Contractor and submitted in accordance with instructions provided by the Department. Along with the annual certification, the Contractor shall also submit an update of any changes in any conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.

(4) In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York State Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) **Remedies** - The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be permitted by the terms of Clause I of this Appendix or other applicable provisions of this contract regarding termination.

(d) The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has

developed the statement of work or the solicitation package

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Department.

If this is a contract for work related to action at an inactive hazardous waste site, the following paragraph shall apply to those Contractors whose work requires the application of professional judgment: It does not apply to construction contracts.

(f) Due to the scope and nature of this contract, the Contractor shall observe the following restrictions on future hazardous waste site contracting for the duration of the contract.

(1) The Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party with respect to any work relating to remedial activities or work pertaining to a site where the Contractor previously performed work for the Department under this contract without the prior written approval of the Department.

(2) The Contractor agrees in advance that if any bids/proposals are submitted for any work for a third party that would require written approval of the Department prior to entering into a contract because of the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Department to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

IV. Requests for Payment All requests for payment by the Contractor must be submitted on forms supplied and approved by the Department. Each payment request must contain such items of information and supporting documentation as are required by the Department, and shall be all-inclusive for the period of time covered by the payment request.

V. **Compliance with Federal requirements** To the extent that federal funds are provided to the Contractor or used in paying the Contractor under this contract, the Contractor agrees that it will comply with all applicable federal laws and regulations, including but not limited to those laws and regulations under which the Federal funds were authorized. The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform substantially to the language of this clause.

VI. **Independent Contractor** The Contractor shall have the status of an independent contractor. Accordingly, the Contractor agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out as, nor claim to be, an officer or employee of the Department by reason of this contract. It further agrees that it will not make any claim, demand or application to the Department for any right or privilege applicable to an officer or employee of the Department, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

VII. **Compliance with applicable laws**

(a) Prior to the commencement of any work under this contract, the Contractor is required to meet all legal requirements necessary in the performance of the contract. This includes but is not limited to compliance with all applicable federal, state and local laws and regulations promulgated thereunder. It is the Contractor's responsibility to obtain any necessary permits, or other authorizations. By signing this contract, the Contractor affirmatively represents that it has complied with said laws, unless it advises the Department otherwise, in writing. The Department signs this contract in reliance upon this representation.

(b) During the term of this contract, and any extensions thereof, the Contractor must remain in compliance with said laws. A failure to notify the Department of noncompliance of which the Contractor was or should have been aware, may be considered a material breach of this contract.

VIII. **Dispute Resolution** The parties agree to the following steps, or as many as are necessary to resolve disputes between the Department and the Contractor.

(a) The Contractor specifically agrees to submit, in the first instance, any dispute relating to this contract to the designated individual, who shall render a written decision and furnish a copy thereof to the Contractor.

(1) The Contractor must request such decision in writing no more than fifteen days after it knew or should have known of the facts which are the basis of the dispute.

(2) The decision of the designated individual shall be the final DEC determination, unless the Contractor files a written appeal of that decision with the designated appeal individual ("DAI") within twenty days of receipt of that decision.

(b) Upon receipt of the written appeal, the DAI, will review the record and decision. Following divisional procedures in effect at that time, the DAI will take one of the following actions, with written notice to the Contractor.

(1) Remand the matter to the program staff for further negotiation or information if it is determined that the matter is not ripe for review; or

(2) Determine that there is no need for further action, and that the determination of the designated individual is confirmed; or

(3) Make a determination on the record as it exists.

(c) The decision of the DAI shall be the final DEC decision unless the Contractor files a written appeal of that decision with the Chair of the Contract Review Committee ("CRC") within twenty days of receipt of that decision.

The designated individual to hear disputes is:

Laura Zeppetelli, Bureau Director

(Name and Title)

NYS Dept of Environmental Conservation - Remediation

625 Broadway, 12th Fl, Albany, NY 12233-7012

(Address)

(518) 402-9764

(Telephone)

The designated appeal individual to review decisions is:

Michael Ryan, Asst. Division Director

(Name and Title)

NYS Dept of Environmental Conservation - Remediation

625 Broadway, 12th Fl, Albany, NY 12233-7011

(Address)

(518) 402-9706

(Telephone)

The Chair of the Contract Review Committee is:

Department of Environmental Conservation

Nancy W. Lussier Chair

Contract Review Committee

625 Broadway, 10th Floor

Albany, NY 12233-5010

Telephone: (518) 402-9228

(d) Upon receipt of the written appeal, the Chair of the CRC, in consultation with the members of the CRC and the Office of General Counsel, will take one of the following actions, or a combination thereof, with written notice to the Contractor.

(1) Remand the matter to program staff for additional fact finding, negotiation, or other appropriate action; or

(2) Adopt the decision of the DAI; or

(3) Consider the matter for review by the CRC in accordance with its procedures.

(e) Following a decision to proceed pursuant to (d) 3, above, the Chair of the CRC shall convene a proceeding in accordance with the CRC's established contract dispute resolution guidelines. The proceeding will provide the Contractor with an opportunity to be heard.

(f) Following a decision pursuant to (d) 2 or (d) 3, the CRC shall make a written recommendation to the Assistant Commissioner for Administration who shall render the final DEC determination.

(g) At any time during the dispute resolution process, and upon mutual agreement of the parties, the Office of Hearings and Mediation Services (OHMS) may be requested to provide mediation services or other appropriate means to assist in resolving the dispute. Any findings or recommendations made by the OHMS will not be binding on either party.

(h) Final DEC determinations shall be subject to review only pursuant to Article 78 of the Civil Practice Law and Rules.

(i) Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the designated individual. Nothing in this Contract shall be construed as making final the decision of any administrative officer upon a question of law.

(j) Notwithstanding the foregoing, at the option of the Contractor, the following shall be subject to review by the CRC: Disputes arising under Article 15-A of the Executive Law (Minority and Women Owned Business participation), the Department's determination with respect to the adequacy of the Contractor's Utilization Plan, or the Contractor's showing of good faith efforts to comply therewith. A request for a review before the CRC should be made, in writing, within twenty days of receipt of the Department's determination.

(k) The CRC will promptly convene a review in accordance with Article 15-A of the Executive Law and the regulations promulgated thereunder.

IX. Labor Law Provisions

(a) When applicable, the Contractor shall post, in a location designated by the Department, a copy of the New York State Department of Labor schedules of prevailing wages and supplements for this project, a copy of all re-determinations of such schedules for the project, the Workers' Compensation Law Section 51 notice, all other notices required by law to be posted at the site, the Department of Labor notice that this project is a public work project on which each worker is entitled to receive the prevailing wages and supplements for their occupation, and all other notices which the Department directs the Contractor to post. The Contractor shall provide a surface for such notices which is satisfactory to the Department. The Contractor shall maintain such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. Contractor shall post such notices before commencing any work on the site and shall maintain such notices until all work on the site is complete.

(b) When appropriate, contractor shall distribute to each worker for this Contract a notice, in a form provided by the Department, that this project is a public work project on which each worker is entitled to receive the prevailing wage and supplements for the occupation at which he or she is working. Worker includes employees of Contractor and all Subcontractors and all employees of suppliers entering the site. Such notice shall be distributed to each worker before they start performing any work of this contract. At the time of distribution, Contractor shall have each worker sign a statement, in a form provided by the Department, certifying that the worker has received the notice required by this section, which signed statement shall be maintained with the payroll records required by the following paragraph (c).

(c) Contractor shall maintain on the site the original certified payrolls or certified transcripts thereof which Contractor and all of its Subcontractors are required to maintain pursuant to the New York Labor Law Section 220. Contractor shall maintain with the payrolls or transcripts thereof, the statements signed by each worker pursuant to paragraph (b).

(d) Within thirty days of issuance of the first payroll, and every thirty days thereafter, the Contractor and every subcontractor must submit a transcript of the original payroll to the Department, which transcript must be subscribed and affirmed as true under penalty of perjury.

X. **Offset** In accordance with State Law, the Department has the authority to administratively offset any monies due it from the Contractor, from payments due to the Contractor under this contract. The Department may also (a) assess interest or late payment charges, and collection fees, if applicable; (b) charge a fee for any dishonored check; (c) refuse to renew certain licenses and permits.

XI. **Tax Exemption** Pursuant to Tax Law Section 1116, the State is exempt from sales and use taxes. A standard state voucher is sufficient evidence thereof. For federal excise taxes, New York's registration Number 14740026K covers tax-free transactions under the Internal Revenue Code.

XII. **Litigation Support** In the event that the Department becomes involved in litigation related to the subject matter of this contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Compensation will be negotiated and based on rates established in the contract, or as may otherwise be provided in the contract.

XIII **Equipment** Any equipment purchased with funds provided under this contract, shall remain the property of the Department, unless otherwise provided in the contract. The Contractor shall be liable for all costs for maintaining the property in good, usable condition. It shall be returned to the Department upon completion of the contract, in such condition, unless the Department elects to sell the equipment to the Contractor, upon mutually agreeable terms.

XIV. **Inventions or Discoveries** Any invention or discovery first made in performance of this Contract shall be the property of the Department, unless otherwise provided in the contract. The Contractor agrees to provide the Department with any and all materials related to this property. At the Department's option, the Contractor may be granted a non-exclusive license.

XV. **Patent and Copyright Protection**
If any patented or copyrighted material is involved in or results from the performance of this Contract, this Article shall apply.

(a) The Contractor shall, at its expense, defend any suit instituted against the Department and indemnify the Department against any award of damages and costs made against the Department by a final judgment of a court of last resort based on the claim that any of the products, services or consumable supplies furnished by the Contractor under this Contract infringes any patent, copyright or other proprietary right; provided the Department gives the Contractor:

(1) prompt written notice of any action, claim or threat of infringement suit, or other suit, and

(2) the opportunity to take over, settle or defend such action at the Contractor's sole expense, and

(3) all available information, assistance and authority necessary to the action, at the Contractor's sole expense.

(4) The Contractor shall control the defense of any such suit, including appeals, and all negotiations to effect settlement, but shall keep the Department fully informed concerning the progress of the litigation.

(b) If the use of any item(s) or parts thereof is held to infringe a patent or copyright and its use is enjoined, or Contractor believes it will be enjoined, the Contractor shall have the right, at its election and expense to take action in the following order of precedence:

(1) procure for the Department the right to continue using the same item or parts thereof;

(2) modify the same so that it becomes non-infringing and of at least the same quality and performance;

(3) replace the item(s) or parts thereof with noninfringing items of at least the same quality and performance;

(4) if none of the above remedies are available, discontinue its use and eliminate any future charges or royalties pertaining thereto. The Contractor will buy back the infringing product(s) at the State's book value, or in the event of a lease, the parties shall terminate the lease. If discontinuation or elimination results in the Contractor not being able to perform the Contract, the Contract shall be terminated.

(c) In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any item or material pursuant to or resulting from this Contract infringes any patent, copyright or proprietary right, and such action is forwarded by the Department to the Contractor for defense and indemnification pursuant to this Article, the Department shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence and a copy of this Contract to the Office of the Attorney General of the State of New York. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth in this Article, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York in writing and shall specify to what

extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of this Contract. The Contractor shall in such event protect the interests of the Department and State of New York and secure a continuance to permit the State of New York to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses which the Department and State shall have.

(d) The Contractor shall, however, have no liability to the Department under this Article if any infringement is based upon or arises out of: (1) compliance with designs, plans, or specifications furnished by or on behalf of the Department as to the items; (2) alterations of the items by the Department; (3) failure of the Department to use updated items provided by the Contractor for avoiding infringement; (4) use of items in combination with apparatus or devices not delivered by the Contractor; (5) use of items in a manner for which the same were neither designed nor contemplated; or (6) a patent or copyright in which the Department or any affiliate or subsidiary of the Department has any direct or indirect interest by license or otherwise.

(e) The foregoing states the Contractor's entire liability for, or resulting from, patent or copyright infringement or claim thereof.

XVI. Force Majeure The term Force Majeure shall include acts of God, work stoppages due to labor disputes or strikes, fires, explosions, epidemics, riots, war rebellion, sabotage or the like. If a failure of or delay in performance by either party results from the occurrence of a Force Majeure event, the delay shall be excused and the time for performance extended by a period equivalent to the time lost because of the Force majeure event, if and to the extent that:

(a) The delay or failure was beyond the control of the party affected and not due to its fault or negligence; and

(b) The delay or failure was not extended because of the affected party's failure to use all reasonable diligence to overcome the obstacle or to resume performance immediately after such obstacle was overcome; and

(c) The affected party provides notice within (5) days of the onset of the event, that it is invoking the protection of this provision.

XVII. Freedom of Information Requests The Contractor agrees to provide the Department with any records which must be released in order to comply with a request pursuant to the Freedom of Information Law. The Department will provide the contractor with an opportunity to identify material which may be protected from release

and to support its position.

XVIII. Precedence In the event of a conflict between the terms of this Appendix B and the terms of the Contract (including any and all attachments thereto and amendments thereof, but not including Appendix A), the terms of this Appendix B shall control. In the event of a conflict between the terms of this Appendix B, and the terms of Appendix A, the terms of Appendix A shall control.

XIX. Article 15-Requirements

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

(a) General Provisions

(1) The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

(2) The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department (the "Department", to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.

(3) Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Article or enforcement proceedings as allowed by the Contract.

(b) Contract Goals

(1) For purposes of this procurement, the Department hereby establishes an overall goal of 0% for Minority and Women-Owned Business Enterprises ("MWBE") participation (based on the current availability of qualified MBEs and WBEs).

(2) For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address;

<https://ny.newnycontracts.com>

Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

(3) Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, 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 Contractor 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 Department for liquidated or other appropriate damages, as set forth herein.

(c) Equal Employment Opportunity (EEO)

(1) Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements. Contractor shall comply with the following provisions of Article 15-A:

(i) Contractor and Subcontractors 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.

(ii) Contractor shall submit an EEO policy statement to the Department within seventy two (72) hours after the date of the notice by Department to award the Contract to the Contractor.

(iii) If Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement. This statement can be found at the link provided in Section 8.

(iv) The Contractor's EEO policy statement shall include the following language:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.
- c. The Contractor shall request each employer Department, 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 employer Department, 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 (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- e. **EEO Contract Goals** for the purposes of this procurement, the Department hereby establishes a goal of **10% Minority Labor Force Participation, 10% Female Labor Force Participation.**

(2) Staffing Plan Form

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(3) Workforce Employment Utilization Report Form ("Workforce Report")

- (i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
- (ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

- (iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, 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 Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

- (2) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. 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.

(d) MWBE Utilization Plan

- (1) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.
- (2) 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 Appendix.
- (3) 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, Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

(e) Waivers

- (1) For Waiver Requests Contractor should use Waiver Request Form.

(2) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(4) If the Department, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Department 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.

(f) Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report Form to the Department by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

(g) Liquidated Damages - MWBE Participation

(1) Where Department determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department liquidated damages.

(2) Such liquidated damages shall be calculated as an amount equaling the difference between:

- (i) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
- (ii) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

(3) In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the

Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Department.

(h) Forms

The following forms referenced in Article XVIII 3-A-3, 3B, 3C and 5A can be found at
<http://www.dec.ny.gov/about/48854.html>

RESOLUTION NO.: _____ - 2016

OF

AUGUST 8, 2016

**RESOLUTION AMENDING RESOLUTION NO. 300-2015,
THE 2016 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$1,160.00 FROM LEGISLATIVE BODY-TRAVEL AND
CONFERENCE AND \$600.00 FROM LEGISLATIVE BODY-EDUCATION TO
RECREATION – OTHER EQUIPMENT AND CELEBRATIONS – INTERNATIONAL
FESTIVAL**

WHEREAS, Councilwoman Cindy Holmes would like to transfer her allocation from the Legislative budget in the amount of \$880.00 to Recreation – Other Equipment to help purchase a scoreboard remote; and

WHEREAS, Councilwoman Regina Angelo would like to transfer her allocation from the Legislative budget in the amount of \$880.00 to Celebrations – International Festival to help with the costs of the International Festival;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newburgh that Resolution No. 300-2015, the 2016 Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
A.1010.0461 Legislative Body-Travel & Conference	\$1,160.00	
A.1010.0464 Legislative Body-Education	\$ 600.00	
A.7140.0205 Recreation – Other Equipment		\$880.00
A.7550.0754 Celebrations – International Festival		<u>\$880.00</u>
TOTALS:	\$1,760.00	\$1,760.00

	<u>GL Account</u>	<u>Account Description</u>	<u>Amount</u>
From:	A.1010.0461	Legislative Body - Travel and Conference	\$ (1,160.00)
	A.1010.0464	Legislative Body - Education	\$ (600.00)
To:	A.7140-0205	Recreation - Other Equipment	\$ 880.00
	A.7550.0754	Celebrations- Internation Festival	\$ 880.00
			\$ -

Comments

CW Regina Angelo (580 to International Festival) CW Cindy Holmes (580 Recreation Center)

CW Regina Angelo (300 to International Festival) CW Cindy Holmes (300 Recreation Center)

CW Cindy Holmes xfer to help purchase scoreboard remote @ req
CW Regina Angelo xfer to help costs of International Festival

RESOLUTION NO.: _____ - 2016

OF

AUGUST 8, 2016

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO
THE NEW YORK MUTUAL AID AND ASSISTANCE AGREEMENT FOR
WATER/WASTEWATER PROVIDERS**

WHEREAS, Public and Private Water or Wastewater Utilities within New York State are parties to a Mutual Aid and Assistance Agreement to coordinate response activities and share resources during incidents which may impact health or safety and may require aid or assistance in the form of personnel, equipment and supplies from outside the area of impact; and

WHEREAS, the City of Newburgh Water Department recommends that the City of Newburgh enter into the New York Mutual Aid and Assistance Agreement for Water/Wastewater Providers to provide personnel, equipment and supplies to Agreement Members in the event of a health or safety incident; and

WHEREAS, the New York Mutual Aid and Assistance Agreement for Water/Wastewater Providers is annexed hereto and made part hereof and it is deemed to be in the best interests of the City of Newburgh to enter into the Mutual Aid Agreement for such purposes;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into New York Mutual Aid and Assistance Agreement for Water/Wastewater Providers.

New York Mutual Aid and Assistance Agreement for Water/Wastewater Providers

AGREEMENT

This Agreement is made and entered into by public and private Water and Wastewater Utilities that have, by executing this Agreement, manifested their intent to participate in an Intrastate Program for Mutual Aid and Assistance, which is known as the New York Mutual Aid and Assistance Agreement for Water/Wastewater Providers.

ARTICLE I. PURPOSE

Recognizing that incidents which may impact health or safety may require aid or assistance in the form of personnel, equipment, and supplies from outside the area of impact, the signatory utilities hereby establish an Intrastate Program for Mutual Aid and Assistance. Through the Mutual Aid and Assistance Program, Members coordinate response activities and share resources during incidents. This Agreement sets forth the procedures and standards for the administration of the Intrastate Mutual Aid and Assistance Program.

ARTICLE II. DEFINITIONS

- A. Authorized Official – An employee or officer of a Member utility that is authorized to:
 - 1. Request assistance;
 - 2. Offer assistance;
 - 3. Refuse to offer assistance or
 - 4. Withdraw assistance under this agreement.
- B. Incident – A natural or human caused event or circumstance causing, or imminently threatening to cause, loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, intentional acts, sabotage and war that is, or could reasonably be beyond the capability of the services, personnel, equipment, and facilities of a Mutual Aid and Assistance Program Member to fully manage and mitigate internally.
- C. Members – Any public or private Water or Wastewater Utility that manifests intent to participate in the Mutual Aid and Assistance Program by executing this Agreement.
 - 1. Associate Member – Any non-utility participant, approved by the State Steering Committee, that provides a support role for the WARN program, for example State Department of Public Health, or associations, who are members of the Regional or State Steering Committees and do not officially sign the WARN agreement.

2. Requesting Member – A Member who requests aid or assistance under the Mutual Aid and Assistance Program.
 3. Responding Member – A Member that responds to a request for aid or assistance under the Mutual Aid and Assistance Program.
 4. Non-Responding Member - A Member or Associate Member that does not provide aid or assistance during a Period of Assistance under the Mutual Aid and Assistance Program.
- D. Confidential Information - Any document shared with any signatory of this Agreement that is marked confidential, including but not limited to any map, report, notes, papers, opinion, or e-mail.
- E. Period of Assistance – A specified period of time when a Responding Member assists a Requesting Member. The period commences when personnel, equipment, or supplies depart from Responding Member's facility and ends when the resources return to their facility (portal to portal). All protections identified in the Agreement apply during this period. The specified Period of Assistance may occur during response to or recovery from an emergency, as previously defined.
- F. National Incident Management System (NIMS): A national, standardized approach to incident management and response that sets uniform processes and procedures for incident response operations.

ARTICLE III. ADMINISTRATION

The Mutual Aid and Assistance Program shall be administered through Regional Committees, as needed, and a Statewide Committee. The purpose of a Regional Committee is to provide local coordination of the Mutual Aid and Assistance Program before, during, and after an incident. The designated regions correspond to the previously established New York State Emergency Management Office Regions as shown on the map contained in Exhibit 1 of this Agreement. Each Regional Committee, under the leadership of an elected Chairperson, shall meet annually to address Mutual Aid and Assistance Program issues. Each Regional Committee shall also meet annually to review incident preparedness and response procedures. The Chairperson of each Regional Committee represents their Regional Committee's interests on the Statewide Committee. In addition to representing the interests of the Members, the Statewide Committee includes representatives from the New York State Health Department, New York State Emergency Management Office, Department of Environmental Conservation, New York State AWWA, New York State Rural Water Association, and others as may be designated by the Statewide Committee. Under the leadership of the Chair, the Statewide Committee members shall plan and coordinate incident planning and response activities for the Mutual Aid and Assistance Program.

ARTICLE IV. **PROCEDURES**

In coordination with the Regional Committees, the emergency management and the public health system of the state, the Statewide Committee shall develop operational and planning procedures for the Mutual Aid and Assistance Program. These procedures shall be reviewed at least annually and updated as needed by the Statewide Steering Committee.

ARTICLE V. **REQUESTS FOR ASSISTANCE**

- A. Member Responsibility: Members shall identify an Authorized Official and alternates; provide contact information including 24-hour access and maintain resource information that may be available from the utility for mutual aid and assistance response. Such contact information shall be updated annually or when changes occur and provided to the State Steering Committee.

In the event of an Incident, a Member's Authorized Official may request mutual aid and assistance from a participating Member. Requests for assistance can be made orally or in writing. When made orally, the request for personnel, equipment, and supplies shall be prepared in writing as soon as practicable. Requests for assistance shall be directed to the Authorized Official of the participating Member. Specific protocols for requesting aid shall be provided in the required procedures (Article IV).

- B. Response to a Request for Assistance – Members of the agreement are not obligated to respond to a request. After a Member receives a request for assistance, the Authorized Official evaluates whether or not to respond, whether resources are available to respond, or if other circumstances would hinder response. Following the evaluation, the Authorized Official shall inform, as soon as possible, the Requesting Member whether it will respond. If the Member is willing and able to provide assistance, the Member shall inform the Requesting Member about the type of available resources and the approximate arrival time of such assistance.
- C. Discretion of Responding Member's Authorized Official – Execution of this Agreement does not create any duty to respond to a request for assistance. When a Member receives a request for assistance, the Authorized Official shall have sole and absolute discretion as to whether or not to respond, or the availability of resources to be used in such response. The decision of a Member's Authorized Official on the availability of resources shall be final.

ARTICLE VI. **RESPONDING MEMBER PERSONNEL**

- A. National Incident Management System - When providing assistance under this Agreement, the Requesting Member and Responding Member shall be organized and shall function under the National Incident Management System.

- B. Control - While employees so provided may be under the supervision of the Responding Member, the Responding Member's employees come under the direction and control of the Requesting Member, consistent with the NIMS Incident Command System, to address the needs identified by the Requesting Member. The Requesting Member's Authorized Official shall coordinate response activities with the designated supervisor(s) of the Responding Member(s). All services provided by a Responding Member shall be performed with a reasonable level of care and competence. At a minimum, the Responding Member's designated supervisor shall be familiar with the NIMS Incident Command System. The Responding Member's designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance.
- C. Food and Shelter – Whenever practical, Responding Member personnel must be self sufficient for up to 24 hours. Whenever possible, the Requesting Member shall supply reasonable food and shelter for Responding Member personnel. If the Requesting Member is unable to provide food and shelter for Responding personnel, the Responding Member's designated supervisor is authorized to secure the resources necessary to meet the needs of its personnel. Except as provided below, the cost for such resources must not exceed the State per diem rates for that area. To the extent Food and Shelter costs exceed the State per diem rates for the area, the Responding Member must demonstrate that the additional costs were reasonable and necessary under the circumstances. Unless otherwise agreed to in writing, the Requesting Member remains responsible for reimbursing the Responding Member for all reasonable and necessary costs associated with providing food and shelter, if such resources are not provided.
- D. Communication – The Requesting Member shall provide Responding Member personnel with communication equipment as available or radio frequency information to program existing equipment in order to facilitate communications with local responders and utility personnel.
- E. Status - Unless otherwise provided by law, the Responding Member's officers and employees retain the same privileges, immunities, rights, duties and benefits as provided in their respective jurisdictions.
- F. Licenses and Permits – To the extent permitted by law, Responding Member personnel that hold licenses, certificates, or permits evidencing professional, mechanical, or other skills shall be allowed to carry out activities and tasks relevant and related to their respective credentials during the specified Period of Assistance.
- G. Right to Withdraw - The Responding Member's Authorized Official retains the right to withdraw some or all of its resources at any time for any reason in the Responding Member's sole and absolute discretion. Notice of intention to withdraw must be communicated to the Requesting Member's Authorized Official as soon as soon as is practicable under the circumstances.

