

REQUEST FOR QUALIFICATIONS

**PROFESSIONAL ENGINEERING SERVICES  
WASTEWATER SERVICES**

RFQ #2023-01

**VILLAGE OF MILLERTON  
NEW YORK**

JENNIFER NAJDEK  
MAYOR

APRIL 28, 2023

Village of Millerton  
Request for Qualifications for  
Professional Engineering Services

**I. PURPOSE**

The Village of Millerton (Village) is requesting statements of qualifications from qualified professional engineering firms to provide engineering services for wastewater engineering services related to wastewater collection and treatment in Millerton, New York. The firm selected for this role will support the Village in various tasks and projects related to municipal wastewater and will have a demonstrated ability to execute these types of projects and provide the Village with the technical assistance required to make informed choices in developing and implementing wastewater projects. The Village anticipates funding all or a portion of the costs of the services from the proceeds of a Municipal Investment Grant (“MIG”), from Dutchess County (“DC”) and to make application for additional sources of funding which may include BIL and/or WQIP funding through NYS Environmental Facilities Corporation (“EFC”). The Village reserves the right to require compliance with conditions of the MIG as advised by DC and with conditions of any grant or loan funding (“EFC Funding”) provided through the EFC (each a “Grantor”).

**II. SUBMISSION OF STATEMENTS OF QUALIFICATIONS**

The Village of Millerton will accept statements of qualifications for Professional Engineering Services relating to wastewater treatment and collection systems for the Scope of Services described at APPENDIX I.

All proposals shall be received at

Village of Millerton,  
Attn: CLERK,  
Village Hall,  
5933 N Elm Avenue,  
Millerton, New York, 12546

until 4:00 PM local time on the date specified in the RFQ notice. PROPOSALS MUST BE SUBMITTED IN HARD COPY FORM NOT VIA EMAIL, TOGETHER WITH A PDF COPY ON THUMB DRIVE. Village Hall is open Monday through Thursday 9:00 AM to 4:00 PM and Friday 9:00 AM to Noon (except holidays). Proposals received after this time and date may be rejected as non-responsive.

**III. SCHEDULE**

The Schedule of key dates related to this RFQ is as follows, subject to change by the Village at any time. Notice of changes to the Schedule and any Addenda to this RFQ will be provided by email to prospective proposers who have requested a copy of this RFQ and provided an email contact to the Village Clerk.

Site Visit to the Village – 4:00 pm at Village Hall, May 8, 2023

Submission of Questions Deadline – 4:00 pm May 10, 2023

Village may issue an Addendum to address questions submitted.

Proposal Submission Deadline – 4:00 pm May 26, 2023

Interviews at Village option – ESTIMATED week of May 29, 2023

Village Board selection of Engineer – ESTIMATED June 12, 2023

Contract Execution– ESTIMATED 10 days from Village Board Selection, approval by Grantor and submission of all documents required for execution by the Village.  
Contract Initiation Meeting –ESTIMATED 10 days from Contract Execution.

#### **IV. SUBMISSION REQUIREMENTS**

The following information must be submitted as part of the statement of qualifications and provided in the following order.

**1. Cover Letter (not to exceed 2 pages).** Statements of qualifications shall include a cover letter on letterhead including the following:

Firm name, location, form of business, firm ownership and owners/principals and officers  
Confirm business ability and professional licensing of the identified firm to legally provide professional engineering services being requested by the Village in New York State and the County of Dutchess, New York  
Proposed Project Manager and primary Village Liaison  
Identification of proposed Sub Consultants  
Acknowledgement that Proposer will comply with contract terms including MIG conditions and EFC Funding conditions.  
State and itemize any exceptions taken to contract terms and conditions.

**2. Statement of Qualifications & Relevant Experience (not to exceed 20 pages).**

a. Proposed Project Staff and Qualifications

Identify the proposed project organization and key staffing with name, title and primary office location. Include a summary of individual qualifications for key staff proposed to be assigned to the project with specific qualifications relevant to the Scope of Services, including particularly the following as applicable:

- Preparation of Engineering Reports in compliance with New York State Environmental Facilities Corporation and New York State Department of Environmental Conservation Engineering Report Outline for New York State Wastewater Infrastructure Projects.
- Assistance with grant applications and administration of grant funding and compliance with grant requirements.
- Experience meeting project schedules and preparation of construction documents in conformance with 10 State Standards and approved by New York State Department of Environmental Conservation and Dutchess County Department of Community and Behavioral Health.
- WWTP systems, including Septic tank effluent pump (STEP) collection systems, and/or Modular biofiltration treatment systems.
- Small community wastewater treatment systems with average flows of less than 500,000 gpd.
- Intermunicipal wastewater systems.

- Engagement with property owners for work on private parcels, including development of new utility access easements.
- b. Subcontractors: If the Proposer intends to use any subcontractors for the performance of services under this agreement, identify the subcontractor, provide resumes for their personnel, and the scope of their engagement.
- c. Experience.  
  
Include five examples of the publicly owned projects relevant to the scope of services completed by the proposed project staff within the last 5 years that demonstrate ability to provide services for this assignment.  
  
Include a brief description of projects and services provided, and the duration of the appointment. For each project identify the year constructed, engineer's estimate, and actual final cost, and funding sources.  
  
Include a contact person for each project identified.
- d. References. Include at least three references who can speak to the experience and qualifications of the proposed project staff.
- e. Disclosure of any pending investigation of the firm, or enforcement or disciplinary actions taken within the past three years by the NYS Commissioner of Education or other regulatory bodies, or termination for cause by any municipality or public entity.
- f. Any additional information the Proposer believes the Village should be familiar with prior to making a decision.

### **3. Engagement Approach (not to exceed 2 pages)**

A clear, comprehensive description of how the Proposer would go about meeting the needs of the Village including management, quality control, communication, cost containment, a description of any other services the Proposer believes will be required to meet the needs of the Village, and a description of the Proposer's plan for providing them.

- 4. Non-Collusive Bidding Certification Form.** Submit the signed and notarized form attached to this RFQ.

## **V. QUESTIONS AND CLARIFICATIONS**

Any questions or requests for clarifications with regard to this Request for Proposal and any proposed exceptions to terms and conditions should be submitted in writing to:

Village Clerk  
Village Hall  
5933 N Elm Avenue  
Millerton, New York, 12546  
[clerk@villageofmillerton.com](mailto:clerk@villageofmillerton.com)

Questions or requests for clarifications may be transmitted to the Village by US Mail, courier, e-mail or electronic facsimile, provided that email or facsimile must be actively confirmed as to receipt by the Village. All questions or requests for clarification must be received no later than the date specified in the Schedule.

Any changes to this RFQ will be made by written addendum provided via email. No oral modification will be binding.

## **VI. SELECTION PROCESS**

The selection of an engineering firm for this project shall be in accordance with EFC requirements for procurement of professional engineering services for projects receiving federal funding, and with Dutchess County MIG Grant procurement requirements. The Village plans to select a firm whose proposal is determined most advantageous to the Village.

The Village will evaluate and rank Proposers submitting statements of qualifications according to the following criteria:

Understanding of work to be done;

Satisfactory experience with similar services on behalf of public entities of similar size and character to the Village;

Qualifications of staff for work to be done;

Familiarity with Federal and State requirements;

Financial responsibility; and

Logistics and familiarity with the project area.

