

**RESOLUTION NO. \_\_\_\_**  
**August 8, 2022**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH THE  
NEW YORK DEPARTMENT OF STATE FOR A SMART GROWTH COMPREHENSIVE  
PLANNING GRANT AWARD, AND TO ISSUE A RELATED REQUEST FOR  
QUALIFICATIONS**

**WHEREAS**, the City of Hudson last updated its comprehensive plan in 2002; and

**WHEREAS**, the City of Hudson, after due consideration, determined that it is desirable and in the public interest to undertake the necessary activities for the submittal of a grant application under the Smart Growth Comprehensive Planning Grant Program administered by the New York Department of State; and

**WHEREAS**, following successful submission of an application to the 2021-22 cycle of the aforementioned grant program, the City of Hudson has been awarded \$67,500 to support the development of a new comprehensive plan utilizing Smart Growth principles; and

**WHEREAS**, the Common Council acknowledges the imminent need to procure a qualified consulting firm to assist the City in the creation of an updated comprehensive plan,

**NOW THEREFORE BE IT RESOLVED**, that the Common Council authorizes and directs the Mayor to execute a master contract, a copy of which is appended to this resolution, as well as all other documents provided by the New York Department of State necessary for the implementation of this work relating to the financial and/or administrative processes of the grant program; and

**BE IT FURTHER RESOLVED**, that the Common Council authorizes and directs the Mayor to issue a Request for Qualifications seeking qualified professional firms to provide consulting services for the development of a comprehensive plan for the City of Hudson; and

**BE IT FURTHER RESOLVED**, to the extent all or any actions hereby authorized have been executed and/or performed by the Mayor all are hereby ratified and confirmed and this Resolution take effect immediately.

Introduced: \_\_\_\_\_

Approved: \_\_\_\_\_  
Kamal Johnson, Mayor

Seconded: \_\_\_\_\_

**STATE OF NEW YORK  
MASTER CONTRACT FOR GRANTS**

This State of New York Master Contract for Grants (Master Contract) is hereby made by and between the State of New York acting by and through the applicable State Agency (State) and the public or private entity (Contractor) identified on the face page hereof (Face Page).

**WITNESSETH:**

**WHEREAS**, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

**WHEREAS**, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Master Contract;

**NOW THEREFORE**, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree as follows:

**STANDARD TERMS AND CONDITIONS**

**I. GENERAL PROVISIONS**

**A. Executory Clause:** In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Master Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Master Contract.

**B. Required Approvals:** In accordance with Section 112 of the State Finance Law (or, if the Master Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Master Contract exceeds \$50,000 (or \$85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Master Contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the AG and OSC.

**Budget Changes:** An amendment that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the AG and OSC where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than

five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment D (Payment and Reporting Schedule).

**C. Order of Precedence:** In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as

In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as follows:

1. Standard Terms and Conditions
2. Modifications to the Face Page
3. Modifications to Attachment A-2<sup>1</sup>, Attachment B, Attachment C and Attachment D
4. The Face Page
5. Attachment A-2<sup>2</sup>, Attachment B, Attachment C and Attachment D
6. Modification to Attachment A-1
7. Attachment A-1
8. Other attachments, including, but not limited to, the request for proposal or program application

**D. Funding:** Funding for the term of the Master Contract shall not exceed the amount specified as “Contract Funding Amount” on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Master Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

**E. Contract Performance:** The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Master Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Master Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program.

**F. Modifications:** To modify the Attachments or Face Page, the parties mutually agree to record, in writing, the terms of such modification and to revise or complete the Face Page and all the appropriate attachments in conjunction therewith. In addition, to the extent that such modification meets the criteria set

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<sup>1</sup> To the extent that the modifications to Attachment A-2 are required by federal requirements and conflict with other provisions of the Master Contract, the modifications to Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

<sup>2</sup> To the extent that the terms of Attachment A-2 are required by federal requirements and conflict with other provisions of the Master Contract, the federal requirements of Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V)

forth in Section I.B herein, it shall be subject to the approval of the AG and OSC before it shall become valid, effective and binding upon the State. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Master Contract.

**G. Governing Law:** The Master Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

**H. Severability:** Any provision of the Master Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Master Contract shall attempt in good faith to reform the Master Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

**I. Interpretation:** The headings in the Master Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Master Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

**J. Notice:**

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:
  - a) by certified or registered United States mail, return receipt requested;
  - b) by facsimile transmission;
  - c) by personal delivery;
  - d) by expedited delivery service; or
  - e) by e-mail.
2. Notices to the State shall be addressed to the Program Office designated in Attachment A-1 (Program Specific Terms and Conditions).
3. Notices to the Contractor shall be addressed to the Contractor's designee as designated in Attachment A-1 (Program Specific Terms and Conditions).
4. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.
5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the Master Contract by giving fifteen (15) calendar days prior written notice to the other party sent in

accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

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

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

**M. Indemnification:** The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Master Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Master Contract.

**N. Non-Assignment Clause:** In accordance with Section 138 of the State Finance Law, the Master Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the State's previous written consent, and attempts to do so shall be considered to be null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract, let pursuant to Article XI of the State Finance Law, may be waived at the discretion of the State Agency and with the concurrence of OSC, where the original contract was subject to OSC's approval, where the assignment is due to a reorganization, merger, or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that the merged contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless the Master Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**O. Legal Action:** No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Master Contract. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from any of the State of New York, the State Agency, or any county, or other local government entity. The term "regulatory action" shall include commencing or threatening to commence a regulatory proceeding, or requesting any

regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

**P. No Arbitration:** Disputes involving the Master 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.

**Q. Secular Purpose:** Services performed pursuant to the Master Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

**R. Partisan Political Activity and Lobbying:** Funds provided pursuant to the Master Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

**S. Reciprocity and Sanctions Provisions:** The Contractor is hereby notified that if its principal place of business is located in a country, nation, province, state, or political subdivision that penalizes New York State vendors, and if the goods or services it offers shall be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that it be denied contracts which it would otherwise obtain.<sup>3</sup>

**T. Reporting Fraud and Abuse:** Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the Federal False Claims Act, the New York State False Claims Act, and whistleblower protections.

**U. Non-Collusive Bidding:** By submission of this bid, the Contractor and each person signing on behalf of the Contractor 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 his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor's behalf.

**V. Federally Funded Grants:** All of the Specific federal requirements that are applicable to the Master Contract are identified in Attachment A-2 (Federally Funded Grants) hereto. To the extent that the Master Contract is funded in whole or part with federal funds, (i) the provisions of the Master Contract that conflict with federal rules, federal regulations, or federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachment A-2 (Federally Funded Grants) hereto.

## **II. TERM, TERMINATION AND SUSPENSION**

**A. Term:** The term of the Master Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

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<sup>3</sup>As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

## **B. Renewal:**

1. **General Renewal:** The Master Contract may consist of successive periods on the same terms and conditions, as specified within the Master Contract (a “Simplified Renewal Contract”). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Master Contract.

### **2. Renewal Notice to Not-for-Profit Contractors:**

a) Pursuant to State Finance Law §179-t, if the Master Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State’s intent to renew or not to renew the Master Contract no later than ninety (90) calendar days prior to the end of the term of the Master Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State’s intent to renew or not to renew the Master Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Master Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State (“Unusual Circumstances”), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, “Unusual Circumstances” shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

b) Notification to the not-for-profit Contractor of the State’s intent to not renew the Master Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Master Contract as required in this Section and State Finance Law §179-t, the Master Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Master Contract.

## **C. Termination:**

### **1. Grounds:**

a) Mutual Consent: The Master Contract may be terminated at any time upon mutual written consent of the State and the Contractor.

b) Cause: The State may terminate the Master Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Master Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Master Contract.

c) Non-Responsibility: In accordance with the provisions of Sections IV(N)(6) and (7) herein, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Master Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.

d) Convenience: The State may terminate the Master Contract in its sole discretion upon thirty (30) calendar days prior written notice.

e) Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Master Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Master Contract, the Master Contract may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Master Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Master Contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.

f) Force Majeure: The State may terminate or suspend its performance under the Master Contract immediately upon the occurrence of a "force majeure." For purposes of the Master Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

## **2. *Notice of Termination:***

a) Service of notice: Written notice of termination shall be sent by:

- (i) personal messenger service; or
- (ii) certified mail, return receipt requested and first class mail.

b) Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:

(i) if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or

(ii) if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business



days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

**3. *Effect of Notice and Termination on State's Payment Obligations:***

- a) Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.
- b) The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Master Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Master Contract after its termination date.

**4. *Effect of Termination Based on Misuse or Conversion of State or Federal Property:***

Where the Master Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Master Contract for the purposes set forth herein, the State may, at its option, require:

- a) the repayment to the State of any monies previously paid to the Contractor; or
- b) the return of any real property or equipment purchased under the terms of the Master Contract; or
- c) an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

**D. Suspension:** The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time as the State issues a formal written notice authorizing a resumption of performance under the Master Contract.

### **III. PAYMENT AND REPORTING**

**A. Terms and Conditions:**

- 1. In full consideration of contract services to be performed, the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.
- 2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Master Contract shall not be reimbursed.

3. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Attachment D (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.
4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of the State Agency, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments.
5. If travel expenses are an approved expenditure under the Master Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.
6. Timeliness of advance payments or other claims for reimbursement, and any interest to be paid to Contractor for late payment, shall be governed by Article 11-A of the State Finance Law to the extent required by law.
7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, "Full Execution" shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

**B. Advance Payment and Recoupment:**

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Attachment D (Payment and Reporting Schedule).
2. Advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page.
3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Attachment D) will be modified as part of the renewal process.
4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Attachment D (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract

Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.

5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.

### **C. Claims for Reimbursement:**

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Master Contract in accordance with this Section and the applicable claiming schedule in Attachment D (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Attachment B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:

a) Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

b) Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

c) Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

d) Milestone/Performance Reimbursement:<sup>4</sup> Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event.

Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Attachment D (Payment and Reporting Schedule). The State Agency shall make milestone payments subject to the Contractor's satisfactory performance.

e) Fee for Service Reimbursement:<sup>5</sup> Payment shall be limited to only those fees specifically agreed upon in the Master Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f) Rate Based Reimbursement:<sup>6</sup> Payment shall be limited to rate(s) established in the Master Contract. Payment may be requested no more frequently than monthly.

g) Scheduled Reimbursement:<sup>7</sup> The State Agency shall generate vouchers at the frequencies and amounts as set forth in Attachment D (Payment and Reporting Schedule), and service reports shall be used to determine funding levels appropriate to the next annual contract period.

h) Fifth Quarter Payments:<sup>8</sup> Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall use a written directive for fifth quarter financing. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.
4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Master Contract as security for the faithful completion of services or work, as applicable, under the Master Contract. This amount may be withheld in whole or in part from any single

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<sup>4</sup> A milestone/ performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Master Contract effort.

<sup>5</sup> Fee for Service is a rate established by the Contractor for a service or services rendered.

<sup>6</sup> Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.

<sup>7</sup> Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Master Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

<sup>8</sup> Fifth Quarter Payments occurs where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract.

5. payment or combination of payments otherwise due under the Master Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.
6. The State shall not be liable for payments on the Master Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.
7. All vouchers submitted by the Contractor pursuant to the Master Contract shall be submitted to the State Agency no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency to the Contractor shall not exceed the amount of actual expenditures.
8. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Master Contract is funded in whole or in part with federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures.

#### **D. Identifying Information and Privacy Notification:**

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property, must include the Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number, (ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.
2. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. The personal information is requested by the purchasing unit of the State Agency contracting to purchase the goods or services or lease the real or personal property covered by the Master Contract. This information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York, 12236.

## **E. Refunds:**

1. In the event that the Contractor must make a refund to the State for Master Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in Attachment A-1 (Program Specific Terms and Conditions). The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Refund Office at the address specified in Attachment A-1 (Program Specific Terms and Conditions).
2. If at the end or termination of the Master Contract, there remains any unexpended balance of the monies advanced under the Master Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Master Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

**F. Outstanding Amounts Owed to the State:** Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Master Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

## **G. Program and Fiscal Reporting Requirements:**

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Attachment D (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Master Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.
2. Consistent with the selected reporting options in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:
  - a) If the Expenditure Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with one or more of the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:
    - (i) *Narrative/Qualitative Report:* The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Attachment C (Work Plan). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.
    - (ii) *Statistical/Quantitative Report:* The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting

Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)

- (iii) *Expenditure Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.
- (iv) *Final Report*: The Contractor shall submit a final report as required by the Master Contract, not later than the time period listed in Attachment D (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Attachment C (Work Plan).
- (v) *Consolidated Fiscal Report (CFR)*: The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Attachment D (Payment and Reporting Schedule).

b) If the Performance-Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

- (i) *Progress Report*: The Contractor shall provide the State Agency with a written progress report using the forms and formats as provided by the State Agency, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Attachment C (Work Plan). Progress reports shall be submitted in a format prescribed in the Master Contract.
- (ii) *Final Progress Report*: Final scheduled payment is due during the time period set forth in Attachment D (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Attachment D (Payment and Reporting Schedule). The State Agency shall complete its audit and notify the Contractor of the results no later than the date set forth in Attachment D (Payment and Reporting Schedule). Payment shall be adjusted by the State Agency to reflect only those services/expenditures that were made in accordance with the Master Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Attachment D (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.

3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Attachment D (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Master Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Attachment D (Payment and Reporting Schedule).

## **H. Notification of Significant Occurrences:**

1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to the State Agency within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.
2. The Contractor shall immediately notify in writing the program manager assigned to the Master Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Master Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

## **IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES**

### **A. Contractor as an Independent Contractor/Employees:**

1. The State and the Contractor agree that the Contractor is an independent contractor, and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Master Contract, and all applicable Federal and State laws and regulations.
2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Master Contract and/or any subcontract entered into under the Master Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Master Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Master Contract, Contractor shall immediately notify the State.

### **B. Subcontractors:**

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Master Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Master Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.



2. The Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of \$100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of \$100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Master Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the subcontract, nor under the Master Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.

3. Prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.

4. When a subcontract equals or exceeds \$100,000, the subcontractor must submit a Vendor Responsibility Questionnaire (Questionnaire).