ARTICLE VII.
COST- REIMBURSEMENT

The Requesting Member shall reimburse the Responding Member for each of the following categories of costs incurred during the specified Period of Assistance; provided, that any Responding Member may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the Requesting Member without charge or cost.

- A. Personnel – The Responding Member shall be reimbursed by the Requesting Member for personnel costs incurred for work performed during the specified Period of Assistance. Responding Member personnel costs shall be calculated according to the terms provided in their employment contracts or other conditions of employment. The Responding Member's designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance. Requesting Member reimbursement to the Responding Member must include all personnel costs, including salaries or hourly wages, costs for fringe benefits, and reasonable indirect costs, unless otherwise agreed in writing.
- B. Equipment – The Requesting Member shall reimburse the Responding Member for the use of equipment during the specified Period of Assistance, including, but not limited to, reasonable rental rates, all fuel, lubrication, maintenance, transportation, and loading/unloading of loaned equipment. All equipment shall be returned to the Responding Member in good working order as soon as is practicable and reasonable under the circumstances. As a minimum, rates for equipment use must be based on the Federal Emergency Management Agency's (FEMA) Schedule of Equipment Rates. If a Responding Member uses rates different from those in the FEMA Schedule of Equipment Rates, the Responding Member must provide such rates orally or in writing to the Requesting Member prior to supplying the equipment. Mutual agreement on which rates are used must be reached in writing prior to dispatch of the equipment. Reimbursement for equipment not referenced on the FEMA Schedule of Equipment Rates must be developed based on actual recovery of costs. If a Responding Member must lease a piece of equipment while its equipment is being repaired, Requesting Member shall reimburse Responding Member for such rental costs.
- C. Materials and Supplies – The Requesting Member must reimburse the Responding Member in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable supplies. The Responding Member must not charge direct fees or rental charges to the Requesting Member for other supplies and reusable items that are returned to the Responding Member in a clean, damage-free condition. Reusable supplies that are returned to the Responding Member with damage must be treated as expendable supplies for purposes of cost reimbursement.

- D. Payment Period – The Responding Member must provide an itemized bill to the Requesting Member for all expenses incurred by the Responding Member while providing assistance under this Agreement. The Requesting Member must send the itemized bill not later than (90) ninety days following the end of the Period of Assistance. The Responding Member may request additional periods of time within which to submit the itemized bill, and Requesting Member shall not unreasonably withhold consent to such request. The Requesting Member must pay the bill in full on or before the ninetieth (90th) day following the billing date. The Requesting Member may request additional periods of time within which to pay the itemized bill, and Responding Member shall not unreasonably withhold consent to such request, provided, however, that all payments shall occur not later than one (1) year after the date a final itemized bill is submitted to the Requesting Member. Any bill not paid within ninety (90) days, shall be assessed a penalty of eighteen percent (18%) per year on the unpaid portion of the bill.
- E. Records - Each Responding Member and their duly authorized representatives shall have access to a Requesting Member's books, documents, notes, reports, papers and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost, bill or making a financial, maintenance or regulatory audit. Each Requesting Member and their duly authorized representatives shall have access to a Responding Member's books, documents, notes, reports, papers and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost, bill or making a financial, maintenance or regulatory audit. Such records shall be maintained for at least six (6) years after the Period of Assistance or longer where required by law.

ARTICLE VIII.

DISPUTES

If any controversy or claim arises out of, or relates to, the execution of the Agreement, including, but not limited to, alleged breach of the Agreement, the disputing Members shall first attempt to resolve the dispute by negotiation, followed by mediation and if not resolved, then the parties shall endeavor to settle the dispute by binding arbitration before a panel of three persons chosen from the members of this Mutual Aid Agreement, excluding those Members that are parties to this dispute. Associate Members shall not serve on the arbitration panel. The arbitration shall be conducted in accordance with the laws of New York State.

ARTICLE IX.

REQUESTING MEMBER'S DUTY TO INDEMNIFY

The Requesting Member shall assume the defense of, fully indemnify and hold harmless, the Responding Member, its officers and employees, contractors and agents from all claims, loss, damage, injury and liability of every kind, nature and description, directly or indirectly arising from Responding Member's work during a specified Period of Assistance. The scope of the Requesting Member's duty to indemnify includes, but is not limited to, suits arising from, or related to, negligent or wrongful use of equipment or supplies on loan to the Requesting Member, or faulty workmanship or other negligent acts, errors or omissions by Requesting Member or the Responding Member personnel. This shall not include a duty to indemnify for intentional or grossly negligent acts of the Responding party.

The Requesting Member's duty to indemnify is subject to, and shall be applied consistent with, the conditions set forth in Article X.

ARTICLE X.
SIGNATORY INDEMNIFICATION

In the event of a liability, claim, demand, action, or proceeding of whatever kind or nature arising out of a specified Period of Assistance, the Members who receive and provide assistance shall have a duty to defend, indemnify, save and hold harmless all Non-Responding Members, their officers, agents and employees from any liability, claim, demand, action, or proceeding of whatever kind or nature arising out of a Period of Assistance.

ARTICLE XI.
WORKER'S COMPENSATION CLAIMS

The Responding Member is responsible for providing worker's compensation benefits and administering worker's compensation for its employees. The Requesting Member is responsible for providing worker's compensation benefits and administering worker's compensation for its employees.

ARTICLE XII.
NOTICE

A Member who becomes aware of a claim or suit that in anyway, directly or indirectly, contingently or otherwise, affects or might affect other Members of this Agreement shall provide prompt and timely notice to the Members who may be affected by the suit or claim. Each Member reserves the right to participate in the defense of such claims or suits as necessary to protect its own interests.

ARTICLE XIII.
INSURANCE

Members of this Agreement shall maintain an insurance policy or maintain a self insurance program that covers activities that it may undertake by virtue of membership in the Mutual Aid and Assistance Program. The following minimum insurance limits apply:

- A. Commercial General Liability - \$1,000,000 each occurrence and \$2,000,000 in aggregate, including products and completed operations liability
- B. Automobile Liability - \$1,000,000 combined single limit.
- C. Excess Liability - \$3,000,000 each occurrence and aggregate
- D. Property Insurance – Coverage for equipment used as part of this Agreement

ARTICLE XIV.
CONFIDENTIAL INFORMATION

To the extent provided by law, any Member or Associate Member shall maintain in the strictest confidence and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information disclosed under this Agreement. If any Member, Associate Member, third party or other entity requests or demands, by subpoena or court order, that a Member or Associate Member disclose any Confidential Information disclosed under this Agreement, the Member or Associate Member shall immediately notify the owner of the Confidential Information and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information by asserting all applicable rights and privileges with respect to such information and shall cooperate fully in any judicial or administrative proceeding relating thereto.

ARTICLE XV.
EFFECTIVE DATE

This Agreement shall be effective after the Water and Wastewater Utility's authorized representative executes the Agreement and the applicable Regional Committee Chair receives the Agreement. The Regional Committee Chair shall maintain a list of all Members in the respective region. The Statewide Committee Chair shall maintain a master list of all members of the Mutual Aid and Assistance Program.

ARTICLE XVI.
WITHDRAWAL

A Member may withdraw from this Agreement by providing written notice of its intent to withdraw to the applicable Regional Committee Chair and the Statewide Chair. Withdrawal shall take effect sixty (60) days after the appropriate officials receive notice. Withdrawal from this Agreement shall in no way affect a Requesting Member's duty to reimburse a Responding Member for cost incurred during a Period of Assistance, which duty shall survive such withdrawal or termination of this Agreement.

ARTICLE XVII.
MODIFICATION

No provision of this Agreement may be modified, altered or rescinded by individual parties to the Agreement. Modifications to this Agreement may be due to programmatic operational changes to support the Agreement, legislative action, creation of an interstate aid and assistance agreement, or other developments. Modifications require a simple majority vote of Members within each region and a unanimous agreement between the regions. The Statewide Committee Chair must provide written notice to all Members of approved modifications to this Agreement. Approved modifications take effect ninety (90) days after the date upon which notice is sent to the Members.

ARTICLE XVIII.
SEVERABILITY

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

ARTICLE XIX.
PRIOR AGREEMENTS

This Agreement supersedes all prior Agreements between Members to the extent that such prior Agreements are inconsistent with this Agreement.

ARTICLE XX.
PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES

This Agreement is for the sole benefit of the Members and no person or entity may have any rights under this Agreement as a third party beneficiary. Assignments of benefits and delegations of duties created by this Agreement are prohibited and must be without effect.

ARTICLE XXI.
INTRASTATE AND INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS

To the extent practicable, Members of this Agreement shall participate in Mutual Aid and Assistance activities conducted under the State of New York Intrastate Mutual Aid and Assistance Program and the Interstate Emergency Management Assistance Compact (EMAC). Members may voluntarily agree to participate in an interstate Mutual Aid and Assistance Program for water and wastewater utilities through this Agreement if such a Program were established.

Now, therefore, in consideration of the covenants and obligations set forth in this Agreement, the Water and Wastewater Utility listed here manifests its intent to be a Member of the Intrastate Mutual Aid and Assistance Program for Water and Wastewater Utilities by executing this Agreement on this _____ day of _____ 20____.

Water/Wastewater Utility: _____

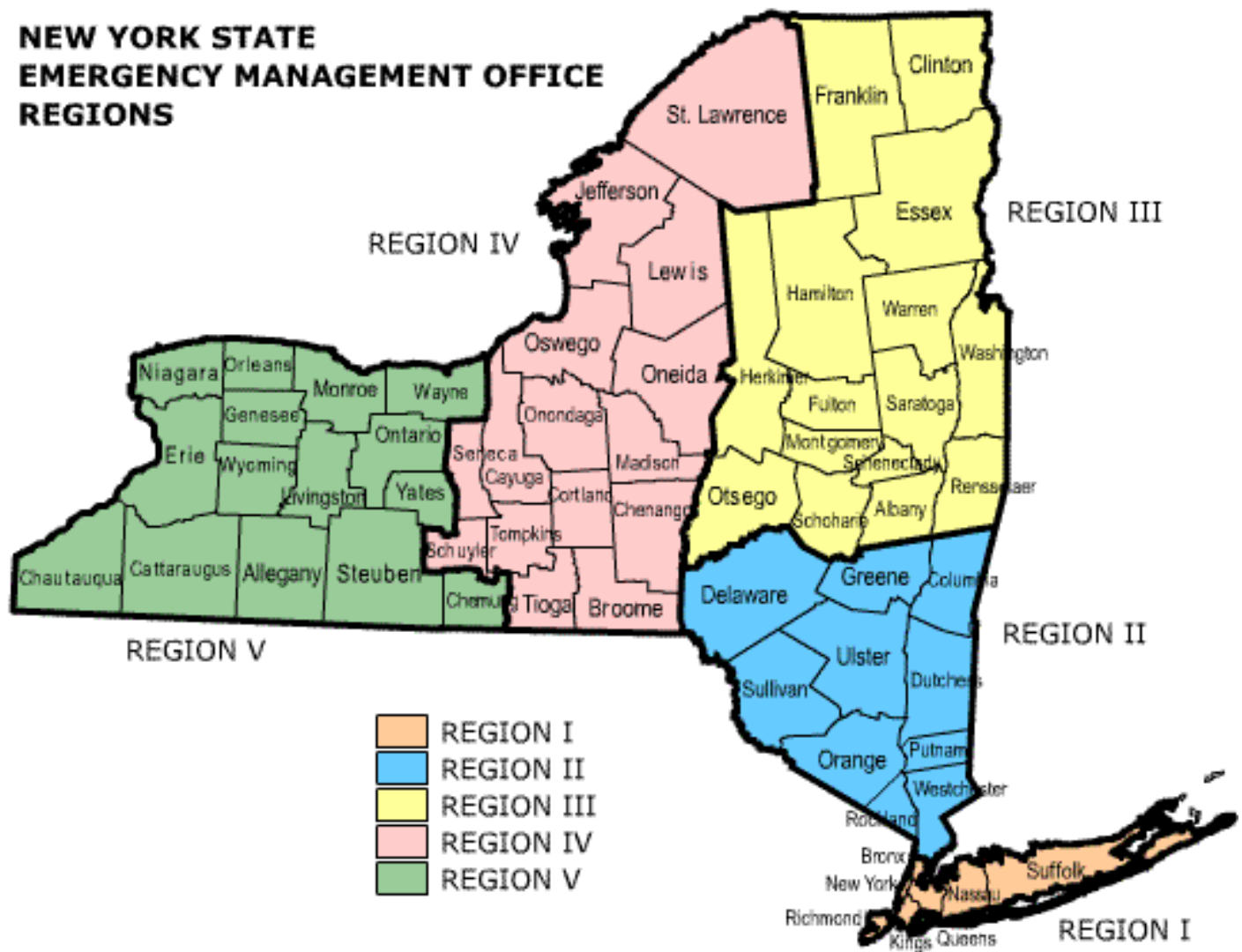
By: _____

Title _____

Please Print Name

Exhibit 1

**NEW YORK STATE
EMERGENCY MANAGEMENT OFFICE
REGIONS**



RESOLUTION NO.: _____ - 2016

OF

AUGUST 8, 2016

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
A SATISFACTION IN CONNECTION WITH A MORTGAGE
ISSUED TO 98 GRAND STREET CORPORATION
FOR PREMISES LOCATED AT 98 GRAND STREET
(SECTION 24, BLOCK 11, LOT 26)**

WHEREAS, the City of Newburgh is the successor in interest to Kingston-Newburgh Enterprise Corporation (KNEC) by KNEC Resolution No.1 of March 12, 2001, wherein KNEC distributed and assigned to the Cities of Kingston and Newburgh the administration of outstanding loans consistent with and in support of activities consistent with the KNEC mission; and

WHEREAS, the KNEC issued a mortgage to 98 Grand Street Corp. in the principal sum of \$45,000.00 for premises located at 98 Grand Street (Section 24, Block 11, Lot 29), dated May 7, 1998, and recorded in the Orange County Clerk's Office on May 26, 1998, in Liber 6625 at Page 266; and

WHEREAS, the terms of the mortgage instruments have been satisfied by the mortgagor and the issuance of a Satisfaction of Mortgage, a copy of which is annexed hereto, is necessary and appropriate; and

WHEREAS, this Council has determined that executing said Satisfaction is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to execute the attached Satisfaction in connection with a mortgage issued to 98 Grand Street Corp. for premises located at 98 Grand Street (Section 18, Block 6, Lot 43).

SATISFACTION OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, THAT

The City of Newburgh, as Successor in Interest to the Kingston-Newburgh Enterprise Corporation, a municipal corporation with a principal place of business at 83 Broadway, Newburgh, New York 12550;

Does hereby certify that the following mortgage is paid, and does hereby consent that the same be discharged of record:

MORTGAGE bearing the date of May 7, 1998, made by 98 Grand Street Corp. to the Kingston-Newburgh Enterprise Corporation, given to secure payment of the principal sum of \$45,000.00, and duly recorded in the office of the Orange County Clerk's Office on May 26, 1998 in Liber 6625 at page 266;

which mortgage has not been further assigned of record.

Dated: August _____, 2016

CITY OF NEWBURGH

By: Michael G. Ciaravino, City Manager
Per Resolution No.: _____-2016

STATE OF NEW YORK)
)
COUNTY OF ORANGE) ss.:

On the _____ day of August, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared MICHAEL G. CIARAVINO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

Notary Public

RECORD & RETURN TO:

RESOLUTION NO.: _____ - 2016

OF

AUGUST 8, 2016

**A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY
KNOWN AS 130 THIRD STREET (SECTION 18, BLOCK 9, LOT 13) AND
132 THIRD STREET (SECTION 18, BLOCK 9, LOT 14)
AT PRIVATE SALE TO JAMES GIBBONS FOR THE AMOUNT OF \$7,895.00**

WHEREAS, the City of Newburgh has acquired title to several parcels of real property by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real property Tax law of the State of New York; and

WHEREAS, pursuant to Section 1166 of the Real Property Tax Law the City may sell properties acquired by foreclosure *In Rem* at private sale; and

WHEREAS, the City of Newburgh desires to sell 130 Third Street and 132 Third Street, being more accurately described as Section 18, Block 9, Lots 13 and 14, respectively, on the official tax map of the City of Newburgh; and

WHEREAS, the prospective buyer has offered to purchase this property at private sale; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyer for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchasers upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to **THE CITY OF NEWBURGH**, such sums are to be paid on or before November 7, 2016, being ninety (90) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
130 Third Street	18 – 9 – 13	James Gibbons	\$4,290.00
132 Third Street	18 – 9 – 14		\$3,605.00

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the parcel is not required for public use.

Terms and Conditions Sale
130 Third Street, City of Newburgh (18-9-13)
132 Third Street, City of Newburgh (18-9-14)

STANDARD TERMS:

1. City of Newburgh acquired title to these properties in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The properties are sold subject to unpaid school taxes for the tax year of 2016-2017, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2016-2017, and subsequent levies up to the date of the closing. Upon the closing, the property shall become subject to taxation and apportionment of the 2016 City and County taxes shall be made as of the date of closing. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.** The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
6. Notice is hereby given that the properties lie within the East End Historic District as designated upon the zoning or tax map. These parcels are being sold subject to all provision of law applicable thereto and it is the sole responsibility of the purchaser to redevelop such parcel so designated in accordance with same.
7. Notice is hereby given that the properties are vacant and unoccupied. These parcels are being sold subject to the City's Vacant Property Ordinance and all provisions of law applicable thereto. At closing, the purchaser will be required to register the properties and remit the vacant property fee. It is the sole responsibility of the purchaser to redevelop such parcel in accordance with same.

8. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
9. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
10. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
11. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before November 7, 2016. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees. The City is not required to send notice of acceptance or any other notice to a purchaser.* At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
12. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
13. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
14. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
15. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
16. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
17. Evictions, if necessary, are solely the responsibility of the purchaser after closing and recording of the deed.

18. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

Purchase Proposal Summary

Location: 130 & 132 Third Street (north side of Third between Chambers & Lander Streets)

Tax Map Number: 18-9-13 & 18-9-14

Property Class: 130 Third Street: 230—Three Family Residence
132 Third Street: 210—One Family Residence

Zoning: RM-Residential Medium Density; EEHD-East End Historic District

Description: Two brick row houses; Year built (estimated): 1900; each listed as having 1928sf; lot sizes slightly irregular.

Condition: Poor

Assessed Value: \$ 14,300 (130 Third)
\$ 10,300 (132 Third)

Annual Taxes: \$ 750 +/- (130 Third); \$540 +/- (132 Third)

Selling Price: \$ 4,290 @ 30% (130 Third)
\$ 3,605 @ 35% (132 Third)

The city acquired this property: 130 & 132 Third (August 2010)

Offer Information:

Name: James Gibbons (aka 144 Tercera Corp.)

Offer Price: \$ 4,290 (130 Third)
\$ 3,605 (132 Third)

Construction Estimate: \$ 96,400 for each (\$192,800 total)

Proof of Financing: Morgan Stanley account; Wells Fargo account.

Comments: Mr. Gibbons owns two other properties in the City of Newburgh: 144 Third Street and 78 William Street. The purchaser is looking to buy another investment property in the same general neighborhood as his other property on 144 Third Street—a building he has recently renovated. The purchaser is current on his municipal obligations.

In the property records, 130 First Street is listed as a three family residence and 132 Third Street is listed as a single family. The purchase intends to renovate both properties as 2-family residences. Two-family residences are permitted by right in the new RM zoning district. Both properties have been neglected for years and needs substantial repairs. The renovation costs are low because Mr. Gibbons is an engineer and also has his own contracting company.



130 Third Street





132 Third Street



Proposal Form

Contact Information:

RECEIVED
1/18/16

Name: JAMES A. GIBBONS
Business Name (If Applicable): 144 TERCELA CORP
Address: 1 Central Ave, 308, Tarrytown, New York, 10591
City, State & Zip:
Home phone: 914. 841 4743
Business Phone: 914. 524. 9740
Mobile Phone: 914. 841. 4743
E-mail: GIBBONSENGINEERING@yahoo.com
Federal I.D. No. (If Available): 47-2474493

Information on Bid Property:

Property Address: 130 Third ST
SBL#: 18-9-13

Order of Preference: (If submitting more than one proposal): 1

Type of Project:

☐ Single Family Yes ☐ No ☐
☒ Multi-Family Yes ☒ No ☐ # Units: 2
☐ Commercial ☐ Industrial

Offer Purchase Price: \$ 4290-

Does your proposal conform with existing zoning? Yes ☒ No ☐

Renovation Estimate - How much do you anticipate investing in this project for renovations? Do not include offer purchase price: \$ 96,500

Who will be doing the work? ☒ Self ☐ Other (complete below)

Please keep in mind that the City of Newburgh requires electrical and plumbing work to be performed by City licensed electricians and plumbers.

General Contractor: TYPE A Contracting Corp (JAMES A. GIBBONS)
Architect: N/A
Engineer: GIBBONS ENGINEERING PC (JAMES A GIBBONS PE)

Development Experience:

	Project No. 1	Project No. 2	
Project location: Please list all addresses (not merely project name). Include street number, street, city and zip	31 EDISON Ave Yonkers, Ny 10703	226 TRUMAN Ave Yonkers Ny 10703	144 Third! Newburgh Ny 12551
Role (i.e. managing partner, limited partner, general contractor, architect, lawyer, investor, consultant).	OWNER ENGINEER Developer G.C.	OWNER ENGINEER Developer G.C.	OWNER
Type of Project: (i.e. new construction, substantial rehabilitation, moderate rehabilitation)	2 Family Frame + Block New House	2 Family Frame w/ Plc Foundation	4 Family Rehnb
Use: (i.e. single-family, multi-family rental or commercial)	2 Family	2 Family	4 Family
Number of Buildings in Project	1	1	1
Total Number of Residential Units in Project	2	2	4
If commercial, total square footage of project	3500 sq	3500 sq	3500+/- F
Systems Replaced	New Construction	New Construction	Heat, Boiler Hot water, Some electric Plumbing, Cosmetic \$10,000
Total Development Costs	\$350,000	\$351,500	
Current Status (predevelopment, in construction, 100% complete, completed, converted to permanent financing)	Completed	Completed 2008, OWNER, Rented 2008 Through Present.	Completed 2015 & Rented.
Government Program, if any (provide name of program and agency, name and current phone of reference)	NONE	NONE	NONE

Do you (or your contractor) have a history of tax delinquency or code violations in the City of Newburgh? No ☒ Yes _____ (attach explanation)

Finances:

I am providing: ☒ Personal Financial Statement
☐ Letter from Lender/Investor
☐ Personal or Business Bank Statement
☐ Evidence of project funding
☐ Developers should provide three years financial statements

Business Relationship:

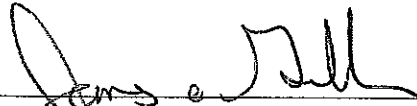
Have you had a "business relationship" as defined in Chapter 34, Article 2 (B) (2) of the municipal code, with any City elected official in the 12 months prior to the due date of this proposal? Yes _____ No ☒

What You should Attach:

- o Description of renovation plan with preliminary budget
- o Verification of financial capacity
- o Explanation of any tax delinquency/code violations (if applicable)

INFORMATION RELEASE:

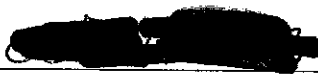
It is our intent that all personal financial information submitted with this proposal to the Department of Planning and Development shall be considered confidential. I hereby authorize the City of Newburgh Department of Planning and Development to obtain credit reports and verify information supplied as part of this proposal. All information provided is true and accurate to the best of my knowledge.


Signature

7-11-16
Date

JAMES A. GIBBONS
Print Name

SS#



Date of Birth



Submit Application to:

Department of Planning & Development
City Hall - 83 Broadway
Newburgh NY 12550

GIBBONS ENGINEERING, P.C.

1 Central Avenue, Suite 308
Tarrytown, NY 10591
Office: (914)524-9740
Fax: (914)524-9746

July 14, 2016

Mr. David Kohl
Economic Development Specialist
City Hall
83 Broadway
Newburgh, NY 12550

Preliminary Renovation Estimate of 130 Third Street

- Based on my experience, I can restore 130 Third Street for approximately \$50 per square foot. My estimate based on square footage is as follows:

1,928 Sq. Ft. x \$50/ Sq. Ft. = \$ 96,400

- Based on a more formal estimate, I offer the following analysis:

New plumbing for 2 bathrooms and 2 kitchens.....	\$ 7,500
Two new boilers - gas hot water, baseboard system.....	\$ 10,000
New water service.....	\$ 10,000
Electric.....	\$ 10,000
New floor joists as needed with plywood	\$ 12,200
New hardwood flooring.....	\$ 11,568
Roof repairs	\$ 5,100
Windows.....	\$ 8,000
Wallboard, ceiling board and trim	\$ 7,000
Bathroom and kitchens.....	\$ 9,200

Repointing and exterior..... \$ 5,832.
Total: **\$ 96,400**

Note that soft costs are not included; however, engineering plans and filings will be done in house through Gibbons Engineering, P.C. which is my company.