By submission of its proposal, the Proposer authorizes the Village to investigate the qualifications of the Proposer under consideration, require confirmation of information furnished by a Proposer, and require additional evidence of qualifications to perform the work described in this RFQ or information clarifying their submissions.

The Village will identify and may conduct discussions with at least three firms considered to be the most highly qualified to provide the required services. The Village will conduct contract negotiations with the firm most highly qualified and advantageous to the Village in order to determine compensation that is fair and reasonable based on a clear understanding of project scope, complexity, professional nature, and the estimated value of the services to be rendered. In the event the Village is unable to satisfactorily conclude negotiations with the first firm, it may move to conduct negotiations with the next qualified firm.

Base Pricing will be based on the estimated not to exceed price for each task in the Scope of Services as shown at Appendix I. An Hourly Rate Schedule will be established for additional work. The Village reserves the right to negotiate "lump sum" pricing, based on the hourly rates in the proposal, for particular projects or portions of projects. Projects with lump-sum pricing will be paid by milestones rather than at the hourly rate. Estimated disbursements will be paid at cost unless otherwise approved as part of contract negotiations. The Contract will identify matters which are included in the task billing and/or hourly rates including without limitation: reviews of invoices; relationship reviews; high level planning sessions; and contract compliance reporting.

## **VII. ETHICS, DISCLOSURE OF INTERESTS AND REPRESENTATIONS**

Code of Ethics: The Village's Ethics Code is posted on the Town's website at <https://www.villageofmillerton.net/government.html>.

Prohibited interests: Officers and employees are prohibited from entering into certain contracts with the Village pursuant to Article 18 of the General Municipal Law. Except as expressly provided in § 802 of Article 18 of the New York State General Municipal Law, no Village officer or employee shall have an interest in a contract that is prohibited by § 801 of the General Municipal Law. Any contract willfully entered into by or with the Village in which there is an interest prohibited by that section shall be null, void, and wholly unenforceable to the extent provided by § 804 of the General Municipal Law.

Disclosure of interests: Except as expressly provided in § 802 of Article 18 of the General Municipal Law, any Village officer or employee who has, will have, or later acquires an interest in any actual or proposed contract with the Village, shall publicly disclose the nature and extent of that interest in accordance with § 803 of the General Municipal Law.

Representations: By submission of its Proposal, each Proposer represents and warrants:

- (a) That they are financially solvent and that they are experienced in and competent to perform the type of work to be furnished by them and meet all requirements set forth in the contract;
- (b) That they are familiar with all federal, state, municipal and department laws, ordinances and regulations which may in any way affect the work or those employed therein;
- (c) That they and their subcontractors have no interest and will not acquire an interest, direct or indirect, that would conflict with the performance of the work under this Contract;
- (d) That neither they nor any of their owners, officers, partners, directors or shareholders have been the subject of a criminal investigation; and
- (e) That the firm has not been terminated by a municipality or public entity for cause in the last five years relating to a failure to comply with Ethics laws or policies, Conflicts of Interest laws or policies, or violation of laws and regulations.

## **VIII. CONTRACT**

The Village reserves the right to award the contract to other than the Proposer presenting the lowest price. The Village may negotiate with one or more Proposers. No Proposer shall have any rights against the Village arising from such invitation or negotiations.

The Village reserves the right to reject any and all statements of qualifications and proposals. The contract resulting from this solicitation will be awarded to the qualified Proposer whose proposal the Village believes will be most advantageous to the Village. Discretion to award a contract rests with the Board of Trustees of the Village.

The Village is an equal opportunity employer. The successful Proposer must be in compliance with the provisions of Section 312 of the New York Executive Law which requires New York State Contractors to ensure equal employment opportunity to all persons without regard to race, color, religion, sex, national origin, age, disability or marital status, and to promote full realization of equal opportunity through a positive and continuing program.

Upon completion of negotiations to the satisfaction of the Village, the successful Proposer will be required to execute an agreement with the Village for professional services. Appendix “III”, attached herein, contains the Village’s proposed contract. Proposers are required to review the contract before submitting their response. Unless the proposer specifically takes exception to clauses in the contract within the time provided in the Schedule for questions and clarifications, the Proposer if selected by the Village will be expected to execute the contract with the Village as is. The Village reserves the right to reject exceptions.

The contract will include Phase I of the Scope of Services included with this Request for Proposal as an attachment. Additionally, a pricing schedule and hourly rate schedule based upon negotiations phase will become part of the contract. Pricing and hourly rates will for Phase II and Phase III are also expected to be included in negotiations, to be awarded in the discretion of the Village.

The contract term will be three (3) years from the effective date of the contract between the Engineer and the Village. The Village will have the option of two (2) additional 1-year extensions (five years total).

As a condition to execution of a contract, the selected Proposer shall provide evidence satisfactory to the Village of insurance in the form and amounts and from providers as required in the form of contract.

#### VIII. MISCELLANEOUS

FOIL. All proposals submitted in response to this RFQ may be disclosed in accordance with the standards specified in the Freedom of Information Law, Article 6 of the Public Officers Law of the State of New York (“FOIL”). A Proposer may provide in writing, at the time of its submission, a detailed description of the specific information contained in its submission, which it has determined is a trade secret and which, if disclosed, would cause substantial injury to such organization’s competitive position. This characterization shall not be determinative, and the Village assumes no responsibility for any disclosure or use of data submitted.

Property of Village. All materials submitted in response to this RFQ will become the property of the Village. The Village shall not be liable for any pre-contractual expenses incurred by the Proposers in the preparation of their proposals.

## APPENDIX I

### SCOPE OF SERVICES

#### **Project Description:**

The Village of Millerton and the Town of North East have been jointly pursuing the development of a wastewater system. The purposes of the project are twofold:

- 1) To replace failing on-site wastewater systems, including cesspools and leach fields that are the municipalities' current and only waste water collection and treatment technologies with an innovative and advanced water resource recovery system. The age and the condition of existing components present a serious environmental challenge to the ground water and surface water of the Housatonic Watershed, and
- 2) To provide businesses and potential residential development the wastewater management capacity for expansion, ensuring the communities' sustainable economic growth.

The following engineering planning reports have been prepared and are available from the Town Clerk:

1. Wastewater Feasibility Evaluation dated March 2020, last revised April 2022
2. The Sewer District Map, Plan and Report November 2022
3. Village Wastewater System Map & Plan November 2022

#### **Scope of Services:**

##### Phase I:

The Scope of Services (Phase I) includes a Preliminary Engineering Design Report including the following tasks:

- House to house inspections of existing wastewater disposal units for lots proposed to be within the initial Village operated wastewater collection system and within proposed Town Sewer District, identification of potential failure rates and proposed collection system technology
- Development of easement agreements for construction and permanent access
- Survey and mapping of collection system sites and WWTP site
- Subsurface exploration for system design
- Support of state and federal grant submissions
- Assistance with completion of Local Proceedings (including SEQR, System Approval, District formation, local approvals)

At the discretion of the Village:

##### Phase II: Design, Permits and Bidding

- Engineering Bid Documents (Lump Sum)
- Permits & Approvals (Hourly Not to Exceed)
- Sewer Use Law
- O&M Plan



Phase III: Construction Services (Hourly Not to Exceed)

- Construction Administration
- Construction Observation

## APPENDIX II

### NON-COLLUSIVE BIDDING CERTIFICATION

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not knowingly been disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

State of \_\_\_\_\_ )  
 ):ss  
County of \_\_\_\_\_ )

Company Name of Bidder: \_\_\_\_\_

Officer/partner/individual bidder's signature: \_\_\_\_\_

Print name: \_\_\_\_\_ Title: \_\_\_\_\_

Sworn to before me this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

## APPENDIX III

### FORM OF CONTRACT TERMS AND CONDITIONS

**AGREEMENT FOR PROFESSIONAL SERVICES  
ENGINEERING SERVICES CONTRACT (Wastewater 2023)**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement"), dated as of the \_\_\_\_ day of \_\_\_\_, 2023 between the **VILLAGE OF MILLERTON**, a municipal corporation of the State of New York, Village Hall, 5933 N Elm Avenue, Millerton, New York, 12546, hereinafter referred to as "Village," and \_\_\_\_\_, a professional \_\_\_\_\_ organized under the laws of the State of New York, having its principal office at \_\_\_\_\_, hereinafter referred to as "Consultant."