5. When a subcontract is executed, the Contractor must provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.

6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

#### **C. Use of Material, Equipment, or Personnel:**

1. The Contractor shall not use materials, equipment, or personnel paid for under the Master Contract for any activity other than those provided for under the Master Contract, except with the State's prior written permission.

2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Master Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Master Contract.

#### **D. Property:**

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.

a) If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.

b) If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Master Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Master Contract.

c) In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.

d) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Master Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to the State Agency, naming the State Agency as an additional insured, covering the loss, theft or destruction of such equipment.

e) A rental charge to the Master Contract for a piece of Property owned by the Contractor shall not be allowed.

f) The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Master Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.

g) No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Master Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.

2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Master Contract:

a) For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.

b) For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.

3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Master Contract shall be governed by the terms and conditions of Attachment A-2 (Federally Funded Grants).
4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.
5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

## **E. Records and Audits:**

### **1. General:**

- a) The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Master Contract (collectively, Records).
- b) The Contractor agrees to produce and retain for the balance of the term of the Master Contract, and for a period of six years from the later of the date of (i) the Master Contract and (ii) the most recent renewal of the Master Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Master Contract. Such Records may include, but not be limited to, original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:
  - (i) personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders, detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.
  - (ii) payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.
  - (iii) non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.
  - (iv) receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.
- c) The OSC, AG and any other person or entity authorized to conduct an examination, as well as the State Agency or State Agencies involved in the Master Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m.

until 5:00 p.m., Monday through Friday (excluding State recognized holidays), at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

d) The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records, as exempt under Section 87 of the Public Officers Law, is reasonable.

e) Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

## **2. *Cost Allocation:***

a) For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of OMB Circulars A- 87, A-122, and/or A-21. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.

b) For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

3. ***Federal Funds:*** For records and audit provisions governing Federal funds, please see Attachment A-2 (Federally Funded Grants).

**F. Confidentiality:** The Contractor agrees that it shall use and maintain information relating to individuals who may receive services, and their families pursuant to the Master Contract, or any other information, data or records deemed confidential by the State (Confidential Information) only for the limited purposes of the Master Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

## **G. Publicity:**

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.

2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Master Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:

a) Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and

b) State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.

3. Notwithstanding the above, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section V(G)(2) (Publicity) hereof.

**H. Web-Based Applications-Accessibility:** Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Master Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08- 005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by the State Agency and the results of such testing must be satisfactory to the State Agency before web content shall be considered a qualified deliverable under the Master Contract or procurement.

**I. Non-Discrimination Requirements:** Pursuant to 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 and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), 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. 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 the Master Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Master Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the 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 the Master Contract. The Contractor shall be subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

**J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises:** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Master Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting State Agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State Agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting State Agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;
2. The Contractor 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;
3. The Contractor shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
4. At the request of the State, 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 shall not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and
5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall 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 subclauses 1 – 5 of this Section (IV)(J), in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where

the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Master Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State 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 State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The 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.

**K. Omnibus Procurement Act of 1992:** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises, as bidders, subcontractors and suppliers on its procurement contracts.

1. If the total dollar amount of the Master Contract is greater than \$1 million, the Omnibus Procurement Act of 1992 requires that by signing the Master Contract, the Contractor certifies the following:

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

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

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

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

**L. Workers' Compensation Benefits:**

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

2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

**M. Unemployment Insurance Compliance:** The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to the State Agency staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;
2. any debts owed for UI contributions, interest, and/or penalties;
3. the history and results of any audit or investigation; and
4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Master Contract.

**N. Vendor Responsibility:**

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may obtain a paper form from the OSC prior to execution of the Master Contract. The Contractor further covenants and represents that as of the date of execution of the Master Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.
2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.
3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.
4. The State reserves the right, in its sole discretion, at any time during the term of the Master Contract:
  - a) to require updates or clarifications to the Questionnaire upon written request;



- b) to inquire about information included in or required information omitted from the Questionnaire;
  - c) to require the Contractor to provide such information to the State within a reasonable timeframe; and
  - d) to require as a condition precedent to entering into the Master Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and
  - e) to require the Contractor to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. By signing the Master Contract, the Contractor agrees to comply with any such additional conditions that have been made a part of the Master Contract.
5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Master Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Master Contract.
6. The State, in its sole discretion, reserves the right to make a final Determination of Non- Responsibility at any time during the term of the Master Contract based on:
- a) any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or
  - b) the State's discovery of any material information which pertains to the Contractor's responsibility.
7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non-responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

**O. Charities Registration:** If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish the State Agency with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Master Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Master Contract.

**P. Consultant Disclosure Law:**<sup>9</sup> If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing,

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<sup>9</sup> Not applicable to not-for-profit entities.

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

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

## **INSTRUCTIONS FOR NEW SGCP CONTRACTS**

### **Master Grant Contract and Signature Pages**

Review all sections and attachments of the contract and let us know if you have any questions or concerns before signing and submitting the contract. If you need to make any changes to any part of the contract, please indicate so in writing to DOS (please do not handwrite changes into the contract). Some specific areas to review:

- Page 1 of the Face Page - confirm that all information entered is correct (Contractor (Grantee) Name & Address, Federal Tax ID number, Vendor ID number, Contractor Status/Exemption Codes and, if applicable, Charities Registration number).
- Page 2 of the Face Page - verify that the Current Contract Funding Amount is correct. Also, verify that the Current Contract Term and Period listed reflect the time period during which the project activities are to be undertaken and project costs incurred. Be advised that activities and related costs occurring outside of this time period will not be eligible for reimbursement and will not be eligible to be used as match.
- Page 6 of Attachment A-1, verify that the Mayor's contact information is complete and correct.
- Review the budget in Attachment B to confirm that the costs and local share anticipated for this project and the MWBE goals are accurately reflected. Verify that costs listed in: A. Salaries are for time spent by official employees of Grantee only; B. Travel, C. Supplies, and D. Equipment are for costs incurred directly by the Grantee; E. Contractual is for contractors procured directly by the Grantee only; and F. Other contains any other relevant costs which do not fit into the previous categories.
- Also in Attachment B, Category E, confirm that the name and address of any known subcontractors are indicated. If you know the subcontractor(s) that will be performing any of the work in Category E (even if it's another municipality), this information must be listed in the contract. If a subcontractor has not yet been selected for a particular item, "To be determined" should be indicated.
- Review the project description and tasks in Attachment C to confirm that the project description and tasks are accurately reflected.

### **Signature Page**

The person authorized to execute this contract should sign the signature page and have their signature notarized. All signature fields and notary fields must be filled out and the notary stamp must be legible.

### **Contact Update Form**

Complete the form to indicate the name and address of the City of Hudson and the contact information for the Mayor. You should also enter the name and contact information for the MWBE Liaison and you may also enter up to (2) additional contacts to receive contract-related correspondence from DOS.

A webinar to assist you with completing this form is located here:

<https://www.youtube.com/watch?v=Qz0gRyNcXBM>

- Make sure that the official mailing address of the Grantee is correct and complete.
- Verify/correct the contact information for the Mayor. Make sure all fields are complete.
- Contact person #1 and #2 – confirm that the correct people are listed. Ideally, we'd like to see the Grant Administrator and Project Manager listed. Verify/correct/provide the names and contact information for each of the contacts. Make sure all fields are complete.

- MWBE Liaison – enter the person who will be responsible MWBE goals and updates for this contract and provide their and contact information. Note that this person must be an employee of the City of Hudson and should match the person entered as the Designated Liaison on MWBE Form A.
- Note that each email address must be unique to the individual.

### **Contract Review Form**

Answer all questions on the form based on your review of the contract. If any questions are answered “NO”, a written explanation must be provided on the form or attached. The form should be signed and dated by the Mayor. Provide the contact information for the person that we should contact if we have questions during the contract execution process.

### **MWBE Forms A, B, D and D-1**

Form A (EEO Policy Statement) – MWBE Form A is required for contracts with a State Funding Amount over \$25,000 (for planning projects) or over \$100,000 (for construction projects). The form should be completed to show your agreement to enact the state’s EEO policy related to this contract. Note that if the Grantee already has an EEO policy in effect, a copy of that policy may be submitted in place of Form A. If completing Form A:

- At the top, there are two blank lines. Fill in the authorized employee’s name and their title
- Fill out the bottom section and have signed by an authorized employee of the Grantee.
- Fill in the Name of the Designated Liaison – must be an employee of the Grantee and should match the person entered as the MWBE Contact on the CUF.
- MWBE goals – confirm the MBE and WBE goals are accurate for this contract (see Attachment B-1 for more information).
- EEO goals – enter the Grantee’s current EEO goals. If the Grantee does not have EEO goals, enter zero for both goals. This section cannot be left blank.
- Fill out the bottom section and have signed by an authorized employee of the Grantee.

Form B (Staffing Plan - Grantee) – MWBE Form B is required for contracts with a State Funding Amount over \$250,000. The form is to be filled out by the Grantee to show the characteristics of the individuals who are anticipated to be working on the project in any capacity. To complete Form B:

- Confirm that the offeror’s (grantee) name and address are accurate.
- Check whether the information provided will reflect the work force utilized for this project, or total work force. Either one is acceptable.
- In the table, enter the information to show the characteristics of individuals in the organization who are anticipated to be working on the project in any capacity.
- Make sure to complete the “Total” line for each column.
- Fill out the bottom section and have signed by an authorized employee of the Grantee.

Form B (Staffing Plan – Subcontractor) – MWBE Form B is required from subcontractors listed in Appendix B of the contract (for contracts with a State Funding Amount over \$250,000). The form should be completed as outlined above, except enter their company name for reporting entity and have signed by an authorized employee of the subcontractor.

Form D (Utilization Plan) – MWBE Form D is required if an MWBE goal is listed in Attachment B of the contract and MWBE subcontractors have already been selected. This form is to be filled out by the Grantee to indicate the state-certified MWBE firms who have been selected to perform work under this contract. Note that if no state-certified MWBE firms have yet been selected, Form D-1 (Compliance Certification Letter) should be submitted instead of Form D. If completing Form D:

- Confirm the Offeror's (Grantee) name, address, phone number, and federal tax ID are accurate.
- In the table, enter the names of the specific state-certified MWBE firms who have been selected to perform work on this contract. Indicate whether they are MBE and/or WBE and include a description of work and amount.
- Please check the NYS MWBE directory to confirm MWBE certification at: <https://ny.newnycontracts.com>.
- If the MWBE firm is a subcontractor of another hired vendor, please indicate that in the description column.
- Fill out the bottom section and have signed by an authorized employee of the Grantee.

Important: If additional MWBE firms are selected to perform work on this contract in the future, an updated Form D containing *all* hired MWBE firms should be submitted within two weeks following the selection.

Form D-1 (Compliance Certification Letter) – This form is to be filled out when the Grantee has not yet selected any state-certified MWBE firms to perform work under this contract. Form D-1 should be completed to certify that the Grantee will comply with the MWBE goals in the contract and will complete and submit Form D (Utilization Plan) within two weeks following selection of an MWBE firm. To complete Form D-1:

- In the first line, fill in the authorized representative's name.
- At the bottom, have signed by an authorized employee of the Grantee and fill in that individuals name, title and contact info (phone number and email address) as well as the date signed.

### **Status Report Template**

The Status Report Template is attached as a separate Word file with some information prepopulated including the top section, the task list table (based on the Work Plan of the contract) and the MWBE goals.

A webinar to assist you with completing this form is located here:

<https://www.youtube.com/watch?v=Wdc30PXSpQ8>

This form is to be completed by doing the following:

- Enter the Date Prepared at the top of the form.
- Columns 3-5 of the task list table should be completed to reflect the expected timeline for completion of tasks.
- If any tasks have already started and/or been completed, Columns 3-7 should be completed to show the status of those tasks.
- If any costs have been incurred to date by MWBE firms, fill in this information under the table.
- Fill in any applicable narratives and enter your contact information at the bottom of the form.
- Please use the "Status Guidelines" PDF email attachment to assist you in completing this form.
- Reach out to your DOS Project Manager if you have questions or would like assistance with your timeline (see the bottom of this guidance document for contact information).

### **Vendor Responsibility Questionnaire**

The Vendor Responsibility Questionnaire (VRQ) must be completed under the following circumstances only:

- If the Grantee listed on the face page is a Not-for-Profit (NFP), and the contract amount is \$50,000 or more, the NFP must complete the VRQ (municipalities are exempt from VRQ).
- If the Grantee (NFP or municipality) has any known subcontractors which will receive state funds equaling \$100,000 or more, the vendor(s) must complete the VRQ.

To complete the VRQ, please go to <https://www.osc.state.ny.us/vendrep/index.htm>. Please note that the information provided must be updated every 6 months. If you have questions about VendRep, please contact them at (866) 370-4672 or [ITservicedesk@osc.ny.gov](mailto:ITservicedesk@osc.ny.gov).

In addition, the following documents must be submitted by NFP Grantees to support the VRQ:

- Proof of Workers' Comp Coverage (Form C-105.2, U-26.3, SI-12, SIG-105.2 or CE-200).
- Proof of Disability Coverage (Form DB-120.1, DB-155, or CE-200).
- Acord forms are not acceptable proof of coverage.

NFP's are strongly encouraged to confirm the following:

- NFP Grantees and/or subcontractors – The entity's NYS Charities annual filings are up-to-date: <https://www.charitiesnys.com/>
- NFP Grantees only - The entity's prequalification status is "Prequalified" in the Grants Gateway: [https://grantsgateway.ny.gov/IntelliGrants\\_NYSGG/login2.aspx](https://grantsgateway.ny.gov/IntelliGrants_NYSGG/login2.aspx)

### **Executive Order 16**

On March 17, 2022, Governor Kathy Hochul issued Executive Order 16 prohibiting state agencies and authorities from contracting with businesses conducting business in Russia. Please see the guidelines under this Executive Order and the Certification here: <https://ogs.ny.gov/EO-16>. The certification must be submitted only if the grantee is a non-municipal entity.