Please do not hesitate to contact me if you have any questions.

Respectfully Submitted.

James A. Gibbons, P.E.
Professional Engineer

CLIENT STATEMENT | For the Period May 1-31, 2016

Morgan Stanley

STATEMENT PACKAGE FOR:
JAMES A GIBBONS
1 CENTRAL AVE STE 308

TOTAL VALUE OF YOUR ACCOUNTS (as of 5/31/16)
Includes Accrued Interest

\$290,416.89

Morgan Stanley Smith Barney LLC, Member SIPC.

Your Financial Advisors

Carole Epstein
Vice President
Carole.R.Epstein@morganstanley.com
914 225-4859

Mary Gardiner
Vice President
Mary.G.Gardiner@morganstanley.com
914 225-5119

Your Branch

2000 WESTCHESTER AVE INC
PURCHASE, NY 10577
Telephone: 914-225-5510; Alt. Phone: 888-499-8544; Fax: 914-225-6770

Client Service Center (24 Hours a Day; 7 Days a Week): 800-869-3326

Access Your Accounts Online: www.morganstanley.com/online

002791 MSDDD121 018537

#BWINJGWM

00002791 03 AV 0.003 03 TR 00012 MSDDD121 000000

JAMES A GIBBONS

1 CENTRAL AVE STE 308

TARRYTOWN NY 10591-3301



JAMES A GIBBONS
1 CENTRAL AVE STE 308
TARRYTOWN NY 10591-3301

Questions?

Available by phone 24 hours a day, 7 days a week:
Telecommunications Relay Services calls accepted

1-800-742-4932

TTY: 1-800-877-4833

En español: 1-877-727-2932

華語 1-800-288-2288 (6 am to 7 pm PT, M-F)

Online: wells Fargo.com

Write: Wells Fargo Bank, N.A. (348)
P.O. Box 6995
Portland, OR 97228-6995

You and Wells Fargo

Thank you for being a loyal Wells Fargo customer. We value your trust in our company and look forward to continuing to serve you with your financial needs.

Account options

A check mark in the box indicates you have these convenient services with your account(s). Go to wells Fargo.com or call the number above if you have questions or if you would like to add new services.

Online Banking	☐	Direct Deposit	☒
Online Bill Pay	☐	Auto Transfer/Payment	☐
Online Statements	☐	Overdraft Protection	☐
Mobile Banking	☐	Debit Card	☐
My Spending Report	☐	Overdraft Service	☐

Other Wells Fargo Benefits

Students have unique needs when it comes to their money. Whether a younger teen in high school, or an older teen preparing to graduate and take the next step towards college, the military, or directly into the workforce, Wells Fargo has the tools and resources to help students access their money, manage a budget, pay for college, and much more. Visit wellsfargo.com/studentcenter

Activity summary

Beginning balance on 5/1	\$38,949.45
Deposits/Additions	10,582.67
Withdrawals/Subtractions	- 8,722.59
Ending balance on 5/31	\$40,809.53 ←

Account number: 1010282704935

JAMES A GIBBONS

New York account terms and conditions apply

For Direct Deposit use

Routing Number (RTN): 026012881

Proposal Form

RECEIVED
7/18/16

Contact Information:

Name: JAMES A. GIBBONS
Business Name (If Applicable): 144 Tercera Corp
Address: 1 Central Ave, 308, Tarrytown, NY 10591
City, State & Zip: _____
Home phone: 914.841.4743
Business Phone: 914.524.9740
Mobile Phone: 914.841.4743
E-mail: GIBBONSENGINEERING@yahoo.com
Federal I.D. No. (If Available): 47-2474493

Information on Bid Property:

Property Address: 132 Third ST
SBL#: 18-9-14

Order of Preference: (If submitting more than one proposal): _____

Type of Project:

____ Single Family Yes ____ No ____
☒ Multi-Family Yes ☒ No ____ # Units: 2
____ Commercial ____ Industrial

Offer Purchase Price: \$ 3605

Does your proposal conform with existing zoning? Yes ☒ No ____

Renovation Estimate - How much do you anticipate investing in this project for renovations? Do not include offer purchase price: \$ 98,500

Who will be doing the work? ☒ Self ____ Other (complete below)

Please keep in mind that the City of Newburgh requires electrical and plumbing work to be performed by City licensed electricians and plumbers.

General Contractor: TYPE A Contracting Corp
Architect: ENIA
Engineer: GIBBONS ENGINEERING, PC (JAMES A. GIBBONS PE)

Development Experience:

	Project No. 1	Project No. 2	
Project location: Please list all addresses (not merely project name). Include street number, street, city and zip	31 EDISON Ave Yonkers NY 10703	226 TRUMAN Ave YONKERS, NY 10703	144 Third St, New York NY 10003
Role (i.e. managing partner, limited partner, general contractor, architect, lawyer, investor, consultant).	OWNER, ENGINEER, Developer, G.C.	OWNER, ENGINEER, Developer, G.C.	OWNER
Type of Project: (i.e. new construction, substantial rehabilitation, moderate rehabilitation)	2 Family Frame Frame & Block <u>NEW HOUSE</u>	2 Family Frame w/ PIC Foundation	4 Family Rehab
Use: (i.e. single-family, multi-family rental or commercial)	2 Family	2 Family	4 Family
Number of Buildings in Project	1	1	1
Total Number of Residential Units in Project	2	2	4
If commercial, total square footage of project	3500 sq	3500 sq	3500 sq
Systems Replaced	New Const.	New Const	Rehab
Total Development Costs	\$ 350,000	\$ 351,500	\$ 400,000
Current Status (predevelopment, in construction, ____% complete, completed, converted to permanent financing)	Completed 2003	Completed 2008	Completed 2015
Government Program, if any (provide name of program and agency, name and current phone of reference)	NONE	NONE	NONE

Do you (or your contractor) have a history of tax delinquency or code violations in the City of Newburgh? No ☒ Yes _____ (attach explanation)

Finances:

I am providing: ☒ Personal Financial Statement
☐ Letter from Lender/Investor
☐ Personal or Business Bank Statement
☐ Evidence of project funding
☐ Developers should provide three years financial statements

Business Relationship:

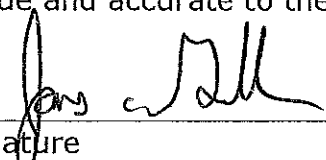
Have you had a "business relationship" as defined in Chapter 34, Article 2 (B) (2) of the municipal code, with any City elected official in the 12 months prior to the due date of this proposal? Yes _____ No ☒

What You should Attach:

- o Description of renovation plan with preliminary budget
- o Verification of financial capacity
- o Explanation of any tax delinquency/code violations (if applicable)

INFORMATION RELEASE:

It is our intent that all personal financial information submitted with this proposal to the Department of Planning and Development shall be considered confidential. I hereby authorize the City of Newburgh Department of Planning and Development to obtain credit reports and verify information supplied as part of this proposal. All information provided is true and accurate to the best of my knowledge.



Signature
Date 7-14-16
JAMES D. GIBBONS SS# [REDACTED] Date of Birth [REDACTED]
Print Name

Submit Application to:

Department of Planning & Development
City Hall – 83 Broadway
Newburgh NY 12550

GIBBONS ENGINEERING, P.C.

1 Central Avenue, Suite 308

Tarrytown, NY 10591

Office: (914)524-9740

Fax: (914)524-9746

July 14, 2016

Mr. David Kohl
Economic Development Specialist
City Hall
83 Broadway
Newburgh, NY 12550

Preliminary Renovation Estimate of 132 Third Street

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Repointing and exterior..... \$ 5,832.
Total: **\$ 96,400**

Note that soft costs are not included; however, engineering plans and filings will be done in house through Gibbons Engineering, P.C. which is my company.

Please do not hesitate to contact me if you have any questions.

Respectfully Submitted.

James A. Gibbons, P.E.
Professional Engineer

CLIENT STATEMENT | For the Period May 1-31, 2016

Morgan Stanley

STATEMENT PACKAGE FOR:
JAMES A GIBBONS
1 CENTRAL AVE STE 308

TOTAL VALUE OF YOUR ACCOUNTS (as of 5/31/16)
Includes Accrued Interest

\$290,416.89

Morgan Stanley Smith Barney LLC. Member SIPC.

Your Financial Advisors

Carole Epstein
Vice President
Carole.R.Epstein@morganstanley.com
914 225-4859

Mary Gardiner
Vice President
Mary.G.Gardiner@morganstanley.com
914 225-5119

Your Branch

2000 WESTCHESTER AVE 1NC
PURCHASE, NY 10577
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JAMES A GIBBONS

1 CENTRAL AVE STE 308

TARRYTOWN NY 10591-3301

JAMES A GIBBONS
1 CENTRAL AVE STE 308
TARRYTOWN NY 10591-3301

Questions?

Available by phone 24 hours a day, 7 days a week:
Telecommunications Relay Services calls accepted

1-800-742-4932

TTY: 1-800-877-4833

En español: 1-877-727-2932

華語 1-800-288-2288 (6 am to 7 pm PT, M-F)

Online: wellsfargo.com

Write: Wells Fargo Bank, N.A. (348)
P.O. Box 6995
Portland, OR 97228-6995

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Activity summary

Beginning balance on 5/1	\$38,949.45
Deposits/Additions	10,582.67
Withdrawals/Subtractions	- 8,722.59
Ending balance on 5/31	\$40,809.53 ←

Account number: 1010282704935

JAMES A GIBBONS

New York account terms and conditions apply

For Direct Deposit use

Routing Number (RTN): 026012881

RESOLUTION NO.: _____ - 2016

OF

AUGUST 8, 2016

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A LICENSE AGREEMENT WITH
HABITAT FOR HUMANITY OF GREATER NEWBURGH, INC.
TO PERMIT ACCESS TO CITY OWNED PROPERTY
LOCATED AT 20 SOUTH MILLER STREET (SECTION 30, BLOCK 2, LOT 37)
FOR THE PURPOSE OF PERFORMING CERTAIN PREDEVELOPMENT
ACTIVITIES**

WHEREAS, Habitat for Humanity of Greater Newburgh, Inc. has expressed an interest in acquiring City-owned property known as 20 South Miller Street, more accurately described as Section 30, Block 3, Lot 37 on the official tax map of the City of Newburgh; and

WHEREAS, Habitat for Humanity of Greater Newburgh, Inc. has requested that the City of Newburgh allow them access to 20 South Miller Street for the purpose of and to perform certain pre-development activities including structural evaluation and environmental testing before finalizing an offer of purchase; and

WHEREAS, such access to the properties requires the parties to execute a license agreement, a copy of which is attached hereto and made a part of this resolution; and

WHEREAS, this Council has reviewed such license and has determined that entering into the same would be in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached license agreement with Habitat for Humanity of Greater Newburgh, Inc., and their contracted agents to allow access to 20 South Miller Street, Section 20, Block 2, Lot 37, for the purpose of and to perform certain pre-development activities including environmental testing and structural evaluation.

LICENSE AGREEMENT

This Agreement, made this ____ day of _____, two thousand and sixteen by and between the CITY OF NEWBURGH, a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as "LICENSOR," and HABITAT FOR HUMANITY OF GREATER NEWBURGH, INC., a private business organization having an address of, 125 Washington Street, Newburgh, New York 12550, and their consultants and contractors as "LICENSEE";

WITNESSETH THAT:

WHEREAS, Licensee desires the license or privilege of gaining access to and performing work upon the premises of Licensor, on behalf of itself and its employees, agents and contractors, known as 20 South Miller Street, and more accurately described on the official tax map of the City of Newburgh, New York as Section 30, Block 2, Lot 37.

AND WHEREAS, Licensor is willing to give said license or privilege on the following terms and conditions:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, it is hereby agreed as follows:

First: Licensor hereby gives to Licensee and Licensee's employees, agents and contractors, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's property located at 20 South Miller Street, in the City of Newburgh, New York, and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary; for the purpose of and to perform certain tasks on said property owned by Licensor, including but not limited not limited to structural evaluation, excavating, filling, boring, testing, sampling, restoration and any and all other work appurtenant thereto.

Second: Licensee agrees to do such work and perform such tasks in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority, obtaining any and all permits required thereby.

Third: During the term of this Agreement, the parties mutually agree to release and indemnify each other for all claims, damages or expenses resulting from said party's own negligence. It is hereby acknowledged that Licensor is a self-insured municipality.

Fourth: Licensee will perform the subject work in connection with a site assessment and evaluation of a vacant residential property, including walk-through inspection, review of City of Newburgh and other records, review of governmental environmental records and data, and other measures relating to underground tanks, potential contamination issues, demolition of structures and related tasks. In the contract by which Licensee retains consultants and contractors, they shall name City as additional insured under insurance coverage concerning the performance of the tasks referenced herein.

Fifth: This Agreement and the license or privilege hereby given shall expire and terminate upon the completion of the work by Licensee and its agents, employees and contractors, and the restoration of the property to a clean and orderly state and in the same condition as existed prior to the granting of this license, normal wear and tear excepted.

Sixth: It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties held said premises prior to the granting of this license.

Seventh: Without limitation to the general provisions of this Agreement, it is understood and agreed that said work shall be performed in substantially the location and position shown in the attachments hereto, and in accordance with details and specifications as set forth on map or plan hereto attached and hereby made a part hereof.

Eighth: Licensee shall provide copies of all evaluations, tests, results and reports to Licensors within thirty (30) days of Licensee's receipt of said evaluations, tests, results and reports.

WITNESSETH:

THE CITY OF NEWBURGH

LICENSOR

By: _____
Michael G. Ciaravino, City Manager
Per Resolution No.

HABITAT FOR HUMANITY OF GREATER
NEWBURGH, INC.

LICENSEE

By: _____
Cathy Collins, Executive Director

Approved as to Form:

Approved as to Form:

KATHRYN MACK
Acting City Comptroller

MICHELLE KELSON
Corporation Counsel

RESOLUTION NO.: _____ - 2016

OF

AUGUST 8, 2016

**A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY
KNOWN AS 28 COURTNEY AVENUE (SECTION 48, BLOCK 3, LOT 24)
AT PRIVATE SALE TO ARCHIE LOGAN FOR THE AMOUNT OF \$2,000.00**

WHEREAS, the City of Newburgh has acquired title to several parcels of real property by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real property Tax law of the State of New York; and

WHEREAS, pursuant to Section 1166 of the Real Property Tax Law the City may sell properties acquired by foreclosure *In Rem* at private sale; and

WHEREAS, the City of Newburgh desires to sell 28 Courtney Avenue, being more accurately described as Section 48, Block 3, Lot 24 on the official tax map of the City of Newburgh; and

WHEREAS, the prospective buyer has offered to purchase this property at private sale; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyer for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to **THE CITY OF NEWBURGH**, such sums are to be paid on or before November 7, 2016, being ninety (90) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
28 Courtney Avenue	48 – 3 – 24	Archie Logan	\$2,000.00

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the parcel is not required for public use.

Terms and Conditions Sale

28 Courtney Avenue, City of Newburgh (48-3-24)

STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The properties are sold subject to unpaid school taxes for the tax year of 2016-2017, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2016-2017, and subsequent levies up to the date of the closing. Upon the closing, the properties shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.** The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
6. Notice is hereby given that the property lies within the East End Historic District as designated upon the zoning or tax map. This parcel is being sold subject to all provision of law applicable thereto and it is the sole responsibility of the purchaser to redevelop such parcel so designated in accordance with same.
7. Notice is hereby given that the property is vacant and unoccupied. The parcel is being sold subject to the City's Vacant Property Ordinance and all provisions of law applicable thereto. At closing, the purchaser will be required to register the property and remit the vacant property fee. It is the sole responsibility of the purchaser to redevelop such parcel in accordance with same.
8. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed

by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.

9. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
10. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
11. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before November 7, 2016. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
12. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
13. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
14. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
15. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
16. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least ten (10) days in advance of closing title and approved by the City's Engineer.
17. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.

18. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

Purchase Proposal Summary

Location: 28 Courtney Avenue
Tax Map Number: 48-3-24
Property Class: 210—One-Family Residence
Zoning: RL—Residential Low Density—East End Historic District
Description: Year Built—1900+/-; 2-story, semi-attached brick building, 2094 sf; lot size—25 x 100
Condition: Poor
Assessed Value: \$ 19,300
Annual Taxes: \$ 1,012 +/-
Selling Price: \$ 1,930 @ 10%
The city acquired this property: October 2012

Offer Information:

Name: Archie Logan
Offer Price: \$2,000

Comments: Archie Logan and his partner Anna Falat plan to move to the Newburgh area and make this residence their home. Anna Flat has rehabilitated houses in Pennsylvania. The building has been abandoned for many years. It is a semi-attached home. Therefore, by saving this half of the attached structure, the buy will essentially be saving two residences. 28 Courtney Avenue is rapidly deteriorating due to water damage from the roof.







Property Anna Falat renovated in Williamsport, PA.



Proposal Form

Contact Information:

Name: Archie Logan and Anna Talant
Business Name (If Applicable): _____
Address: 2600 South Rd 44-184
City, State & Zip: Poughkeepsie, NY 12601
Home phone: 845-342-1966
Business Phone: 570-850-0691 ☒
Mobile Phone: 570-850-0691 ☒
E-mail: archie.logan@ymail.com wine@eaglerackwinery.com ☒
Federal I.D. No. (If Available): 23-2675103
★ Preferred contact

Information on Bid Property:

Property Address: 28 Courtney

SBL#: A8-3-24

Order of Preference: (If submitting more than one proposal): _____

Type of Project:

☒ Single Family Yes _____ No _____
☐ Multi-Family Yes _____ No _____ # Units: _____
☐ Commercial ☐ Industrial

Offer Purchase Price: \$ 2000.00

Does your proposal conform with existing zoning? Yes ☒ No _____

Renovation Estimate - How much do you anticipate investing in this project for renovations? Do not include offer purchase price: \$ 100,000.00 - 130,000 + 1-

Who will be doing the work? ☒ Self ^{and} ☒ Other (complete below)

Please keep in mind that the City of Newburgh requires electrical and plumbing work to be performed by City licensed electricians and plumbers.

General Contractor: TBD
Architect: TBD
Engineer: TBD

Development Experience:

	Project No. 1	Project No. 2
Project location: Please list all addresses (not merely project name). Include street number, street, city and zip	Eagle Rock Winery 414 W 14th St. Williamsport, PA 17701	525 S. Washington St Muncy, PA 17756
Role (i.e. managing partner, limited partner, general contractor, architect, lawyer, investor, consultant).	Managing Partner	G.C.
Type of Project: (i.e. new construction, substantial rehabilitation, moderate rehabilitation)	Historic substantial Renovation	Rehab and new construction
Use: (i.e. single-family, multi-family rental or commercial)	Mixed Use	Mixed Use
Number of Buildings in Project	1	1
Total Number of Residential Units in Project	3	1
If commercial, total square footage of project	7882	2200
Systems Replaced	All	HVAC, Part Electrical
Total Development Costs	\$325,000	
Current Status (predevelopment, in construction, ___% complete, completed, converted to permanent financing)	100% complete	100% complete
Government Program, if any (provide name of program and agency, name and current phone of reference)	N/A	N/A

Do you (or your contractor) have a history of tax delinquency or code violations in the City of Newburgh? No X Yes _____ (attach explanation)

Finances:

I am providing: X Personal Financial Statement - Anna M. Forlat
____ Letter from Lender/Investor
____ Personal or Business Bank Statement
____ Evidence of project funding
____ Developers should provide three years financial statements

Business Relationship:

Have you had a "business relationship" as defined in Chapter 34, Article 2 (B) (2) of the municipal code, with any City elected official in the 12 months prior to the due date of this proposal? Yes _____ No X

What You should Attach:

- o Description of renovation plan with preliminary budget
- o Verification of financial capacity
- o Explanation of any tax delinquency/code violations (if applicable) N/A

INFORMATION RELEASE:

It is our intent that all personal financial information submitted with this proposal to the Department of Planning and Development shall be considered confidential. I hereby authorize the City of Newburgh Department of Planning and Development to obtain credit reports and verify information supplied as part of this proposal. All information provided is true and accurate to the best of my knowledge.

Archie L. Logan Anna M. Forlat 6/23/16
Signature Date

Archie L. Logan SS# [REDACTED] Date of Birth [REDACTED]
Print Name

Submit Application to:

Department of Planning & Development
City Hall - 83 Broadway
Newburgh NY 12550

ACTIVITY	PLAN START	PLAN DURATION	ACTUAL START	ACTUAL DURATION	PERCENT COMPLETE	ESTIMATED COST	ACTUAL COST	
							Day	Day
00 Search/Close	0	1	0	0	0%	750.00	0.00	
00 Permits	0	180	0			4,750.00		
01 Remediation	1	3			0%			
02 Temp Electric	1	6			0%	4,000.00		
03 Install Roof	2	4			0%	3,000.00		
04 Install Framin	4	8			0%	10,000.00		
05 Install Subflo	4	2			0%	8,000.00		
06 Demolition	4	3			0%	2,000.00		
07 Insurance	5	4			0%	4,300.00		
08 Plumbing	5	2			0%	10,000.00		
09 HVAC	5	2			0%	20,000.00	0.00	
10 Final Electric	6	5			0%	10,000.00		
11 Fireplace	6	1			0%	3,000.00		
12	9	3			0%			
13 Master Bath	9	6			0%	3,400.00		
14 1st Floor Batt	9	3			0%	4,000.00		
15 2nd Floor Bat	9	4			0%	1,500.00		
16 Kitchen Cabs	10	5			0%	9,000.00		
17 Kitchen Appl	11	2			0%	2,500.00		
18 Bamboo Floo	12	6			0%	3,000.00		
19 Tile Floor MB	12	1			0%	600.00		
20 Landscaping	14	5			0%	4,000.00		
21 Front Porch	14	8			0%	400.00		
22 Windows	14	7			0%	5,000.00		
23 Porches	15	4			0%	4,000.00		
24 Solar InstallH	15	5			0%	8,000.00		
25 Drywall	15	8			0%	5,000.00		
26 Hook Up Unil	2	2			0%	300.00		
27 Front Door	3	3			0%	500.00		
28 Basement Rej	3	3			0%	2,000.00		
29 Insulation	3	3			0%	4,000.00		
30 Security Syst	1	5			0%	4,000.00		
31 Lighting Fix						1,000.00		
32 Paint	29	30			0%	2,000.00		



Amount Approved
N to Borrow

American Advisors Group/New York Branch (100000)
Product Comparison - Loan #9442931
ANNA FALAT

Loan Number: 9442931 / 9442931
Borrower: FALAT, ANNA
FHA Case Number: 446-2956044
Loan Status: Suspended
Delivery Channel: Retail
Loan Program: HECM 2014 (Fixed)

You are in READ ONLY mode. No changes to loan information allowed.
Fees may not be accurate. Please verify fees.