**WITNESSETH:**

WHEREAS, pursuant to a request for qualifications dated as of April 7, 2023 ("RFQ"), the Village has determined to enter into this Agreement providing for services of the Consultant for the purposes set forth in the request for proposals and as provided herein;

NOW THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

**Section 1. SCOPE OF SERVICES.**

- a. The Consultant shall render the professional services described in the Scope of Services attached hereto and made a part hereof as **Exhibit B** (hereinafter referred to as the "Scope of Services").
- b. During the period from the date of this Agreement to the end of the Initial Term and any extension as provided in Section 3 hereof, the Consultant shall perform such additional services as Consultant as may be requested in writing by the Village, at the hourly rates and actual expenses specified herein (such additional services being referred to herein as "Additional Services"). Prior to undertaking any such Additional Services, the Consultant shall propose a budget and schedule for each proposed project, to be approved by the Village prior to commencing work. No work shall be considered Additional Services unless specifically agreed to in writing by the Village.

**Section 2. CONSULTANT QUALIFICATIONS; REPRESENTATIONS; NO CONFLICTS.**

- a. The Consultant represents and covenants that (i) it is experienced in performing professional engineering work of the types contemplated by the Scope of Services; (ii) at all times during the term of this Agreement the persons assigned to perform services have and will have the experience, knowledge, and licenses necessary to perform the services described herein; (iii) the Consultant is fully qualified to perform the Scope of Services, with capability to perform the Scope of Services and timely deliver a work product as required by this agreement, (iv) the Consultant will procure and maintain all licenses and permits necessary to perform the work described in this Agreement, and (v) the Consultant will comply with the provisions of the Labor Law and all State laws and Federal and local statutes, ordinances and regulations that are applicable to the performance of this Agreement.

b. Unless otherwise authorized in writing in advance by the Village, the persons primarily responsible for performing work under this Agreement, including any subcontractors, shall be as set forth at **Exhibit E** and **Exhibit C**. Any subcontractors shall be bound by the provisions of this Agreement, such subcontractors and the form of any subcontract shall be subject to prior review and approval by Village in its discretion, and any such subcontract shall be deemed to include the Standard Clauses attached hereto as **Exhibit A**.

c. The Consultant represents and warrants that (i) the Consultant has all requisite power and authority to execute, deliver and perform this Agreement; (ii) this Agreement has been duly authorized by all necessary action on the part of the Consultant and has been duly executed and delivered by the Consultant and, assuming due execution and delivery by the Village, constitutes a legal, valid, binding and enforceable obligation of the Consultant; and (iii) the execution and delivery of this Agreement, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under the organization documents, or any statute, indenture, mortgage, deed of trust or other agreement or instrument to which the Consultant is bound, or to the knowledge of the Consultant, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Consultant or any of its activities or properties.

d. The Consultant represents and warrants that it has not entered into any agreement for services with any other party with respect to any activities within or relating to the Scope of Services under this Agreement, other than such subcontracts as are specifically set forth at **Exhibit E**. The Consultant shall accept no other compensation, directly or indirectly, from any party, other than the Village, for any services connected with the work described in the Scope of Services. The Consultant represents that it has reviewed the Code of Ethics of the Village and will comply with its provisions, as it may be amended and in effect from time to time.

e. The Consultant represents and warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent on or resulting from the award or making of this Agreement. The Consultant further represents and warrants that neither it nor any of its directors, officers, members, partners, associates or employees, has any interest, nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services. In the event of breach of this provision the Village shall have the option to annul this Agreement without liability, or deduct from the Agreement consideration, or otherwise recover, the full amount of any such fee, commission, percentage, brokerage fee, gift or other consideration. Such remedies shall be in addition to and not in limitation of any other remedies available at law or in equity.

**Section 3. TERM AND COMPLETION SCHEDULE.** The Scope of Services shall commence upon the delivery by the Village of a notice to commence work under this Agreement (the "Commencement Date") and shall be completed within the initial term set forth at **Exhibit D** ("Initial Term"). The Scope of Services shall be completed within the period specified at **Exhibit D** except as extended by the Village in writing. Any extension granted shall be for work and payment purposes only and shall not result in any additional Consultant Costs other than those agreed to herein. This agreement may be extended for the optional extension periods set forth at **Exhibit D**,

upon approval by the Village Board. This agreement may be further extended by written addendum upon mutual agreement and as approved by the Village Board.

**Section 4. REPORTS; RIGHT TO INSPECT.** The Consultant shall report to the Village as specified at **Exhibit B**. The Village staff and its duly authorized representatives shall have the right at all times to inspect and receive copies of the work of the Consultant without additional charge.

**Section 5. STANDARD CLAUSES.** This Agreement is subject to the terms attached hereto as **Exhibit A** and incorporated herein by reference.

**Section 6. DELIVERABLES.** The Village will cooperate with the Consultant in providing those deliverables specifically listed herein as being necessary to their performance of the subject work. The Village will provide deliverables, if any, as specified in **Exhibit B**. In the event that such deliverables are not provided within six (6) weeks of the date hereof, the Consultant may request an extension on the term of this Agreement.

**Section 7. FEES AND EXPENSES.**

a. As compensation for the Services performed pursuant to this Agreement, including all expenses, the Village shall pay the Consultant its fees and expenses as set forth at **Exhibit C**, not to exceed the maximum amount set forth at **Exhibit C** ("Fees and Expenses").

b. The expenses provided for herein shall be limited to the expenses actually and reasonably incurred in connection with the performance of the Scope of Services, of the types listed at **Exhibit C**. Unless otherwise approved in advance by the Supervisor, the Village shall not pay for the following: (i) travel, except for travel outside of the county of Dutchess, when requested in writing by the Village and not including travel to and from Consultant to the Village unless approved in writing for a specific project; (ii) meal charges, except for actual and reasonable expenses which are required for business purposes, such as expenses incurred while hosting working group meetings or closings; or (iii) time spent in preparing bills.

Any reimbursement for travel, meals and lodging shall be made at the actual cost paid, but such reimbursement shall not exceed the prevailing maximum rates established by the New York State Comptroller or any lesser standard rates established from time to time by the Village for its own employees. Any travel must be approved in advance by the Supervisor. Disbursements and expenses shall be itemized by category. Unless otherwise agreed, expenses shall be billed at the same time as the services to which they relate.

Upon request, the Consultant shall provide the Village with detailed documentation substantiating all fees and disbursements. This documentation shall be maintained by the Consultant for a period of six years after the completion of the matter. During that period, the Village shall have the right to audit the Consultant's charges.

