

Revised 2017

**AGREEMENT FOR MAINTENANCE, REPAIR AND ENERGIZING OF HIGHWAY SIGNALS
IDENTIFIED AS**

SR # 5095; 1312

**LOCATION South Broadway and West Market- NYS Route 9 & Route 199,
Village of Red Hook, Dutchess County
P.I.N. 80PS.02**

Agreement # 4

This Agreement, made this 2/12/2019 between:

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

and

the Board of Trustees of the Village of Red Hook which is herein referred to as the
"MUNICIPALITY".

WITNESSETH:

WHEREAS, pursuant to Highway Law §10 (24) the Commissioner of Transportation (the
"Commissioner"), may at the expense of the state, or using federal funds, provide for the
construction/installation of solar powered pedestrian crosswalk lighting system, provided the
Commissioner deems it practicable to perform such work for such Municipality/Sponsor in
connection with the performance of any work of construction, reconstruction or improvement
under the Highway Law; and

WHEREAS, the COMMISSIONER proposes to reconstruct a State Highway pursuant to
the New York State Highway Law, such highway being identified as State Highway (S.H.) 5095
and S.H. 1312 in Dutchess County within the geographical jurisdiction of the MUNICIPALITY
and geographical jurisdiction of Village of Red Hook in Dutchess County and

WHEREAS, the MUNICIPALITY desires to have solar powered pedestrian crosswalk
lighting system on or along such highway within the geographical jurisdiction of the
MUNICIPALITY; and

WHEREAS, it is recognized by the MUNICIPALITY and the COMMISSIONER that if the
MUNICIPALITY desires to have solar powered pedestrian crosswalk lighting system on or along
such highway within the geographical jurisdiction of the MUNICIPALITY, the MUNICIPALITY will
have to maintain, repair and energize such solar powered pedestrian crosswalk lighting system
at its own expense; and

WHEREAS, the MUNICIPALITY by **Resolution No. #4 – 2019** adopted and approved
the plan for the installation, maintenance and energizing of said solar powered pedestrian
crosswalk lighting system and has provided such Resolution hereto, and has further authorized

the Board of Trustees of the MUNICIPALITY to execute this Agreement on behalf of the MUNICIPALITY; and

WHEREAS, the Board of Trustees of Village of Red Hook and the COMMISSIONER are desirous of identifying the respective responsibilities of the parties with regard to the solar powered pedestrian crosswalk lighting system.

NOW, THEREFORE, in consideration of the mutual promises and benefits moving to the parties, it is agreed as follows:

ARTICLE 1: DOCUMENTS FORMING THIS AGREEMENT. The parties agree that the Agreement consists of the following:

- a. Agreement: This document, entitled "Agreement for Maintenance, Repair and Energizing of Highway Lighting for State highway identified as SR# 5095:1312; South Broadway and West Market – NYS Route 9 & Route 199"
- b. Schedule "A" - Description of Project, funding and deposit requirements;
- c. Appendix "A" - New York State Required Contract Provisions;
- d. Municipal Resolution(s): duly adopted resolution authorizing this agreement and the appropriate municipal office to execute the Agreement and undertake the project on the terms and conditions set forth herein.

ARTICLE 2: PROJECT RESPONSIBILITIES.

2.1 The COMMISSIONER shall provide for the furnishing and placing of the following items in connections with solar powered pedestrian crosswalk lighting system on the above mentioned highway:

- a. Anchor bolts on structures.
- b. Foundation for signs.
- c. Light standards and bracket arms.
- d. Luminaries, wiring, switches and ballasts and all other components necessary to complete the lighting system.

2.2 Upon completion of construction of the above identified highway, the MUNICIPALITY shall, at its own expense, maintain the lighting system on or along such highway. Such maintenance shall include, but not be limited to:

- a. Repair of equipment which may be damaged from any cause whatsoever.
- b. Replacement of equipment which may be damaged from any cause whatsoever, such replacement material to be of equal character to the replaced equipment.
- c. Furnishing solar current for the lighting system during the customary night hours of each day of the year, at no cost or obligation to the STATE.