### **NYS Contract System**

Please visit <https://ny.newnycontracts.com> to confirm that the Grantee is registered in the NYS Contract System (NYSCS) and that the MWBE Liaison entered on the CUF and MWBE Form A is able to access the NYSCS. If you have any questions, or are unable to access the NYSCS, please contact [opdcontracts@dos.ny.gov](mailto:opdcontracts@dos.ny.gov) and we will assist you.

### **Submitting Contract Package for Execution**

Once everything is reviewed and signed, submit the following:

- Contract Review Form.
- Contact Update Form.
- Signature page.
- MWBE Forms A and B, and D or D-1 (depending on which are applicable).
- Completed status report template.
- VRQ information, if required (see above):
  - PDF of the completed Vendor Responsibility Questionnaire(s).
  - Proof of Workers' Compensation and Disability Coverage.

Submit the above documents within 30 days to [opdcontracts@dos.ny.gov](mailto:opdcontracts@dos.ny.gov) for review and processing.

When your contract submission is received, we will review for completeness then forward to our Fiscal office, who will have the contract executed by the State. The execution process usually takes about 2 months. When fully executed, a copy of the contract will be forwarded to the Grantee via email.

In the meantime, if you would like to check on the execution status of this contract please visit: <http://www2.osc.state.ny.us/transparency/contracts/contractsearch.cfm>. Search contracts by Vendor Name (City of Hudson) and/or Contract Number (C1002062). If the contract is listed in the search results, it means the contract has been executed. The exact execution date can be found in the last column. You can expect to receive official notification from us within a couple of weeks after execution. Note, if you

contract begins with the letter “T”, it may not be listed on this website right away – please contact us directly for updates.

If you have questions, please contact Meg Bowers at 518-474-4054 or [opdcontracts@dos.ny.gov](mailto:opdcontracts@dos.ny.gov) or your project manager Lisa Vasilakos at 518-486-3434 or [lisa.vasilakos@dos.ny.gov](mailto:lisa.vasilakos@dos.ny.gov).

IN WITNESS THEREOF, the parties hereto have executed or approved this Master Contract on the dates below their signatures.

**CONTRACTOR:**

City of Hudson  
520 Warren Street  
Hudson, NY 12534

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

\_\_\_\_\_  
Printed Name

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

Date: \_\_\_\_\_

**STATE AGENCY:**

NYS Department of State  
One Commerce Plaza  
99 Washington Avenue – Suite 1010  
Albany, NY 12231

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

\_\_\_\_\_  
Printed Name

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

Date: \_\_\_\_\_

**STATE OF NEW YORK**

COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the contractor described herein which executed the foregoing instrument; and that he/she signed his/her name thereto as authorized by the contractor name on the face page of this Master Contract.

(Notary) \_\_\_\_\_

**ATTORNEY GENERAL'S SIGNATURE**

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

\_\_\_\_\_  
Printed Name

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

Date: \_\_\_\_\_

**STATE COMPTROLLER'S SIGNATURE**

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

\_\_\_\_\_  
Printed Name

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

Date: \_\_\_\_\_



**Contact Update Form**

Please update/specify information for up to (4) people to receive contract related correspondence from DOS. Ideally, we would want to see the CEO, Grant Administrator, Project Manager and MWBE Liaison listed on this form.  
All changes should be made in the Changes/Additions/Corrections column.

|  |  | Changes/Additions/Corrections |
|--|--|-------------------------------|
| Official mailing address of the City of Hudson | City of Hudson<br>520 Warren Street<br>Hudson, NY 12534  |                               |
| Mayor of the City of Hudson:                   | Name: Kamal Johnson<br>Title: Mayor<br>Affiliation: City of Hudson<br>Email: mayor@cityofhudson.org<br>Phone: 518-828-7217                             |                               |
| Contact Person #1:                             | Name: Michael Hoffmann<br>Title: Mayor's Aide<br>Affiliation: City of Hudson<br>Email: mayoralaide@cityofhudson.org<br>Phone: 518-828-7217             |                               |
| Contact Person #2:                             | Name: Thomas DePietro<br>Title: President, Common Council<br>Affiliation: City of Hudson<br>Email: councilpres@cityofhudson.org<br>Phone: 518-828-7217 |                               |
| MWBE Liaison:                                  | Name:<br>Title:<br>Affiliation: City of Hudson<br>Email:<br>Phone:   |                               |

**Contract Review Form**

|   |     |    |
|---|-----|----|
| On Face Page (page 1), are the Contractor Name, Federal Tax ID Number and NYS Vendor ID Number correct?   | YES | NO |
| On Face Page (page 2), does the Current Contract Term and Period reflect the time period during which all project costs will be incurred (including match)?   | YES | NO |
| In Attachment B, does the budget accurately reflect the anticipated costs and MWBE goals for the project?   | YES | NO |
| In Attachment B, Category E, are all known subcontractors accurately reflected?   | YES | NO |
| In Attachment C, does the project description and work program tasks accurately reflect the work to be undertaken for the project?  | YES | NO |
| Confirm that the City of Hudson is registered in the NYS Contract System and that the MWBE Liaison is able to access the NYSCS.   | YES | NO |
| Confirm that MWBE Form A (or copy of EEO policy) is included in this submission (for planning contracts over \$25,000 and construction projects over \$100,000).  | YES | NO |
| Confirm that MWBE Form B (for the grantee, as well as any known subcontractors) are included in this submission (for contracts over \$250,000).   | YES | NO |
| Confirm that MWBE Form D or MWBE Form D-1 is included in this submission, and that MWBE Form D will be resubmitted each time any new MWBE subcontractors are selected during the life of the contract.  | YES | NO |
| Confirm that the Vendor Responsibility Questionnaire has been completed for any NFP Grantees receiving \$50,000 or more, as well as any known subcontractors receiving \$100,000 or more in State Funds, and that Disability and Workers' Comp certificates are included in this submission for any NFP Grantees. | YES | NO |
| Confirm that all appropriate financial documentation related to this contract will be retained during the life of the contract and for six years following the final contract payment, and that the documentation will be submitted as necessary to support payment requests and/or as requested by DOS.          | YES | NO |
| Confirm that all documentation related to procurements under this contract, including documentation related to Good Faith Effort to secure MWBE utilization, will be retained during the life of the contract and submitted as requested by DOS (see attached document "MWBE Good Faith Effort Documentation").   | YES | NO |

***\*\*If any questions above are answered "NO", a written explanation must be attached to this form\*\****

Signature of the Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

Enter the name, phone number and email address of the individual(s) that we should contact if we have questions while executing this contract:

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

# MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBE) PROGRAM AT THE DEPARTMENT OF STATE (DOS)

## Overview

**Article 15-A of the NYS Executive law** was enacted on **July 19, 1988**, to promote equality of economic opportunities for MWBEs and to eliminate barriers to their participation in state contracting.

DOS aspires to meet our agency-wide MWBE goal of **30%** utilization.

The MWBE requirement applies to Contracts, including Grants, with value over:

- \$25,000 for commodities and services
- \$100,000 for construction

DOS participates in the statewide requirement to provide procurement opportunities for MWBEs.

The **Bureau of Fiscal Management** administers the Department's **MWBE Program**.

## How does it apply to you?

- Under **5 NYCRR §142.8**, DOS contractors are required to make “**good faith efforts (GFE)**” to provide meaningful participation to MWBEs as subcontractors or suppliers in the performance of their contracts.
- The contract's specific MWBE goals can be identified in the **RFA** and/or the **budget page** in applicable contracts.
- Goals apply to qualified (subbed out/procured) budget lines of all applicable contracts
- Contractors should set up an account in the New York State Contract System(<https://ny.newnycontracts.com>) for submitting utilization plans and reports. **\*100% federally funded contracts are not required to use the system.**



### Your Responsibilities Under Article 15-A

**1**

Within ten days of receipt of the award notification from DOS, submit:

- **Form A** - MWBE/EEO Policy Statement
- **Form B** - Staffing Plan (if contract > \$250,000)
- **Form D** - MWBE Utilization Plan **OR**
- **Form D-1** - MWBE Certification Letter

Forms are available at: [www.dos.ny.funding/mwbe](http://www.dos.ny.funding/mwbe)

**2**

Throughout the contract term:

- Report payments to MWBE subcontractors as soon as those payments are made, through the system **OR** submit Form F - Quarterly MWBE Utilization
- Submit Form C - Workforce Utilization.
- Communicate with your contract's Program Manager through the system.



## How to meet the MWBE goals?

### The number of certified MWBE vendors keeps growing!

Find **eligible businesses** through the NYS MWBE Directory located at:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

Only the use of **New York State-certified** MWBEs will count towards meeting NYS contract goals.

A **Waiver Request** can be submitted if there are no opportunities for MWBE participation, or to demonstrate the Good Faith Efforts to meet the goals. **Contact your contract program manager for assistance!**

For additional information about the MWBE Program, contact:

The Empire State Development's Division of Minority and Women-owned Business Enterprises at **(212) 803-2414**

Website: <https://ny.newnycontracts.com>

For certification: <https://esd.ny.gov/mwbe-new-certification>



For questions or assistance with achieving and reporting MWBE utilization, Contact the Bureau of Fiscal Management at **518-474-2754** or [dos.sm.mwbe@dos.ny.gov](mailto:dos.sm.mwbe@dos.ny.gov)

# SERVICE DISABLED VETERAN-OWNED BUSINESS ENTERPRISES (SDVOB) PROGRAM AT THE DEPARTMENT OF STATE (DOS)

## Overview

Article 17-B of the Executive Law, enacted on May 12, 2014, recognizes veteran's service to and sacrifice for our nation. It is New York State's policy to promote and encourage the continuing economic development of service disabled veteran-owned businesses, and allows eligible business owners to become certified as a New York State Service Disabled Veteran-Owned Business (SDVOB), in order to increase their participation in New York State's contracting opportunities.



New York State has established a statewide SDVOB goal of **6%**, to improve contracting opportunities for SDVOB certified vendors.

DOS participates in the statewide requirement to provide procurement opportunities for SDVOB.

The **Bureau of Fiscal Management** administers the Department's **SDVOB Program**.

### Did you know???

Utilizing SDVOB vendors in your contracts will support NYS' efforts to improve the businesses owned by those who served our nation, create more private sector jobs, and maximize economic activity, to the mutual benefit of the communities

## How does it apply to you?

DOS grantees and contractors are requested to make every effort, to the maximum extent possible, to:

- ◆ **Engage** certified SDVOBs in the purchasing of commodities, services and technology, in the performance of their DOS contracts, and
- ◆ **Report** any SDVOB vendor utilization achieved.

## How to achieve SDVOB Utilization

Find **eligible businesses** at the NY State SDVOB Directory located at: <https://online.ogs.ny.gov/SDVOB/search>. **Only the use of New York State-certified SDVOBs** will give you credit for SDVOB utilization.

New certified SDVOB vendors are frequently being added to the Directory!

### SDVOB vendors are available in the following categories:

- **Commodities**
- **Construction**
- **Construction Professional Services**
- **Financial Services**
- **Consulting & Other Services** (Business, Management, Administrative, IT, Media, Transportation, Equipment, Miscellaneous)

SDVOB utilization can be as subcontractors, suppliers, or other contracting roles.



## Need Help?

The Office of General Services' **Division of Service-Disabled Veterans' Business Development** administers the NYS SDVOB Program :

Phone: 518-474-2015

Email: [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov)

For Certification: <https://ogs.ny.gov/Veterans/>

For questions or assistance with achieving and reporting SDVOB utilization, Contact the Bureau of Fiscal Management  
518-474-2754 or [dos.sm.sdvoib@dos.ny.gov](mailto:dos.sm.sdvoib@dos.ny.gov)



**Department of State**

**FORM A**  
**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL**  
**EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**M/WBE AND EEO POLICY STATEMENT**

I, \_\_\_\_\_, the \_\_\_\_\_  
agree to adopt the following policies with respect to the project being developed or services rendered at  
the City of Hudson:

**M/WBE**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**EEO**

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation 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 disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

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

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

\_\_\_\_\_ is designated as the Minority Business Enterprise Liaison  
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

30.00% Minority and Women's Business Enterprise Participation

15.00% Minority Business Enterprise Participation

15.00% Women's Business Enterprise Participation

**EEO Contract Goals**

\_\_\_\_\_ % Minority Labor Force Participation

\_\_\_\_\_ % Female Labor Force Participation

\_\_\_\_\_  
(Authorized Representative)

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

Date: \_\_\_\_\_

## FORM B - STAFFING PLAN (Grantee)

|  |  |   |
|--|--|---|
| <b>Solicitation No.:</b> C1002062                                  | <b>Reporting Entity:</b><br>City of Hudson | <b>Report includes Contractor's/Subcontractor's:</b><br><input checked="" type="checkbox"/> Work force to be utilized on this contract<br><input type="checkbox"/> Total work force |
| <b>Offeror's Name:</b> City of Hudson                              |  | <input checked="" type="checkbox"/> Offeror<br><input type="checkbox"/> Subcontractor   |
| <b>Offeror's Address:</b><br>520 Warren Street<br>Hudson, NY 12534 |  |   |