**Section 8. PAYMENT.**

- a. Work within the Scope of Services shall be billed monthly in accordance with the schedule of hourly rates attached hereto at **Exhibit C** unless otherwise agreed in writing by the Village. Upon request, the Consultant shall provide monthly statements with respect to accrued fees and disbursements for any matters subject to a periodic retainer or cap.
- b. For any Additional Services agreed by the Village and the Consultant to be unrelated to the Scope of Services set forth at **Exhibit B**, the Village shall pay for services rendered in accordance with the schedule of hourly rates attached hereto at **Exhibit C**. Prior to undertaking any such Additional Services, the Consultant shall inform the Village that such services will be billed as Additional Services, shall provide an estimate of the total fees and expenses to be charged for such Additional Services, and shall obtain the Village's written authorization prior to commencing such work. For such other services, the Consultant shall submit invoices not more often than once a month.
- c. All statements shall provide (a) the name and position of each individual whose time is billed; (b) the billing rate for each individual; (c) the number of hours expended on behalf of the Village on any day that the individual performed services for the Village; (d) a brief description of the task(s) performed each day for which time is billed; and (e) the total number of hours billed for services rendered to the Village by each individual during the billing period. Copies of detailed documentation substantiating all disbursements and/or out-of-pocket expenses over \$25 shall be provided to the Village. Disbursements and expenses shall be itemized by category. Unless otherwise agreed, any authorized expenses shall be billed at the same time as the services to which they relate. Invoices shall be submitted to the Village at the notice address shown below, to the attention of the Village Treasurer. The Consultant shall maintain separate billing records with respect to each matter undertaken by the Consultant. At the Village's request, the Consultant shall submit invoices on forms provided by the Village.

The acceptance by the Consultant of final payment under this Agreement shall operate as and be a release to the Village from all claims and liability to the Consultant, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the Consultant under or in connection with this Agreement or for any part thereof.

## **Section 9. OWNERSHIP OF DOCUMENTS.**

All documents, reports, opinions, source code, system documentation, and other materials prepared for or relating to the Services provided hereunder shall be at all times the sole and exclusive property of the Village, and shall be treated as confidential by the Consultant except as expressly authorized by the Village. All work product created in connection with this Agreement, including working papers, data, maps, drafts, and other information in whatever form shall at all times be and remain the property of the Village. Such documents are not intended or represented to be suitable for modification or adaptation by the Village or others on extensions of the project designed by Consultant or on any other project. Any such modification or adaptation without written verification by Consultant, as appropriate for the specific purpose intended, will be at Village's sole risk and without liability or legal exposure to Consultant or to Consultant's subconsultants.

## **Section 10. INDEPENDENT STATUS; TAXES.**

- a. The Consultant and their employees, agents, contractors, subcontractors and/or consultants, are independent contractors and not employees of the Village. In accordance with their status as independent contractors, the Consultant covenants and agrees that neither the Consultant nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the Village.
- b. Nothing in this Agreement shall impose any liability or duty on the Village for the acts, omissions, liabilities or obligations of the Consultant, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the Consultant for the payment of taxes of any nature including but not limited to sales tax, unemployment insurance, worker's compensation, disability benefits and social security, or, except as specifically stated in this Agreement, to any person, firm or corporation.

#### **Section 11. INSURANCE.**

- a. The Consultant shall at all times maintain in force during the term of this Agreement, and shall provide evidence satisfactory to the Village, of the following policies of insurance:
  - i. Professional errors and omissions insurance with a U.S. domiciled company providing limits of not less than \$1,000,000 per claim, and in the aggregate, with extended reporting period or automatic coverage of not less than two years. If provided as an option, the Consultant shall agree to purchase an extended reporting period on cancellation or termination unless a new policy is effected with a retroactive date, including at least the last policy year.
  - ii. Workers' compensation and other statutory coverage required by New York Law without regard to jurisdiction.
  - iii. Automobile Liability policies with the limits of not less than \$500,000 for each person or \$500,000 for each accident because of bodily injury, sickness or disease including death at any time resulting therefrom, sustained by any person, caused by accident or arising out of the ownership, maintenance or use of owned, non-owners, or hired automobiles with minimum limits of \$500,000 for damages because of injury or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance, or use of owned, non-owned or hired automobiles.
  - iv. Comprehensive General Liability Insurance shall be furnished with limits not less than \$1,000,000 Bodily Injury Liability for each person/each accident and \$500,000 Property Damage Liability for Each person/Each Accident.
  - v. Such other insurance as shall be required in writing by the Village at the Village's expense.
- b. Any policy required to be maintained under this section shall be from a company rated at least A/X by Best's Rating Service and properly licensed in the State of New York, and shall provide that



the policy shall not be canceled, materially changed, or not renewed without thirty (30) days' prior notice thereof to the Village.

c. Prior to the effective date of this contract, and as a condition precedent to this Agreement, the Consultant shall furnish the Village with certificates of insurance listing the Village as a certificate holder, and upon demand, shall provide such policies to the Village. At least thirty (30) days prior to expiration of any policy required by this Agreement, the Consultant shall furnish the Village evidence satisfactory to the Village of the continuation of such coverage in accordance with this Agreement.

**Section 12. INDEMNIFICATION.** The Consultant shall defend and indemnify the defend the Village, its agents, servants, officers and employees (collectively the "Indemnified Parties"), and save the Indemnified Parties harmless from any liability, damage, claims, demands, costs or loss, including reasonable attorneys' fees, arising directly and indirectly out of the Consultants' or its or its officers', employees', agents', contractors', subcontractors' or consultants' respective negligent acts or omissions pursuant to this Agreement, including without limitation negligent performance of services under this Agreement, and such indemnity may not be limited by reason or enumeration of any insurance coverage required, and excluding only such liabilities or costs attributable to the Owner's negligence. Negligent performance of services, within the meaning of this section, shall include, in addition to negligence founded upon tort, negligence based upon Consultant's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work.

**Section 13. RIGHT TO AUDIT AND RECORDS.**

a. The Consultant shall maintain accurate and complete records detailing the back-up documentation required by this Agreement, and shall maintain such documents for a period of six years from document generation and shall allow the Village access thereto for inspection and photocopying at all reasonable times.

b. All receipts and disbursements are subject to audit by the Village, and the Consultant agrees to cooperate with any audit of this Agreement undertaken by the Village or any entity with jurisdiction to audit the Village, including without limitation any granting agency.

**Section 14. COMPLIANCE WITH LAW.** The Consultant shall comply with all Federal, State and local laws, rules and regulations applicable to performing the Services herein.

**Section 15. DEFAULTS AND REMEDIES.**

a. If either party defaults in the observance or performance of any material term of this Agreement, and such default continues for more than thirty (30) days after written notice of such default is received by the defaulting party from the non-defaulting party, such non-defaulting party may take any action available at law or in equity to enforce the terms of this Agreement, and may suspend work or terminate this Agreement upon thirty (30) days written notice to the defaulting party. If the default is not capable of being cured within thirty (30) days and the defaulting party has commenced cure within thirty (30) days and is diligently pursuing efforts to cure, such thirty (30) day period shall

be extended for a reasonable period of time.

b. If either party is required to enforce the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs. No remedy herein conferred upon or reserved to the Village is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

c. No delay or omission in exercising any remedy shall impair any such remedy or construed to be a waiver thereof. It shall not be necessary to give any notice other than as expressly required under this Agreement. In the event any provision contained in this Agreement should be breached and thereafter duly waived by the party or parties so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

**Section 16. EARLY TERMINATION.** The Village shall have the right to postpone, suspend, abandon or terminate this Agreement with or without cause, and such action shall in no event be deemed a breach of contract. Upon termination by the Village without cause under this section, the Consultant shall be entitled to compensation for acceptable completed Services performed through the date of postponement, suspension, abandonment or termination, such Services to be verified by audit. In the event that this Agreement is terminated by the Village for any reason, then within ten (10) days after such termination, the Consultant shall make available to the Village all records, documents and data pertaining to Services rendered under this Agreement.