ARTICLE 3: TERM.

3.1 This Agreement shall commence on February 12, 2019, and shall expire twenty-five (25) years after the date of final acceptance of the Project. The MUNICIPALITY shall continue to maintain the solar powered pedestrian crosswalk lighting system for the period of **its useful life** or until such time as the COMMISSIONER at his/her discretion determines that such solar powered pedestrian crosswalk lighting system and/or the maintenance of such solar powered pedestrian crosswalk lighting system is no longer necessary for such State Arterial.

3.2 The MUNICIPALITY agrees not to assign, transfer, convey, sublet or otherwise dispose of this agreement or any part thereof, or its right, title, or interest therein, or its power to execute such agreement to any person, company or corporation without prior consent in writing to the COMMISSIONER except as herein provided by Resolution attached hereto.

3.3 The COMMISSIONER herewith extends his/her consent to the MUNICIPALITY to establish a lighting district and transferring responsibility for maintenance of the solar powered pedestrian crosswalk lighting system and payment of ensuing energy cost to the MUNICIPALITY.

ARTICLE 4: REMEDIES.

4.1 In the event the MUNICIPALITY, without the prior consent of the COMMISSIONER, discontinues the energizing or discontinues payment for the energizing of the solar powered pedestrian crosswalk lighting system, which results in the STATE being required to pay the Federal government any moneys, as a penalty or otherwise, the MUNICIPALITY, upon notification by the COMMISSIONER of such requirement to pay, shall reimburse the STATE the amount of such required payment.

4.2 Further, it is expressly understood that the MUNICIPALITY shall indemnify and save harmless the STATE from claims, suits, actions, damages and costs of every name and description resulting from the discontinuance of the energizing or discontinuance of payment for energizing of the solar powered pedestrian crosswalk lighting system by the MUNICIPALITY.

4.3 The COMMISSIONER or the COMMISSIONER's representative may periodically inspect the solar powered pedestrian crosswalk lighting system provided and installed under the above identified project number to ascertain that the solar powered pedestrian crosswalk lighting system is being maintained in accordance with the terms of this Agreement and in condition satisfactory to the COMMISSIONER. The COMMISSIONER shall, in writing, notify the MUNICIPALITY of any observed deficiencies, listing such deficiencies within thirty (30) days of receipt of such notification. The COMMISSIONER or his/her representative shall arrange for a meeting to be held with the authorized representative of the MUNICIPALITY. At such meeting the COMMISSIONER or his/her representative and the authorized representative of the MUNICIPALITY shall discuss the means required to remedy the noted deficiencies. Based on the discussion, and based on the nature of the required remedial action, a reasonable time limit shall be mutually established by the COMMISSIONER or his/her representative and the authorized representative of the MUNICIPALITY for the satisfactory completion of remedial action by the MUNICIPALITY.

4.4 It is recognized by the parties hereto that failure of the MUNICIPALITY to complete the required remedial actions within the agreed upon time limit may subject the MUNICIPALITY to certain penalties. If the equipment supplied and installed by the STATE for the above subject solar powered pedestrian crosswalk lighting system was done pursuant to a Federally aided and Federally reimbursable contract, and the MUNICIPALITY fails to make the remedial actions within the agreed upon time limit, no further Federally aided project shall be approved for the MUNICIPALITY until such time as the solar powered pedestrian lighting system is restored to the level and condition of maintenance required by this Agreement. In addition, failure of the MUNICIPALITY to make such remedial actions may subject the MUNICIPALITY to loss of State aid for other municipal contract.