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

| EEO-Job Category                                   | Total<br>Work<br>force | Work force by<br>Gender |                        | Work force by<br>Race/Ethnic Identification |  |                  |  |                     |                       |                  |  |                               |  |                     |  |                    |  |
|--|------------------------|-------------------------|------------------------|---|--|------------------|--|---------------------|-----------------------|------------------|--|-------------------------------|--|---------------------|--|--------------------|--|
|  |                        | Total<br>Male<br>(M)    | Total<br>Female<br>(F) | White<br>(M) (F)                            |  | Black<br>(M) (F) |  | Hispanic<br>(M) (F) |                       | Asian<br>(M) (F) |  | Native<br>American<br>(M) (F) |  | Disabled<br>(M) (F) |  | Veteran<br>(M) (F) |  |
| Officials/Administrators                           |                        |                         |                        |   |  |                  |  |                     |                       |                  |  |                               |  |                     |  |                    |  |
| Professionals                                      |                        |                         |                        |   |  |                  |  |                     |                       |                  |  |                               |  |                     |  |                    |  |
| Technicians  |                        |                         |                        |   |  |                  |  |                     |                       |                  |  |                               |  |                     |  |                    |  |
| Sales Workers                                      |                        |                         |                        |   |  |                  |  |                     |                       |                  |  |                               |  |                     |  |                    |  |
| Office/Clerical                                    |                        |                         |                        |   |  |                  |  |                     |                       |                  |  |                               |  |                     |  |                    |  |
| Craft Workers                                      |                        |                         |                        |   |  |                  |  |                     |                       |                  |  |                               |  |                     |  |                    |  |
| Laborers   |                        |                         |                        |   |  |                  |  |                     |                       |                  |  |                               |  |                     |  |                    |  |
| Service Workers                                    |                        |                         |                        |   |  |                  |  |                     |                       |                  |  |                               |  |                     |  |                    |  |
| Temporary<br>/Apprentices                          |                        |                         |                        |   |  |                  |  |                     |                       |                  |  |                               |  |                     |  |                    |  |
| Totals   |                        |                         |                        |   |  |                  |  |                     |                       |                  |  |                               |  |                     |  |                    |  |
| <b>PREPARED BY (Signature):</b>                    |                        |                         |                        |   |  |                  |  |                     | <b>TELEPHONE NO.:</b> |                  |  |                               |  | <b>DATE:</b>        |  |                    |  |
|  |                        |                         |                        |   |  |                  |  |                     | <b>EMAIL ADDRESS:</b> |                  |  |                               |  |                     |  |                    |  |
| <b>NAME AND TITLE OF PREPARER (Print or Type):</b> |                        |                         |                        |   |  |                  |  |                     |                       |                  | <b>Submit completed with bid or proposal</b> |                               |  |                     |  |                    |  |
|  |                        |                         |                        |   |  |                  |  |                     |                       |                  |  |                               |  |                     |  |                    |  |

## FORM B - STAFFING PLAN (Subcontractor)

|  |   |   |
|--|---|---|
| <b>Solicitation No.:</b> C1002062                                  | <b>Reporting Entity (Subcontractor Name):</b> | <b>Report includes Contractor's/Subcontractor's:</b><br><input checked="" type="checkbox"/> Work force to be utilized on this contract<br><input type="checkbox"/> Total work force |
| <b>Offeror's Name:</b> City of Hudson                              |   | <input type="checkbox"/> Offeror<br><input checked="" type="checkbox"/> Subcontractor   |
| <b>Offeror's Address:</b><br>520 Warren Street<br>Hudson, NY 12534 |   |   |

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

| EEO-Job Category                                   | Total Work force | Work force by Gender |                  | Work force by Race/Ethnic Identification |  |               |  |                       |  |               |  |                         |  |              |  |  |  |
|--|------------------|----------------------|------------------|--|--|---------------|--|-----------------------|--|---------------|--|-------------------------|--|--------------|--|--|--|
|  |                  | Total Male (M)       | Total Female (F) | White (M) (F)                            |  | Black (M) (F) |  | Hispanic (M) (F)      |  | Asian (M) (F) |  | Native American (M) (F) |  |              |  |  |  |
| Officials/Administrators                           |                  |                      |                  |  |  |               |  |                       |  |               |  |                         |  |              |  |  |  |
| Professionals                                      |                  |                      |                  |  |  |               |  |                       |  |               |  |                         |  |              |  |  |  |
| Technicians  |                  |                      |                  |  |  |               |  |                       |  |               |  |                         |  |              |  |  |  |
| Sales Workers                                      |                  |                      |                  |  |  |               |  |                       |  |               |  |                         |  |              |  |  |  |
| Office/Clerical                                    |                  |                      |                  |  |  |               |  |                       |  |               |  |                         |  |              |  |  |  |
| Craft Workers                                      |                  |                      |                  |  |  |               |  |                       |  |               |  |                         |  |              |  |  |  |
| Laborers   |                  |                      |                  |  |  |               |  |                       |  |               |  |                         |  |              |  |  |  |
| Service Workers                                    |                  |                      |                  |  |  |               |  |                       |  |               |  |                         |  |              |  |  |  |
| Temporary /Apprentices                             |                  |                      |                  |  |  |               |  |                       |  |               |  |                         |  |              |  |  |  |
| Totals   |                  |                      |                  |  |  |               |  |                       |  |               |  |                         |  |              |  |  |  |
| <b>PREPARED BY (Signature):</b>                    |                  |                      |                  |  |  |               |  | <b>TELEPHONE NO.:</b> |  |               |  |                         |  | <b>DATE:</b> |  |  |  |
|  |                  |                      |                  |  |  |               |  | <b>EMAIL ADDRESS:</b> |  |               |  |                         |  |              |  |  |  |
| <b>NAME AND TITLE OF PREPARER (Print or Type):</b> |                  |                      |                  |  |  |               |  |                       |  |               | <b>Submit completed with bid or proposal</b> |                         |  |              |  |  |  |
|  |                  |                      |                  |  |  |               |  |                       |  |               |  |                         |  |              |  |  |  |



**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (FORM B) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

**Instructions for completing:**

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the DOS Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female

## FORM D – M/WBE UTILIZATION PLAN

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

**Offeror's Name:** City of Hudson  
**Address:** 520 Warren Street  
**City, State, Zip Code:** Hudson, NY 12534  
**Telephone No.:** 518-828-7217  
**Region/Location of Work:** CR

**Federal Identification No.:** 14-6002244  
**Project/Contract No.:** C1002062

**M/WBE Goals in the Contract:** MBE 15.00% WBE 15.00%

| 1. Certified M/WBE Subcontractors/Suppliers<br>Name, Address, Email Address, Telephone No. | 2. Classification  | 3. Federal ID No. | 4. Detailed Description of Work<br>(Attach additional sheets, if necessary) | 5. Dollar Value of Subcontracts/<br>Supplies/Services and intended<br>performance dates of each<br>component of the contract. |
|--|--|-------------------|---|---|
| <b>A.</b>  | <b>NYS ESD<br/>CERTIFIED</b><br><input type="checkbox"/> MBE<br><input type="checkbox"/> WBE |                   |   |   |
| <b>B.</b>  | <b>NYS ESD<br/>CERTIFIED</b><br><input type="checkbox"/> MBE<br><input type="checkbox"/> WBE |                   |   |   |
| <b>C.</b>  | <b>NYS ESD<br/>CERTIFIED</b><br><input type="checkbox"/> MBE<br><input type="checkbox"/> WBE |                   |   |   |
| <b>D.</b>  | <b>NYS ESD<br/>CERTIFIED</b><br><input type="checkbox"/> MBE<br><input type="checkbox"/> WBE |                   |   |   |
| <b>E.</b>  | <b>NYS ESD<br/>CERTIFIED</b><br><input type="checkbox"/> MBE<br><input type="checkbox"/> WBE |                   |   |   |

|  |  |  |   |                       |
|--|--|--|---|-----------------------|
| F.   | <b>NYS ESD<br/>CERTIFIED</b><br><input type="checkbox"/> MBE<br><input type="checkbox"/> WBE |  |   |                       |
| <b>6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM E.</b>  |  |  |   |                       |
| <b>PREPARED BY (Signature):</b><br><br><b>DATE:</b><br><br><b>NAME AND TITLE OF PREPARER (Print or Type):</b><br><br><br>SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT. |  |  | <b>TELEPHONE NO.:</b>   | <b>EMAIL ADDRESS:</b> |
|  |  |  | <b>FOR M/WBE USE ONLY</b>   |                       |
|  |  |  | <b>REVIEWED BY:</b>   | <b>DATE:</b>          |
|  |  |  | <b>UTILIZATION PLAN APPROVED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____<br><b>Contract No.:</b> <b>Project No. (if applicable):</b><br><br><b>Contract Award Date:</b><br><b>Estimated Date of Completion:</b><br><b>Amount Obligated Under the Contract:</b><br><b>Description of Work:</b><br><b>NOTICE OF DEFICIENCY ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____<br><br><b>NOTICE OF ACCEPTANCE ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ |                       |

**MWBE COMPLIANCE CERTIFICATION LETTER (FORM D-1)**

I, \_\_\_\_\_, a duly authorized representative of the City of Hudson (hereinafter, "Applicant"), acknowledge by my signature below that Applicant is committed to show due-diligence and to comply with the established MWBE goals and requirements set forth in RFA No. 21-OPDSG-18 (hereinafter, the "RFA") with the NYS Department of State (DOS).

Applicant understands that submitting an MWBE Utilization Plan – Form D will be a requirement if awarded the Contract. As hereby authorized and directed by DOS, applicant acknowledges and agrees that, following contract execution, it shall submit the MWBE Utilization Plan – Form D for the Contract within two weeks after selection of any vendor or subcontractor for the provision of MWBE-applicable purchases or contractual services to be undertaken in furtherance of the Contract. The Contractor shall be required to adhere to an such MWBE Utilization Plan in the performance of the Contract, and a failure to so submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. It is further acknowledged and agree that this document shall not under any circumstances be construed as constituting a waiver or release, in whole or in part, of any provision of the RFA or Contract or of any rights, obligations or remedies that may be available to DOS or Contractor.

Date:

Signature: \_\_\_\_\_

Contract Number: C1002062

Name:

Contract Description: The City of Hudson Smart  
Growth Plan

Title:

Contact Information:



**Department  
of State**

## **MWBE GOOD FAITH EFFORT DOCUMENTATION**

The following documentation of Good Faith Effort made by the Grantee to secure MWBE utilization for goods and/or services procured under this contract should be retained during the life of the contract and submitted to DOS upon request:

1. A DETAILED statement with the project description (any special characteristics, needs, specifications, etc.), and an explanation setting forth your basis and justification for requesting a partial or total waiver of the MWBE goals.
1. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals related to this contract.
2. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
3. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
4. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation, if an identical solicitation was made to all certified M/WBEs.
5. Provide copies of responses to your solicitations received by you from certified M/WBEs.
6. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
7. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
8. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
9. Provide the name, title, address, telephone number, and email address of offeror/contractor's representative authorized to discuss and negotiate this waiver request.
10. Copy of notice of application receipt issued by Empire State Development (ESD).

# STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

|  |  |
|--|--|
| <b>STATE AGENCY:</b><br><br>NYS Department of State<br>One Commerce Plaza<br>99 Washington Avenue – Suite 1010<br>Albany, NY 12231   | <b>BUSINESS UNIT/DEPT ID:</b> DOS01/3800000<br><br><b>CONTRACT NUMBER:</b> C1002062<br><br><b>CONTRACT TYPE:</b><br><input type="checkbox"/> Multi-Year Agreement<br><input type="checkbox"/> Simplified Renewal Agreement<br><input checked="" type="checkbox"/> Fixed Term Agreement   |
| <b>CONTRACTOR SFS PAYEE NAME:</b><br><br>HUDSON CITY OF  | <b>TRANSACTION TYPE:</b><br><input checked="" type="checkbox"/> New<br><input type="checkbox"/> Renewal<br><input type="checkbox"/> Amendment  |
| <b>CONTRACTOR DOS INCORPORATED NAME:</b><br><br>n/a  | <b>PROJECT NAME:</b><br><br>The City of Hudson Smart Growth Plan   |
| <b>CONTRACTOR IDENTIFICATION NUMBERS:</b><br><br>NYS VENDOR ID Number:                      1000002218<br><br>Federal Tax ID Number:                      14-6002244<br><br>DUNS Number (if applicable):                      n/a  | <b>AGENCY IDENTIFIER:</b><br><br>21-OPDSG-18 (CR)<br><br><b>CFDA NUMBER (Federally Funded Grants Only):</b><br><br>n/a   |
| <b>CONTRACTOR PRIMARY MAILING ADDRESS:</b><br><br>City of Hudson<br>520 Warren Street<br>Hudson, NY 12534<br><br><b>CONTRACTOR PAYMENT ADDRESS:</b><br><input checked="" type="checkbox"/> Check if same as primary mailing address<br><br><b>CONTRACTOR MAILING ADDRESS</b><br><input checked="" type="checkbox"/> Check if same as primary mailing address | <b>CONTRACTOR STATUS:</b><br><br><input type="checkbox"/> For Profit<br><input checked="" type="checkbox"/> Municipality, Code:<br><input type="checkbox"/> Tribal Nation<br><input type="checkbox"/> Individual<br><input type="checkbox"/> Not-for-Profit<br><br>Charities Registration Number:                      n/a<br><br>Exemption Status/Code:                      3A/02<br><br><input type="checkbox"/> Sectarian Entity |

# STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

|   |  |                |                |                |
|---|--|----------------|----------------|----------------|
| <p><b>CURRENT CONTRACT TERM:</b></p> <p>FROM: 6/1/2022 TO: 5/31/2025</p> <p><b>CURRENT CONTRACT PERIOD:</b></p> <p>FROM: 6/1/2022 TO: 5/31/2025</p> <p><b>AMENDED TERM:</b></p> <p>FROM: TO:</p> <p><b>AMENDED PERIOD:</b></p> <p>FROM: TO:</p>   | <p><b>CONTRACT FUNDING AMOUNT:</b><br/>(<i>Multi-year</i> – enter total projected amount of the contract; <i>Fixed Term/Simplified Renewal</i> – enter current period amount)</p> <p><b>CURRENT:</b> \$67,500.00</p> <p><b>AMENDED:</b></p> <p><b>FUNDING SOURCES:</b></p> <p style="margin-left: 40px;"> <input checked="" type="checkbox"/> State<br/> <input type="checkbox"/> Federal<br/> <input type="checkbox"/> Other         </p> |                |                |                |
| <p><b>FOR MULTI-YEAR AGREEMENTS ONLY – CONTRACT PERIOD AND FUNDING AMOUNT:</b><br/>(Out years represent projected funding amounts)</p>  |  |                |                |                |
| #   | CURRENT PERIOD   | CURRENT AMOUNT | AMENDED PERIOD | AMENDED AMOUNT |
| 1   |  |                |                |                |
| 2   |  |                |                |                |
| 3   |  |                |                |                |
| 4   |  |                |                |                |
| 5   |  |                |                |                |
| <p><b>ATTACHMENTS PART OF THIS AGREEMENT:</b></p> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <p><input checked="" type="checkbox"/> Attachment A:</p> <p><input checked="" type="checkbox"/> Attachment B:</p> <p><input checked="" type="checkbox"/> Attachment C: Work Plan</p> <p><input checked="" type="checkbox"/> Attachment D: Payment and Reporting Schedule</p> <p><input type="checkbox"/> Other:</p> </div> <div style="width: 50%;"> <p><input checked="" type="checkbox"/> A-1 Program Specific Terms and Conditions</p> <p><input type="checkbox"/> A-2 Federally Funded Grants</p> <p><input checked="" type="checkbox"/> B-1 Expenditure Based Budget</p> <p><input type="checkbox"/> B-2 Performance Based Budget</p> <p><input type="checkbox"/> B-3 Capital Budget</p> <p><input type="checkbox"/> B-1(A) Expenditure Based Budget (Amendment)</p> <p><input type="checkbox"/> B-2(A) Performance Based Budget (Amendment)</p> <p><input type="checkbox"/> B-3(A) Capital Budget (Amendment)</p> </div> </div> |  |                |                |                |

**STATE OF NEW YORK  
MASTER CONTRACT FOR GRANTS**

This State of New York Master Contract for Grants (Master Contract) is hereby made by and between the State of New York acting by and through the applicable State Agency (State) and the public or private entity (Contractor) identified on the face page hereof (Face Page).