**Section 17. NOTICES.** Unless otherwise specified, all notices required or permitted for herein shall be in writing and sent by U.S. mail, postage prepaid, or by hand, by overnight courier, or by telecopy confirmed by any of the previous methods, addressed to the parties as indicated below or to such addresses as they may designate in writing from time to time:

To the Consultant at their address set forth on the execution page of this Agreement.

To the Village at:  
Jenn Nadjek, Mayor  
Village Hall  
5933 N Elm Avenue  
Millerton, New York, 12546

With a copy to:  
Victoria Polidoro, Esq.  
Rodenhausen Chale & Polidoro LLP  
55 Chestnut Street  
Rhinebeck, NY 12572

**Section 18. SEVERABILITY.** In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

**Section 19. AGREEMENT IS A LEGALLY BINDING CONTRACT.** Each party hereto represents and warrants that this Agreement has been duly authorized and executed by it and constitutes its valid and binding agreement, and that any governmental approvals necessary for the performance of this Agreement have been obtained.

**Section 20. NO THIRD PARTY BENEFICIARY.** Nothing in this Agreement shall act to confer third party beneficiary rights on any person or entity not a party to this Agreement.

**Section 21. NO RECOURSE.** All covenants, stipulations, promises, agreements and obligations of the Village contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Village, and not of any member, director, officer, employee or agent of the Village in his individual capacity, and no recourse shall be had for the payment of any claim based under this Agreement against any member, director, officer, employee or agent of the Village.

**Section 22. COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

**Section 23. ENTIRE AGREEMENT; GOVERNING LAW AND JURISDICTION; AMENDMENT.** This Agreement contains the entire understanding between the parties with respect to the subject matter herein and supersedes any prior agreements or understandings, either oral or written. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. This Agreement may be amended only upon mutual written agreement signed by both parties.

**Section 24. HEADINGS.** The headings herein are solely for convenience of reference, and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

**Section 25. GRANT CONDITIONS.** The Consultant acknowledges and agrees to comply with the conditions applicable to Village's consultant pursuant to the terms of the Grant Agreement (s) referred to at **Exhibit F**.

[Remainder of page intentionally left blank.]

**Execution Page for AGREEMENT FOR PROFESSIONAL SERVICES  
ENGINEERING SERVICES CONTRACT (Wastewater 2023)**

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date first above written.

**VILLAGE OF MILLERTON**

By: \_\_\_\_\_  
Jenn Nadjek, Mayor

\_\_\_\_\_,  
as **Consultant**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**Notice**  
**Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**This Agreement consists of the Agreement (9 pages including this execution page), together with the following Exhibits:**

EXHIBIT A STANDARD CLAUSES FOR ALL MUNICIPAL CONTRACTS  
EXHIBIT B SCOPE OF SERVICES  
EXHIBIT C FEES AND EXPENSES  
EXHIBIT D TERM AND COMPLETION DEADLINES  
EXHIBIT E SUBCONTRACTS  
EXHIBIT F GRANT CONDITIONS

**EXHIBIT A**

**STANDARD CLAUSES FOR MUNICIPAL CONTRACTS**

## EXHIBIT A

### STANDARD CLAUSES FOR MUNICIPAL 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 Municipality, whether a contractor, licensor, licensee, lessor, lessee or any other party):

#### 1. NON-ASSIGNMENT

**CLAUSE.** This contract may not be assigned, and no part or portion may be subcontracted, by the Contractor nor may its right, title or interest therein be assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the Municipality and any attempts to assign the contract without the Municipality's written consent are null and void.

**2. WORKERS' COMPENSATION BENEFITS.** 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. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers' Compensation Act endorsement must be included.

**3. 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 age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status. 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, the Contractor agrees that neither it nor its subcontractors or any person acting on behalf of such contractor or subcontractor shall, by reason of race, creed, color, national origin, 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. 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 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.

**4. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law, if this contract is: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby the State or other contracting agency as defined in Section 312 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 (b) a written agreement in excess of \$100,000 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 (c) a written agreement in excess of \$100,000 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 Municipality, 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 agency, union, or representative will affirmatively

cooperate in the implementation of the Contractor's obligations herein.

(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.

The Contractor shall include the provisions of (a), (b), and (c) above in every subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon except where such work is for the beneficial use of the Contractor in such a manner that the provisions will be binding upon each subcontractor as to work in connection with the state contract. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to this Agreement; or (ii) employment outside New York State. The Municipality shall consider compliance by the Contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The Municipality 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 Municipality shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor shall 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.

**5. 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 New York 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 New York State Labor Department in accordance with the Labor Law. Additionally, 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 this Section 220 of the Labor Law shall be a condition precedent to payment by the Municipality of any sums due and owing to any person for work done upon the project.

**6. NON-COLLUSIVE BIDDING REQUIREMENT.** In accordance with General Municipal Law § 103-d, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the Municipality a non-collusive bidding certification on Contractor's behalf.

**7. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of this 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 Municipality within five (5) business days of such conviction, determination or disposition of appeal.

**8. SET-OFF RIGHTS.** The Municipality shall have rights of set-off. These rights shall include, but not be limited to, the Municipality'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 by the Contractor to the Municipality with regard to this contract, or any other contract with the Municipality, including any contract for a term commencing prior to the term of this contract. This also includes amounts due and owing the Municipality for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Municipality and third parties in connection therewith.

**9. RECORD-KEEPING REQUIREMENT.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts or other evidence directly pertinent to performance under this contract (the "Records") for a period of six (6) years following final payment or to the termination of this contract, whichever is later, and any extensions thereto. The Municipality and Attorney General or 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 such Records during the contract term, extensions thereof and said six (6) year period thereafter 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 purposes of inspection, auditing and copying. "Termination of the contract", as used in this clause 9, shall mean the later of completion of the work of the contract or the end date of the term stated in the contract. The Municipality 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 the



Municipality's chief fiscal officer with a copy to its Records Access Officer, 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 Municipality's right to discovery in any pending or future litigation.

10. **LIABILITY.** Contractor shall be responsible for all damage to life and property due to negligent or otherwise tortious acts, errors or omissions of Contractor, in connection with their services under this contract. Further, it is expressly understood that Contractor shall indemnify and save harmless the Municipality, from claims, suits, actions, damages, and costs of every name and description resulting from the negligent performance of the services of Contractor under this contract, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided.

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

12. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by General Municipal Law § 106-b.

13. **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.

14. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules, 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 Municipality's receipt of the return

thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the Municipality, in writing, of each and every change of address to which service of process can be made. Service by the Municipality to the last known address shall be sufficient.

15. **OBSERVANCE OF LAWS.** The Contractor agrees to observe all Federal, State and local laws and regulations and to procure all necessary licenses and permits.