	Fixed	Libor	Annual LIBOR CAPS	AAG ADVANTAGE FIXED
Loan Information				
Home Value	\$500,000.00	\$500,000.00	\$500,000.00	\$500,000.00
Lending Limit	\$625,500.00	\$625,500.00	\$625,500.00	\$25,000,000.00
Max Claim Amount	\$500,000.00	\$500,000.00	\$500,000.00	\$500,000.00
Gross Principal Limit	\$268,000.00	\$268,000.00	\$268,000.00	\$105,000.00
Upfront MIP	\$12,500.00	\$12,500.00	\$12,500.00	\$0.00
Origination Fee	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00
Other Closing Costs	\$4,942.33	\$4,942.33	\$4,942.33	\$4,942.33
Lender Credit	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00
Net Principal Limit	\$264,557.67	\$264,557.67	\$264,557.67	\$114,057.67
Liens, Mortgages & Payoffs	\$294,104.00	\$294,104.00	\$294,104.00	\$294,104.00
Repair Set-Aside	\$0.00	\$0.00	\$0.00	\$0.00
1st Year T&A Set-Aside	\$0.00	\$0.00	\$0.00	\$0.00
Rem. Life Expectancy Set-Aside	\$0.00	\$0.00	\$0.00	\$0.00
Total Life Expectancy Set-Aside	\$0.00	\$0.00	\$0.00	\$0.00
Remaining Principal Limit	(\$29,546.33)	(\$29,546.33)	(\$29,546.33)	(\$180,046.33)
Total Mandatory Obligations	\$297,546.33	\$297,546.33	\$297,546.33	\$297,546.33
% of Principal Limit	111.02%	111.02%	111.02%	271.47%
Cap Initial Disb. Limit at Low MIP	\$268,000.00	\$268,000.00	\$268,000.00	N/A
Initial Disbursement Limit	\$268,000.00	\$268,000.00	\$268,000.00	N/A
% of Principal Limit	100.00%	100.00%	100.00%	N/A
Initial Loan Balance UPB	\$268,000.00	\$268,000.00	\$268,000.00	\$105,000.00
% of Principal Limit	100.00%	100.00%	100.00%	100.00%
Available Funds				
Total Funds Due from Borrower	(\$29,546.33)	(\$29,546.33)	(\$29,546.33)	(\$180,046.33)
Max Available Tenure	N/A	\$0.00	\$0.00	N/A
Payment Request				
Cash Request at Closing	(\$29,546.33)	(\$29,546.33)	(\$29,546.33)	(\$180,046.33)
Monthly Cash Request	N/A	\$0.00	\$0.00	N/A
Line of Credit 1st Year	N/A	\$0.00	\$0.00	N/A
Additional LOC After 1st Year	N/A	\$0.00	\$0.00	N/A
Total LOC Available	N/A	\$0.00	\$0.00	N/A
Rates				
Margin	N/A	3.000% ▼	3.000% ▼	N/A
Initial Interest Rate	5.060% ▼	3.447%	4.236%	7.750% ▼

Loan Information	
Est. Closing Date	07/01/2016
Purpose of Loan	Loan Purpose
☐ Additional Income	☐ Home Improvements
☐ Leisure	☐ Medical
☐ Payment of Taxes	☐ Payment of Insurance
☐ Extinguish Forward	☐ Other
INDEX RATES	
Initial Rate Index	0.4470
Expected Rate Index	1.560
BORROWER INFORMATION	
Name	ANNA FALAT
Birthdate	10/06/1952 63 @closing
PROPERTY INFORMATION	
Actual Appraised Value	500,000.00
Total Liens (incl in liability)	\$294,104.00
LOAN ALLOCATION	
Cash Requested	-29,546.33
Set Max	
Clear Allocation	
Payment Type	Documents
Life Expectancy Set-Aside (LESA)	

RESOLUTION NO.: _____ - 2016

OF

AUGUST 8, 2016

**A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY
KNOWN AS 57-58 WILLIAMSBURG DRIVE (SECTION 1, BLOCK 2, LOT 29)
AT PRIVATE SALE TO NATALYA FREDERICKS FOR THE AMOUNT OF
\$35,000.00**

WHEREAS, the City of Newburgh has acquired title to several parcels of real property by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real property Tax law of the State of New York; and

WHEREAS, pursuant to Section 1166 of the Real Property Tax Law the City may sell properties acquired by foreclosure *In Rem* at private sale; and

WHEREAS, the City of Newburgh desires to sell 57-58 Williamsburg Drive, being more accurately described as Section 1, Block 2, Lot 29 on the official tax map of the City of Newburgh; and

WHEREAS, the prospective buyer has offered to purchase this property at private sale; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyer for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchasers be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to **THE CITY OF NEWBURGH**, such sums are to be paid on or before November 7, 2016, being ninety (90) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
57-58 Williamsburg Drive	1 – 2 – 29	Natalya Fredericks	\$35,000.00

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the parcel is not required for public use.

Terms and Conditions Sale

57-58 Williamsburg Drive, City of Newburgh (1-2-29)

STANDARD TERMS:

1. City of Newburgh acquired title to these properties in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The properties are sold subject to unpaid school taxes for the tax year of 2016-2017, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2016-2017, and subsequent levies up to the date of the closing. Upon the closing, the properties shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing except that where the water meter reading nets a usage to the purchaser of less than 6 units for the quarterly bill, the purchaser shall be responsible for a minimum water and sewer bill of 6 units.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.** The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
6. Notice is hereby given that the property is occupied. This parcel is being sold subject to the City's Rental License Ordinance and all provisions of law applicable thereto. At closing, the purchaser will be required to register the property and remit the rental license fee. It is the sole responsibility of the purchaser to redevelop such parcel in accordance with same.
7. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed

by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.

8. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
9. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
10. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before November 7, 2016. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
11. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
12. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
13. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
14. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
15. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.

16. Evictions, if necessary, are solely the responsibility of the purchaser after closing and recording of the deed.
17. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

Purchase Proposal Summary

Location: 57-58 Williamsburg Drive

Tax Map Number: 1-2-29

Property Class: 220—Two Family Residential

Zoning: RL—Residential Low Density

Description: Semi-attached 2-family home; Year built: 1988; 2 Apartments—One 3-bedroom (2nd floor) and one 2-bedroom (1st floor), Total of 2538sf of living area; 2-car garage; 5 bedrooms; 4 baths; lot size: 98 x 82

Condition: Fair

Assessed Value: \$ 103,900

Annual Taxes: \$ 5,453+/-

Selling Price: \$ 41,560 @ 40%

The city acquired this property: February 2015

Offer Information:

Name: Natalya Fredericks (aka Step Up Properties, LLC)

Offer Price: \$ 35,000

Construction Estimate: \$ 32,000+/-

Proof of Financing: Hudson Valley Federal Credit Union account.

Comments: Although this home is currently rented, it still needs considerable work. There were many leak marks on the second floor ceiling indicating some possible roof and gutter repair. The siding needs re-painting and/or replacing in several areas. One or both furnaces may need replacing, the plumbing and the electrical system need attention. Settlement was also noted. The purchaser owns several properties in the City of Newburgh, and has a proven track record with maintaining her properties. At this time, the purchaser is current on all municipal obligations. It should also be noted that the purchaser also has good credit.





Side & Rear View



Settlement



2nd Floor Ceiling Leak Marks



2nd Floor Interior



Bath

Proposal Form

Contact Information:

Name: Natalya Fredericks
Business Name (If Applicable): Step Up Properties, LLC
Address: P.O. Box 144
City, State & Zip: Vails Gate, NY 12584
Home phone: (845) 337-5995
Business Phone: -/-
Mobile Phone: -/-
E-mail: _____
Federal I.D. No. (If Available): 27-2961539

Information on Bid Property:

Property Address: 57-58 Williamsburg, Newburgh, NY
SBL#: 1-2-29

Order of Preference: (If submitting more than one proposal): _____

Type of Project:

☐ Single Family Yes _____ No _____ Owner Occupied: Yes _____ No _____
☒ Multi-Family Yes ☒ No _____ # Units: 2
☐ Commercial ☐ Industrial ☐ Vacant Land

Offer Purchase Price: \$ 35,000

Does your proposal conform to existing zoning? Yes ☒ No _____

Renovation Estimate - How much do you anticipate investing in this project for renovations? Do not include offer purchase price: \$ 32,000

Who will be doing the work? ☒ Self ☐ Other (complete below)

Please keep in mind that the City of Newburgh requires electrical and plumbing work to be performed by City licensed electricians and plumbers.

General Contractor: Myself
Architect: _____
Engineer: _____

Development Experience:

	Project No. 1	Project No. 2
Project location: Please list all addresses (not merely project name). Include street number, street, city and zip	57-58 Williamsburg	
Role (i.e. managing partner, limited partner, general contractor, architect, lawyer, investor, consultant).		
Type of Project: (i.e. new construction, substantial rehabilitation, moderate rehabilitation)	Moderate rehabilitation	
Use: (i.e. single-family, multi-family rental or commercial)	multi-family rental	
Number of Buildings in Project	1	
Total Number of Residential Units in Project	2	
If commercial, total square footage of project	n/a	
Systems Replaced		
Total Development Costs	\$ 32,000	
Current Status (predevelopment, in construction, ____% complete, completed, converted to permanent financing)		
Government Program, if any (provide name of program and agency, name and current phone of reference)	none	

Do you (or your contractor) ☒ have a history of tax delinquency or code violations in the City of Newburgh? No ☒ Yes _____ (attach explanation)

Finances:

I am providing: ☒ Personal Financial Statement
☐ Letter from Lender/Investor
☐ Personal or Business Bank Statement
☐ Evidence of project funding
☐ Developers should provide three years financial statements

Business Relationship:

Have you had a "business relationship" as defined in Chapter 34, Article 2 (B) (2) of the municipal code, with any City elected official in the 12 months prior to the due date of this proposal? Yes _____ No ☒

What You Should Attach:

- o Description of renovation plan with preliminary budget
- o Verification of financial capacity
- o Explanation of any tax delinquency/code violations (if applicable)

INFORMATION RELEASE:

It is our intent that all personal financial information submitted with this proposal to the Department of Planning and Development shall be considered confidential. I hereby authorize the City of Newburgh Department of Planning and Development to obtain credit reports and verify information supplied as part of this proposal. All information provided is true and accurate to the best of my knowledge.

Signature

Date

Print Name

SS#

Date of Birth

Submit Application to:

Department of Planning & Development
City Hall - 83 Broadway
Newburgh NY 12550

From: "natalya FREDERICKS" <natasha68@optonline.net>
To: dkohl@cityofnewburgh-ny.gov
Date: 07/25/2016 12:04:34 PM
Subject: 57-58 Williamsburg dr.

Good Morning David,
I was able to stop at the house on Saturday and make notes about what is needed in order to bring this house to life again

APT 1

1. Multiple plumbing issues (required license plumber)

Bathroom 1

Totally clogged toilet , not used for awhile \$350

To replace a shower body, new bathroom faucet (labor and material \$ 900)

Running faucets bathroom and kitchen (labor and material \$350)

-The boiler is about 30 year old , practically not working in the winter time, needs to be replaced
\$3500 Installed- labor and material)

- The electric stove in the kitchen is not working (\$700)

- The apartment needs to be repainted - \$1400

- Carpet flooring needs to be replaced -\$3000

- Some electrical issues required a license electrician \$1000(estimated)

Total \$11,200

APT 2

Plumbing issues

-Running faucets(3) for extended amount of time, needed to be replaced (\$450)

- Toilets do not flush well, possibly due to a partially clogged sewer line (\$350)

- Multiple leaks from the roof through the whole apartment, the roof is almost 30 years old
(The roof possibly needs to be replaced about \$5000)

- Electrical issues through the whole apartment estimated \$1000

- The apartment needs to be repainted \$2200

- Replacing an old carpet with floor Allure \$5500

Total apt 2 \$14,500

- Garage insulation due to the tenants loosing a lot of heat in the winter time. \$1800

The outside of the house will need to be repainted (30 year old wood siding) - \$4500

Total amount needed for repairs \$32000

Even though the house is about 30 years old..... there is a major deferred maintenance here, that would have to be addressed specially electric, plumbing and roofing, which is not cheap

My offer is \$35,000

Reasons for that.....

NOT INSURABLE TITLE (it is still within 2 years and that the owner can claim the property back) and the banks have 6 years to claim the property back)
The financial institutions will not finance this purchase for that reason because it is a high risk for them

It leaves you with a cash buyers who are willing to take that risk but for the RIGHT PRICE .

NEEDS ABOUT \$32000 IN REPAIRS

I can close on this property in 30 days and the City will start generating a revenue from this property again in form of property tax and other fees...

Regards Natalya Fredericks
845-537-5995



HudsonValley[®]

FEDERAL CREDIT UNION

P.O. Box 1071 | Poughkeepsie, NY | 12602-1071

845.463.3011 | hvfcu.org

June 29, 2016

Dear To Whom it May Concern,

This letter is to confirm the following verification of information that you requested:

Accounts:

Type of Account	Member Number/Account Number	Current Available Balance as of Date	Average Balance for Previous Two Months	Date Opened
Money Market	xxx344	\$70,000.00		10/26/09

Loans:

Type of Loan	Member/Account Number	Date of Loan	Original Loan Amount	Current Balance as of Date	Monthly Payment	Payoff Amount	Per Diem

Other Information:

This is an existing Money Market account, owner by Natalya Fredericks as of October of 2009. This account is in good standing with a balance in excess of \$70,000.00.

Amanda Pisciotto/ Financial Service Rep. II

Employee Signature

6/29/2016

Date

RESOLUTION NO.: _____ - 2016

OF

AUGUST 8, 2016

**A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY
KNOWN AS 1 LINCOLN TERRACE (SECTION 21, BLOCK 4, LOT 7)
AT PRIVATE SALE TO VICTORIA GALLO FOR THE AMOUNT OF \$52,000.00**

WHEREAS, the City of Newburgh has acquired title to several parcels of real property by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real property Tax law of the State of New York; and

WHEREAS, pursuant to Section 1166 of the Real Property Tax Law the City may sell properties acquired by foreclosure *In Rem* at private sale; and

WHEREAS, the City of Newburgh desires to sell 1 Lincoln Terrace, being more accurately described as Section 21, Block 4, Lot 7 on the official tax map of the City of Newburgh; and

WHEREAS, the prospective buyer has offered to purchase this property at private sale; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyer for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchasers be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to **THE CITY OF NEWBURGH**, such sums are to be paid on or before November 7, 2016, being ninety (90) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
1 Lincoln Terrace	21 – 4 – 7	Victoria Gallo	\$52,000.00

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the parcel is not required for public use.

Terms and Conditions Sale

1 Lincoln Terrace, City of Newburgh (21-4-7)

STANDARD TERMS:

1. City of Newburgh acquired title to these properties in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The properties are sold subject to unpaid school taxes for the tax year of 2016-2017, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2016-2017, and subsequent levies up to the date of the closing. Upon the closing, the properties shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing except that where the water meter reading nets a usage to the purchaser of less than 6 units for the quarterly bill, the purchaser shall be responsible for a minimum water and sewer bill of 6 units.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.** The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
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by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.

8. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
9. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
10. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before November 7, 2016. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
11. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
12. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
13. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
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17. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

Purchase Proposal Summary

Location: 1 Lincoln Terrace

Tax Map Number: 21-4-7

Property Class: 210—One Family Residential

Zoning: RL—Residential Low Density

Description: Detached single family home—Year built: 1926; 2080sf; 4 bedrooms with 1.5 baths; lot size: 55.8 x 100

Condition: Fair

Assessed Value: \$ 131,400

Annual Taxes: \$ 6,896+/-

Selling Price: \$ 52,560 @ 40%

The city acquired this property: February 2015

Offer Information:

Name: Victoria Gallo

Offer Price: **\$ 52,000**

Proof of Financing: Hudson Valley Federal Credit Union; Bank of America.

Comments: The house is currently occupied by a tenant. The purchaser and her family plan to occupy the house. She intends to give the tenant a few months to vacate the premises. The exterior of the house needs some painting, the windows may need to be replaced and the roof needs to be repaired. The heating system is old and may also need to be replaced. The interior is in better condition than the exterior. The purchaser has relatives who can do the necessary repairs. The purchaser is currently renting in the Washington Heights area of the City of Newburgh.





Exterior Views



Interior Photos



RESOLUTION NO.: _____ - 2016

OF

AUGUST 8, 2016

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR
AND ACCEPT IF AWARDED AN ORANGE COUNTY YOUTH BUREAU GRANT
IN AN AMOUNT NOT TO EXCEED \$11,000.00 REQUIRING NO CITY MATCH
TO SUPPORT PROGRAMS DESIGNED TO IMPROVE YOUTH AND COMMUNITIY
OUTCOMES IN THE LIFE AREAS OUTLINED BY THE TOUCHSTONES
FRAMEWORK**

WHEREAS, the Orange County Youth Bureau has advised they are accepting a 2nd Request for Proposals as they have a limited amount of Youth Development Program (YDP) funding available due to additional state funds not allocated during the original 2016 RFP process; and

WHEREAS, the City of Newburgh Recreation Department wishes to apply for and accept if awarded an Orange County Youth Bureau Grant in an amount not to exceed \$11,000.00 with no City match required to provide services and opportunities designed to improve youth and community outcomes in the Life Areas outlined by the Touchstones framework; and

WHEREAS, the Touchstones framework is organized by six Life Areas: Economic Security; Physical and Emotional Health; Education; Citizenship; Family; and Community; and

WHEREAS, the goals and objectives are related to each other and call for comprehensive strategies to address any single aspect of children and family well-being; and

WHEREAS, this Council has determined that applying for and accepting said grant if awarded is in the best interests of the City of Newburgh and its youth;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded an Orange County Youth Bureau Grant in an amount not to exceed \$11,000.00 requiring no City match to support programs designed to improve youth and community outcomes in the Life Areas outlined by the Touchstones framework; and to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.



Steven M. Neuhaus
County Executive

ORANGE COUNTY YOUTH BUREAU

38 Years of Promoting Positive Youth Development!
1978-2016



Rachel R. Wilson
Executive Director

Orange County Youth Bureau 2016 2nd Request for Proposals

The Orange County Youth Bureau is pleased to announce that it has a limited amount of Youth Development Program (YDP) funding available, about \$11,000 in total, due to additional state funds not allocated during the original 2016 RFP process. It is the intent of this RFP to award to one or multiple agencies, to support programs that provide programming or services to **children and youth of military families throughout Orange County**, AND/OR other programs operating primarily in the **Cities of Middletown, Newburgh and/or Port Jervis**, for Orange County youth ages 0-21, that provide services, opportunities and supports designed to improve youth and community outcomes in the Life Areas outlined by the Touchstones framework. Developed by the New York State Council on Children and Families, the Touchstones framework is organized by six Life Areas: Economic Security; Physical and Emotional Health; Education; Citizenship; Family; and Community. The goals and objectives are related to each other and call for comprehensive strategies to address any single aspect of children and family well-being.

Orange County Youth Bureau grants are awarded to non-profit organizations and Orange County municipalities that will operate to meet goals identified in the Touchstone Life Areas defined in Part III of this RFP, the Orange County 2011-2016 Children and Family Services Plan.

Eligible Applicants: The following organizations are eligible to apply for funding through this RFP: not-for-profit and community-based organizations including, but not limited to, secular and faith-based, organizations operating in Orange County; Orange County municipalities; and partnerships or consortia consisting of the foregoing. Applicants that have never received funding through the Orange County Youth Bureau are encouraged to apply for funding in this RFP.

Applications are now available on the Empire State Bid System aka "BidNet" at <http://www.empirestatebidsystem.com> or by visiting the Youth Bureau website at: www.orangecountygov.com/youthbureau.

- **The Orange County Department of General Services will be the ONLY point of contact for applicants during the submission process until the start of the Proposal Review Process.**
 - Proposals will **NOT** be submitted to the Youth Bureau. Instead they will be sent directly to the Orange County Department of General Services.
 - **ALL inquiries about the RFP must be directed to the Orange County Department of General Services, to Samantha Sweikata, Contract Coordinator, at 845-291-2507 or ssweikata@orangecountygov.com.** Answers will be compiled and posted for all to access in one addendum. Anyone contacting the Youth Bureau directly **WILL** be redirected to Ms. Sweikata. **(This is to comply with State Finance Law.)**
 - After the Orange County Department of General Services audits applications for all required attachments, they will be given to the Orange County Youth Bureau to go through the Proposal Review process.

Projected Timetable of Key Events

<u>Event:</u>	<u>Date:</u>
Request for Proposals Released	7/18/16
Submittal of Questions Deadline	7/25/16
Addendum Issued	7/29/16
Proposals Due	8/15/16 – 4:00 PM EDT
Competitive Awards Announced (tentative)	9/23/16
Contract Start Date	1/1/16

18 Seward Ave., Suite 102, Middletown, NY 10940
Email: YouthBur@OrangeCountyGov.com

Phone: 845.615.3620 Fax: 845.346.1170
Website: www.OrangeCountyGov.com/YouthBureau

RESOLUTION NO.: _____-2016

OF

AUGUST 8, 2016

**A RESOLUTION AMENDING THE 2016 PERSONNEL ANALYSIS BOOK
AUTHORIZING A CHANGE IN JOB TITLE FROM IT ASSISTANT
TO INFORMATION TECHNOLOGY SPECIALIST IN THE POLICE DEPARTMENT**

WHEREAS, the 2016 Personnel Analysis Book included a new position of IT Assistant in the Police Department for the purpose of implementing and maintaining the information technology equipment and data within the Police Department; and

WHEREAS, the City staff is recommending to this Council that the position of IT Assistant be changed to the title of Information Technology Specialist to ensure that the information technology equipment and data is implemented and maintained appropriately to improve the efficiency of the Police Department operations; and

WHEREAS, the job title of Information Technology Specialist has been reviewed and approved by the City of Newburgh Civil Service Commission; and

WHEREAS, the change in job title of such position requires the amendment of the City of Newburgh Adopted Personnel Analysis Book for 2016;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Personnel Analysis Book for 2016 be and is hereby amended to provide for a change in title from IT Assistant to Information Technology Specialist within the Police Department.

RESOLUTION NO.: _____ - 2016

OF

AUGUST 8, 2016

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A
PARTNERSHIP AGREEMENT WITH THE NEWBURGH ENLARGED CITY
SCHOOL DISTRICT IN CONNECTION WITH THE APPLICATION TO
THE NEW YORK STATE EDUCATION DEPARTMENT
FOR A FAMILY AND COMMUNITY ENGAGEMENT PROGRAM GRANT**

WHEREAS, The New York State Education Department is now accepting applications for Family and Community Engagement Program Grants and will award maximum individual grants of \$150,000.00 for school districts, community-based organizations, and other groups to improve family engagement efforts in local communities; and

WHEREAS, the purpose of the Family and Community Engagement Program is to increase the academic achievement and college and career readiness of boys and young men of color and to develop and sustain effective relationships with families toward the goal of success for all students through parent advocacy, incorporating the use of mentors to improve student achievement, or creating outreach material in home languages so families can learn how to enhance school success for their children, beginning at the earliest ages, through high school and beyond; and

WHEREAS, the Newburgh Enlarged City School District is eligible to apply for Family And Community Engagement Program Grants and partnership agreements with local governments and community-based organizations are mandatory as part of the application; and

WHEREAS, the City Council of the City of Newburgh finds that entering into a partnership agreement with the Newburgh Enlarged City School District for the purpose of applying for a new York State Education Department Family and Community Engagement Program Grant is in the best interests of the City of Newburgh and its youth;

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Newburgh that the City Manager be and he is hereby authorized to execute a partnership agreement with the Newburgh Enlarged City School District for the purpose of applying for and accepting a New York State Education Department Family and Community Engagement Program Grant in an amount not to exceed \$150,000.00 with a 15% match of applicant funds, private funds or in-kind services; and to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.

**Family and Community Engagement Program (FCEP)
A New York State My Brother's Keeper Initiative**

2016-2020

ANNOUNCEMENT OF FUNDING OPPORTUNITY

Legislative Authority:	Chapter 53 of the laws of 2016. With the adoption of the 2016-2017 New York State budget, New York became the first state to accept the President's My Brother's Keeper challenge.
Purpose/Goal:	This announcement is intended to assist public school districts in applying for Family and Community Engagement Program (FCEP) grants for 2016-2020. The purpose of the FCEP is to increase the academic achievement and college and career readiness of boys and young men of color. Many schools and districts struggle with the challenge of how to develop and sustain effective relationships with families toward the goal of student success. Teacher, Principals and School District leaders identify family engagement as one of the most challenging aspects of their work with students. When narrowing the scope of this ongoing concern to the issues of boys and young men of color, it is not only an issue of engaging and connecting to the family, but to the extended family and community as a whole.
Funding:	The allocation for 2016-2017 is expected to be \$6,000,000. The project period will be from September 1 - August 31, subject to the continuation of the State appropriation. Maximum individual annual grant award: \$150,000.
Program Start Date & Coverage of Expenditures:	The beginning date for grant activities is September 1, 2016 – August 31, 2017. Only expenses incurred during this period will be eligible for coverage with these state funds.
Matching Requirements:	A minimum 15 percent (%) match of approved grant contract is required. The matching requirements may be met through the institution's own resources, private sources, other non-state government sources, and/or in-kind services.
Applicant Eligibility:	New York State public school districts which meet the following criteria may submit applications: 1. School districts must have a Free & Reduced Price Lunch (FRPL) eligibility rate greater than 55% of district enrollment, an English Language Learner (ELL) enrollment rate greater than 1%, and a four year August graduation rate of less than 90%. OR 2. School district must have a FRPL eligibility rate greater than 60% of district enrollment and a four year August graduation rate of less than 85%. OR

3. School districts must have an ELL enrollment rate greater than 3% and a four year August graduation rate of less than 90%.

To determine eligibility districts should use the following school year data:

ELL and FERPL % - 2015 school year data

Graduation rates - 2014-15 graduation rates based upon the 2011 total cohort
– 4 Year Outcome - August 2015 data

Important Dates:

Full proposals must be postmarked by **8/26/16**

Q & A

Questions regarding this grant must be e-mailed to
FCEPRFP@nysed.gov by **7/29/16**

A Question and Answers Summary will be posted at:
<http://www.nysed.gov/nysmbk>
no later than **8/11/16**

SED reserves the right to modify or amend the RFP upon completion of the webinars and the question and answer period. Please monitor the website links for any notice of modification or amendment to the RFP

Webinar will be available at <http://www.nysed.gov/nysmbk> on: **7/26/16**

For Information and
Submission, Contact:

New York State Education Department
Office of Access, Equity, and Community Engagement Services
89 Washington Avenue, EB Room 505W
Albany, New York 12234
(518) 474-3719
FCEPRFP@nysed.gov

The State Education Department Contacts:

Program:

Dr. Richard A. Rose
FCEPRFP@nysed.gov

Fiscal:

Richard Duprey
FCEPRFP@nysed.gov

**The University of the State of New York
THE STATE EDUCATION DEPARTMENT
Office of Access, Equity, and Community Engagement Services
89 Washington Avenue
Albany, NY 12234**

**Guidelines
For Submission of
Family and Community Engagement Program (FCEP)
Proposals
For the Period 2016-2020**

THE UNIVERSITY OF THE STATE OF NEW YORK

Regents of The University

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**FAMILY AND COMMUNITY ENGAGEMENT PROGRAM (FCEP)
GUIDELINES
For the Submission of Grant Proposals
For Fiscal Year 2016-20**

I. APPLICATION GUIDANCE

Please adhere to the following instructions or your application will **not** be considered for review.