**WITNESSETH:**

**WHEREAS**, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

**WHEREAS**, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Master Contract;

**NOW THEREFORE**, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree as follows:

**STANDARD TERMS AND CONDITIONS**

**I. GENERAL PROVISIONS**

**A. Executory Clause:** In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Master Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Master Contract.

**B. Required Approvals:** In accordance with Section 112 of the State Finance Law (or, if the Master Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Master Contract exceeds \$50,000 (or \$85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Master Contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the AG and OSC.

**Budget Changes:** An amendment that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the AG and OSC where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than



five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment D (Payment and Reporting Schedule).

**C. Order of Precedence:** In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as

In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as follows:

1. Standard Terms and Conditions
2. Modifications to the Face Page
3. Modifications to Attachment A-2<sup>1</sup>, Attachment B, Attachment C and Attachment D
4. The Face Page
5. Attachment A-2<sup>2</sup>, Attachment B, Attachment C and Attachment D
6. Modification to Attachment A-1
7. Attachment A-1
8. Other attachments, including, but not limited to, the request for proposal or program application

**D. Funding:** Funding for the term of the Master Contract shall not exceed the amount specified as “Contract Funding Amount” on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Master Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

**E. Contract Performance:** The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Master Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Master Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program.

**F. Modifications:** To modify the Attachments or Face Page, the parties mutually agree to record, in writing, the terms of such modification and to revise or complete the Face Page and all the appropriate attachments in conjunction therewith. In addition, to the extent that such modification meets the criteria set

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<sup>1</sup> To the extent that the modifications to Attachment A-2 are required by federal requirements and conflict with other provisions of the Master Contract, the modifications to Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

<sup>2</sup> To the extent that the terms of Attachment A-2 are required by federal requirements and conflict with other provisions of the Master Contract, the federal requirements of Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V)

forth in Section I.B herein, it shall be subject to the approval of the AG and OSC before it shall become valid, effective and binding upon the State. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Master Contract.

**G. Governing Law:** The Master Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

**H. Severability:** Any provision of the Master Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Master Contract shall attempt in good faith to reform the Master Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

**I. Interpretation:** The headings in the Master Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Master Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

**J. Notice:**

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:
  - a) by certified or registered United States mail, return receipt requested;
  - b) by facsimile transmission;
  - c) by personal delivery;
  - d) by expedited delivery service; or
  - e) by e-mail.
2. Notices to the State shall be addressed to the Program Office designated in Attachment A-1 (Program Specific Terms and Conditions).
3. Notices to the Contractor shall be addressed to the Contractor's designee as designated in Attachment A-1 (Program Specific Terms and Conditions).
4. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.
5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the Master Contract by giving fifteen (15) calendar days prior written notice to the other party sent in

accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

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

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

**M. Indemnification:** The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Master Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Master Contract.

**N. Non-Assignment Clause:** In accordance with Section 138 of the State Finance Law, the Master Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the State's previous written consent, and attempts to do so shall be considered to be null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract, let pursuant to Article XI of the State Finance Law, may be waived at the discretion of the State Agency and with the concurrence of OSC, where the original contract was subject to OSC's approval, where the assignment is due to a reorganization, merger, or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that the merged contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless the Master Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**O. Legal Action:** No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Master Contract. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from any of the State of New York, the State Agency, or any county, or other local government entity. The term "regulatory action" shall include commencing or threatening to commence a regulatory proceeding, or requesting any

regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

**P. No Arbitration:** Disputes involving the Master 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.

**Q. Secular Purpose:** Services performed pursuant to the Master Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

**R. Partisan Political Activity and Lobbying:** Funds provided pursuant to the Master Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

**S. Reciprocity and Sanctions Provisions:** The Contractor is hereby notified that if its principal place of business is located in a country, nation, province, state, or political subdivision that penalizes New York State vendors, and if the goods or services it offers shall be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that it be denied contracts which it would otherwise obtain.<sup>3</sup>

**T. Reporting Fraud and Abuse:** Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the Federal False Claims Act, the New York State False Claims Act, and whistleblower protections.

**U. Non-Collusive Bidding:** By submission of this bid, the Contractor and each person signing on behalf of the Contractor 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 his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor's behalf.

**V. Federally Funded Grants:** All of the Specific federal requirements that are applicable to the Master Contract are identified in Attachment A-2 (Federally Funded Grants) hereto. To the extent that the Master Contract is funded in whole or part with federal funds, (i) the provisions of the Master Contract that conflict with federal rules, federal regulations, or federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachment A-2 (Federally Funded Grants) hereto.

## **II. TERM, TERMINATION AND SUSPENSION**

**A. Term:** The term of the Master Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

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<sup>3</sup>As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

## **B. Renewal:**

1. **General Renewal:** The Master Contract may consist of successive periods on the same terms and conditions, as specified within the Master Contract (a “Simplified Renewal Contract”). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Master Contract.

### **2. Renewal Notice to Not-for-Profit Contractors:**

a) Pursuant to State Finance Law §179-t, if the Master Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State’s intent to renew or not to renew the Master Contract no later than ninety (90) calendar days prior to the end of the term of the Master Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State’s intent to renew or not to renew the Master Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Master Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State (“Unusual Circumstances”), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, “Unusual Circumstances” shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

b) Notification to the not-for-profit Contractor of the State’s intent to not renew the Master Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Master Contract as required in this Section and State Finance Law §179-t, the Master Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Master Contract.

## **C. Termination:**

### **1. Grounds:**

a) Mutual Consent: The Master Contract may be terminated at any time upon mutual written consent of the State and the Contractor.

b) Cause: The State may terminate the Master Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Master Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Master Contract.

c) Non-Responsibility: In accordance with the provisions of Sections IV(N)(6) and (7) herein, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Master Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.

d) Convenience: The State may terminate the Master Contract in its sole discretion upon thirty (30) calendar days prior written notice.

e) Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Master Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Master Contract, the Master Contract may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Master Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Master Contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.

f) Force Majeure: The State may terminate or suspend its performance under the Master Contract immediately upon the occurrence of a "force majeure." For purposes of the Master Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

## **2. *Notice of Termination:***

a) Service of notice: Written notice of termination shall be sent by:

- (i) personal messenger service; or
- (ii) certified mail, return receipt requested and first class mail.

b) Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:

(i) if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or

(ii) if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business

days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

**3. *Effect of Notice and Termination on State's Payment Obligations:***

- a) Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.
- b) The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Master Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Master Contract after its termination date.

**4. *Effect of Termination Based on Misuse or Conversion of State or Federal Property:***

Where the Master Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Master Contract for the purposes set forth herein, the State may, at its option, require:

- a) the repayment to the State of any monies previously paid to the Contractor; or
- b) the return of any real property or equipment purchased under the terms of the Master Contract; or
- c) an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

**D. Suspension:** The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time as the State issues a formal written notice authorizing a resumption of performance under the Master Contract.

### **III. PAYMENT AND REPORTING**

**A. Terms and Conditions:**

- 1. In full consideration of contract services to be performed, the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.
- 2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Master Contract shall not be reimbursed.

3. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Attachment D (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.
4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of the State Agency, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments.
5. If travel expenses are an approved expenditure under the Master Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.
6. Timeliness of advance payments or other claims for reimbursement, and any interest to be paid to Contractor for late payment, shall be governed by Article 11-A of the State Finance Law to the extent required by law.
7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, "Full Execution" shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

**B. Advance Payment and Recoupment:**

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Attachment D (Payment and Reporting Schedule).
2. Advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page.
3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Attachment D) will be modified as part of the renewal process.
4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Attachment D (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract



Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.

5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.

### **C. Claims for Reimbursement:**

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Master Contract in accordance with this Section and the applicable claiming schedule in Attachment D (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Attachment B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:

a) Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

b) Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

c) Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

d) Milestone/Performance Reimbursement:<sup>4</sup> Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event.

Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Attachment D (Payment and Reporting Schedule). The State Agency shall make milestone payments subject to the Contractor's satisfactory performance.

e) Fee for Service Reimbursement:<sup>5</sup> Payment shall be limited to only those fees specifically agreed upon in the Master Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f) Rate Based Reimbursement:<sup>6</sup> Payment shall be limited to rate(s) established in the Master Contract. Payment may be requested no more frequently than monthly.

g) Scheduled Reimbursement:<sup>7</sup> The State Agency shall generate vouchers at the frequencies and amounts as set forth in Attachment D (Payment and Reporting Schedule), and service reports shall be used to determine funding levels appropriate to the next annual contract period.

h) Fifth Quarter Payments:<sup>8</sup> Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall use a written directive for fifth quarter financing. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.
4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Master Contract as security for the faithful completion of services or work, as applicable, under the Master Contract. This amount may be withheld in whole or in part from any single

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<sup>4</sup> A milestone/ performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Master Contract effort.

<sup>5</sup> Fee for Service is a rate established by the Contractor for a service or services rendered.

<sup>6</sup> Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.

<sup>7</sup> Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Master Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

<sup>8</sup> Fifth Quarter Payments occurs where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract.

5. payment or combination of payments otherwise due under the Master Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.
6. The State shall not be liable for payments on the Master Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.
7. All vouchers submitted by the Contractor pursuant to the Master Contract shall be submitted to the State Agency no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency to the Contractor shall not exceed the amount of actual expenditures.
8. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Master Contract is funded in whole or in part with federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures.

#### **D. Identifying Information and Privacy Notification:**

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property, must include the Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number, (ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.
2. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. The personal information is requested by the purchasing unit of the State Agency contracting to purchase the goods or services or lease the real or personal property covered by the Master Contract. This information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York, 12236.

## **E. Refunds:**

1. In the event that the Contractor must make a refund to the State for Master Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in Attachment A-1 (Program Specific Terms and Conditions). The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Refund Office at the address specified in Attachment A-1 (Program Specific Terms and Conditions).
2. If at the end or termination of the Master Contract, there remains any unexpended balance of the monies advanced under the Master Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Master Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

**F. Outstanding Amounts Owed to the State:** Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Master Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

## **G. Program and Fiscal Reporting Requirements:**

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Attachment D (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Master Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.
2. Consistent with the selected reporting options in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:
  - a) If the Expenditure Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with one or more of the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:
    - (i) *Narrative/Qualitative Report:* The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Attachment C (Work Plan). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.
    - (ii) *Statistical/Quantitative Report:* The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting

Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)

- (iii) *Expenditure Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.
- (iv) *Final Report*: The Contractor shall submit a final report as required by the Master Contract, not later than the time period listed in Attachment D (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Attachment C (Work Plan).
- (v) *Consolidated Fiscal Report (CFR)*: The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Attachment D (Payment and Reporting Schedule).

b) If the Performance-Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

- (i) *Progress Report*: The Contractor shall provide the State Agency with a written progress report using the forms and formats as provided by the State Agency, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Attachment C (Work Plan). Progress reports shall be submitted in a format prescribed in the Master Contract.
- (ii) *Final Progress Report*: Final scheduled payment is due during the time period set forth in Attachment D (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Attachment D (Payment and Reporting Schedule). The State Agency shall complete its audit and notify the Contractor of the results no later than the date set forth in Attachment D (Payment and Reporting Schedule). Payment shall be adjusted by the State Agency to reflect only those services/expenditures that were made in accordance with the Master Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Attachment D (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.

3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Attachment D (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Master Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Attachment D (Payment and Reporting Schedule).

## **H. Notification of Significant Occurrences:**

1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to the State Agency within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.
2. The Contractor shall immediately notify in writing the program manager assigned to the Master Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Master Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

## **IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES**

### **A. Contractor as an Independent Contractor/Employees:**

1. The State and the Contractor agree that the Contractor is an independent contractor, and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Master Contract, and all applicable Federal and State laws and regulations.
2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Master Contract and/or any subcontract entered into under the Master Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Master Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Master Contract, Contractor shall immediately notify the State.

### **B. Subcontractors:**

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Master Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Master Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.

2. The Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of \$100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of \$100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Master Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the subcontract, nor under the Master Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.

3. Prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.

4. When a subcontract equals or exceeds \$100,000, the subcontractor must submit a Vendor Responsibility Questionnaire (Questionnaire).

5. When a subcontract is executed, the Contractor must provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.

6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

#### **C. Use of Material, Equipment, or Personnel:**

1. The Contractor shall not use materials, equipment, or personnel paid for under the Master Contract for any activity other than those provided for under the Master Contract, except with the State's prior written permission.

2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Master Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Master Contract.

#### **D. Property:**

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.

a) If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.

b) If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Master Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Master Contract.

c) In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.

d) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Master Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to the State Agency, naming the State Agency as an additional insured, covering the loss, theft or destruction of such equipment.

e) A rental charge to the Master Contract for a piece of Property owned by the Contractor shall not be allowed.

f) The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Master Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.

g) No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Master Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.