16. **DISQUALIFICATION TO CONTRACT WITH PUBLIC ENTITY OR POLITICAL SUBDIVISION.** The Contractor has not been disqualified from selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or any official of any public authority created by the state or any political subdivision, for goods, work or services.

17. **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 New York State Finance Law §165. (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 Section 165 of the New York 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.

18. **ETHICS.** The Municipality shall have the right to cancel or terminate this Agreement at any time if any work performed under the Agreement is in conflict with the provisions of the New York State Public Officers Law or the Municipality's ethics code.

19. **OSHA 10 HOUR CONSTRUCTION SAFETY AND HEALTH COURSE.** If this is a public work contract covered by Article 8 of the New York State Labor Law, it shall be required that on all public work projects of at least \$250,000.00, all laborers, workers and mechanics working on the site be certified as having successfully completed A MINIMUM OF 10 HOURS OF CONSTRUCTION AND HEALTH SAFETY TRAINING, as approved by the United States Department of Labor's Occupational Safety and Health Administration (OSHA). The Contractor, sub-contractor or other person doing or contracting to do the whole or part of the work contemplated by the contract, shall provide proof of certification for successfully completing the course for each employee prior to performing any work on the project.

20. **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 Exhibit, the terms of this Exhibit shall control, except that to the extent required for the purpose of obtaining Federal Aid in connection with this contract, any contract provisions required for Federal Aid projects shall supersede any conflicting provisions.

21. **WICKS LAW PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law, where preparation of separate specifications is not required, the Contractor shall make no change of subcontractor or agreed-upon amount to be paid to each subcontractor without the approval of the owner in accordance with Section 101(5) of the General Municipal Law.

22. **NO WAIVER OF PROVISIONS.** The Municipality's failure to exercise or delay in exercising any right or remedy under this contract shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Municipality of any right or remedy under this contract shall be effective unless made in a writing duly executed by an authorized officer of the Municipality, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this contract.

23. **NO INVESTMENT ACTIVITIES IN IRAN.** A person that is identified on a list created pursuant to paragraph (b) of subdivision three of section 165-a of the State Finance Law as a person engaging in investment activities in Iran as described in such section, shall not be deemed a responsible Contractor to the extent provided pursuant to section 103 of the General Municipal Law. By signing this contract, the Contractor and each person signing on behalf of the Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief such Contractor is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law.

24. **ENTIRE AGREEMENT.** This contract, together with this Exhibit, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties hereto.

25. **SEXUAL HARASSMENT POLICY.** Pursuant to Labor Law § 201-G, the Municipality has adopted the form of Sexual Harassment Policy promulgated by the New York State Division of Human Rights, a copy of which is on file with the Clerk. By execution of this Agreement, the Contractor acknowledges receipt of the Sexual Harassment Policy and that it shall be bound by the terms of said policy.

Any violation of the Sexual Harassment Policy, the New York State Labor Law, or the New York State Human Rights Law by the Contractor, its contractors, subcontractors, officers, employees, or agents shall constitute an event of default under this Agreement.

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

## **EXHIBIT B**

### **SCOPE OF SERVICES**

Scope of Services: The Consultant agrees to furnish the services more specifically described at Exhibit B-1 and Exhibit B-2 attached hereto.

- a. Before undertaking any task, the Consultant shall submit to the Supervisor, with a copy to the Clerk, a proposed scope with a maximum authorized amount for each task or project and obtain written authorization from the Mayor and, if the amount exceeds \$2,000, the Village Board of Trustees.
- b. The Consultant shall submit to the Village Board of Trustees a monthly progress report regarding the status of the services for each assigned project. The Consultant will attend meetings of the Village Board upon request.
- c. The Village reserves the right to assign any work or project to another consultant, and to require competitive quotations or proposals for any work or project.

Deliverables: The Village shall provide the following:

- a. Arrange for and provide access for the Consultant to enter upon public property as required for the Consultant to perform the services. To the extent included in the scope for a particular task, Consultant shall notify the Village of a need to enter onto private property and request instructions from the Village's Attorney in the event owner consent is not provided to Consultant.
- b. Furnish or loan to the Consultant upon request all plans, maps and contract data in the possession of the Village which relates and is necessary to the work to be performed by the Consultant.
- c. Pay all permit fees, application fees, etc. which may be required to progress the work.
- d. Examine all studies, reports, and other documents presented by the Consultant, obtain advice of an attorney, bond counsel, accountant and other consultants as the Village deems appropriate for such examination and render decisions pertaining thereto.
- e. In the event that Consultant is unable after notice and due diligence to progress the work because of an outstanding deliverable, Consultant may be entitled to a reasonable delay in the deadline for completion of the work. No increase in compensation shall be provided as a result of such delay unless expressly approved in writing by the Village. .

## **EXHIBIT B-1**

### **DETAILED SCOPE OF SERVICES**

#### **APPENDIX I SCOPE OF SERVICES**

##### **Project Description:**

The Village of Millerton and the Town of North East have been jointly pursuing the development of a wastewater system. The purposes of the project are twofold:

- 1) To replace failing on-site wastewater systems, including cesspools and leach fields that are the municipalities' current and only waste water collection and treatment technologies with an innovative and advanced water resource recovery system. The age and the condition of existing components present a serious environmental challenge to the ground water and surface water of the Housatonic Watershed, and
- 2) To provide businesses and potential residential development the wastewater management capacity for expansion, ensuring the communities' sustainable economic growth.

##### **Scope of Services:**

###### **Phase I:**

The Scope of Services (Phase I) includes a Preliminary Engineering Design Report including the following tasks:

- House to house inspections of existing wastewater disposal units for lots proposed to be within the initial Village operated wastewater collection system and within proposed Town Sewer District, identification of potential failure rates and proposed collection system technology
- Development of easement agreements for construction and permanent access
- Survey and mapping of collection system sites and WWTP site
- Subsurface exploration for system design
- Support of state and federal grant submissions
- Assistance with completion of Local Proceedings (including SEQR, System Approval, District formation, local approvals)

At the discretion of the Village:

###### **Phase II: Design, Permits and Bidding**

- Engineering Bid Documents (Lump Sum)
- Permits & Approvals (Hourly Not to Exceed)
- Sewer Use Law
- O&M Plan

###### **Phase III: Construction Services (Hourly Not to Exceed)**

- Construction Administration
- Construction Observation

**EXHIBIT B-2**  
**DETAILED SCOPE**  
**[TBD]**

## EXHIBIT C

### FEES AND EXPENSES

Lump Sum Task Based Fees: Fees for the tasks outlined in the Scope of Services are set forth at the attached **Exhibit C-1**.

Standard Fee Schedule: Hourly Rates are attached hereto at **Exhibit C-2**. Fees for each approved task shall be subject to the maximum approved amount for the services specified.

Additional Services: Any approved Additional Services are to be billed at the Hourly Rates specified above. All Additional Services require the advance written approval of the Village Board, subject to the maximum approved amount for the services specified. Services performed without such authorization are at the Consultant's risk and under no circumstances shall the Village be obligated for payment.

Project Billing: The Village and Consultant may agree on a case by case basis to a lump sum fee for a particular project scope of services identified in a supplemental agreement or proposal and approved by the Village Board; in such case, progress billing shall be based on satisfactory completion of tasks as specified in the supplemental agreement or proposal.