Required Signature(s)

The original signature of the District Superintendent (or designee) of the institution must appear on the Statement of Assurances Page in **blue** ink.

Partnership Agreements

Applicant information for all partnership agreements must be provided. **PARTNERSHIP AGREEMENTS ARE REQUIRED AS PART OF THE APPLICATION.** A signed partnership agreement is required for all **primary partners. The primary partners are the applicant school district and any, tribal government, local (town or village government), Chamber of Commerce, business, community based organizations, and institutions of higher education taking an active role in the implementation of the program.** The original signature of all **partners** must appear on the agreement in **blue** ink.

Number of Copies

Please submit **one original and two** copies of the full proposal, as well as one electronic copy of the complete application on CD or flash drive, to FCEP-SED postmarked by **8/26/16**.

Questions and Answers

Questions regarding this grant must be e-mailed to FCEPRFP@nysed.gov by **7/29/16**

A Question and Answers Summary will be posted at: <http://www.nysed.gov/nysmbk> no later than **8/11/16**.

SED reserves the right to modify or amend the RFP upon completion of the webinars and the question and answer period. Please monitor the website links for any notice of modification or amendment to the RFP.

Webinar will be available on: **7/26/16**

Checklist

Please use the Application Checklist to ensure that you send a complete application package.

Page Limits and Standards:

You must limit the project narrative to no more than **15 double-spaced pages in a minimum 10 point font** and all information requested in this section (excluding resumes, memoranda of agreement and course descriptions) must be contained within the narrative portion of the proposal. The narrative should present a cohesive document with each individual section related to all other sections. The name of the institution must appear in the top right corner of each page.

A specific format is required for the information requested in **Attachment I**. This information should be provided on Attachment I and be included in the 15 page limit. Single-spacing may be used on Attachment I provided the typeface or font is at least 10 point size. **The Budget Narrative will be subject to the 15 page Project Narrative limit, but the FS-10 will not.**

Proposed Budget for a Federal or State Project (FS-10)

The application must include a budget and budget narrative for each category of expenditure that is required for the grant (Professional Salaries, Support Staff Salaries, Purchased Services, Travel Expenses, Employee Benefits, BOCES Services) and a Proposed Budget for a Federal or State project (FS-10). The necessary and appropriate narrative should include sufficient detail to allow reviewers to understand what the funds will be used for and the relationship between the proposed expenditure and project activities and goals.

The total from each of the Budget Category Forms must correspond to amounts shown on the Budget Summary Form. Please be sure to check all of your calculations for accuracy.

II. INTRODUCTION

The FAMILY AND COMMUNITY ENGAGEMENT PROGRAM was initially established under an initiative of the Board of Regents to increase the academic achievement and college and career readiness of boys and young men of color.

III. PURPOSE

The purpose of the Family and Community Engagement Program is to increase the academic achievement and college and career readiness of boys and young men of color. Many schools and districts struggle with the challenge of how to develop and sustain effective relationships with families toward the goal of student success. Teacher, Principals and School District leaders identify family engagement as one of the most challenging aspects of their work with students. When narrowing the scope of this ongoing concern to the issues of boys and young men of color, it is not only an issue of engaging and connecting to the family, but to the extended family and community as a whole. Contributing to the problem is the lack of sustained, accessible, and effective opportunities to build capacity among local education agency (LEA) staff, communities and families.

A major focus of the initiative is on building respectful and trusting relationships between home, community, and school. No meaningful family engagement can be established until relationships of trust and respect are established between home, community, and school. The development of an implementation model is critical for success. The implementation model for the Family and Community Engagement Program (FCEP) will be the Dual-Capacity Building Framework as outlined by the U.S. Department of Education (<http://www2.ed.gov/documents/family-community/partners-education.pdf>). The Dual Capacity-Building Framework components create a focus on building of the capacity of staff and families to engage in partnerships.

IV. RATIONALE

Public schools in the U.S. now have a majority of nonwhite students. This is also true for many school districts within New York State, especially urban and low income districts. Nationally, that's been the case since 2014, and yet children of color — especially boys — still lag behind their white peers. New York State, through actions by the Board of Regents, the Governor and Legislature, have taken steps to become the first in the nation to adopt a statewide version of My Brother's Keeper, an initiative from President Obama to boost the educational futures of young minority men and boys.

As part of the national initiative launched in February 2014, My Brother's Keeper seeks to close the persistent gaps in educational achievement and opportunity between young minority men and boys and their peers. An overarching goal is to encourage and support young men in making good choices, become more resilient,

overcome obstacles educational and community, and achieve their dreams in life thereby improving their communities and the state.

As far back as 1975 the Board of Regents adopted educational policies which seek to alleviate the achievement gaps of Native American students (Position Paper #22). The principles included in those nine Regent's directives, sit firmly as the foundation for many of the activities which are now ideally to be implemented for all boys and young men of color.

V. FCEP OBJECTIVES AND KEY STRATEGIES

Utilizing the methods of the Dual-Capacity Building Framework, each Family and Community Engagement Program (FCEP), administered by a NYS public school district, will define and measure outcomes and evaluate practice to achieve the following goals:

Goal 1: Develop the knowledge and skills of school and district personnel, as well as families and community members, to increase required trust and relationships necessary to address student learning needs and abilities at each grade level.

- Initiatives are aligned with school and district achievement goals and connect families to the teaching and learning goals for the students. Professional development (PD) will be provided throughout the life of the project to develop the interpersonal and relationship building skills of school personnel
 - Progress will be measured by the number and content of PD opportunities offered, the number of attendees, and the number of personnel observed practicing and improving skills;
 - Training opportunities for family and community members are provided to develop literacy, problem solving, and parent advocacy skills;
 - Interest in, and success of, training will be measured by evaluation/feedback forms for each activity, and the number of participants attending regularly.
- Increase family participation in each child's education by implementing family and community engagement strategies based on current research. PD opportunities for school and district personnel related to the reading, interpretation, and analysis of data; applying data knowledge to making data-driven decisions regarding instruction, student placement, remediation services, etc.;
 - Progress will be measured by the number of attendees, the number of data meetings held to plan and/or revise instructional and support strategies for students; and the number of personnel providing data information, knowledge, and skill to family and community members;
- Initiatives bring families and staff together for shared learning to create collective learning environments that foster peer learning and communications networks among families and staff. Family and community member training opportunities are supported by the intentional breaching of barriers to participation such as language translation services, transportation, child care, and convenient times and locations of training;
 - The success indicators will include an increase in the numbers of family and community members engaging in training and activities; and
- Initiatives increase capacity to engage staff, families, and community to improve student outcomes. Scheduling of quarterly family and teacher conferences to discuss student learning profiles, the role of family members in supporting student(s), and the expected roles of personnel, family, and students in the plans for skill building and improved achievement;
 - The success of this indicator will be measured by increased attendance at conferences and improved academic achievement of students.

Goal 2: Provide access to multi-level networks that foster respect and trust in building family relationships with the school and school community.

- Initiatives must expand beyond mailings, automated phone calls, and even incentives like meals and prizes for attendance as these do little to ensure regular participation of families, and school staff is often less than enthusiastic about participating in these events. The school will develop policies and procedures regarding the use of electronic platforms as conduits to free-flowing and open communication and networking between students, family members, and the school;
 - Success will be measured by the number of activities held to assist in welcoming student, family, and community members into the development and feedback processes of the policies and procedures, and by the number of attendees engaged in the processes
- A district or school's efforts to build the capacity of families and staff to form effective partnerships are integrated into all aspects of its improvement strategy, such as the recruitment and training of effective teachers and school leaders, professional development, and mechanisms of evaluation and assessment. Design web pages, Facebook pages, and other forms of print and electronic platforms as conduits to free-flowing and open communication and networking between students, family members, and the school;
 - The success of this indicator will be measured by an increase in the number of contacts and conversations initiated, or reciprocated, by students, family members, and community members through the various platforms;
- Initiatives encourage support from, and collaboration with, families, community-based organizations, and local associations in communities with high populations of low-achieving boys and young men of color. The school will lead the design of a system to ensure the timely response to student, family and/or community input; the system will include a code of conduct for use of the electronic platforms, as well as a plan for frequent monitoring of the platforms for appropriateness of use and content;
 - The success of the school's leadership will be measured by satisfaction levels of response time and helpfulness of electronic communication users, and the monitoring of the platforms will be measured by the numbers of complaints regarding the content of electronic communications and the number of inappropriate communications blocked through the monitoring process; and
- Initiatives develop an effective engagement strategy that is employed by the school staff, parents, and community members, and understand the infrastructure and skills required to sustain it. The face-to-face and electronic communication platforms developed and monitored by the school will encourage multi-level networks that assist in building respectful and trusting relationships between students and school personnel, students and family members, students and community members, school personnel and family members, school personnel and community members, and family members and community members
 - The success of this indicator will be measured by an increase in the number of cross-contacts and conversations initiated, or reciprocated, by students, family members, and community members through the various platforms, paying particular attention to relationships supportive of increased learning, achievement, and mentoring

Goal 3: Create an environment where partnerships thrive in a comfortable, culturally diverse, and engaging atmosphere that fosters respect and trust.

- Initiatives provide outreach in families' home language to explain curriculum, school programming, special education services, enrichment programs, and the importance of school attendance. Provide translation services when necessary for any verbal, electronic, and print communications; seek community, county, state, and volunteer translation resources as appropriate for each situation, paying particular attention to the confidentiality of sensitive and protected information;

- The success of this indicator will be measured by comparing the number of translators available and in use with the size of the non-English speaking community, as well as the number of documented uses of translation services compared to the identified need or requests for such services;
- Initiatives focus on building the intellectual, social, and human capital of stakeholders engaged in the program. Provide genuine opportunities for student, family, and community members to share in decision-making opportunities;
 - The success of this indicator will be measured by the number and type of decision-making opportunities within normal school operations, as well as activities supporting the FCEP, identified; the number of students, family, and community members invited to participate; and documentation of the training provided to explain the role and responsibilities in each shared decision-making opportunity;
- During learning sessions, staff and families can receive information on skills and tools, but must also have the opportunity to practice what they have learned and receive feedback and coaching from each other, peers, and facilitators. Develop a plan and procedures to ensure family and community members' safe and equitable access to public buildings to engage in activities, including volunteer activities, training, shared decision-making, etc. opportunities.
 - This indicator will be measured by the number of successfully completed entries of family and community members into the school and/or other public buildings for engagement in activities related to normal school operations as well as FCEP initiated or supported activities; the safe and equitable access plan will be reviewed by SED personnel monitoring program operations and activities
- Initiatives provide advocacy services to assist and support families navigating the educational system as they help support student learning. Strategies to collaborate with community partners to support student achievement and family practices.
 - This indicator will be measured by the number of meetings, speaking engagements, and other efforts of collaboration with community partners, that are completed by school and FCEP personnel

Goal 4: Commit to building and sustaining child-centered roles for the school, family, and community that values student learning and social and emotional development as equal educational partners.

- Adopt and implement a family and community involvement policy that is approved by the local Board of Education based upon:
 - helping families, extended families, and communities establish home environments that support student learning and social emotional developmental health;
 - developing a system for ongoing effective communication between the school and home and community;
 - recruiting, organizing, and supporting families, extended families, and communities;
 - providing information and resources to families, extended families, and communities to support student learning outside of the classroom;
 - including parents and community members in the engagement decision making process; and
 - identifying and recruiting community based organizations, businesses, and institutions of higher education to partner with school districts and schools to support student achievement and family practices
- Initiatives focuses on empowering and enabling participants to be confident, active, knowledgeable, and informed stakeholders in the transformation of their schools and neighborhoods.
- Initiatives are purposefully designed as core components of educational goals such as school readiness, student achievement, and school turnaround.

- Initiatives design family, extended family, and community practices that are directly connected to student learning
- Initiatives incorporate the use of mentors, teachers/tutors, and other high quality support systems that are designed to improve student achievement and ensure a lasting and positive effect on classroom performance

For each goal, be sure to address the following:

Objectives and Strategies

List specific objectives to be accomplished. Objectives must support the FCEP goals and key strategies and should be measurable. Objectives should be focused on improving student learning, and on increasing the number of individuals from historically underrepresented groups who are prepared for college and/or careers. Each of the FCEP goals listed should be addressed.

Activities and Services

List and describe each activity and service that supports the achievement of each objective. Include required instructional, support, and advocacy services needed for staff, student, family and community member engagement and growth.

Staff Responsible: Indicate staff responsible for the implementation of each activity or service

Timeframe: Indicate the start and end dates, the timeframe, and the duration of each activity or service

Measures/Data Sources: For each objective, describe the performance measures/data sources that will assess its efficacy. Indicate the populations to be served and the tools, methods, and instruments that will be used.

VI. INSTITUTIONAL ELIGIBILITY

New York State public school districts which meet the following criteria may submit applications:

1. School districts must have a Free & Reduced Price Lunch (FRPL) eligibility rate greater than 55% of district enrollment, an English Language Learner (ELL) enrollment rate greater than 1%, and a four year August graduation rate of less than 90%.

OR

2. School district must have a FRPL eligibility rate greater than 60% of district enrollment and a four year August graduation rate of less than 85%.

OR

3. School districts must have an ELL enrollment rate greater than 3% and a four year August graduation rate of less than 90%.

To determine eligibility districts should use the following school year data:

ELL and FERPL % - 2015 school year data

Graduation rates - 2014-15 graduation rates based upon the 2011 total cohort – 4 Year Outcome - August 2015 data

VII. PARTNERSHIP AGREEMENTS

PARTNERSHIP AGREEMENTS ARE MANDATORY AS PART OF THE APPLICATION. In order to encourage support from, and collaboration with, families, community-based organizations, and local associations in

communities with high populations of low-achieving boys and young men of color; the eligible applicant must include in their application identified partnership(s) with such organization(s). In order to be a qualifying partnership, the partnership must meet the following requirements:

- The partnership must be evidenced by a signed partnership agreement signed by all parties to the agreement. Specify all of the services each of the partners is required to provide and when they are expected to do it. Is signed by all of the parties to the agreement when the application is submitted. The Partnership Agreement must be submitted with the application.
- The partnership organization(s) must be between the applicant school district, who serves as the program lead, and local and community based organizations able to provide insight and connection between the activities undertaken by the district and the communities.
- The primary partners are the applicant school district and any, tribal government, local (town or village government), Chamber of Commerce, business, community based organizations, and institutions of higher education taking an active role in the implementation of the program.
- While up to 40% of the total funds may be sub-contracted amongst the partnership organizations, the primary relationship of the partnership is not that of sub-contractors or consultants; but is one of collaboration toward alleviating the achievement gap.

VIII. NYSED'S RESERVATION OF RIGHTS

NYSED reserves the right to:

1. Reject any or all proposals received in response to the RFP;
2. Withdraw the RFP at any time, at the agency's sole discretion;
3. Make an award under the RFP in whole or in part;
4. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
5. Seek clarifications of proposals;
6. Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;
7. Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it may become available;
8. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
9. Change any of the scheduled dates;
10. Waive any requirements that are not material;
11. Negotiate with the successful bidder within the scope of the RFP in the best interests of the state;
12. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
13. Utilize any and all ideas submitted in the proposals received;
14. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 90 days from the bid opening;
15. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation;
16. Request best and final offers.

XI. PROJECT EXPECTATIONS

The ultimate goal of success for the FCEP is a school district where the staff honor and recognize families' existing knowledge, skill, and forms of engagement; create and sustain school and district cultures that welcome, invite, and promote family, extended family and community engagement; and develop family, extended family and community engagement initiatives and connect them to student learning and development. For families and communities success is ultimately achieved when the communities are supporters of their children's learning and development; encouragers of an achievement identity, a positive self-image, and a "can do" spirit in their children; monitors of their children's time, behavior, boundaries, and resources; models of lifelong learning and enthusiasm for education; advocates for improved learning opportunities for their children and at their schools; decision-makers/choosers of educational options for their children, the school, and their community; and collaborators with school staff and other members of the community on issues of school improvement and reform.

In addition to the specific indicators identified in the description of the four program goals, for the purposes of data reporting and analysis, projects will be deemed as meeting project expectations if they produce:

- Reduced suspension rates, both in-school and out of school for boys and young men of color
- Reduced drop-out rates for boys and young men of color
- Increased attendance rates for boys and young men of color
- Increased retention rates for boys and young men of color
- Increased persistence rates for boys and young men of color
- Increased graduation rates for boys and young men of color
- Improved performance on Regents Examinations and other standardized tests for boys and young men of color
- Increased number of college credits earned overall within a high school for boys and young men of color
- Increased number of AP course completions in high school for boys and young men of color

For the purposes of this RFP a 'boy or young man of color' includes, male students in NYS public schools who are identified in their school records with race/ethnicity described as Black or African-American, Hispanic/Latino, Asian, Native Hawaiian or other Pacific Islander, or American Indian, or Alaska Native; or two or more. School districts are required to ensure that the official school record accurately identifies the student in the category that the student has identified and not a category identified by a school or district official.

During the implementation of the My Brother's Keeper initiative, staff in NYSED will develop additional student-centric data collections to seek to measure the following items:

- student's postsecondary aspirations
- student's impression of their parent's involvement
- student's opinion of school climate

X. FUNDING LIMITATIONS AND METHOD OF DETERMINING AWARD AMOUNTS

The maximum request for any FCEP project will be \$150,000 per year.

All funding requests will be reviewed at the time of proposal submission. If certain costs cannot be supported by FCEP funds, the expenses will be removed from the proposed budget and the budget will be scored accordingly.

Method of Determining Award Amounts:

The funds in the appropriation will be distributed to successful applicants according to the process indicated below. The proposals will be rated numerically, with a maximum possible score of 100 points: 60 points for the Narrative Application, 20 points for the Budget/Budget Narrative, and 20 points to be awarded for a need based score. The Department will calculate the need based score and those scores will be posted at <http://www.nysed.gov/nysmbk> no later than July 21, 2016. Scores are recorded to two decimal places.

A. Awarding of Funds to Districts

1. The Narrative Application scores will be determined by two reviewers.
2. The budget and budget narrative of each application will also be reviewed and scored by both reviewers.
3. The final score used for rank ordering the applications will be calculated by adding the Department calculated need based score to the average of the two reviewers' scores for the total of the narrative application and the budget/budget narrative
 - a. If, however, the two reviewer's scores for the narrative and budget/budget narrative show a discrepancy of more than 15 points, these sections will go to a third reviewer. After the third review, the mathematical average of all three reviewer's scores will be the final score for the narrative and budget/budget narrative sections.
 - b. The final summary application score must be 65 points for an application to be considered for funding. Failure to meet this requirement will disqualify a proposal from further consideration.
 - c. In the event of a tie score, the tie breaker will be the highest score on the Program Objectives section of the scoring rubric in the Narrative Application.
 - d. If the scores remain tied after this step, a second tiebreaker will be the highest score on the Need and Cooperative Relationships section of the scoring rubric in the Narrative Application.
4. New York State is divided into ten Regents Higher Education Regions (found here: <http://www.highered.nysed.gov/kiap/documents/RegentsRegions2009.pdf>). The highest ranking applicant in each region with a passing score will be funded at the amount of their request, pending modification of the budget if it includes unallowable expenses.
5. The remaining funds will be pooled into a single statewide sum to be awarded to the remaining eligible unfunded applicants in rank order by final application statewide score. This process should result in at least one program per region and should also support those meritorious applications competing on a statewide basis.
6. If there are funds remaining that will not fully support funding the next highest application in the statewide ranking, that applicant will be given the opportunity to receive a partial award. If an eligible applicant chooses not to accept the partial award, the next eligible applicant will be contacted.

For an increase in available funding:

If new or additional funding becomes available, and NYSED chooses to distribute this funding to applicants of this current RFP, NYSED will allocate the funds in this order by:

1. Making whole any funded programs that have received a partial award;
2. Approving awards, in rank order, for eligible applicants who received passing scores, but who did not rank high enough to receive the initial funding;
3. Allocating funds among already awarded programs. Maximum request amounts will be established by distributing funding proportionally (based on total annual budget) to those currently funded projects.

For a decrease in available funding:

A decrease in funding for any subsequent funding year will result in a proportional reduction to all funded projects based on total annual budget.

XI. BUDGET

Budget Form (FS-10)

Applicants must submit a FS-10 budget with this application, for the initial 12 month project period of September 1, 2016 – August 31, 2017. The 12 month budget will be reviewed and scored.

The applicant must complete the FS-10 Budget Form. Budgeted costs must be in compliance with applicable State and federal laws and regulations and the Department's Fiscal Guidelines. These guidelines, as well as the FS-10 form, are available online at the following URL:

<http://www.oms.nysed.gov/cafe>. The FS-10 must bear the original signature of the Chief School/Administrative Officer.

Information about the categories of expenditures and general information on allowable costs, applicable cost principles and administrative regulations are available in the Fiscal Guidelines for Federal and State Aided Grants at <http://www.oms.nysed.gov/cafe/guidance/guidelines.html>.

The budget should be reasonable and appropriate to cover program expenses.

For more information, visit the website

<http://www.oms.nysed.gov/cafe/guidance/faqs.html>

A. Use of Funds

1. Activities funded under a FCEP award will be administered according to a written agreement between the State Education Department and the participating school district.
2. Amendments to the proposal during the course of the year that involve changes in the manner in which FCEP funds are expended must have prior written approval from the FCEP-SED, and may require approval by the Office of the State Comptroller. Expenses for activities not included in the approved budget will not be reimbursed by the State.

B. Allowable Expenses

Allowable costs include the following:

1. **Program administration:** including as allowable: professional and non-professional salaries, fringe benefits, staff travel, purchased services/consultant services, regional and statewide professional development; reimbursement for "release time" for school personnel engaged in program planning and implementation reported as a purchased service. Out of state travel requires prior approval by SED.
2. **Program activities:** including as deemed allowable: professional development, community engagement events, program achievement/awards, project brochures/materials and promotional activities, expenses related to program attendance and state administration of the FCEP such as participant transportation, and evaluation materials and activities.

3. **Administrative and instructional supplies, materials, and durable goods:** including instructional or administrative computer software and computers, etc., which are used principally in the operation and administration of the project.
 - a. When durable goods (to include computer equipment) are purchased with FCEP-SED funds, it is the responsibility of the district to ensure that the Equipment Inventory Form is completed and that a copy is submitted to the FCEP-SED.
 - b. If a program closes, any durable goods purchased with FCEP-State funds must be released for transfer to another FCEP program so that the durable goods continue to support FCEP students.
 - c. FCEP-SED staff will assist District staff in arranging the transfer of such durable goods.

C. Non-Allowable Expenses

1. Funds may not be used for indirect costs.
2. Funds may not be used for construction or renovation of classroom or office space.
3. Funds may not be used for equipment (items with a per-unit cost of \$5000 or more).
4. Funds are not available for rental of office or meeting space, storage facilities, equipment, fixtures or communication cost (phone, postage, and/or electronic communication cost).
5. Funds cannot be used for items which previously had been assumed by the institution. The purpose of a FCEP award is to supplement rather than supplant monies previously or presently allocated to FCEP related activities.
6. FCEP funds are intended to establish new efforts or to enrich or expand existing ones. They may not be used to supplant funding of other existing efforts.
7. FCEP funds cannot be used to pay for the salary or stipend of the FCEP Director's Supervisor or someone designated as a Principal Investigator for the grant.
8. Funds may not be used for purposes other than those described in the approved grant contract.
9. FCEP funds cannot be used for organizational dues or items not specifically allowed under the categories identified above.

E. Transfer of Funds

1. Budget transfers of more than 10 percent in any category must be submitted as a budget amendment. Form FS-10-A: Proposed Amendment for a Federal or State Project must be used to request a budget amendment and must be submitted to FCEP-SED for review. All FS-10-A forms must be submitted anytime between the start date of any funding year and July 31st of that year. Funds should not be expended until the budget amendment has been approved in writing. If the amount of the modification is equal to or greater than ten percent of the total value of the contract, the modification will require the prior approval of the Office of the State Comptroller.
2. Funds up to 10 percent of line categories may be transferred between approved line categories without prior written approval. However, FCEP-SED must be informed in writing of all amendments made to an approved budget within 30 days of each occurrence, but no later than July 31st of the program year.

F. Institutional Funds

1. **Matching Funds:** A minimum 15 percent match of the approved FCEP grant is required. The matching requirement may be met through the District's own resources, private sources, other governmental sources, and/or in-kind services. Other State funds may be used in this match with the exception of state grant funds from educational opportunity programs, but may not duplicate services

provided. All matching contributions must be used for activities related exclusively to the FCEP project, and institutional accounts must be structured to reflect this contribution by the appropriate line item.

2. Program Support: The district must provide sufficient space and other resources for the effective operation of the program.

3. Institutional Obligation: Districts approved for funding will have an obligation to honor the district amount committed in support of the program in each budget category. This obligation will be reflected in the approved budget agreed to by the State Education Department and the institution. The budget may be amended during the year following the procedures stated in *Budget: E. Transfer of Funds*.