2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Master Contract:

a) For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.

b) For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.



3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Master Contract shall be governed by the terms and conditions of Attachment A-2 (Federally Funded Grants).
4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.
5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

## **E. Records and Audits:**

### **1. General:**

- a) The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Master Contract (collectively, Records).
- b) The Contractor agrees to produce and retain for the balance of the term of the Master Contract, and for a period of six years from the later of the date of (i) the Master Contract and (ii) the most recent renewal of the Master Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Master Contract. Such Records may include, but not be limited to, original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:
  - (i) personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders, detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.
  - (ii) payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.
  - (iii) non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.
  - (iv) receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.
- c) The OSC, AG and any other person or entity authorized to conduct an examination, as well as the State Agency or State Agencies involved in the Master Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m.

until 5:00 p.m., Monday through Friday (excluding State recognized holidays), at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

d) The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records, as exempt under Section 87 of the Public Officers Law, is reasonable.

e) Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

## **2. *Cost Allocation:***

a) For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of OMB Circulars A- 87, A-122, and/or A-21. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.

b) For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

3. ***Federal Funds:*** For records and audit provisions governing Federal funds, please see Attachment A-2 (Federally Funded Grants).

**F. Confidentiality:** The Contractor agrees that it shall use and maintain information relating to individuals who may receive services, and their families pursuant to the Master Contract, or any other information, data or records deemed confidential by the State (Confidential Information) only for the limited purposes of the Master Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

## **G. Publicity:**

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.

2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Master Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:

a) Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and

b) State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.

3. Notwithstanding the above, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section V(G)(2) (Publicity) hereof.

**H. Web-Based Applications-Accessibility:** Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Master Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08- 005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by the State Agency and the results of such testing must be satisfactory to the State Agency before web content shall be considered a qualified deliverable under the Master Contract or procurement.

**I. Non-Discrimination Requirements:** Pursuant to 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 and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), 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. 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 the Master Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Master Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the 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 the Master Contract. The Contractor shall be subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

**J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises:** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Master Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting State Agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State Agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting State Agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;
2. The Contractor 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;
3. The Contractor shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
4. At the request of the State, 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 shall not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and
5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall 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 subclauses 1 – 5 of this Section (IV)(J), in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where

the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Master Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State 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 State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The 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.

**K. Omnibus Procurement Act of 1992:** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises, as bidders, subcontractors and suppliers on its procurement contracts.

1. If the total dollar amount of the Master Contract is greater than \$1 million, the Omnibus Procurement Act of 1992 requires that by signing the Master Contract, the Contractor certifies the following:

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

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

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

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

**L. Workers' Compensation Benefits:**

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

2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

**M. Unemployment Insurance Compliance:** The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to the State Agency staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;
2. any debts owed for UI contributions, interest, and/or penalties;
3. the history and results of any audit or investigation; and
4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Master Contract.

**N. Vendor Responsibility:**

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may obtain a paper form from the OSC prior to execution of the Master Contract. The Contractor further covenants and represents that as of the date of execution of the Master Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.
2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.
3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.
4. The State reserves the right, in its sole discretion, at any time during the term of the Master Contract:
  - a) to require updates or clarifications to the Questionnaire upon written request;

- b) to inquire about information included in or required information omitted from the Questionnaire;
  - c) to require the Contractor to provide such information to the State within a reasonable timeframe; and
  - d) to require as a condition precedent to entering into the Master Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and
  - e) to require the Contractor to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. By signing the Master Contract, the Contractor agrees to comply with any such additional conditions that have been made a part of the Master Contract.
5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Master Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Master Contract.
6. The State, in its sole discretion, reserves the right to make a final Determination of Non- Responsibility at any time during the term of the Master Contract based on:
- a) any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or
  - b) the State's discovery of any material information which pertains to the Contractor's responsibility.
7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non-responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

**O. Charities Registration:** If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish the State Agency with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Master Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Master Contract.

**P. Consultant Disclosure Law:**<sup>9</sup> If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing,

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<sup>9</sup> Not applicable to not-for-profit entities.

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

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



**ATTACHMENT A-1**  
**AGENCY AND PROGRAM SPECIFIC TERMS AND CONDITIONS**

**I. Agency Specific Clauses (revised 4/21/20)**

For the purposes of this Agreement, the terms "State" and "Department" are interchangeable, unless the context requires otherwise. In addition, the terms "Agreement" and "Contract" are interchangeable, unless the context requires otherwise.

**A. Project Timetable**

The Contractor agrees to proceed expeditiously with the Project and to complete the Project in accordance with any timetable associated therewith as set forth in the Work Plan (Attachment C) as well as with the conditions of any applicable permits, administrative orders, or judicial orders and this Agreement.

**B. Budget Modifications**

Prior DOS written approval, which requires a detailed breakdown and justification, is required for all requests for budget modifications, regardless of the amount of the modification. Additional approvals will be required when modifications exceed thresholds described below.

Any proposed modification to a contract that will result in a transfer of funds among program activities or budget cost categories, but does not affect the amount, consideration, scope or other terms of such contracts must be submitted to DOS for submission to the Office of State Comptroller for approval when:

1. The amount of the modification is equal to or greater than ten percent of the total value of the contract for contracts of less than five million dollars; or
1. The amount of the modification is equal to or greater than five percent of the total value of the contract for contracts of more than five million dollars.

**C. Applicable Terms**

In addition to the criteria set forth in IV(E)(1)(b) of the Standard Terms and Conditions, documentation of personal service expenditures shall:

1. Be based upon actual work performed;
1. Be supported by internal controls that provide a reasonable assurance that the charges are accurate, allowable, and properly allocated; and
2. Comply with the Contractor's established accounting policies.

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

#### D. License to Use and Reproduce Documents, Intellectual Property and Other Works:

By acceptance of this Agreement, Contractor transfers to the Department a perpetual, transferable nonexclusive license to use, reproduce in any medium, and distribute, for any purpose, any intellectual property or other work purchased, developed or prepared for or in connection with the Project using funding provided pursuant to this Contract, including but not limited to reports, maps, designs, plans, analysis, and documents regardless of the medium in which they are originally produced. Contractor warrants to the Department that it has sufficient title or interest in such works to license pursuant to this Agreement, and further agrees and warrants that it shall not enter into any subcontract or other agreement purporting to limit such title or interest in such works in any manner that may compromise Contractor's ability to provide the aforesaid license to the Department. Such warranties shall survive the termination of this agreement. Contractor agrees to provide the original of each such work, or a copy thereof which is acceptable to the Department, to the Department before payments shall be made under this Agreement.

#### E. Property

The ownership of all property or intellectual property described herein and purchased, developed or prepared under the terms of this Contract shall reside with the Contractor with a reversionary interest in such property or intellectual property held by the Department, unless otherwise authorized or directed in writing by the Department. Except as otherwise provided in Section II.C.4 of the Standard Terms and Conditions, Contractor shall retain ownership of such property or intellectual property after the term of this Contract so long as such property or intellectual property is used for purposes similar to those contemplated by this Contract. Otherwise, the Contractor shall return such property or intellectual property to the Department at the Contractor's cost and expense, and Contractor's ownership interests, rights and title in such property or intellectual property shall revert to the Department. The ownership of all property purchased with federal funds provided pursuant to this Agreement, however, shall be governed by the terms of applicable federal law and OMB Circulars, including but not limited to 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," as amended.

#### F. Termination

The Department may terminate the Agreement in accordance with the terms and conditions set forth in the Master Grant Contract section of this Agreement. In addition to other reserved rights it has to terminate this Agreement, the Department may terminate or suspend the Agreement under the following circumstances:

1. The Contractor shall complete the project as set forth in this Agreement, and failure to render satisfactory progress or to complete the project to the satisfaction of the State may be deemed an abandonment of the project and may cause the suspension or termination of any obligation of the State. In the event the Contractor should be deemed to have abandoned the project for any reason or cause other than a national emergency or an Act of God, all monies paid to the Contractor by the State and not expended in accordance with this Agreement shall be repaid to the State upon demand. If such monies are not repaid within one year after such demand, the State Comptroller of the State of New York may cause to be withheld from the Contractor any State assistance to which the Contractor would otherwise be entitled in an amount equal to the monies demanded.
2. In the event that the Department has provided written notice to the Contractor directing that the Contractor correct any failure to comply with this Agreement, the Department reserves the right to

direct that the Contractor suspend all work during a period of time to be determined by the Department. If the Contractor does not correct such failures during the period provided for in the notice, this Agreement shall be deemed to be terminated after expiration of such time period. During any such suspension, the Contractor agrees not to incur any new obligations after receipt of the notice without approval by the Department.

3. If the Department determines the Contractor has breached a term of the Agreement and if the Department determines the defect can be remedied, it may, in its sole discretion, issue a written notice providing the Contractor with a minimum of 30 days to correct the defect and the notice may include a prospective termination date. If the Contractor fails to correct the defect or fails to make a good faith effort to do so as determined by the Department to the Department's satisfaction, the Department may terminate the Agreement for cause.
4. The Department shall also have the right to postpone or suspend the Agreement or deem it abandoned without this action being a breach of the Agreement. The Department shall provide written notice to the Contractor indicating the Agreement has been postponed, suspended or abandoned. During any postponement, suspension or abandonment the Contractor agrees not to do any work under the Agreement without prior written approval of the Department.
5. In the event the Agreement is postponed, suspended, abandoned or terminated, the Department shall make a settlement with the Contractor upon an equitable basis in good faith and under the general compensation principles and rates established in the Agreement by the Department. This settlement shall fix the value of the work which was performed by the Contractor to the Department's satisfaction prior to the postponement, suspension, abandonment or termination of the Agreement.
6. Any funds paid to the Contractor by the Department which are not expended under the terms of the Agreement shall be repaid to the Department.

#### G. Subcontracting Requirements

1. Contractor agrees that it shall not enter into any subcontract for the performance of work in furtherance of this Contract with any subcontractor that at the time of contracting: (1) is listed on the New York State Department of Labor's list of companies with which New York State cannot do business (available at <https://dbr.labor.state.ny.us/EDList/searchPage.do>); (2) is listed as an entity debarred from federal contracts (available at: <https://www.sam.gov/portal/public/SAM>); or (3) fails to possess requisite workers compensation and disability insurance coverage (see <http://www.wcb.ny.gov>). In addition, Contractor agrees that it shall immediately suspend or terminate any subcontract entered into for the performance of work in furtherance of this Contract if at any time during the term of such subcontract the subcontractor: (1) is listed on the New York State Department of Labor's list of companies with which New York State cannot do business (available at <https://dbr.labor.state.ny.us/EDList/searchPage.do>); (2) is listed as an entity debarred from federal contracts (list available at: <https://www.sam.gov/portal/public/SAM>); or (3) fails to maintain requisite workers compensation or disability insurance coverage (see <http://www.wcb.ny.gov>). Contractor agrees that any such suspension shall remain in place until the condition giving rise to the suspension is corrected by the subcontractor. The terms of this clause shall be incorporated in any and all subcontracts entered into in furtherance of this Contract.

2. The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the Work in accordance with the Contract. The Contractor shall control and coordinate the Work of its subcontractors.
3. The Contractor shall be responsible for informing its subcontractors of all the terms, conditions and requirements of the Contract Documents including, but not limited to the terms of the Master Grant Contract, any and all Appendices, and any changes made by amendments thereto, and ensuring that any and all subcontracts entered into in furtherance of this Contract conform to and do not conflict with such terms.
4. Contractor shall file each and every subcontract entered into in furtherance of this Contract with the Department of State no later than fifteen (15) calendar days following the signing of the subcontract, unless otherwise authorized or directed by the Department of State.
5. In addition to the requirements of Section IV.B.2 of the Standard Terms and Conditions, the Department reserves the right to require, upon notice to the Contractor, that, commencing from the date of such notice or a date otherwise specified in such notice, Contractor must obtain written approval from the Department prior to entering into any and all subcontracts valued at or below \$100,000 for the performance of any activities covered by this Contract (as provided for in Attachment C). Contractor agrees to require any proposed subcontractors to timely provide to the Department such information as may be requested by the Department as necessary to assess whether the proposed subcontractor is a responsible entity capable of lawfully and satisfactorily performing the work. In the event the Department invokes this right of prior approval and a request for approval is submitted by Contractor and denied by the Department, Contractor agrees that it shall not enter into the proposed subcontract and that no costs associated with such subcontract shall be allowable under this Contract.

#### H. Compliance with Procurement Requirements

1. All contracts by municipalities for service, labor, and construction involving not more than \$35,000 and purchase contracts involving not more than \$20,000 are subject to the requirements of General Municipal Law §104-b, which requires such contracts to comply with the procurement policies and procedures of the municipality involved. All such contracts shall be awarded after and in accordance with such municipal procedures, subject to the MWBE requirements as set forth in Section M and any additional requirements imposed by the State as set forth in Attachment C hereof.
2. The municipal attorney, chief legal officer or financial administrator of the Contractor shall certify to the Department of State that applicable public bidding procedures of General Municipal Law §103 were followed for all service, labor, and construction contracts involving more than \$35,000 and all purchase contracts involving more than \$20,000. In the case of contracts by municipalities service, labor, and construction contracts involving not more than \$35,000 and purchase contracts involving not more than \$20,000, the municipal attorney, chief legal officer or financial administrator shall certify that the procedures of the municipality established pursuant to General Municipal Law §104-b were fully complied with, in addition to the MWBE requirements as set forth in Section M of this Agreement and any additional requirements imposed by the State as set forth in Attachment C hereof.
3. For non-municipal entities such as community-based organizations, the chief legal officer or financial administrator of the Contractor shall certify to the State that alternative proposals and

quotations for professional services were secured by use of written requests for proposals through a publicly advertised process satisfactory to meet the MWBE requirements set forth in Section M of this Agreement and to ensure the prudent and economical use of public funds for professional services of maximum quality at reasonable cost.