Consultant Project Manager and Project Team: Assigned personnel shall be as follows unless otherwise approved by the Village in its discretion:

[Identify Project Manager:\_\_\_\_\_]  
[Identify other key team members:\_\_\_\_\_]

**EXHIBIT C-1**

**ITEMIZED FEE SCHEDULE INCLUDING TASK BILLING, HOURLY  
FEES, AND DISBURSEMENTS**



## **EXHIBIT D**

### **TERM AND COMPLETION DEADLINES**

Commencement Date: Date Specified in a Notice to Proceed

Initial Term: Three years commencing with effective date of Contract

Optional Extensions: The Village may elect to extend the term for up to two (2) additional one-year periods.

Completion Deadlines for Deliverables: TBD on a project and task basis in consultation with the Village; services are to be completed within the Term of this Agreement unless expressly approved in writing by the Village.

## **EXHIBIT E**

### **SUBCONTRACTS**

Consultant is not authorized to subcontract with any other person or entity for the purposes described in the Scope of Services without prior written authorization from the Village. In the event that Consultant is so authorized to subcontract for services, all subcontractors shall be bound by the provisions of this Agreement, including without limitation requirements for compliance with the Village's Ethics Policy, Standard Clauses, insurance and indemnity.

## **EXHIBIT F**

### **GRANT CONDITIONS**

The Consultant shall comply with the terms of the following grant agreements, to the extent such terms apply to a consultant of the Village:

1. Dutchess County Municipal Innovation Grant conditions, a copy of which is attached hereto and incorporated by reference.
2. EFC Contract Addendum, a copy of which is attached hereto and incorporated by reference.

# REQUIRED CONTRACT LANGUAGE

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## Recipient to Identify Contract Type:

☐ **Construction**

☐ **Treatment Works and Drinking Water Projects**

☐ **Non-Treatment Works**

☐ **Non-Construction**

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## COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

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

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

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

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

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

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

**“State”** means the State of New York.

**“Treatment Works”** is defined in Clean Water Act (CWA) Section 212.

**“Nonpoint Source Projects”** and **“Green Infrastructure Projects”** are defined in CWA Section 319.

**“Estuary Management Program Project”** is defined in CWA Section 320.

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

For purposes of this section:

**“Non-Construction”** shall mean Contracts for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing.

**“Contracts Meeting Article 15-A Thresholds”** shall mean Contracts or Subcontracts meeting the thresholds under New York State Executive Law Article 15-A as follows:

- (a) Non-Construction Contracts greater than \$25,000;
- (b) Non-Construction Contracts, that are initially under \$25,000 but subsequent change orders or contract amendments increase the Contract value to above \$25,000;
- (c) Construction Contracts greater than \$100,000; and,
- (d) Construction Contracts that are initially under \$100,000 but subsequent change orders or contract amendments increase the Contract value to above \$100,000.

The Equal Employment Opportunities requirements of this section apply to all Contracts and Subcontracts, with the exception of:

- (1) the requirements under Title VII of the Civil Rights Act of 1964 and 41 CFR Part 60-1 Subpart A which apply only to construction Contracts and Subcontracts;
- (2) the Federal Affirmative Action Regulations requirements which apply only to construction Contracts and Subcontracts greater than \$10,000.

The Minority- and Women- Owned Business Enterprises (“MWBE”) participation requirements of this section apply to the Contracts Meeting Article 15-A Thresholds.

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

## **II. General Provisions**

- A. Contractors and Subcontractors are required to comply with the following provisions:
1. New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State Contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon.
  2. Title VI of the Civil Rights Act of 1964 and 40 CFR Part 7 ("Title VI") for any program or activity receiving federal financial assistance, as those terms are defined therein.
  3. Title VII of the Civil Rights Act of 1964 and 41 CFR Part 60-1 Subpart A ("Title VII") for construction Contracts related to any government programs providing federal financial assistance, as those terms are defined therein.
  4. 41 CFR Part 60-4 ("Federal Affirmative Action Regulations") for federal or federally assisted construction Contracts in excess of \$10,000, as those terms are defined therein.
  5. Section 504 of the Rehabilitation Act of 1973 ("Section 504") for any program or activity receiving federal financial assistance, as those terms are defined therein.
  6. The Age Discrimination Act of 1975 ("Age Discrimination Act") for any program or activity receiving federal financial assistance, as those terms are defined therein.
  7. Section 13 of the Federal Water Pollution Control Act ("Clean Water Act") Amendments of 1972 ("Section 13") for any program or activity receiving federal financial assistance under the Clean Water Act, as those terms are defined therein.
- B. Failure to comply with all of the requirements herein may result in a finding by the Recipient that the Contractor is non-responsive, non-responsible, and/or has breached the Contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to subsection III(F) of this section, or enforcement proceedings as allowed by the Contract.
- C. If any terms or provisions herein conflict with Executive Law Article 15-A, the MWBE Regulations, Title VI, Title VII, or Federal Affirmative Action Regulations, such law and regulations shall supersede these requirements.
- D. Upon request from the Recipient's Minority Business Officer ("MBO") and/or EFC, Contractor will provide complete responses to inquiries and all MWBE and EEO records available within a reasonable time. For purposes of this section, MBO means the duly authorized representative of the SRF Recipient for MWBE and EEO purposes.

## **III. Equal Employment Opportunities (EEO)**

*Applicable to all Contracts and Subcontracts unless otherwise noted*

- A. Each Contractor and Subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- B. The Contractor shall comply with the provisions of the Human Rights Law (Executive Law Article 15), Title VI, Title VII, the Federal Affirmative Action Regulations, Section 504, Age Discrimination Act, Section 13, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

- C. Contractors and Subcontractors shall have instituted grievance procedures to assure the prompt and fair resolution of complaints when a violation of Title VI of the Civil Rights Act of 1964 or Title 40 CFR Part 7 is alleged.
- D. Pursuant to 40 CFR § 7.95, the Contractor shall display a copy of the EEO notice at the project site in a visible location. The notice shall accommodate individuals with impaired vision or hearing and should be provided in languages other than English where appropriate. The notice must also identify the employee responsible for its EEO compliance. A copy of the EEO notice ("EEO Poster") can be found at:  
<https://www.dol.gov/ofccp/regs/compliance/posters/pdf/eeopost.pdf> .

The Contractor will include the provisions of Subdivisions II(A) and II(C) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

*Applicable to all construction Contracts*

- E. The Contractor and Subcontractor will comply with the requirements of 41 CFR § 60-1.4(b) and (c), and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor and Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action 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.

*Applicable to construction Contracts greater than \$10,000*

- F. The Contractor and Subcontractor will comply with the Affirmative Action Regulations and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor place affirmative action goals on Contracts and Subcontracts, as established by the United States Department of Labor. Affirmative action goals for minorities and women by geographic region can be found here:  
<https://www.dol.gov/sites/dolgov/files/ofccp/ParticipationGoals.pdf> .

G. Required EEO Forms

Pursuant to 41 CFR Section 60-1.7 for federally assisted construction Contracts, Contractor and Subcontractor will annually file an EEO-1 Report with the Joint Reporting Committee for the Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) according to the instructions provided at <https://www.eeoc.gov/employers/eeo-1-survey/eeo-1-instruction-booklet> , if Contractor or Subcontractor:

1. Is not exempt from compliance pursuant to 41 CFR § 60-1.5;
2. Has 50 or more employees;
3. Is a prime Contractor or first tier Subcontractor; or Subcontractor below the first tier which performs construction work at the site of construction; and
4. Has a Contract, Subcontract, or purchase order amounting to \$50,000 or more.