G. FCEP Payment Schedule

Please refer to the **FISCAL GUIDELINES FOR FEDERAL AND STATE AIDED GRANTS** at:

<http://www.oms.nysed.gov/cafe/guidance/guidelines.html>

Funds will be provided through a 25% initial payment of the first year's annual budget, up to 90% based upon submitted FS-25 forms as interim payments; the final 10% will be reimbursed upon completion of the required reports and FS-10F.

XII. PROJECT SCHEDULE

A. Operation Dates: For year one, projects may begin as early as Sept. 1, 2016 but must be completed by August 31, 2017. Expenses incurred prior to September 1, 2016 or after August 31, 2017, will not be reimbursed. **The subsequent three years will be funded at the same level as was awarded for year one, subject to the continuation of the State Appropriation and successful performance of the district.**

B. Required Reports: Each institution receiving a FCEP grant will be required to submit interim and final reports to FCEP-SED. The interim and final reports will outline the scheduled activities in the program period identifying tasks, assignments, and specific objectives accomplished within the reporting period. A format and reporting schedule for the reports will be provided by FCEP-SED.

XIII. APPLICATION INSTRUCTIONS

Interested institutions must submit one original and two copies of the application for funding as well as one electronic copy of the complete application on CD or flash drive. **The original must be clearly identified and signed in blue ink.** An application for funding requires the original signature of the District Superintendent (or designee) of the district on the Statement of Assurances (Attachment II). **Applications for funding must be postmarked on or before 8/26/16 to:**

New York State Education Department
Office of Access, Equity, and Community Engagement Services
89 Washington Avenue, EB 505W
Albany, NY 12234

An application for funding meets the deadline requirement if it has a legible postmark, shipping label, invoice or receipt from the U.S. Postal Service or a commercial carrier bearing the date of **8/26/16** or earlier. Private

metered postmarks **will not** be accepted as proof of meeting the required deadline. Hand delivered applications must be received at the FCEP-SED office by 5:00 p.m. on or before **8/26/16**.

Proposals that do not meet the deadline requirement will **not** be considered.

A complete application for funding consists of the following items in the order indicated:

- A. Application checklist
- B. Application Cover Page with Original Signature of Chief Executive/Administrative Officer (Attachment I)
- C. Statement of Assurances with Original Signature of Chief Executive/Administrative Officer (Attachment III)
- D. Proposed Budget (Attachment IV)
- E. Payee Information Form (if applicable)
- F. **Required Partnership Agreement(s)** (Attachment VII)
- G. Proposal Narrative (including Attachment II)
- H. Budget Narrative
- I. FS-10 Budget
- J. Worker's Compensation Documentation
- K. Disability Benefits Documentation
- L. M/WBE Documents Package (original signatures required) (Attachment VIII)

XIV. NARRATIVE FORMAT

The proposal narrative should describe the 2016-2017 proposed activities in full detail, including the overall goals, planning, implementation, and evaluation of all proposed activities. **It may not be more than 15 double-spaced pages in a minimum 11 point font**, and all information requested in this section (excluding resumes, memoranda of agreement, course descriptions and the FS-10) must be contained within the narrative portion of the proposal. The narrative should present a cohesive document, with each individual section related to all other sections, and **must** adhere to the format indicated below. The name of the school must appear in the top right corner of each page. A specific format is required for the information requested in Attachment I. This information should be provided on Attachment I and be included in the 15 page limit. Single-spacing may be used on Attachment I provided that the typeface or font is at least 15 point size. Failure to adhere to these guidelines or to include required information will result in an unfavorable review.

- A. Application Cover Page
- B. Executive Summary (1 page max)

This section summarizes the proposal's purpose, scope, outcomes and methodology used.

- C. Organizational Background:
This section should include:
 - 1. An overview and brief description of the applicant school district
 - 2. This section should explain why your district is qualified for a Family and Community Engagement Program (FCEP)
 - 3. A brief history, accomplishments, qualifications, and educational experience in serving the needs of underrepresented and at risk populations
 - 4. Internal Program Relationships:
 - a. Describe the internal structure of the FCEP project, including the following:

- b. The staff positions that have coordinating responsibilities for the major components of the program (e.g., administration, teaching, counseling, tutoring, evaluating, budgeting, reporting)
 - c. A FCEP organizational chart including all program-related personnel
- D. Need and Cooperative Relationships
 - 1. Identify the need explaining why the district seeks to operate a FCEP project and the student groups selected for involvement. This section should include the following:
 - 2. Why does your school district want to initiate a FCEP project?
 - a. Community description including poverty, education, and other information that describes or relates to your target population and the goals of your proposal
 - 3. Fully describe the criteria and processes used to solicit, recruit and involve community organizations and groups, businesses, and institutions of higher education in forming FCEP partnerships. Be specific.
 - 4. Provide a description of the roles and responsibilities of any other local education agencies, school district(s), community-based organizations, and all other parties who will participate in the project. Specify how each collaborating party will contribute to the project
 - a. Partnership Agreement that describes collaborations **must** be attached
 - 5. Describe the school's plan to coordinate and integrate FCEP activities into a systematic approach of enhancing student achievement and college/career readiness
- E. Program Objectives, Strategies, Activities, Services and Performance Measures/Data Sources

Use the forms provided in Attachment I: Program Objectives, Strategies, Activities, Services and Performance Measures/Data Sources

Goal 1: Develop the knowledge and skills of school and district personnel, as well as families and community members, to increase required trust and relationships necessary to address student learning needs and abilities at each grade level.

- 1. Initiatives are aligned with school and district achievement goals and connect families to the teaching and learning goals for the students.
- 2. Initiatives increase family participation in each child's education by implementing family and community engagement strategies based on current research.
- 3. Initiatives bring families and staff together for shared learning to create collective learning environments that foster peer learning and communications networks among families and staff.
- 4. Initiatives increase capacity to engage staff, families, and community to improve student outcomes

Goal 2: Provide access to multi-level networks that foster respect and trust in building family relationships with the school and school community.

- 1. Initiatives must expand beyond mailings, automated phone calls, and even incentives like meals and prizes for attendance as these do little to ensure regular participation of families, and school staff is often less than enthusiastic about participating in these events.
- 2. A district or school's efforts to build the capacity of families and staff to form effective partnerships are integrated into all aspects of its improvement strategy, such as the recruitment and training of effective teachers and school leaders, professional development, and mechanisms of evaluation and assessment.

3. Initiatives encourage support from, and collaboration with, families, community-based organizations, and local associations in communities with high populations of low-achieving boys and young men of color
4. Initiatives develop an effective engagement strategy that is employed by the school staff, parents, and community members, and understand the infrastructure and skills required to sustain it

Goal 3: Create an environment where partnerships thrive in a comfortable, culturally diverse, and engaging atmosphere that fosters respect and trust.

1. Initiatives provide outreach in families' home language to explain curriculum, school programming, special education services, enrichment programs, and the importance of school attendance
2. Initiatives focus on building the intellectual, social, and human capital of stakeholders engaged in the program.
3. During learning sessions, staff and families can receive information on skills and tools, but must also have the opportunity to practice what they have learned and receive feedback and coaching from each other, peers, and facilitators.
4. Initiatives provide advocacy services to assist and support families navigating the educational system as they help support student learning

Goal 4: Commit to building and sustaining child-centered roles for the school, family, and community that values student learning and social and emotional development as equal educational partners.

1. Adopt and implement a family and community involvement policy that is approved by the local Board of Education based upon:
 - a. helping families, extended families, and communities establish home environments that support student learning and social emotional developmental health;
 - b. developing a system for ongoing effective communication between the school and home and community;
 - c. recruiting, organizing, and supporting families, extended families, and communities;
 - d. providing information and resources to families, extended families, and communities to support student learning outside of the classroom;
 - e. including parents and community members in the engagement decision making process; and
 - f. identifying and recruiting community based organizations, businesses, and institutions of higher education to partner with school districts and schools to support student achievement and family practices
2. Initiatives focuses on empowering and enabling participants to be confident, active, knowledgeable, and informed stakeholders in the transformation of their schools and neighborhoods.
3. Initiatives are purposefully designed as core components of educational goals such as school readiness, student achievement, and school turnaround.
4. Initiatives design family, extended family, and community practices that are directly connected to student learning
5. Initiatives incorporate the use of mentors, teachers/tutors, and other high quality support systems that are designed to improve student achievement and ensure a lasting and positive effect on classroom performance

For each goal, be sure to address the following:

Objectives and Strategies

List the specific objectives to be accomplished. Objectives must support the FCEP goals and key strategies and should be measurable. Objectives should be focused on improving student learning,

and increasing the number of boys and young men of color who are prepared for college and/or careers. Each of the FCEP goals listed should be addressed.

Activities and Services

List and describe each activity and service that supports the achievement of each objective. Include required instructional, support, and advocacy services needed for staff, student, family and community member engagement and growth.

Staff Responsible: Indicate staff responsible for the implementation of each activity or service

Timeframe: Indicate the start and end dates, the timeframe, and the duration of each activity or service

Measures/Data Sources: For each objective, describe the performance measures/data sources that will assess its efficacy. Indicate the populations to be served and the tools, methods, and instruments that will be used.

F. Project Staffing and Management

1. Describe a management plan that will assure the effective completion of project activities given the fiscal and other resources available.
2. Provide an organizational chart which indicates the management structure of the program within the district

Note: Direct involvement of school/district administrator is required.

3. Briefly describe all professional staff positions (full-time and part-time, paid and volunteer) that will be assigned directly to the project. Define role and scope of designated positions.
4. List the names and titles of all full-time and part-time professional and instructional staff for the project. Provide current resumes for all professionals in the project.

G. Budget and Budget Narrative

1. Indicate the proposed expenditures for the project on Attachment IV: FCEP 2016-2017 Proposed Budget. The attachment must provide complete information and indicate all proposed expenditures from FCEP, school, district, and other matching funds. The budget must be consistent with the scope of services, reasonable, cost effective, and the staffing pattern is appropriate for the services to be offered.
2. Budget narrative expenditures description (including descriptions of school, district, and other source contributions) must follow the general format of Attachment IV: FCEP 2016-2017 Proposed Budget using the same sequence of categories and code numbers. The budget justifications must be clear and appropriate.
3. Each salaried position is identified by title, anticipated salary amount, and the time contribution to the FCEP Project. Indicate the per diem or hourly rate for each consultant identified under the Purchased Services Category. Provide the unit rate or estimate for all services or items.

Note: A completed FS-10: Proposed Budget for the State Project will be required with this application.

XV. PROPOSAL RATING, DEBRIEFING, AWARD PROTEST PROCEDURES

Proposal Rating

Proposals will be rated in accordance with Section X of this RFP. **PARTNERSHIP AGREEMENTS ARE REQUIRED AS PART OF THE APPLICATION.**

Debriefing Procedures

All applicants may request a debriefing within fifteen (15) calendar days of receiving notice of non-award from NYSED. Applicants may request a debriefing on the selection process regarding this Grant by emailing the request to FCEPRFP@nysed.gov.

A summary of the strengths and weaknesses of the application, as well as recommendations for improvement will be emailed back to the applicant within ten (10) business days.

Award Protest Procedures

Applicants who receive a notice of non-award may protest the NYSED award decision subject to the following:

1. The protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by NYSED.

2. The protest must be filed within ten (10) business days of receipt of the notice of non-award. The protest letter must be filed with:

NYS Education Department
Contract Administration Unit
89 Washington Avenue
Room 501W EB
Albany, NY 12234

3. The NYSED Contract Administration Unit (CAU) will convene a review team that will include at least one staff member from each of NYSED's Office of Counsel, CAU, and the Program Office. The review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the applicant with written notification of the review team's decision within seven (7) business days of the receipt of the protest. The original protest and decision will be filed with OSC when the contract procurement record is submitted for approval and CAU will advise OSC that a protest was filed.

4. The NYSED Contract Administration Unit (CAU) may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest only raises issues of law that have already been decided by the courts.

XVI. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) PARTICIPATION GOALS PURSUANT TO ARTICLE 15-A OF THE NEW YORK STATE EXECUTIVE LAW

The following M/WBE requirements apply when an applicant submits an application for grant funding that exceeds \$25,000 for the full grant period.

All forms referenced here can be found in the M/WBE Documents section at the end of this RFP.

All applicants are required to comply with NYSED's Minority and Women-Owned Business Enterprises (M/WBE) policy. Compliance can be achieved by one of the three methods described below. Full participation by meeting or exceeding the M/WBE participation goal for this grant is the preferred method.

M/WBE participation includes services, materials, or supplies purchased from minority and women-owned firms certified with the NYS Division of Minority and Women Business Development. Not-for-profit agencies are not eligible for this certification. For additional information and a listing of currently certified M/WBEs, see <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>

The M/WBE participation goal for this grant is 30% of each applicant's total discretionary non-personal service budget over the entire term of the grant. Discretionary non-personal service budget is defined as total budget, excluding the sum of funds budgeted for:

1. direct personal services (i.e., professional and support staff salaries) and fringe benefits; and
2. rent, lease, utilities and indirect costs, if these items are allowable expenditures.

For multi-year grants, applicants should use the total budget for the full multi-year term of the grants in the above calculation. The M/WBE Goal Calculation Worksheet is provided for use in calculating the dollar amount of the M/WBE goal for this grant application.

M/WBE participation does not need to be the same for each year of a multi-year grant.

All requested information and documentation should be provided at the time of submission. If this cannot be done, the applicant will have thirty days from the date of notice of award to submit the necessary documents and respond satisfactorily to any follow-up questions from the Department. Failure to do so may result in loss of funding.

METHODS TO COMPLY

An applicant can comply with NYSED's M/WBE policy by one of three methods:

1. Full Participation - This is the preferred method of compliance. Full participation is achieved when an applicant meets or exceeds the participation goals for this grant.

COMPLETE FORMS:

M/WBE Goal Calculation Worksheet
M/WBE Cover Letter
M/WBE 100 Utilization Plan
M/WBE 102 Notice of Intent to Participate

2. Partial Participation - Partial Request for Waiver - This is acceptable only if good faith efforts to achieve full participation are made and documented, but full participation is not possible.

COMPLETE FORMS:

M/WBE Goal Calculation Worksheet
M/WBE Cover Letter
M/WBE 100 Utilization Plan
M/WBE 101 Request for Waiver
M/WBE 102 Notice of Intent to Participate

M/WBE 105 Contractor's Good Faith Efforts

3. No Participation - Request for Complete Waiver - This is acceptable only if good faith efforts to achieve full or partial participation are made and documented, but do not result in any participation by M/WBE firm(s).

COMPLETE FORMS:

M/WBE Goal Calculation Worksheet

M/WBE Cover Letter

M/WBE 101 Request for Waiver

M/WBE 105 Contractor's Good Faith Efforts

GOOD FAITH EFFORTS

Applicants must make a good faith effort to solicit NYS certified M/WBE firms as subcontractors and/or suppliers to achieve the goals for this grant. Solicitations may include, but are not limited to: advertisements in minority and women-centered publications; solicitation of vendors found in the NYS Directory of Certified Minority and Women-Owned Business Enterprises (see <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>); and the solicitation of minority and women-oriented trade and labor organizations.

Good faith efforts include actions such as setting up meetings or announcements to make M/WBEs aware of supplier and subcontracting opportunities, identifying logical areas of the grant project that could be subcontracted to M/WBE firms, and utilizing all current lists of M/WBEs who are available for and may be interested in subcontracting or supplying goods for the project.

Applicants should document their efforts to comply with the stated M/WBE goals and submit this with their applications as evidence. Examples of acceptable documentation can be found in form M/WBE 105, Contractor's Good Faith Efforts. NYSED reserves the right to reject any application for failure to document "good faith efforts."

REQUEST FOR WAIVER

When full participation cannot be achieved, applicants must submit a Request for Waiver (M/WBE 101). Requests for Waivers must be accompanied by documentation explaining the good faith efforts made and reasons they were unsuccessful in obtaining M/WBE participation.

NYSED reserves the right to approve the addition or deletion of subcontractors or suppliers to enable applicants to comply with the M/WBE goals, provided such addition or deletion does not impact the technical proposal and/or increase the total budget.

All payments to Minority and Women-Owned Business Enterprise subcontractor(s) should be reported to the NYSED M/WBE Program Unit using the M/WBE 103 Quarterly M/WBE Compliance Report. This report should be submitted on a quarterly basis and can be found at www.oms.nysed.gov/fiscal/MWBE/forms.html.

NYSED's M/WBE Coordinator is available to assist applicants in meeting the M/WBE goals. The Coordinator can be reached at MWBE@mail.nysed.gov.

Equal Employment Opportunity Reporting (EEO) Pursuant to Article 15-A of the New York State Executive Law
Applicants must complete and submit form EEO 100: Staffing Plan.

XVII. WORKERS' COMPENSATION COVERAGE AND DEBARMENT

New York State Workers' Compensation Law (WCL) has specific coverage requirements for businesses contracting with New York State and additional requirements which provide for the debarment of vendors that violate certain sections of WCL. The WCL requires, and has required since introduction of the law in 1922, the heads of all municipal and State entities to ensure that businesses have appropriate workers' compensation and disability benefits insurance coverage *prior* to issuing any permits or licenses, or *prior* to entering into contracts.

Workers' compensation requirements are covered by WCL Section 57, while disability benefits are covered by WCL Section 220(8). The Workers' Compensation Benefits clause in Appendix A – STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS states that in accordance with Section 142 of the State Finance Law, a contract shall be void and of no force and effect unless the contractor provides and maintains coverage during the life of the contract for the benefit of such employees as are required to be covered by the provisions of the WCL.

Under provisions of the 2007 Workers' Compensation Reform Legislation (WCL Section 141-b), any person, or entity substantially owned by that person: subject to a final assessment of civil fines or penalties, subject to a stop-work order, or convicted of a misdemeanor for violation of Workers' Compensation laws Section 52 or 131, is barred from bidding on, or being awarded, any public work contract or subcontract with the State, any municipal corporation or public body for one year for each violation. The ban is five years for each felony conviction.

PROOF OF COVERAGE REQUIREMENTS

The Workers' Compensation Board has developed several forms to assist State contracting entities in ensuring that businesses have the appropriate workers' compensation and disability insurance coverage as required by Sections 57 and 220(8) of the WCL.

Please note – an ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.

Proof of Workers' Compensation Coverage

To comply with coverage provisions of the WCL, the Workers' Compensation Board requires that a business seeking to enter into a State contract submit appropriate proof of coverage to the State contracting entity issuing the contract. For each new contract or contract renewal, the contracting entity must obtain ONE of the following forms from the contractor and submit to OSC to prove the contractor has appropriate workers' compensation insurance coverage:

- **Form C-105.2** – Certificate of Workers' Compensation Insurance issued by private insurance carriers, or **Form U-26.3** issued by the State Insurance Fund; or
- **Form SI-12**– Certificate of Workers' Compensation Self-Insurance; or **Form GSI-105.2** Certificate of Participation in Workers' Compensation Group Self-Insurance; or
- **CE-200**– Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage.

Proof of Disability Benefits Coverage

To comply with coverage provisions of the WCL regarding disability benefits, the Workers' Compensation Board requires that a business seeking to enter into a State contract must submit appropriate proof of coverage to the State contracting entity issuing the contract. For each new contract or contract renewal, the contracting entity must obtain ONE of the following forms from the contractor and submit to OSC to prove the contractor has appropriate disability benefits insurance coverage:

- **Form DB-120.1** - Certificate of Disability Benefits Insurance; or
- **Form DB-155**- Certificate of Disability Benefits Self-Insurance; or
- **CE-200**– Certificate of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Coverage.

For additional information regarding workers' compensation and disability benefits requirements, please refer to the New York State Workers' Compensation Board website at:

<http://www.wcb.ny.gov/content/main/Employers/busPermits.jsp>. Alternatively, questions relating to either workers' compensation or disability benefits coverage should be directed to the NYS Workers' Compensation Board, Bureau of Compliance at (518) 486-6307.

XVIII. CORRESPONDENCE

All correspondence, requests for information, and questions concerning this grant should be addressed to:

New York State Education Department
Office of Access, Equity, and Community Engagement Services
89 Washington Avenue, EB 505W
Albany, New York 12234

XIX. PUBLICITY

All materials developed in whole or in part with the support of FCEP funds, including publicity releases and program announcements, will include the following statement:

Support for the development and production of this material was provided by a grant under the My Brother's Keeper Initiative of the New York State Education Department.

ATTACHMENT I

**Application Cover Page
Family and Community Engagement Program**

Name of School District: _____

Regents Higher Education Region: _____

District Address: _____

Name of Program Director: _____

Telephone: _____ E-mail Address: _____

Person Submitting Proposal (name/title): _____

Telephone: _____ E-mail Address: _____

Total Number of Students in the district with race/ethnicity described as Black or African-American, Hispanic/Latino, Asian, Native Hawaiian or other Pacific Islander, or American Indian, or Alaska Native; or two or more

Percentage of Students in the district with race/ethnicity described as Black or African-American, Hispanic/Latino, Asian, Native Hawaiian or other Pacific Islander, or American Indian, or Alaska Native; or two or more

I certify that the information contained in this application is, to the best of my knowledge, complete and accurate and any ensuing program and activity will be conducted in accordance with all applicable Federal and State laws, application guidelines and instructions, Assurances, Certifications, Appendices A, A1-G and that the requested budget amounts are necessary for the implementation of this program. I understand that this application constitutes an offer and, if accepted by the NYSED or renegotiated to acceptance, will form a binding agreement. I also agree that immediate written notice will be provided to NYSED if at any time I learn that this certification was erroneous when submitted, or has become erroneous by reason of changed circumstances.

Signature of District Chief Administrator (or designee) _____

Title: _____

ATTACHMENT II

Instructions for Completing Program Objectives, Strategies, Activities, Services and Performance Measures/Data Sources

1. Make as many copies of the forms as needed.
2. Each of the 4 identified FCEP Goals should be addressed.
Complete one sheet for each goal.
3. Provide all the information requested in each column of the Objectives, Strategies, Activities Matrix (1-5).
4. Definitions:
 - **Strategies:** Describe the process or method FCEP project will use to achieve the FCEP goal indicated on the form (how).
 - **Activities/Services:** Indicate what FCEP project will do to accomplish the FCEP goal indicated on the form (action/work).
 - **Staff Responsible:** Indicate the staff members who will be responsible. Use the title(s) for individuals listed.
 - **Performance Measure:** Indicate measurable elements that will indicate accomplishment of the FCEP goal listed on the form.
 - **Data Source:** Indicate the sources from which the data elements are drawn.
 - **Timeframe:** Indicate the timeframe(s) for each item listed.

Goal 1: Develop the knowledge and skills of school and district personnel, as well as families and community members, to increase required trust and relationships necessary to address student learning needs and abilities at each grade level

Strategies	Activities/Services	Staff Responsible	Timeframe	Performance Measures/Data Sources

Goal 2: Provide access to multi-level networks that foster respect and trust in building family relationships with the school and school community				
Strategies	Activities/Services	Staff Responsible	Timeframe	Performance Measures/Data Sources

Goal 3: Create an environment where partnerships thrive in a comfortable, culturally diverse, and engaging atmosphere that fosters respect and trust

Strategies	Activities/Services	Staff Responsible	Timeframe	Performance Measures/Data Sources

Goal 4: Commit to building and sustaining child-centered roles for the school, family, and community that values student learning and social and emotional development as equal education partners

Strategies	Activities/Services	Staff Responsible	Timeframe	Performance Measures/Data Sources

ATTACHMENT III

Family and Community Engagement Program (FCEP)
STATEMENT OF ASSURANCES

Institution Name: _____

Program: _____

1. The recipient will, if funded, operate a Family and Community Engagement Program (FCEP) program within the letter and spirit of all pertinent legislation and policies, including the appropriate Guidelines.
2. Funds from this source will supplement, not supplant, local expenditures and will not duplicate expenditures from other sources.
3. All activities supported by grant funds will, to the extent possible, be accessible by persons with disabilities.
4. Upon request, the recipient will provide the State Education Department access to its records and other sources of information concerning the operation of the FCEP program.
5. All materials developed in whole or in part with the support of FCEP funds, including publicity releases and program announcements, will include the following statement:
Support for the development and production of this material was provided by a grant under the Family and Community Engagement Program administered by the New York State Education Department.

CHIEF EXECUTIVE OFFICER CERTIFICATION

I hereby certify that the information in this application is correct and in total compliance with appropriate State laws and regulations and that the program design will be carried out as described in the application.

Signed* _____ Date _____
(District Superintendent)

Print name and title _____

*Original signature of District Superintendent is required.

ATTACHMENT IV

Total Number of Students in the district with race/ethnicity described as Black or African-American, Hispanic/Latino, Asian, Native Hawaiian or other Pacific Islander, or American Indian, or Alaska Native; or two or more: _____

FCEP 9/1/16-8/31/17 PROPOSED BUDGET

ROUND CENTS TO THE NEAREST DOLLAR

Line No.	Expenditure Category	Code	FCEP (1)	Institution (2)	Other Sources (3)	TOTAL (4)
1	Salaries for Professional Personnel	15				
2	Salaries for Non-Professional Personnel	16				
	a. Clerical/Secretarial					
	b. Student Assistants					
	c. Other					
3	Purchased Services	40				
4	Supplies & Materials	45				
	a. Instructional					
	b. Other					
5	Travel Expenses	46				
	a. Student/Programmatic					
	b. Staff/Administrative					
6	Employee Benefits	80				
	a. Professional__%					
	b. Clerical/Secretarial__%					
	c. Student Assistants__%					
	d. Other__%					
7	SUBTOTAL of Lines 1-6					
8	Indirect Cost*	90	XXXXXXXXX			
9	Equipment	20	XXXXXXXXX			
10	GRAND TOTAL (Lines 7 - 9)					

ROUND CENTS TO THE NEAREST DOLLAR.