#### I. Vendor Responsibility Determinations

1. A Vendor Responsibility Questionnaire and Certification is required for certain contracts. This Questionnaire is designed to provide information to assist the contracting agency in assessing a CONTRACTOR's responsibility, prior to entering into a contract, and must be completed and submitted electronically or returned with the contract. Contractor is invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at <http://osc.state.ny.us/vendrep/index.htm> or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us). Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact the Department of State or the Office of the State Comptroller's Help Desk for a copy of the paper form.
2. Contractor hereby acknowledges that the Vendor Responsibility Questionnaire (VRQ), as described in Section IV (N) of the Master Grant Contract, as well as any updated or amended version of the VRQ submitted during the term of this contract, or any contractor responsibility information that may be requested by the Department and submitted during the term of this contract, is made a part of this contract by reference hereto and that any misrepresentation of fact in the information submitted, may result in termination of this contract. During the term of this Contract, any changes in the information provided in the questionnaire shall be disclosed to the Department, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of the contract.

#### J. State Attorney General Charities Registration

In accordance with the Estates, Powers and Trust Law § 8-1.4 (s), the recipient certifies that it is in compliance with the requirements of Estate, Powers and Trusts Law sections 8-1.4 (d), (f), and (g), regarding organizations which administer property for charitable purposes registering and filing periodic reports (together with the appropriate filing fees) with the New York State Attorney General's Charities Bureau. This certification is a material representation of fact upon which reliance was placed by the Department of State in entering into this Agreement with the Contractor.

The Contractor agrees that it will provide immediate written notice to the Department of State if at any time it learns that this certification was erroneous when made or has become erroneous by reason of changed circumstances.

#### K. Records Access

The Contractor shall make such records available for review by the Department upon request at any time. The Department shall have the right to conduct progress assessments and review books and records as necessary. The Department shall have the right to conduct an on-site review of the Project and/or books and

records of the Contractor prior to, and for reasonable time following, issuance of the final payment. The Department shall be entitled to disallow any cost or expense, and/or terminate or suspend this Agreement, if the Contractor has misrepresented any expenditures or Project activities in its application to the Department, or in this Agreement, or in any progress reports or payment requests made pursuant hereto. The Contractor shall maintain such books and records in a manner so that reports can be produced therefrom in accordance with generally accepted accounting principles. The Contractor shall maintain separate financial books and records for all funds received through the Department pursuant to this Agreement.

#### L. Notices

Pursuant to Section J of the Master Grant Contract, notice hereunder shall be addressed as follows:

1. Notice to the State

|                   |  |
|-------------------|--|
| Name:             | Laurissa Garcia  |
| Title:            | Contract Management Specialist 2                                     |
| Agency:           | Department of State  |
| Division:         | Office of Planning, Development and Community Infrastructure         |
| Address:          | 99 Washington Avenue, Suite 1010<br>Albany, NY 12231                 |
| Telephone Number: | 518-486-9540   |
| E-Mail Address:   | <a href="mailto:opdcontracts@dos.ny.gov">opdcontracts@dos.ny.gov</a> |

2. Notice to the Contractor

|                   |  |
|-------------------|--|
| Name:             | Kamal Johnson  |
| Title:            | Mayor  |
| Affiliation:      | City of Hudson   |
| Address:          | 520 Warren Street<br>Hudson, NY 12534                              |
| Telephone Number: | 518-828-7217   |
| E-Mail Address:   | <a href="mailto:mayor@cityofhudson.org">mayor@cityofhudson.org</a> |

#### M. Limits on Administrative Expenses and Executive Compensation (19 NYCRR Part 144, incorporated herein by reference):

1. If Contractor is a “covered provider” within the meaning of 19 NYCRR § 144.3(d) at any time during the life of this Agreement, then during the period when Contractor is such a “covered provider”:
  - a. Contractor shall comply with the requirements set forth in 19 NYCRR Part 144, as amended; and
  - b. Contractor’s failure to comply with any applicable requirement of 19 NYCRR Part 144, as amended, including but not limited to the restrictions on allowable administrative expenses, the limits on executive compensation, and the reporting requirements, may be deemed a material breach of this Agreement and constitute a sufficient basis for, in the discretion of the Department, termination for cause, suspension for cause, or the reduction of funding provided pursuant to this Agreement.

2. Contractor shall include the following provision in any agreement with a subcontractor or agent receiving State funds or State-authorized payments from the Contractor to provide program or administrative services under this Agreement:

*[Name of subcontractor/agent] acknowledges that, pursuant to this Agreement, it is receiving "State funds" or "State-authorized payments" originating with, passed through, or approved by the New York State Department of State in order to provide program or administrative services on behalf of [Name of CONTRACTOR]. If at any time during the life of this Agreement [Name of subcontractor/agency] is a "covered provider" within the meaning of Section 144.3(d) of DOS regulations, [Name of subcontractor/agent] shall comply with the terms of 19 NYCRR Part 144, as amended. A failure to comply with 19 NYCRR Part 144, where applicable, may be deemed a material breach of this Agreement constituting a sufficient basis for suspension or termination for cause. The terms of 19 NYCRR Part 144, as amended, are incorporated herein by reference.*

#### N. Minority and Women Owned Business Participation

Article 15-A of the New York State Executive Law, as amended, authorized the creation of a Division of Minority and Women's Business Development to promote employment and business opportunities on state contracts for minorities and women. This law supersedes any other provision in state law authorizing or requiring an equal employment opportunity program or a program for securing participation by minority and women-owned business enterprises. Under this statute, State agencies are charged with establishing business participation goals for minorities and women. The Department of State administers a Minority and Women-owned Business Enterprises (MWBE) Program as mandated by Article 15-A.

##### 1. General Provisions

- a. The Department of State is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR") for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- b. The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department of State (the "Agency"), to fully comply and cooperate with the Agency in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for New York State-certified minority and women-owned business enterprises ("MWBEs"). The Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") and other applicable federal, state, and local laws. Contractor agrees that the terms "MWBE," "MBE" and "WBE" as used herein, shall mean those MBE or WBE firms certified as such by the State pursuant to NY Executive Law Article 15-A and listed in the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>.

- c. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section M(7) of this Attachment and such other remedies as are available to the Agency pursuant to the Contract and applicable law.

## 2. Contract Goals

- a. The Department's New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") utilization goal is 30%. For purposes of this Contract, the specific overall MWBE goal and the breakdown between the Minority-owned Business Enterprise ("MBE") and the Women-owned Business Enterprise ("WBE") utilization goals, are set forth in the Attachment B "Budget", based on the current availability of MBEs and WBEs.
- b. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section 2(a) hereof, the Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women's Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- c. 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 the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the broker's contract.

FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the supplier's contract. The portion of a contract with an MWBE serving as a broker 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.

d. The Contractor must document "good faith efforts," pursuant to 5 NYCRR §142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:

- 1) Evidence of outreach to MWBEs;
- 2) Any responses by MWBEs to the Contractor's outreach;
- 3) Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
- 4) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the Agency with MWBEs; and,



- 5) Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

### 3. Equal Employment Opportunity (“EEO”)

- a. The provisions of Article 15-A §312 of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- b. In performing the Contract, the Contractor shall:
  - 1) Ensure that 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.
  - 2) The Contractor shall submit an EEO policy statement to the Agency within seventy two (72) hours after the date of the notice by Agency to award the Contract to the Contractor.
  - 3) If the Contractor, or any of the subcontractors does not have an existing EEO policy statement, the Agency may require the Contractor or subcontractor to adopt a model statement (see Form A - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
  - 4) The Contractor's EEO policy statement shall include the following language:
    - a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
    - b) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
    - c) The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

- d) The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph “e” of this section 3, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- c. Form B - Staffing Plan

If the total expenditure of this contract is in excess of \$250,000, the following provision shall apply:

The Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the Staffing plan form and submit it as part of their proposal or within a reasonable time, as directed by the Department of State.

d. Form C - Workforce Utilization Report

- 1) The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by the Agency on a monthly basis for construction contracts, and on a quarterly basis for all other contracts, during the term of the Contract.
- 2) Separate forms shall be completed by the Contractor and any subcontractors performing work on the Contract.
- 3) The Contractor shall comply with the provisions of the Human Rights Law, as well as all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its 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.

4. MWBE Utilization Plan

- a. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan or shall submit an MWBE Utilization Plan at such time as shall be required by the Department of State through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to the Department of State, either prior to, or at the time of, the execution of the contract.
- b. The Contractor agrees to adhere to such MWBE Utilization Plan for the performance of the Contract.
- c. The Contractor further agrees that a failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Agency shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

## 5. Waivers

- a. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by the Agency (use Form E - Waiver Request). Such waiver request must be supported by evidence of the Contractor's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, the Agency shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- b. If the Agency, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section 6, or any other relevant information, 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 Agency 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.

## 6. Quarterly MWBE Contractor Compliance Report.

The Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form F) to the Agency by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

The Agency may require the Contractor to use the NYSCS to submit utilization plans, record payments to subcontractors and otherwise report compliance with the provisions of Article 15-A of the Executive Law and regulations. Technical assistance can be obtained through the NYSCS website at <https://ny.newnycontracts.com> by clicking on the "Contact Us & Support" link.

Questions regarding this program should be directed to the Department's Minority and Women-owned Business Program by calling (518) 473-3401. Potential contractors can access the NYS Directory of Certified Minority and Women-owned Business Enterprises on-line through the Empire State Development website at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>. The Department makes no representation with respect to the availability or capability of any business listed in the Directory.

## 7. Liquidated Damages - MWBE Participation

- a. Where the Agency determines that the Contractor is not in compliance with the requirements of the Contract and the Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the Agency liquidated damages.
- b. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

2) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

- c. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Agency, the Contractor shall pay such liquidated damages to the Agency within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

#### O. Service-Disabled Veteran-Owned Businesses Participation

Article 17-B of the Executive Law, enacted in 2014, authorized the creation of the Division of Service-Disabled Veterans' Business Development to promote participation of Service-Disabled Veteran-Owned Businesses (SDVOBs) in New York State contracting. The Service-Disabled Veteran-Owned Business Act recognizes the veterans' service to and sacrifice for our nation, declares that it is New York State's public policy to promote and encourage the continuing economic development of service-disabled veteran-owned businesses, and allows eligible Veteran business owners to become certified as a New York State Service-Disabled Veteran-Owned Business (SDVOB), in order to increase their participation in New York State's contracting opportunities. To this effect, the Department of State (DOS) has implemented a Veteran-Owned Businesses (SDVOB) Program, as mandated by Article 17-B.

To comply with the SDVOB Program goals of 6%, the Department of State strongly encourages grantees to make every effort, to the maximum extent possible, to engage certified SDVOBs in the purchasing of commodities, services and technology in the performance of their contracts with the Department. If SDVOB utilization is obtained, a quarterly SDVOB utilization report should be submitted to the Department with information of the utilization percentage achieved during that quarter. Contractor Reporting Forms are found at: <https://ogs.ny.gov/Veterans/>.

The Division of Service-Disabled Veterans' Business Development (DSDVBD) is housed within the New York State Office of General Services (OGS), and maintains a directory of the NYS Certified SDVOBs. For assistance with engaging SDVOB vendors in your contracts, please contact the Division of Service-Disabled Veterans' Business Development at the following email address: [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov), or the DOS Division of Affirmative Action Programs – SDVOB Program at [Catherine.Traina@dos.ny.gov](mailto:Catherine.Traina@dos.ny.gov) or [Api.Ohouo@dos.ny.gov](mailto:Api.Ohouo@dos.ny.gov). The directory of certified SDVOB vendors can be found at: [https://ogs.ny.gov/Veterans/Docs/CertifiedNYS\\_SDVOB.pdf](https://ogs.ny.gov/Veterans/Docs/CertifiedNYS_SDVOB.pdf).

## II. Program Specific Clauses – Smart Growth (4/23/22)

### A. This Agreement has been entered into pursuant to the following understandings:

1. Title 3 of the Environmental Protection Fund Act provides State assistance to municipalities and not-for-profit organizations to establish, update or implement comprehensive plans in a manner consistent with smart growth.
2. The Department of State (Department) is authorized by such Act to evaluate and determine eligibility of applications for funding of projects.
3. Based upon information, representations and certifications contained in Contractor's application for funding, including the Program Work Plan as set forth in Attachment C, the Department has made a determination of eligibility of funding for Contractor's project under such Act.
4. State funds (Funding Amount set forth on the Face Page) for this Project (Attachment C Program Work Plan) are provided pursuant to a reappropriation of funds originally made by Title 3 of the Environmental Protection Fund Act.
5. The Contractor shall request payment and reimbursement of eligible and supportable costs incurred under this Agreement, on an interim basis, and each such payment request will be processed by the Department in accordance with relevant provisions set forth herein, together with the following terms:
  - a. The Department, upon approving each payment request, shall make an interim payment for eligible and supportable costs incurred by the Contractor.
  - b. The final payment request will not be processed by the Department prior to satisfactory completion of the Project.
  - c. The Department can withhold the final 10% of the total amount that may be funded by the State in accordance with this Agreement, until the satisfactory completion of the Project.
6. No liabilities are to be incurred beyond the contract period and no costs will be reimbursed for such liabilities unless all of the following conditions have been met: 1) funds have been reappropriated for the Project in the subsequent State fiscal year, 2) the Department determines that it is in the best interest of the Department and the State to provide additional time to complete the Project and 3) an extension agreement is approved in accordance with Section IA. of the Agreement.
7. Subject to the availability of funds, determination by the Department that it is in the best interest of the State, and upon mutual written consent of the parties, the State may provide a no-cost time extension. The parties shall revise or complete the appropriate appendix form(s), which may be subject to approval of the Office of the State Comptroller.
8. The Contractor has demonstrated its ability to finance its share of the Project and has agreed to fund its portion of the cost of the Project.