ARTICLE 5: TERM OF AGREEMENT; EARLY TERMINATION. The term of this agreement shall extend for a period of twenty-five (25) years after the date of final acceptance for the Project. Prior to the expiration of the Agreement, the Municipality shall review the Agreement and determine whether it desires to continue maintaining said lighting system. If at any time after the useful life of the solar powered pedestrian crosswalk lighting system the MUNICIPALITY, in its discretion, determines that it does not desire to maintain said solar powered pedestrian crosswalk light system, it will so notify the COMMISSIONER.

5.1 Where the MUNICIPALITY has no desire to maintain the solar powered pedestrian crosswalk lighting system, said fixtures will be removed by the STATE at the expense of the MUNICIPALITY, unless the STATE has funds available to maintain, repair and energize said solar powered pedestrian crosswalk lighting system, and the COMMISSIONER, in his/her discretion, determines that such solar powered pedestrian crosswalk lighting system is necessary for such State Highway. Upon notification by the COMMISSIONER of the removal cost, the MUNICIPALITY shall reimburse the STATE the amount specified. The cost of removal includes but is not limited to review and upgrading of roadway delineation features, including pavement markings, and any and all penalties, fees and/or other costs for unamortized fixtures which the STATE is required to pay the Federal Government.

ARTICLE 6: NOTICE REQUIREMENTS

6.1 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 address as follows or to such different addresses as the parties may from time-to-time designate:

New York State Department of Transportation (NYSDOT)

Name: Lance MacMillan

Title: Regional Director

Address: 4 Burnett Blvd., Poughkeepsie, NY 12603

Telephone Number: 845-431-5750

Facsimile Number:

E-Mail Address: Lance.MacMillan@dotny.gov

Municipality: Village of Red Hook

Name: Ed Blundell

Title: Mayor

Address: 7467 South Broadway, Red Hook, NY 12571

Telephone Number: 845 758-1081

Facsimile Number: 845 758-5146

E-Mail Address: info@redhooknyvillage.org

ARTICLE 7: PROJECT; MUNICIPAL PAYMENT/DEPOSIT

7.1 NYSDOT will the remove, relocate, replace and/or reconstruct the local facilities described in Schedule A annexed hereto in accordance with plans and specifications related thereto, as they may be amended or revised, and subject to such change orders as may be approved by NYSDOT in connection with its administration of the work and other work under the contract or contracts to be awarded by NYSDOT for or relating to the work under this Agreement.

7.2 The Municipality will deposit with the State Comptroller in a project escrow account the full amount of the local share (if any) of the estimated cost of the work to be performed on local facilities as described in Schedule A for payments by the Comptroller on account of Project costs and the reimbursement to the municipality of any excess amount of such deposit after project close out.

7.3 Monies in the project account shall be paid on account of facilities costs on the warrant of the State Comptroller on vouchers or requisitions approved by the Commissioner.

7.4 Upon completion and payment of the work to be performed on local facilities contemplated herein the Commissioner shall determine the costs thereof to be borne by the Municipality, and any excess of the deposit shall be paid to the Municipality on the warrant of the State Comptroller on vouchers approved by the Commissioner; and, in the event such costs exceed the amount of the deposit, the Municipality shall within 90 days of the receipt of notice from the Commissioner pay the amount of such deficiency to the State Comptroller.

7.5 The Municipality's/Sponsor's performance of its obligations hereunder is to be financed from *(check applicable source or sources if the municipal deposit is financed thereby)*:

☐ the proceeds of one or more loans from [redacted] [for name of Bank or financial institution or company] that the Municipality/Sponsor represents have been committed as evidenced by the commitment letters annexed hereto. The Municipality/Sponsor pledges proceeds of such loans to the performance of its obligations hereunder in amount sufficient to pay for work to be performed on local facilities costs hereunder;

☐ from amounts deposited by [name of Bank or financial institution or company above] with the Municipality/Sponsor into a segregated account solely for the purpose of financing work to be performed on local facilities costs, pursuant to the Municipality's/Sponsor's resolution establishing such account and providing for expenditures therefrom for such purpose;

☐ by an irrevocable letter of credit, bond or other security (annexed hereto) acceptable to NYSDOT in the full amount of estimated Project Costs per Schedule A, solely for the purpose of paying the costs for work to be performed on local facilities and providing for expenditures therefrom or sight drafts thereon by NYSDOT negotiable through and acceptable to the State's depository bank for such purpose; or

☐ from an escrow established pursuant to a written escrow agreement between the Municipality/Sponsor and the Company solely for the purpose of financing work to be performed on local facilities costs, pursuant to the Municipality's/Sponsor's resolution authorizing such escrow Agreement and providing for expenditures therefrom for such purpose.