The minimum 15% Matching Funds must be reported in Columns 2 and or 3.

ATTACHMENT V

Application Checklist

Listed below are the required documents for a complete application package, in the order that they should be submitted. Use this checklist to ensure that your application submission is complete and in compliance with application instructions.

Required Documents	Checked-Applicant	Checked –SED	
Application Checklist (Attachment V)	☐	☐	
Application Cover Page with Original Signature of Chief Executive/Administrative Officer (Attachment I)	☐	☐	
Statement of Assurances with Original Signature of Chief Executive/Administrative Officer (Attachment III)	☐	☐	
Proposed Budget (Attachment IV)	☐	☐	
Payee Information Form (if applicable) http://www.oms.nysed.gov/cafe/forms/PIform.pdf	☐	☐	
Required Partnership Agreement(s) (Attachment VII)	☐	☐	
Proposal Narrative (15 page maximum – including Attachment II)	☐	☐	
Budget Narrative (included in 15 page maximum)	☐	☐	
FS-10 Budget EXCEL Version (signature required) (Attachment VI)	☐	☐	
Worker’s Compensation Documentation	☐	☐	
Disability Benefits Documentation	☐	☐	
M/WBE Documents Package (original signatures required) (Attachment VIII) ☐ Full Participation ☐ Request Partial Waiver ☐ Request Total Waiver			
	Full Participation	Request Partial Waiver	Request Total Waiver
Calculation of M/WBE Goal Amount	☐	☐	☐
M/WBE Cover Letter	☐	☐	☐
M/WBE 100 Utilization Plan	☐	☐	N/A
M/WBE 102 Notice of Intent to Participate	☐	☐	N/A
M/WBE 105 Contractor’s Good Faith Efforts	N/A	☐	☐
M/WBE 101 Request for Waiver Form	N/A	☐	☐
EO 100 Staffing Plan	☐	☐	☐
SED Comments: Has the applicant complied with the application instructions? ☐ Yes ☐ No SED Reviewer: _____ Date: _____			

ATTACHMENT VI
Budget Form (FS-10)

Applicants must submit a FS-10 budget with this application, for the initial 12 month project period of September 1, 2016 - August 31, 2017. The 12 month budget will be reviewed and scored.

The applicant must complete the FS-10 Budget Form. Budgeted costs must be in compliance with applicable State and federal laws and regulations and the Department's Fiscal Guidelines. These guidelines, as well as the FS-10 form, are available online at the following URL:

<http://www.oms.nysed.gov/cafe>. The FS-10 must bear the original signature of the Chief School/Administrative Officer.

Information about the categories of expenditures and general information on allowable costs, applicable cost principles and administrative regulations are available in the Fiscal Guidelines for Federal and State Aided Grants at <http://www.oms.nysed.gov/cafe/guidance/guidelines.html>.

The budget should be reasonable and appropriate to cover program expenses.

ATTACHMENT VII

SAMPLE **(Insert Name) School and (Insert Name) Partner** **Service Agreement**

This cooperative agreement reflects the overall commitment as well as the specific responsibilities and the roles of the (insert Name) Partner and (insert name) School to enhance the preparation of prospective teachers. The purpose of this partnership is to increase the academic achievement and college and career readiness of boys and young men of color.

Up front Planning Activities: _____

SPECIFIC ROLES AND RESPONSIBILITIES

The partnership of the (Insert Name) Partner and the (insert name) School entails the following:

The (insert Name) Partner agrees to:	The (insert Name) School agrees to:
[List all activities/services/etc. that the partner will provide to the partnership.]	[List all activities/services/etc. that the school will provide to the partnership.]
sample	

Name of School _____ Signature _____ Date _____

Project Director _____ Signature _____ Date _____

Name, Title, School _____

Signature _____ Date _____

Name, Title, Partner Organization _____

Signature _____ Date _____

PLEASE NOTE THAT THESE ACTIVITIES ARE FOR EXAMPLE ONLY. THE AGREEMENT FOR YOUR PROGRAM SHOULD REFLECT THE SPECIFICS OF YOUR PROGRAM AND YOUR PARTNERS. ALL ACTIVITIES/SERVICES, ETC. THAT ARE PERTINENT TO YOUR PROJECT SHOULD BE INCLUDED.

ATTACHMENT VIII**M/WBE Goal Calculation Worksheet**

Project Name: Family and Community Engagement Program (FCEP) A New York State My Brothers' Keeper Initiative 2016-2021

Applicant Name: _____

The M/WBE participation goal is 30% of each grantee's total discretionary non-personal service budget. Discretionary non-personal service budget is defined as the total budget, excluding the sum of funds budgeted for direct personal services (i.e., professional and support staff salaries); fringe benefits; the portion of the budget in purchased services representing stipends, student tuition, and financial assistance; indirect costs; room and board, if these are allowable expenditures.

Please complete the following table to determine the dollar amount of the M/WBE goal for this grant application.

	Budget Category	Amount budgeted for items excluded from M/WBE calculation	Totals
1.	Total Budget		
2.	Professional Salaries		
3.	Support Staff Salaries		
4.	Fringe Benefits		
5.	Portion of Purchased Services used for Stipends, Student Tuition, and Supplemental Financial Assistance		
6.	Indirect Costs		
7.	Student Room and Board		
8.	Sum of lines 2, 3, 4, 5, 6 and 7		
9.	Line 1 minus Line 8		
10.	M/WBE Goal percentage (30%)		0.30
11.	Line 9 multiplied by Line 10 =MWB goal amount		

This form is only for use with the 2016-2021 Family and Community Engagement Program (FCEP) Program. It may not be used with any other grant program.

M/WBE COVER LETTER Minority & Woman-Owned Business Enterprise Requirements

PROJECT NAME: _____

In accordance with the provisions of Article 15-A of the NYS Executive Law, 5 NYCRR Parts 140-145, Section 163 (6) of the NYS Finance Law and Executive Order #8 and in fulfillment of the New York State Education Department (NYSED) policies governing Equal Employment Opportunity and Minority and Women-Owned Business Enterprise (M/WBE) participation, it is the intention of the New York State Education Department to provide real and substantial opportunities for certified Minority and Women-Owned Business Enterprises on all State contracts. It is with this intention the NYSED has assigned M/WBE participation goals to this contract.

In an effort to promote and assist in the participation of certified M/WBEs as subcontractors and suppliers on this project for the provision of services and materials, the bidder is required to comply with NYSED's participation goals through one of the three methods below. Please indicate which one of the following is included with the M/WBE Documents Submission:

- ☐ Full Participation – No Request for Waiver (PREFERRED)
- ☐ Partial Participation – Partial Request for Waiver
- ☐ No Participation – Request for Complete Waiver

By my signature on this Cover Letter, I certify that I am authorized to bind the Bidder's firm contractually.
Typed or Printed Name of Authorized Representative of the Firm
Typed or Printed Title/Position of Authorized Representative of the Firm
Signature/Date

M/WBE UTILIZATION PLAN

INSTRUCTIONS: All bidders/applicants submitting responses to this procurement/project must complete this M/WBE Utilization Plan unless requesting a total waiver and submit it as part of their proposal/application. The plan must contain detailed description of the services to be provided by each Minority and/or Women-Owned Business Enterprise (M/WBE) identified by the bidder/applicant.

Bidder/Applicant's Name _____
 _____/_____

Telephone/Email: _____

Address _____

Federal ID No.: _____

City, State, Zip _____

RFP No.: _____

Certified M/WBE	Classification (check all applicable)	Description of Work (Subcontracts/Supplies/Services)	Annual Dollar Value of Subcontracts/Supplies/Services
NAME ADDRESS CITY, ST, ZIP PHONE/E-MAIL FEDERAL ID No.	NYS ESD Certified MBE _____ WBE _____		\$ _____
NAME ADDRESS CITY, ST, ZIP PHONE/E-MAIL FEDERAL ID No.	NYS ESD Certified MBE _____ WBE _____		\$ _____

PREPARED BY (Signature) _____ DATE _____

SUBMISSION OF THIS FORM CONSTITUTES THE BIDDER/APPLICANT'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-1, 5 NYCRR PART 143 AND THE ABOVE REFERENCE SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR PROPOSAL/APPLICATION DISQUALIFICATION.

NAME AND TITLE OF PREPARER: _____
 (print or type)

TELEPHONE/E-MAIL _____

DATE _____

M/WBE 100

REVIEWED BY _____	DATE _____
UTILIZATION PLAN APPROVED YES/NO _____	DATE _____
NOTICE OF DEFICIENCY ISSUED YES/NO _____	DATE _____
NOTICE OF ACCEPTANCE ISSUED YES/NO _____	DATE _____

**M/WBE SUBCONTRACTORS AND SUPPLIERS
NOTICE OF INTENT TO PARTICIPATE**

INSTRUCTIONS: Part A of this form must be completed and signed by the Bidder/Applicant unless requesting a total waiver. Parts B & C of this form must be completed by MBE and/or WBE subcontractors/suppliers. The Bidder/Applicant must submit a separate M/WBE Notice of Intent to Participate form for each MBE or WBE as part of the proposal/application.

Bidder/Applicant Name: _____ Federal ID No.: _____
Address: _____ Phone No.: _____
City _____ State _____ Zip Code _____ E-mail: _____

Signature of Authorized Representative of Bidder/Applicant's Firm Print or Type Name and Title of Authorized Representative of Bidder/Applicant's Firm
Date: _____

PART B - THE UNDERSIGNED INTENDS TO PROVIDE SERVICES OR SUPPLIES IN CONNECTION WITH THE ABOVE PROCUREMENT/APPLICATION:

Name of M/WBE: _____ Federal ID No.: _____
Address: _____ Phone No.: _____
City, State, Zip Code _____ E-mail: _____

BRIEF DESCRIPTION OF SERVICES OR SUPPLIES TO BE PERFORMED BY MBE OR WBE:

DESIGNATION: ☐ MBE Subcontractor ☐ WBE Subcontractor ☐ MBE Supplier ☐ WBE Supplier

PART C - CERTIFICATION STATUS (CHECK ONE):

☐ The undersigned is a certified M/WBE by the New York State Division of Minority and Women-Owned Business Development (MWBD).
☐ The undersigned has applied to New York State's Division of Minority and Women-Owned Business Development (MWBD) for M/WBE certification.

THE UNDERSIGNED IS PREPARED TO PROVIDE SERVICES OR SUPPLIES AS DESCRIBED ABOVE AND WILL ENTER INTO A FORMAL AGREEMENT WITH THE BIDDER/APPLICANT CONDITIONED UPON THE BIDDER/APPLICANT'S EXECUTION OF A CONTRACT WITH THE NYS EDUCATION DEPARTMENT.

The estimated dollar amount of the agreement \$ _____ _____
Signature of Authorized Representative of M/WBE Firm

Date Printed or Typed Name and Title of Authorized Representative

M/WBE CONTRACTOR GOOD FAITH EFFORTS CERTIFICATION (FORM 105)

PROJECT/CONTRACT # _____

I, _____
(Bidder/Applicant)

_____ of _____
(Title) (Company)

_____ () _____
(Address) (Telephone Number)

do hereby submit the following as evidence of our good faith efforts to retain certified minority- and women-owned business enterprises:

(1) Copies of its solicitations of certified minority- and women-owned business enterprises and any responses thereto;

(2) If responses to the contractor's solicitations were received, but a certified minority- or woman-owned business enterprise was not selected, the specific reasons that such enterprise was not selected;

(3) Copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;

(4) Copies of any solicitations of certified minority- and/or women-owned business enterprises listed in the directory of certified businesses;

(5) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified minority- and women-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;

(6) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority- and women-owned business enterprises.

(7) Describe any other action undertaken by the bidder to document its good faith efforts to retain certified minority - and women- owned business enterprises for this procurement.

Submit additional pages as needed.

Authorized Representative Signature

Date

M/WBE CONTRACTOR UNAVAILABLE CERTIFICATION

PROJECT NAME _____

I, _____ (Authorized Representative) _____ (Title) _____ (Bidder/Applicant's Company)

(Address) _____ (Phone)

I certify that the following New York State Certified Minority/Women Business Enterprises were contacted to obtain a quote for work to be performed on the abovementioned project/contract.

List of date, name of M/WBE firm, telephone/e-mail address of M/WBEs contacted, type of work requested, estimated budgeted amount for each quote requested.

<u>DATE</u>	<u>M/WBE NAME</u>	<u>PHONE/EMAIL</u>	<u>TYPE OF WORK</u>	<u>ESTIMATED BUDGET</u>	<u>REASON</u>
1.					
2.					
3.					
4.					
5.					

To the best of my knowledge and belief, said New York State Certified Minority/Women Business Enterprise contractor(s) was/were not selected, unavailable for work on this project, or unable to provide a quote for the following reasons: Please check appropriate reasons given by each MBE/WBE firm contacted above.

- _____ **A.** Did not have the capability to perform the work
- _____ **B.** Contract too small
- _____ **C.** Remote location
- _____ **D.** Received solicitation notices too late
- _____ **E.** Did not want to work with this contractor
- _____ **F.** Other (give reason) _____

Authorized Representative Signature

Date

Print Name

M/WBE 105A

REQUEST FOR WAIVER FORM

BIDDER/APPLICANT NAME:

TELEPHONE:

ADDRESS:

EMAIL:

FEDERAL ID NO.:

CITY, STATE, ZIPCODE:

RFP#/PROJECT NO.:

INSTRUCTIONS: By submitting this form and the required information, the bidder/applicant certifies that Good Faith Efforts have been taken to promote M/WBE participation pursuant to the M/WBE goals set forth under this RFP/Contract. Please see Page 2 for additional requirements and document submission instructions.

BIDDER/APPLICANT IS REQUESTING (check all that apply):

☐ **MBE Waiver** - A waiver of the MBE goal for this procurement is requested.

☐ **Total**

☐ **Partial** _____%

☐ **WBE Waiver** - A waiver of the WBE goal for this procurement is requested.

☐ **Total**

☐ **Partial** _____%

☐ **Waiver Pending ESD Certification**

(check here if subcontractor or supplier is not certified M/WBE, but an application for certification has been filed with Empire State Development)

Subcontractor/Supplier Name: _____

Date of application filing: _____

PREPARED BY (Signature): _____

DATE: _____

SUBMISSION OF THIS FORM CONSTITUTES THE BIDDER/APPLICANT'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR PROPOSAL DISQUALIFICATION.

NAME OF PREPARER:	FOR AUTHORIZED USE ONLY
TITLE OF PREPARER: TELEPHONE: EMAIL:	REVIEWED BY: _____ DATE: _____ WAIVER GRANTED ☐ YES ☐ NO ☐ TOTAL WAIVER ☐ PARTIAL WAIVER ☐ ESD CERTIFICATION WAIVER ☐ NOTICE OF DEFICIENCY ☐ CONDITIONAL WAIVER COMMENTS:

M/WBE 101

REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

When completing the Request for Waiver Form, please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1-11, as listed below. If a Waiver Pending ESD Certification is requested, please see Item 11 below. Copies of the following information and all relevant supporting documentation must be submitted along with the request.

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses made by certified M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Bidder/Applicant and the M/WBEs undertaken for purposes of complying with the certified M/WBE participations goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number and email address of the Bidder/Applicant's representative authorized to discuss and negotiate this waiver request.
11. Copy of notice of application receipt issued by Empire State Development (ESD).

NOTE: Unless a Total Waiver has been granted, Bidder/Applicant 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 NYSED, to determine M/WBE compliance.

EQUAL EMPLOYMENT OPPORTUNITY - STAFFING PLAN (Instructions on Page 2)

Applicant Name: _____

Telephone: _____

Address: _____

Federal ID No.: _____

City, State, ZIP: _____

Project No: _____

Report includes:

☐ Work force to be utilized on this contract OR

☐

☐ Applicant's total work force

☐

Enter the total number of employees in each classification in each of the EEO-Job Categories identified.

EEO - Job Categories	Total Work Force	Race/Ethnicity - report employees in only one category																	
		Hispanic or Latino		Not-Hispanic or Latino															
				Male									Female						
		Male	Female	White	African-American or Black	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	Disabled	Veteran	White	African-American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	Disabled	Veteran
Executive/Senior Level Officials and Managers																			
First/Mid-Level Officials and Managers																			
Professionals																			
Technicians																			
Sales Workers																			
Administrative Support Workers																			
Craft Workers																			
Operatives																			
Laborers and Helpers																			
Service Workers																			
TOTAL																			

PREPARED BY (Signature): _____

DATE: _____

NAME AND TITLE OF

PREPARER: _____

TELEPHONE/EMAIL: _____

(Print or type)

EEO 100

STAFFING PLAN INSTRUCTIONS

General Instructions: All Bidders/Applicants in the proposal/application must complete an EEO Staffing Plan (EEO 100) and submit it as part of the package. Where the work force to be utilized in the performance of the State contract/project can be separated out, the Bidder/Applicant shall complete this form only for the anticipated work force to be utilized on the State contract/project. Where the work force to be utilized in the performance of the State contract/project cannot be separated out, the Bidder/Applicant shall complete this form for Bidder/Applicant's total work force.

Instructions for Completing:

1. Enter the Project number that this report applies to, along with the name, address, and federal ID number of the Bidder.
2. Check the appropriate box to indicate if the work force being reported is just for the contract/project or the Bidder/Applicant's total work force.
3. Check off the appropriate box to indicate if the Bidder completing the report is the contractor or subcontractor.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and race/ethnic background and enter under the heading Race/Ethnicity. Contact the M/WBE Coordinator, mwbe@mail.nyused.gov, if you have any questions.
6. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in designated areas.

RACE/ETHNIC IDENTIFICATION

For purposes of this form NYSED will accept the definitions of race/ethnic designations used by the federal Equal Employment Opportunity Commission (EEOC), as those definitions are described below or amended hereafter. (Be advised these terms may be defined differently for other purposes under NYS statutory, regulatory, or case law). Race/ethnic designations as used by the EEOC do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. The race/ethnic categories for this survey are:

- **Hispanic or Latino** - A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.
- **White (Not Hispanic or Latino)** - A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
- **Black or African American (Not Hispanic or Latino)** - A person having origins in any of the black racial groups of Africa.
- **Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino)** - A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- **Asian (Not Hispanic or Latino)** - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- **American Indian or Alaska Native (Not Hispanic or Latino)** - A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.
- **Two or More Races (Not Hispanic or Latino)** - All persons who identify with more than one of the above five races.
- **Disabled** - Any person who has a physical or mental impairment that substantially limits one or more major life activity; has a record of such an impairment; or is regarded as having such an impairment
- **Vietnam Era Veteran** - a veteran who served at any time between and including January 1, 1963 and May 7, 1975.

EEO 100

**ATTACHMENT IX
EVALUATION RUBRIC**

**Family and Community Engagement Program (FCEP)
2016-2017 Funding Application
Evaluation Rubric**

Applicant:			
Reviewer's Initials:	Review Completed:	Funding Requested:	Score:

Evaluation Process

Reviewers are asked to evaluate each technical component as listed in the Grant-Contract on a scale provided for each component. In all sections, raters may choose to give a score between any two listed numbers if they feel that a score falls between those two numbers. Reviewers will review applications independently and keep applications and scores confidential. Reviewer comments are required to support the score given in each section.

Rating Guidelines:

- Excellent - Specific and comprehensive. Complete, detailed and clearly articulated information as to how the criteria are met. Well-conceived and thoroughly developed ideas.
- Good - General but sufficient detail. Adequate information as to how the criteria are met, but some areas are not fully explained and/or questions remain. Some minor inconsistencies and weaknesses.
- Fair - Sketchy and non-specific. Criteria appear to be minimally met, but limited information is provided about approach and strategies. Lacks focus and detail.
- Poor - Does not meet the criteria, fails to provide information; provides information that requires substantial clarification as to how the criteria are met.
- Not Found (N/F) - Does not address the criteria or simply restates the criteria.

Executive Summary (0 points)

The proposal briefly and concisely describes the purpose and goals of the project and how the goals will be accomplished.	Excellent	Good	Fair	Poor	N/F
Comments:					

Organizational Background (6)

The proposal provides an overview and brief description of the applicant school, district, and administrative structure	Excellent	Good	Fair	Poor	N/F
	2	1.5	1	.5	0
The proposal provides an explanation why the district is qualified for a Family and Community Engagement Program (FCEP)	2	1.5	1	.5	0
The proposal provides a brief history, accomplishments, qualifications, and educational experience in serving the needs of underrepresented and at risk populations	1	.75	.5	.25	0
The proposal provides an explanation of the Internal Program Relationships	1	.75	.5	.25	0
Comments: Score () out of 6					

Need and Cooperative Relationships (6 points)

Proposal describes the need explaining why the school seeks to operate a FCEP project and the student groups selected for involvement	Excellent	Good	Fair	Poor	N/F
	2	1.5	1	.5	0
Proposal describes the criteria and processes used to solicit, recruit and involve community organizations and groups, businesses, and institutions of higher education in forming FCEP partnerships.	2	1.5	1	.5	0
Proposal provides a description of the roles and responsibilities of any other local education agencies, school district(s), community-based organizations, and all other parties who will participate in the project.	1	.75	.5	.25	0
Proposal describes the school's plan to coordinate and integrate FCEP activities into a systematic approach of enhancing student achievement and college/career readiness	1	.75	.5	.25	0
Comments: _____ Score () out of 6					

Program Objectives, Strategies, Services and Performance Measures/Data Sources (42 points)

Goal 1: Proposal outlines strategies to develop the knowledge and skills of school personnel, families, and community members to address student learning and abilities at each grade level: Specifically the proposal identifies initiatives to:	Excellent	Good	Fair	Poor	N/F
Align with school and district achievement goals and connect families to the teaching and learning goals for the students	4.5	3.375	2.25	1.125	0
Increase family participation in each child's education by implementing family and community engagement strategies based on current research	2	1.5	1	.5	0
Bring families and staff together for shared learning to create collective learning environments that foster peer learning and communications networks among families and staff	3	2.25	1.5	.75	0
Increase capacity to engage staff, families, and community to improve student outcomes	4.5	3.375	2.25	1.125	0
Comments: Objective 1 Score () out of 14					
Goal 2: Proposal outlines strategies to provide access to multi-level networks that foster respect and trust in building family relationships with the school and school community Specifically the proposal identifies initiatives to:	Excellent	Good	Fair	Poor	N/F
Expand beyond mailings, automated phone calls, and even incentives like meals and prizes for attendance	1	.75	.5	.25	0
Form effective partnerships that are					

integrated into all aspects of its improvement strategy	1	.75	.5	.25	0
Encourage support from, and collaboration with, families, community-based organizations, and local associations in communities with high populations of underrepresented and at risk populations.	3	2.25	1.5	.75	0
Develop an effective engagement strategy that is employed by the school staff, parents, and community members, and understand the infrastructure and skills required to sustain it	3	2.25	1.5	.75	0
Comments: Objective 2 Score () out of 8					
Goal 3: Proposal outlines strategies to create an environment where partnerships thrive in a comfortable, culturally diverse, and engaging atmosphere that fosters respect and trust Specifically the proposal identifies initiatives to:	Excellent	Good	Fair	Poor	N/F
Provide outreach in families' home language to explain curriculum, school programming, special education services, enrichment programs, and the importance of school attendance	4.5	3.375	2.25	1.125	0
Focus on building the intellectual, social, and human capital of stakeholders engaged in the program	4.5	3.375	2.25	1.125	0
Ensure that staff and families can receive information on skills and tools, but must also have the opportunity to practice what they have learned and receive feedback and coaching from each other, peers, and facilitators	2	1.5	1	.5	0
Provide advocacy services to assist and support families navigating the educational system as they help	2	1.5	1	.5	0

Comments:		Objective 3 Score () out of 13			
Goal 4: Proposal outlines strategies to commit to building and sustaining child-centered roles for the school, family, and community that values student learning and social and emotional development as equal educational partners Specifically the proposal identifies initiatives to:	Excellent	Good	Fair	Poor	N/F
Adopt and implement a family and community involvement policy that is approved by the local Board of Education based upon the criteria identified	2	1.5	1	.5	0
Focus on empowering and enabling participants to be confident, active, knowledgeable, and informed stakeholders in the transformation of their schools and neighborhoods	2	1.5	1	.5	0
Become core components of educational goals such as school readiness, student achievement, and school turnaround	1	.75	.5	.25	0
Design family, extended family, and community practices that are directly connected to student learning	1	.75	.5	.25	0
Incorporate the use of mentors, teachers/tutors, and other high quality support systems that are designed to improve student achievement and ensure a lasting and positive effect on classroom performance	1	.75	.5	.25	0
Comments:		Objective 4 Score () out of 7			

Total of Goals 1-4 Scores

Goal 1 Score ()

Goal 2 Score ()

Goal 3 Score ()

Goal 4 Score ()

Total Score () out of 42

Project Staffing and Management (6 points)

	Excellent	Good	Fair	Poor	N/F
Proposal describes a management plan that will assure the effective completion of project activities given the fiscal and other resources available	3	2.25	1.5	.75	0
Proposal provides an organizational chart which indicates the management structure of the program within the district	1	.75	.5	.25	0
Proposal describes all professional staff positions (full-time and part-time, paid and volunteer) that will be assigned directly to the project. Define role and scope of designated positions	1	.75	.5	.25	0
Proposal lists the names and titles of all full-time and part-time professional and instructional staff for the project	1	.75	.5	.25	0
Comments:	Score () out of 6				

Budget/Budget Narrative (20 points)

	Excellent	Good	Fair	Poor	N/F
The Proposed Budget, FS-10, and Budget Narrative provide complete information and indicate all proposed expenditures from FCEP, institutional and other source funds. The budget is appropriate and consistent with the scope of the services.	5	3.75	2.5	1.25	0
Proposed expenditures are reasonable and cost effective.	5	3.75	2.5	1.25	0
Each salaried position is identified by title, anticipated salary amount and the time contribution to the FCEP. Indicate the per diem or hourly rate for each consultant identified under the Purchased Services Category. Provide the unit rate or estimate for all services or items.	5	3.75	2.5	1.25	0
The proposal demonstrates how the expenditures and activities are supplemental to and do not supplant or duplicate services currently provided.	5	3.75	2.5	1.25	0
Comments: Score () out of 20					

Scoring

Executive Summary

Organizational Background () out of 6

Need & Cooperative Relationships () out of 6

Program Objectives, Strategies, Activities, Services
And Performance Measures/Data Sources () out of 42

Project Staffing and Management () out of 6

Budget/Budget Narrative () out of 20

Total Score: () out of 80

Additional Comments:

Appendix A
STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

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

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

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

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

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

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or

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

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

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

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

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

The Omnibus Procurement Act of 1992 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) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 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 Section 5-a, if the contractor fails to make the certification required by Tax Law Section 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/Offerors pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the 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. (January 2014)

ATTACHMENT XI

APPENDIX A-1 G

General

- A. In the event that the Contractor shall receive, from any source whatsoever, sums the payment of which is in consideration for the same costs and services provided to the State, the monetary obligation of the State hereunder shall be reduced by an equivalent amount provided, however, that nothing contained herein shall require such reimbursement where additional similar services are provided and no duplicative payments are received.
- B. This agreement is subject to applicable Federal and State Laws and regulations and the policies and procedures stipulated in the NYS Education Department Fiscal Guidelines found at <http://www.nysed.gov/cafe/>.
- C. For each individual for whom costs are claimed under this agreement, the contractor warrants that the individual has been classified as an employee or as an independent contractor in accordance with 2 NYCRR 315 and all applicable laws including, but not limited to, the Internal Revenue Code, the New York Retirement and Social Security Law, the New York Education Law, the New York Labor Law, and the New York Tax Law. Furthermore, the contractor warrants that all project funds allocated to the proposed budget for Employee Benefits, represent costs for employees of the contractor only and that such funds will not be expended on any individual classified as an independent contractor.
- D. Any modification to this Agreement that will result in a transfer of funds among program activities or budget cost categories, but does not affect the amount, consideration, scope or other terms of this Agreement must be approved by the Commissioner of Education and the Office of the State Comptroller when:
 - a. The amount of the modification is equal to or greater than ten percent of the total value of the contract for contracts of less than five million dollars; or
 - b. The amount of the modification is equal to or greater than five percent of the total value of the contract for contracts of more than five million dollars.
- E. Funds provided by this contract may not be used to pay any expenses of the State Education Department or any of its employees.