#### IV. Business Participation Opportunities for MWBEs

*Applicable to Contracts Meeting Article 15-A Thresholds*

##### A. Contract Goals

1. For purposes of this Contract, EFC establishes the following goals for New York State certified MWBE participation based on the current availability of qualified MBEs and WBEs.

Program	MWBE Contract Goal*
CWSRF, DWSRF, & Green Innovation Grant Program	20%
NYS Water Infrastructure Improvement Act Grants (also receiving EFC loan)	Clean Water project 20% Drinking Water project 20%
NYS Intermunicipal Grants (also receiving EFC loan)	Clean Water project 20% Drinking Water project 20%

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

2. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section III-A hereof, the Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com>.
3. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards achievement of applicable MWBE participation goals.
  - a. For construction and construction-related services Contracts or Subcontracts, the portion of the Contract or Subcontract with an MWBE serving as a supplier, and so designated in ESD's Directory, that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the Contract or Subcontract. The portion of a Contract or Subcontract with an MWBE serving as a broker, as denoted by NAICS code 425120, that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.
  - b. For non-construction Contracts or Subcontracts, the portion of a Contract or Subcontract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract
4. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR § 142.8, the Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as Subcontractors or suppliers in the performance of the Contract.
5. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of Contract and the Contractor shall be liable to the Recipient for liquidated or other appropriate damages, as set forth herein.

##### B. MWBE Utilization Plan

1. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan to the Recipient prior to the execution of this Contract.
2. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this section.



3. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is not responsive.
4. Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the Recipient's MBO. Contractor shall indicate the changes to the MBO in the next Monthly MWBE Contractor Compliance Report after the changes occurred. At EFC's discretion, an updated MWBE Utilization Plan form and good faith effort documentation may be required to be submitted. When a Utilization Plan is revised due to execution of a change order, the change order should be submitted to the MBO with the Monthly MWBE Contractor Compliance Report or revised Utilization Plan.
5. The Contractor shall submit copies of all fully executed Subcontracts, agreements, and purchase orders that are referred to in the MWBE Utilization Plan to the MBO within 30 days of their execution.

#### C. Requests for Waiver

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

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

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

#### E. Liquidated Damages - MWBE Participation

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

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

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

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

In the event a determination has been made by the Recipient or EFC which requires the payment of damages identified herein and such identified sums have not been withheld, Contractor shall pay such damages to the Recipient within sixty (60) days after they are assessed unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Empire State Development Corporation – Division of Minority and Women’s Business Development (“ESD”) pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the damages shall be payable if the Director of ESD renders a decision in favor of the Recipient.

## **V. SECTION 2 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

New York State Executive Law Article 17-B and 9 NYCRR Part 252 provide for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. EFC recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of EFC Contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as Subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <http://ogs.ny.gov/Core/SDVOBA.asp>.

Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

## **VI. SECTION 3 AMERICAN IRON AND STEEL (AIS) REQUIREMENT**

*The requirements of this section apply to (1) all construction Contracts and Subcontracts for DWSRF projects and CWSRF treatment works projects and (2) all Contracts for the purchase of iron and steel products for a DWSRF project or CWSRF treatment works project. Disregard this section if it does not apply to this Contract or Subcontract.*

The Contractor acknowledges to and for the benefit of the Recipient of the Clean Water State Revolving Fund (“CWSRF”) or the Drinking Water State Revolving Fund (“DWSRF”) financial assistance that the Contractor understands the goods and services under this Agreement are being funded with monies made available by the New York State Environmental Facilities Corporation (“EFC”) through the CWSRF or the DWSRF and that such funding is subject to certain statutory restrictions requiring that certain iron and steel products used in the project be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement.

The Contractor hereby represents and warrants that:

- (a) the Contractor has reviewed and understands the American Iron and Steel Requirement,
- (b) all of the iron and steel products covered by the American Iron and Steel Requirement used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and
- (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Recipient.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Recipient to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Recipient resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EFC or any damages owed to the EFC by the Recipient). While the Contractor has no direct contractual privity with the EFC, as a lender to the Recipient for the funding of this project, the Recipient and the Contractor agree that the EFC is a third-party beneficiary and neither this paragraph, nor any other provision of this Agreement necessary to give this paragraph force or effect, shall be amended or waived without the prior written consent of the EFC.

## **VII. SECTION 4 DAVIS-BACON (DB) PREVAILING WAGE REQUIREMENTS**

*The requirements of this section apply to all construction Contracts and Subcontracts greater than \$2,000 for either DWSRF projects or CWSRF treatment works projects. Disregard this section if it does not apply to this Contract or Subcontract.*

### **For Contracts in Excess of \$2,000:**

#### **1. Minimum Wages**

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. The Davis-Bacon poster (WH-1321) can be found at <https://www.dol.gov/whd/regs/compliance/posters/davis.htm>. Wage determinations may be obtained from the US Department of Labor's website, <https://beta.sam.gov/>.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination;
2. The classification is utilized in the area by the construction industry; and,
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1) (ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program *provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding. The Recipient shall upon its own action or upon written request of the EPA Award Official or an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Contract, the Recipient may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### 3. Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis–Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis–Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Recipient. Such documentation shall be available on request of EFC or EPA. As to each payroll copy received, the Recipient shall provide written confirmation in a form satisfactory to EFC indicating whether or not the project is in compliance with the requirements of 29 CFR § 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/government-contracts/construction/forms> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and Subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient, for transmission to EFC, EPA if requested by EPA, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a Subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the Recipient (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or Subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Recipient, EFC, EPA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the Recipient, EFC, or EPA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

#### 4. Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does

not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

5. Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

6. Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR § 5.5(a)(1) through (10) and such other clauses as the Recipient may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier subcontractor with all the Contract clauses in 29 CFR § 5.5.

7. Contract Termination: Debarment. A breach of the contract clauses in 29 CFR § 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR § 5.12.

8. Compliance with Davis–Bacon and Related Act requirements. All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

9. Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the Recipient, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.



***For Contracts in Excess of \$100,000:***

1. Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages. The Recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or Subcontractor under any such Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

5. In any Contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR § 5.1, the Contractor or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the Recipient and the Department of Labor, and the Contractor or Subcontractor will permit such representatives to interview employees during working hours on the job.

**VIII. SECTION 5 REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT**

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

Contractor and any Subcontractors shall comply with, Subpart C of 2 CFR Part 180 as implemented and supplemented by 2 CFR Part 1532. The Contractor is not a debarred or suspended party under 2 CFR Part 180 or 2 CFR Part 1532, or 29 CFR § 5.12. Neither the Contractor nor any of its Subcontractors have contracted with, or will contract with, any debarred or suspended party under the foregoing regulations.

The Contractor and any Subcontractor have not been debarred from or deemed ineligible for Government Contracts or federally assisted construction Contracts pursuant to Executive Order 11246.



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

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

#### **IX. SECTION 6     RESTRICTIONS ON LOBBYING**

*The requirements of this section apply to all Contracts and Subcontracts greater than \$100,000. Disregard this section if it does not apply to this Contract or Subcontract.*

The Contractor and any Subcontractor executing a Contract or Subcontract in excess of \$100,000 agree to provide to the Recipient an executed Certification Regarding Lobbying pursuant to 40 CFR Part 34 ("Lobbying Certification") in the form attached hereto as Attachment 9, consistent with the prescribed form provided in Appendix A to 40 CFR Part 34.