IN WITNESS WHEREOF, the STATE has caused this instrument to be signed by the said COMMISSIONER of Transportation and the MUNICIPALITY has caused this instrument to be signed by its **authorized officer**.

Agreement No. 4

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 copies of this contract."

APPROVED:

MUNICIPALITY:

Municipal Attorney

By: _____
(Title)

STATE OF NEW YORK)
) ss:
COUNTY OF _____)

On this _____ day of _____, 20 ____, before me personally came _____, to me known, who being by me duly sworn did depose and say that he/she is the _____ of the Municipal Corporation described herein, and which executed the above instrument; that he/she knows the seal of such Municipality; that the seal affixed to said instrument is such corporate seal, that it was affixed by order of the legislative Body of said Municipal Corporation pursuant to a Resolution which was duly adopted on _____ and to which a certified copy is attached and made a part hereof; and that he signed his name thereto by like order.

Notary Public

APPROVED FOR NYSDOT:

**APPROVED AS TO FORM:
STATE OF NEW YORK ATTORNEY GENERAL**

By: _____ Date _____
For the Commissioner
of Transportation

By: _____
Assistant Attorney General

COMPTROLLER'S APPROVAL:

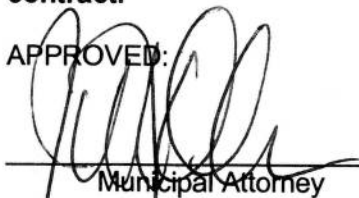
By: _____
For the New York State Comptroller
Pursuant to State Finance Law §112

IN WITNESS WHEREOF, the STATE has caused this instrument to be signed by the said COMMISSIONER of Transportation and the MUNICIPALITY has caused this instrument to be signed by its **authorized officer**.

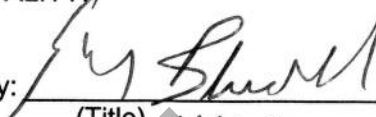
Agreement No. 4

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 copies of this contract."

APPROVED:


Municipal Attorney

MUNICIPALITY:

By: 
(Title) Mayor

STATE OF NEW YORK)

COUNTY OF Dutchess) ss:

On this 29 day of March, 20 , before me personally came Edward Blundell, to me known, who being by me duly sworn did depose and say that he/she is the Mayor of the Municipal Corporation described herein, and which executed the above instrument; that he/she knows the seal of such Municipality; that the seal affixed to said instrument is such corporate seal, that it was affixed by order of the legislative Body of said Municipal Corporation pursuant to a Resolution which was duly adopted on 3-11-2019 and to which a certified copy is attached and made a part hereof; and that he signed his name thereto by like order.


Notary Public



APPROVED FOR NYSDOT:

By: 
For the Commissioner
of Transportation

4/15/19
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

SAMPLE

RESOLUTION # 4 - 2019

TO MAINTAIN HIGHWAY SIGNALS

Highway Identified as South Broadway and West Market – NYS Route 9 & Route 199

On motion of Mayor Blundell, seconded by Trustee Kovalchik, the following resolution was adopted by the Board of Trustees of the Village of Red Hook, New York:

WHEREAS, the New York State Department of Transport proposes to construct an enhanced lighting for pedestrian crosswalks located at Prince Street; Fraleigh Street; Morgans Way, identified as along South Broadway – NYS Route 9, Village of Red Hook, County of Dutchess, and at NYS Route 199 at Benner Road within the geographical jurisdiction of the Village of Red Hook; and