Terminations

- A. The State may terminate this Agreement without cause by thirty (30) days prior written notice. In the event of such termination, the parties will adjust the accounts due and the Contractor will undertake no additional expenditures not already required. Upon any such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder.

Responsibility Provisions

- A. **General Responsibility Language**
The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Education or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- B. **Suspension of Work (for Non-Responsibility)**
The Commissioner of Education or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Education or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

C. Termination (for Non-Responsibility)

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate SED officials or staff, the Contract may be terminated by the Commissioner of Education or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of Education or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

Safeguards for Services and Confidentiality

- A. Any copyrightable work produced pursuant to said agreement shall be the sole and exclusive property of the New York State Education Department. The material prepared under the terms of this agreement by the Contractor shall be prepared by the Contractor in a form so that it will be ready for copyright in the name of the New York State Education Department. Should the Contractor use the services of consultants or other organizations or individuals who are not regular employees of the Contractor, the Contractor and such organization or individual shall, prior to the performance of any work pursuant to this agreement, enter into a written agreement, duly executed, which shall set forth the services to be provided by such organization or individual and the consideration therefor. Such agreement shall provide that any copyrightable work produced pursuant to said agreement shall be the sole and exclusive property of the New York State Education Department and that such work shall be prepared in a form ready for copyright by the New York State Education Department. A copy of such agreement shall be provided to the State.
- B. All reports of research, studies, publications, workshops, announcements, and other activities funded as a result of this proposal will acknowledge the support provided by the State of New York.**
- C. This agreement cannot be modified, amended, or otherwise changed except by a written agreement signed by all parties to this contract.**
- D. No failure to assert any rights or remedies available to the State under this agreement shall be considered a waiver of such right or remedy or any other right or remedy unless such waiver is contained in a writing signed by the party alleged to have waived its right or remedy.
- E. Expenses for travel, lodging, and subsistence shall be reimbursed in accordance with the policies stipulated in the aforementioned Fiscal guidelines.
- F. No fees shall be charged by the Contractor for training provided under this agreement.
- G. Nothing herein shall require the State to adopt the curriculum developed pursuant to this agreement.
- H. All inquiries, requests, and notifications regarding this agreement shall be directed to the Program Contact or Fiscal Contact shown on the Grant Award included as part of this agreement.
- I. This agreement, including all appendices, is, upon signature of the parties and the approval of the Attorney General and the State Comptroller, a legally enforceable contract. Therefore, a signature on behalf of the Contractor will bind the Contractor to all the terms and conditions stated therein.
- J. The parties to this agreement intend the foregoing writing to be the final, complete, and exclusive expression of all the terms of their agreement.

Iran Divestment Act

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

By entering into this Contract, Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Contractor agrees that after the list is posted on the OGS website, should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before SED may approve a request for Assignment of Contract

During the term of the Contract, should SED receive information that a person is in violation of the above-referenced certification, SED will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then SED shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

SED reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award 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. Rev. 6/4/13

The City of Newburgh

Office of the Corporation Counsel

City Hall – 83 Broadway
Newburgh, New York 12550

Michelle Kelson
Corporation Counsel

Tel. (845) 569-7335
Fax. (845) 569-7338

MEMORANDUM

TO: Councilwoman Genie Abrams
Councilwoman Regina Angelo
Councilman Cedric Brown
Councilwoman Cindy Holmes
Councilwoman Gay Lee
Councilwoman Karen Mejia
Mayor Judith L. Kennedy

FROM: Michelle Kelson, Corporation Counsel

DATE: July 29, 2016

CC: Michael G. Ciaravino, City Manager

RE: Police Community Relations and Review Board

By memorandum dated September 29, 2015, I advised that the terms of the initial appointments of the following PCRRB member expire on October 31, 2015. Since the date on which I wrote that memorandum, several PCRRB members resigned their positions. Additionally, the terms of other PCRRB members will expired on October 31, 2016.

To date, the PCRRB members and terms are as follows:

Ward 1:	Jose Castaneda	November 1, 2014	October 31, 2016
	Jahtayzia Faison	February 1, 2016	October 31, 2017
Ward 2:	Vacant		
	Gabrielle Hill	February 2, 2016	October 31, 2017
Ward 3:	Vacant		
	Patrick Berardinelli	November 1, 2014	October 31, 2016

Ward 4:	Lenny Lewis	November 1, 2014	October 31, 2015
	Anthony Bruce	November 1, 2014	October 31, 2016

Chairman:	Corey Allen	January 13, 2015	January 12, 2017.
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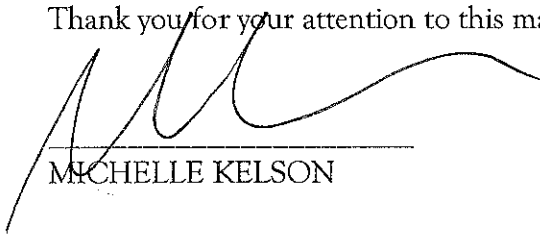
Currently, there are 2 vacancies and 1 holdover. Three appointments expire on October 31, 2016.

In accordance with City Code Section 72-3(C)(2), the Council members of the respective wards may re-appoint the current members for a full two (2) year term or a new appointment may be made for a full term of two (2) years. Under City Code Section 72-2(C)(3), the current members will continue to serve until they are re-appointed or their successors are appointed.

The Law Department can assist you with preparing new appointment letters or re-appointment letters. Under the Public Officers Law, new appointees or re-appointees must take their oath with the City Clerk within thirty days of appointment.

The PCRRB established the fourth Wednesday of each month as its regular meeting night. The PCRRB was unable to field a quorum to transact business in June, August & September of 2015 and January, March, April and June of 2016. In order for the PCRRB to function and fulfill its mission and purpose, dedicated appointees are required. Please canvass your neighborhoods for City residents who are willing to devote the time and attention to an area of community leadership and service in an area of vital importance to the City of Newburgh. Six appointments are needed before October 31, 2016.

Do not hesitate to contact the undersigned if you have questions or require additional information. Thank you for your attention to this matter.



MICHELLE KELSON

MK/bhs

City of Newburgh, NY
Wednesday, February 25, 2015

Chapter 72. Police Community Relations and Review Board

§ 72-1. Findings and purpose.

- A. The City Council of the City of Newburgh finds that it is in the public interest of the citizens of the City of Newburgh have an effective forum to improve the relationship between the community and the City of Newburgh Police Department through the exchange of ideas and discussion of problems within the City relating to crime and crime prevention and other law enforcement objectives.
- B. The City Council further finds that it is important to have a method by which City residents can make requests for law-enforcement-related services.
- C. The City Council further finds that an effective program to improve the relationship between the community and the City of Newburgh Police Department requires an independent authority to review the conduct of law enforcement officials.
- D. The purpose of Chapter 72 of the City Code of Ordinances is to create an independent, nonexclusive body to review complaints of misconduct by members of the City of Newburgh Police Department. The goals of this chapter are to improve the communication between the City of Newburgh Police Department and the community, to increase police accountability and credibility with the public and to create a fair and impartial complaint process.

§ 72-2. Definitions.

For purposes of this chapter, the following words and phrases shall have the meaning described in this section:

CHIEF

The Police Chief of the City of Newburgh Police Department.

COMPLAINT

A written statement concerning police conduct which is submitted to the Police Community Relations and Review Board or filed directly with the City of Newburgh Police Department.

IMMEDIATE FAMILY

Spouse, domestic partner, child, stepchild, mother, father, mother-in-law, father-in-law, grandparent.

MEDIATION

A structured dispute resolution process in which a neutral third party assists the disputants to reach a negotiated settlement of their differences.

OFFICER

Sworn member of the City of Newburgh Police Department.

PCRRB

Police Community Relations and Review Board.

PROFESSIONAL STANDARDS

Administrative Lieutenant of the City of Newburgh Police Department.

§ 72-3. Composition, appointment, removal and vacancy.

- A. There is hereby established a Police Community Relations and Review Board comprised of nine members.
- B. Appointment to the PCRRB shall be made as follows:
 - (1) Two members from each of the four wards shall be appointed by the Council member elected from each ward.
 - (2) One member shall be appointed by the City Council, and such member shall be designated as the Chair of the PCRRB.
 - (3) If a Council member fails or refuses to appoint a member to the PCRRB under § 72-3B(1) and a vacancy exists for more than 60 days from the date the notice of vacancy is provided to the City Council by the PCRRB Chair, then the City Council as a whole may make such appointment.
 - (4) When a PCRRB vacancy has existed for at least 60 days from the date the notice of vacancy is provided to the City Council by PCRRB Chair and the City Council has not acted to make an appointment to fill such vacancy, the PCRRB, by a simple majority, shall have the right to nominate person(s) for review and appointment by the City Council.
- C. Terms.
 - (1) Members shall be appointed for two-year terms; provided, however, that of the members initially appointed by the Council member representing a ward, one shall be for a term of one year and one shall be for a term of two years.
 - (2) No member of the PCRRB shall serve for a period which exceeds two full consecutive terms; provided, however, that a member may be considered for reappointment after one year of nonmembership.
 - (3) Members shall continue to serve on the PCRRB until their successors are appointed.
- D. Removal.
 - (1) The PCRRB, by a simple majority vote of the entire Board, may upon good cause request that the City Council remove a PCRRB member where appropriate.
 - (2) The Mayor and/or a City Council member may upon good cause request that the City Council remove a PCRRB member.
 - (3) PCRRB members may be removed from the PCRRB by a majority plus one vote of the City Council.
- E. Vacancies. Any vacancy which occurs by resignation, death or removal of a PCRRB member shall be filled within 60 days in the same manner as the predecessor to fill the unexpired term.

§ 72-4. Members.

A. Qualifications of members:

- (1) Members of the PCRRB shall reside in the City of Newburgh and be at least 18 years old at the time of appointment.
- (2) Members of PCRRB shall possess a reputation for fairness, integrity and responsibility and have demonstrated an active interest in public affairs and service.
- (3) The City Council shall endeavor to reflect the City's diverse community with respect to age, disability, ethnicity, race, gender, sexual orientation, income level and experience in making their appointments.
- (4) Members of the PCRRB or members of their immediate family shall not be employed by the City of Newburgh Police Department or any local, state or federal law enforcement agency.
- (5) Members of the PCRRB shall not be members of the immediate family of any incumbent elected official of the City of Newburgh nor have any financial ties with either members of the City of Newburgh Police Department or any incumbent elected official of the City of Newburgh.
- (6) No practicing attorney or member of his or her firm, or the immediate family of an attorney or member of his or her family who represents a plaintiff or defendant in a police misconduct lawsuit initiated against the City of Newburgh Police Department, the Police Chief of the City of Newburgh or the Newburgh PBA or a plaintiff or any family member of a plaintiff in such case shall be a member of the PCRRB.

B. Member responsibilities: PCRRB members shall:

- (1) Obey all laws respecting individuals' rights of privacy and confidentiality of records.
- (2) Recuse themselves from participating in the review of any complaint in which they have a personal, professional or financial conflict of interest.
- (3) Conduct themselves at all times in a manner that will maintain public confidence in the fairness, impartiality, and integrity of the PCRRB and refrain from making any prejudicial comments with respect to the PCRRB, complainants or police officers.

§ 72-5. Powers and duties.

- A. Training. The PCRRB shall seek and participate in a broad and independent range of training necessary to pursue the duties and responsibilities of the PCRRB as approved and funded by the City Council.

B. Meetings and administration.

- (1) The PCRRB shall adopt and the City Council shall approve rules and bylaws for the transaction of PCRRB affairs, including the manner of calling and giving notice of special meetings and the appointment and duties of any special committees.
- (2) The PCRRB shall hold regular monthly business meetings.
- (3) Five members of the PCRRB shall constitute a quorum. A quorum must be present to conduct business. Five votes shall be required for any action by the PCRRB.

- (4) The PCRRB shall hold its initial meeting within 60 days after the initial appointments are made. At its initial meeting, the PCRRB shall fix the time and place for its regularly scheduled meetings.
 - (5) The PCRRB may conduct both public and closed meetings as allowed or required by the New York State Public Officers Law, Article 7, known as the "Open Meetings Law."
- C. Recommendations; reports.
- (1) The PCRRB may make recommendations to the City Council and the Police Department regarding law enforcement, crime, crime prevention and improved relations with the community.
 - (2) The PCRRB shall file annual reports with the City Council, City Manager and the Police Chief which contain statistics and summaries of citizen complaints, including a comparison of the PCRRB's findings with the final determination of the City of Newburgh Police Department.
- D. Community outreach and education. In addition to regular monthly business meetings, the PCRRB shall hold public meetings in each ward a minimum of once each year for the purposes of inviting and facilitating public discussion between the City of Newburgh Police Department and City residents regarding law enforcement and services, crime and crime prevention and community relations within the City of Newburgh.
- E. Filing of complaints. Complaints concerning police conduct shall be filed with the PCRRB and the City of Newburgh Police Department as provided in this subsection.
- (1) Complaints shall be lodged in writing on the City of Newburgh Citizen Complaint Form as reviewed and approved by the PCRRB for such purpose and shall be signed by the complainant. Complaints shall be filed with the PCRRB at the Executive Office, City Hall, 83 Broadway, Newburgh, NY, or with the City of Newburgh Police Department, 55 Broadway, Newburgh, NY. Complaint forms shall be printed in English and Spanish and shall be available at the City of Newburgh Police Department, the City Hall Executive Office and the City Clerk's Office.
 - (2) A copy of each complaint filed with the PCRRB shall be forwarded to the City of Newburgh Police Department within five working days of its receipt. A copy of each complaint filed with the City of Newburgh Police Department shall be provided to the PCRRB within five working days of receipt by the Police Department.
 - (3) Complaints shall be filed within six months of the date of the alleged incident giving rise to the complaint. Complaints filed after six months from the date of the alleged incident shall be returned or the PCRRB may accept and review such complaint upon an affirmative vote of five members of the PCRRB.
- F. Review of complaints. A review of a complaint shall proceed as provided in this subsection.
- (1) Investigation of complaints.
 - (a) The City of Newburgh Police Chief or his designee shall investigate every complaint filed with the City of Newburgh Police Department or the PCRRB. The Chief shall file with the PCRRB quarterly reports on the status of the investigation of each complaint.
 - (b) The Police Chief or his designee shall begin its investigation of each complaint immediately upon receipt of the complaint. If the Police Chief or his designee fails to conclude the investigation within 60 days of the receipt of the complaint, he shall advise the PCRRB in writing of the status of the investigation and the estimated time for the conclusion of the investigation. Thereafter, the Police Chief or his designee shall advise

the PCRRB in writing of the status of the investigation every 30 days until the conclusion of the investigation.

- (c) Within 10 working days of the conclusion of the Police Chief's investigation, he shall submit a preliminary report of his findings to the PCRRB.
 - (d) After review and deliberation of the preliminary findings of the Police Chief, the PCRRB shall:
 - [1] Render its findings pursuant to § 72-5F(2); or
 - [2] Request that the Police Chief or his designee conduct further investigation of the complaint; or
 - [3] Obtain additional case-specific information from the Police Chief, including but not limited to written materials, audio- or videotapes and related documents; or
 - [4] Refer the complaint to mediation as provided in § 72-6.
 - (e) In the event that the PCRRB is dissatisfied with the extent and/or quality of the Chief's investigation, it shall promptly inform the City Council in writing of the specific deficiency of the investigation. In such event, the PCRRB may seek authorization from the City Council to conduct an investigation with the services of an outside independent investigator. The investigator shall be selected on a rotating basis from a panel of investigators comprised of certified investigators, attorneys, retired judges and similarly qualified individuals who are approved by the City Council. The use of an outside independent investigator shall be limited to complaints alleging use of excessive force or civil rights violations.
- (2) Findings of the PCRRB.
- (a) The PCRRB, after review and deliberation of an investigation, shall, by majority vote, make one of the following findings on the complaint:
 - [1] Sustained: where the review disclosed sufficient facts to prove the allegations made in the complaint.
 - [2] Not sustained: where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint.
 - [3] Exonerated: where the acts which provide the basis for the complaint occurred but the review shows that such acts were proper.
 - [4] Unfounded: where the review shows that the act or acts complained of did not occur or were misconstrued.
 - [5] Ineffective policy or training: where the matter does not involve guilt or lack thereof but rather ineffective departmental policy or training to address the situation.
 - [6] No finding: where the complaint failed to produce information to further the investigation; where the investigation revealed that another agency was responsible and the complaint or complainant has been referred to that agency; where the complainant withdrew the complaint; where the complainant is unable to clarify the complaint; or where the officer is no longer employed by the City.
 - [7] Mediated: where the complaint is resolved by mediation.
 - (b)

If the PCRRB fails to render any finding referenced above within 60 days of its receipt of the preliminary report of the Chief's findings, the complaint file shall be returned to the Chief for disposition of the matter, unless the PCRRB shall advise the Chief, the complainant and the affected officer(s) in writing of the reason for the delay in rendering its finding. In such case, the PCRRB shall provide the Chief, the complainant and the affected officer(s) with monthly updates on the status of the complaint. In any event, if the PCRRB fails to render a finding referenced above within 120 days of its receipt of the preliminary report of the Chief's findings, the complaint file shall be returned to the Chief for disposition of the matter.

§ 72-6. Mediation.

- A. A mediation process shall be established and coordinated by the PCRRB in accordance with this section.
- B. Mediation shall be conducted at no cost to the complainant or the officer by highly trained and experienced mediators selected from a list approved by the City Council. The list of mediators shall reflect community diversity. Mediators shall be required to complete an appropriate training curriculum and continuing education on issues related to the interaction between civilians and police officers from the perspective of both the citizen and police officer.
- C. After a complaint is filed under § 72-5 of this chapter, the complainant and the officer(s) may at any time in the review process utilize the mediation process herein to resolve the complaint by submitting a written request for mediation to the PCRRB. The mediation process also may be utilized after the complaint is referred to mediation by the PCRRB pursuant to § 72-5F(1)(d) of this chapter. In either case, the mediation shall proceed as promptly as possible after a request for mediation or a referral to mediation is made. Mediation may proceed only on the agreement of the officer with the approval of the Chief and the agreement of the complainant.
- D. Every reasonable effort shall be made to schedule mediation during an officer's normal working hours.
- E. Mediators shall conduct mediation sessions with officers and complainants at times and places agreed upon by the parties.
- F. In conducting the mediation sessions, the mediators may not impose an outcome on the parties.
- G. Mediation sessions shall be closed to the public. Matters discussed shall be confidential unless both parties agree otherwise as part of a written mediation settlement.
- H. Statements and records disclosed during mediation may not be disclosed or introduced in evidence during any judicial or administrative proceeding, and mediators may not be compelled by subpoena to give testimony or produce anything related to the mediation.
- I. The PCRRB and the Chief will be informed whether the mediation sessions result in a resolution of the dispute. If the mediation sessions do not result in a resolution of the dispute, the PCRRB review process referenced in this chapter shall continue to conclusion. If the mediation sessions do result in a resolution of the dispute, the PCRRB shall issue a finding of "mediated" and the allegations shall be deleted from the officer's PCRRB history.

§ 72-7. Suspension of proceedings.

Upon the written recommendation of the Corporation Counsel, the City Council may suspend the PCRRB review of any complaint where a separate criminal investigation is under way or where a civil action against the City is under way or pending. Upon the conclusion of such separate proceedings, the PCRRB may resume or undertake its review.

§ 72-8. Construction of chapter.

No report, finding or determination made pursuant to this chapter shall in any way conflict with or abridge the rights of complainants or officers guaranteed by the United States Constitution, the New York State Constitution or any federal or state law, rule, regulation or administrative order.

§ 72-9. Severability.

If any clause, sentence, paragraph, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid or otherwise unenforceable, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

From: Austin DuBois <austin.dubois@gmail.com>

Date: July 21, 2016 at 1:43:05 PM EDT

To: Michael Ciaravino <mciaravino@cityofnewburgh-ny.gov>, <citycouncil@cityofnewburgh-ny.gov>

Subject: Civil Service Commission board vacancy

Dear Mr. Ciaravino and Honorable City Councilpeople:

Please accept this as my letter of interest in serving on the board of the city's Civil Service Commission. I have been a city resident since June 2013, and recently bought a house here with my fiancée, where we will be raising our family. I currently serve on the city's Industrial Development Agency board, and am happy to further serve the community on the CSC. My love for Newburgh and its residents may be relatively new, but it is strong. They deserve the dedicated service of all able to give it.

I have been a practicing attorney for 9 years, and I serve on a handful of other civic and charitable boards. Therefore, I am familiar with board organization, decisionmaking, function, and the concepts of conflict of interest and fiduciary duty. If selected for this position, I am committed, above all, to discharging my duties with integrity and diligence.

Thank you for taking the time to consider my interest. Please do not hesitate to contact me if you see fit to grant me an interview or to otherwise continue the process.

Best Regards,

Austin F. DuBois
34 City Terrace North
austin.dubois@gmail.com
(215) 528-3383

Sent from [Mail](#) for Windows 10

I request my name be placed on the list of candidates for the appointment of the civil service commission.

I am retired from the City of Newburgh Fire Department Member of the Charter review commission, I now service as Secretary for the City IDA.

Resume; Life time City of Newburgh resident and home owner.

4 Years USN

Retired NFD

President local 589 union NFD 8 years

Former Chairman City of Newburgh Republican Party 11 Years

Secretary City of Newburgh IDA 7 years

Former member City of Newburgh Charter review commision

My first job with the City of Newburgh was with the Parks Department 1949.

I am retired and have free time if I can be of any service for the City I am available at

John F. Penney 18 Temple Ave. Newburgh N.Y. 12550 845 561-7211 cell 845 219-4271