WHEREAS, the New York State Department of Transportation approves of such project, will include in the pedestrian safety action plan contract #2 PIN 8OPS.02 D263742 and desires to have a solar powered highway signalized intersection lighting system along said crosswalks within its geographical jurisdiction; and

WHEREAS, the State of New York has agreed to provide as a part of the project the following items in connection with a pedestrian crosswalk lighting system:

1. Rectangular Rapid Flashing Beacon located at NYS Rt 199 at Benner Road and NYS Rt 9 at Morgans Way; plus
2. Pedestrian – activated Flashing LED: Warning Sign located at NYS Rt 9 at Prince Street and also at Fraleigh Street;

provided that the Village of Red Hook agrees to maintain, repair and energize such pedestrian crosswalk lighting system for a period of 25 years or until such lighting and/or maintenance of such lighting system is no longer necessary.

NOW, THEREFORE, BE IT RESOLVED: the Board of Trustees of the Village of Red Hook hereby approves of the above subject project; and

BE IT FURTHER RESOLVED: that the Village of Red Hook shall maintain, repair and energize such pedestrian crosswalk lighting; and

BE IT FURTHER RESOLVED: that the Board of Trustees of the Village of Red Hook hereby authorizes Mayor Edward Blundell of the Village of Red Hook to enter into and execute an Agreement with the State of New York and through the Commissioner of Transportation to commit the Village of Red Hook to maintain, at its own expense, the lighting system on the above-identified project, such agreement to provide that the maintenance shall include the repair and replacement of equipment and the furnishing of electric current for the lighting system; and

SAMPLE

BE IT FURTHER RESOLVED: that the Village Clerk is hereby directed to transmit five (5) certified copies of the foregoing resolution to the State Department of Transportation.

DATE: January 14, 2019

VOTE:

AYE:
Mayor Blundell
DM Kovalchik
Trustee Laing
Trustee Norris

ABSENT:
Trustee Trapp

State of New York)
 ss:
County of Dutchess)

I, Cynthia Chiarella, Clerk of the Village of Red Hook, in the County of Dutchess, State of New York, do hereby certify that the annexed resolution is a copy of an original on file in my office and has been duly adopted at a regular workshop meeting of the Board of Trustees of said Village held on December 20, 2018.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the said Village this 20th day of December, 2018.



Village Clerk

(Seal)

SAMPLE

**SCHEDULE A
DESCRIPTION OF PROJECT, FUNDING AND DEPOSIT REQUIREMENTS.**

Is the project linked to a State project in the area? YES

If linked to a State project, describe the State project:

The State project is Contract No. D263742, titled Pedestrian Safety Action Plan; Uncontrolled Intersections Contract #2, and is for the construction of ADA crosswalks, ramps, sidewalks in various locations in Dutchess County.

Description of the work to be performed on local facilities:

The Village of Red Hook by Resolution No. 4 adopted on the 20th day of December, 2018, requested and authorized the State Department of Transportation to proceed with the necessary arrangements to incorporate the construction of the solar powered pedestrian crosswalk lighting system located on Route number 9 and Route 199.

The State in connection with our request has incorporated the local project with the work of PIN 80PS.02 as set forth in the plans and specifications for said project.

Engineer's Estimate	\$110,000
Federal Aid Eligible	YES
State Share (in dollars)	\$22,000
Federal Share (in dollars)	\$88,000
Local Share (in dollars)	\$0

APPENDIX "A"
NEW YORK STATE REQUIRED CONTRACT PROVISIONS.

[Provide the current New York state contract provisions here.]

SAMPLE

MUNICIPAL RESOLUTION.

Provide the Municipal Resolution(s) - duly adopted authorizing Agreement on behalf of the Municipality.

SAMPLE

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

SAMPLE

**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, 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 (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: mwb certification@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.