## B. Contractors Insurance Requirements

1. Prior to the commencement of the work, the Contractor shall file with the Department of State, current Certificates of Insurance evidencing compliance with all requirements contained in this Agreement. Such certificate shall be of form and substance acceptable to the Department.
2. Acceptance and/or approval by the Department does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Agreement.
3. All insurance required by the Agreement shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers licensed to do business in New York State; shall be primary and non-contributing to any insurance or self insurance maintained by the Department; shall be endorsed to provide written notice be given to the Department, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail which shall be sent to New York State Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231-0001; and shall name the People of the State of New York and their directors officers, agents, and employees as additional insureds thereunder.
4. The Contractor shall be solely responsible for the payment of all deductibles to which such policies are subject.
5. Each insurance carrier must be rated at least "A" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the Department and rated at least "A" Class "VII" in the most recently published Best's Insurance Report.
6. The Contractor shall cause all insurance to be in full force and effect as of the date of this Agreement and to remain in full force and effect throughout the term of this Agreement and as further required by this Agreement. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.
7. Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply the Department updated replacement Certificates of Insurance, and amendatory endorsements.
8. Unless the Contractor is self-insured, Contractor shall, throughout the term of the Agreement or as otherwise required by this Agreement, obtain and maintain in full force and effect the following insurance with limits not less than those described below and as required by the terms of this Agreement, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies). Where Contractor is self-insured, the Contractor shall provide suitable evidence of such to the Department relating to the risks and coverage amounts as provided hereunder.
  - a. Comprehensive Liability Insurance with a limit of not less than \$1,000,000 for each occurrence. Such liability shall be written on the Insurance Service Office's (ISO) occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form

property damage, personal & advertising injury, owners & contractors protective, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

- 1) If such insurance contains an aggregate limit, it shall apply separately to this location.
  - 2) Products and Completed Operations coverage shall include a provision that coverage will extend for a period of at least twelve (12) months from the date of final completion and acceptance by the owner of all of contractors work.
- b. Where the Project described in Attachment C includes the construction of any structure or building, a Builder's Risk Policy until the Project is completed and accepted in the amount of the total project cost.
  - c. Workers Compensation, Employers Liability, and Disability Benefits as required by New York State. Workers Compensation Policy shall include the U.S. Longshore & Harbor Workers' Compensation Act endorsement.
  - d. Comprehensive Automobile Liability Insurance with a limit of not less than \$1,000,000 for each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non owned automobiles.
  - e. Commercial Property Insurance covering at a minimum, the perils insured under the ISO Special Clauses of Loss Form (CP 10 30), or a substitute form providing equivalent coverages, for loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tools of their agents and employees, staging towers and forms, and property of the Department held in their care, custody and/or control.
  - f. An Owner's Protective Liability Policy with limits no less than \$1,000,000 in the name of the Contractor.
9. Professional consultants retained by the Contractor in connection with the Project shall show evidence of professional liability insurance with limits no less than \$1,000,000.

#### C. Contractor Property Interest

Contractor warrants that it has fee simple or such other estate or interest in the site of the Project, where the Project is undertaken at a site, including easements and /or rights-of-way sufficient to assure undisturbed use and possession for the purposes of construction and operation for the estimated life of the Project. Contractor further acknowledges that where such project is undertaken on or involves the use of lands for active or passive recreational use, it is a material term of this Agreement that such lands shall be available for such recreational use by the People of the State of New York. Additionally, Contractor shall not limit access or discriminate on the operation of the facilities against any person on the basis of place of residence, race, creed, color, national origin, sex, age, disability or marital status.

#### D. Date/Time Warranty

1. Contractor warrants that product(s) furnished pursuant to this contract shall, when used in accordance with the product documentation, be able to accurately process date/time data (including,

but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific products must perform as a package or system, this warranty shall apply to the products as a system.

2. Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g. billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting there from, including but not limited to the failure or untimely performance of such services.
3. This Date/Time Warranty shall survive beyond termination or expiration of this Contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

#### E. Alienation

Where the project is undertaken on or involves parklands or public waterfront land, the following additional provisions apply:

1. The Contractor shall not at any time sell or convey any facility or any portion of the project acquired or developed pursuant to this Agreement or convert such facility or any portion of the project to other than public park or public waterfront purposes without the express authority of an act of the Legislature, which shall provide for the substitution of other lands of equal fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by State.
2. The Contractor agrees to own a property interest sufficient to maintain and operate the project in perpetuity. The Contractor shall not authorize the operation of the project, or any portion thereof, by any other person, entity, or organization pursuant to any management agreement, lease or other arrangement without first obtaining the written approval of the State.

#### F. Requirements for Contract GIS Products (1/17/13)

1. General Map Product Requirements -- The following general cartographic requirements must be adhered to by the Contractor:
  - a. Map Products and Supporting Data -- The Department requires delivery of digital map products, including all associated GIS and/or CAD digital files. Such materials must meet the specifications outlined in this General Map Product Requirements section and the Additional Digital Cartographic File Requirements section. Additionally, finished maps should also be provided in a format suitable for viewing and printing (e.g. PDF). If analog map products are required by the contract, they must meet specifications outlined in this General Map Product Requirements section and the Additional Digital-Ready Map Product Requirements section.



- b. Deliverable Format -- All digital map and attribute table files must be provided in ESRI Shapefile or Geodatabase file format including all associated metadata on Recordable CD or DVD, external hard drive, via email attachment (preferably in a WinZIP file) or downloadable from an ftp site on the Internet. Alternatively, the digital products may be provided as ArcInfo/GIS coverages or CAD files on the same media types upon approval of the Department. All other digital formats require prior approval of the Department. Coordination with the Department prior to submission of digital media is required to ensure compatibility of the delivered materials.
  - c. Documentation -- A data dictionary must be included along with the map files describing file contents and file names, as well as metadata for each file including map projection, horizontal and vertical datums used, coordinate system, RMS accuracy and log sheet, information sources and dates, the map maker and date of preparation, and creation methodology. Data provided under federal funds must be provided in a manner which meets Digital Geospatial Federal Geographic Data Committee Metadata Standard as executed by Executive Order 12906, April 11, 1994, "Coordinating Geographic Data Acquisition and Access: the National Spatial Data Infrastructure".
  - d. Map Accuracy -- All deliverable map products must conform to National Map Accuracy Standards for horizontal and vertical accuracy as established by the United States Bureau of the Budget, June 10, 1941, revised June 17, 1947. For example, for maps at 1:20,000 or smaller, not more than 10% of the well-defined map points tested must be more than 1/50 inch (0.508 mm) out of correct position. At 1:24,000, this tolerance translates to a required horizontal accuracy of 40 feet. If by prior agreement with the Department the map product does not conform to National Map Accuracy Standards, then a statement of actual map accuracy should be included in the Documentation above. Furthermore, hydrographic surveys and maps should conform to recommended accuracy standard proposed in the joint USGS, NOS, Coastal Mapping Handbook, 1978, Melvin Ellis editor, U.S. Government Printing Office, Appendix 6.
  - e. Datums and Coordinate Systems-- All map products should be referenced to the North American Horizontal Datum of 1983 (NAD83) and the National Geodetic Vertical Datum of 1988 (NGVD88). Unless otherwise specified in the RFP, UTM Zone 18 shall be used for data at scales smaller than 1:10,000 and State Plan shall be used for data at 1:10,000 scale and larger.
2. Additional Digital Cartographic File Requirements -- The following cartographic construction requirements must be adhered to by the Contractor:
- a. Edge-matching -- All map sheets must be both visually and coordinate edge-matched with adjacent map sheets. No edge-match tolerance will be allowed. Attributes for splittable features must also be identical.
  - b. Common Boundaries -- All features that share a common boundary, regardless of map layer, must have exactly the same coordinate position of that feature in all common layers.
  - c. Point Duplication -- No duplication of points that occur within a data string is permitted.
  - d. Connectivity -- Where graphic elements visually meet, they must also digitally meet. All confluences of line and polygon data must be exact; "overshoots", "undershoots", "slivers", or "offshoots" are NOT permitted.

- e. Line Quality -- A high quality cartographic appearance must be achieved. Transitions from straight lines to curvilinear elements must be smooth, with angular inflections at the point of intersection. The digital representation must not contain extraneous data at a non-visible level. There should be no jags, hooks, or zero length segments. Any lines that are straight, or should be straight, should be digitized using only two points that represent the beginning and ending points of the line.
  - f. Polygon Closure -- For area features being digitized, the last coordinate pair must be exactly (mathematically) equal to the first coordinate pair. No line or polygon must cross itself except to join at an actual confluence. All digitized features across map boundaries must be edited to effect smooth and continuous lines.
  - g. Graphic Precision -- Positional coordinates for all digital graphic elements should not be reported to a level of precision greater than one thousandth (.001) of a foot.
  - h. Digitizer Accuracy -- The required RMS error for digitizer accuracy must be 0.003 or better for digital map registration.
3. Digital-Ready Map Product Requirements -- The following requirements for large scale, non-digital map products must be followed to facilitate the future conversion of the maps to digital map products. All large format, non-digital map products must be provided on stable base material at a scale. The map products must include an index map to all map sheets and thorough descriptions of all the cartographic elements portrayed on the maps.
- a. Base Map Media -- All maps must be created on mylar or other stable base material.
  - b. Map Scale -- All maps of a similar series should be created using the same base scale. Unless otherwise stated by the Department, all maps should be compiled at 1:24,000. If other map scales are approved by the Department, where possible they will conform to standard map scales such as 1:9600; 1:50,000; 1:75,000; or 1:100,000.
  - c. Map Registration -- The maps must provide a minimum of four (4) corner and four (4) interior ticks tied to USGS/NYS DOT quadrangle Lat/Long or NYTM coordinates. The maps must be geometrically correct and should register when overlaid on the appropriate USGS/NYS DOT quadrangle control ticks.
  - d. Map Title and Legend -- The maps must provide a title and legend block describing the information contained on the maps, and including the Documentation and Datums information requested in the General Map Product Requirements above and the map scale.
  - e. Cartographic Quality -- The quality of all map line work and symbolization must conform to items 1 - 6 in the map criteria set forth in the Additional Digital Cartographic File Requirements section outlined above.
4. Contract Database Standards
- a. Delivery Media -- All database and tabular files must be provided on digital media as specified above in Deliverable Format.

- b. Software Format -- Database and tabular files can be provided in Oracle, Microsoft Excel or Microsoft Access format. Other formats that are convertible to one of the aforementioned formats may be used with prior approval of the Department.
- c. Geographic Attributes -- Database and tabular files that contain elements with a geographic reference must provide a corresponding data field and a geographic coordinate pair for each feature location.

#### G. Notice of Public Proceedings

The Contractor agrees to provide the Department with prompt and timely written notice at least two weeks in advance of all public proceedings, including, but not limited to public meetings or hearings, relating to the Project.

#### H. Environmental Review

1. Contractor agrees to provide the Department, in a timely manner, with all documentation, including but not limited to, permit applications, environmental assessments, designs, plans, studies, environmental impact statements, findings, and determinations, relating to the Project.
2. Contractor acknowledges that compliance with the State Environmental Quality Review Act is a material term and condition of this Agreement. In no event shall any payments be made under this Agreement until Contractor has provided the Department with appropriate documentation that Contractor has met any requirements imposed on Contractor by the State Environmental Quality Review Act.

## ATTACHMENT B-1 - EXPENDITURE BASED BUDGET

| <b>Budget Summary:</b>   | <b>Total Budget</b> |
|--------------------------|---------------------|
| A. Salaries              | \$ 0.00             |
| B. Travel                | \$ 0.00             |
| C. Supplies              | \$ 0.00             |
| D. Equipment             | \$ 0.00             |
| E. Contractual Services  | \$ 75,000.00        |
| F. Other                 | \$ 0.00             |
| <b>Total Budget</b>      | <b>\$ 75,000.00</b> |
| <b>Local Match (10%)</b> | <b>\$ 7,500.00</b>  |
| <b>State Funds (90%)</b> | <b>\$ 67,500.00</b> |

| <b>MWBE Goals:</b> |     |    |           |
|--------------------|-----|----|-----------|
| Grant Award:       |     | \$ | 67,500.00 |
| MBE Goal           | 15% | \$ | 10,125.00 |
| WBE Goal           | 15% | \$ | 10,125.00 |

| <b>A. SALARIES (including fringe benefits)</b> | <b>Total Budget</b> |
|--|---------------------|
|  |                     |
|  |                     |
|  | \$ 0.00             |

| <b>B. TRAVEL</b> | <b>Total Budget</b> |
|------------------|---------------------|
|                  |                     |
|                  |                     |
|                  | \$ 0.00             |

| <b>C. SUPPLIES</b> | <b>Total Budget</b> |
|--------------------|---------------------|
|                    |                     |
|                    |                     |
|                    | \$ 0.00             |

| <b>D. EQUIPMENT</b> | <b>Total Budget</b> |
|---------------------|---------------------|
|                     |                     |
|                     |                     |
|                     | \$ 0.00             |

| <b>E. CONTRACTUAL SERVICES</b>   | <b>Total Budget</b> |
|--|---------------------|
| Planning services for the development of the Smart Growth Comprehensive Plan |                     |
| Subcontractor: To be determined  | \$ 75,000.00        |
|  |                     |
|  | \$ 75,000.00        |

| <b>F. OTHER</b> | <b>Total Budget</b> |
|-----------------|---------------------|
|                 |                     |
|                 |                     |
|                 | \$ 0.00             |

## **ATTACHMENT C - WORK PLAN**

### **The City of Hudson Smart Growth Plan**

#### **1. Project Description**

The City of Hudson (Contractor) and its Comprehensive Planning Committee will prepare a Comprehensive Plan pursuant to General City Law § 28 / Town Law § 272-a / Village Law 7-722. The Comprehensive Plan will establish the objectives that the community wants to achieve, and will guide future sustainable growth within the municipality, enhance the local cultural identity, and protect natural and cultural local resources.

The Comprehensive Plan must address the following general Smart Growth principles, in addition to the elements suggested by the New York State statutes:

- Promote mixed land uses in focus areas.
- Create an adequate range of housing opportunities and choices.
- Promote development and redevelopment where infrastructure is adequate and sustainable.
- Build on traits that make a distinctive and attractive community with a strong sense of place.
- Promote well-planned and well-placed public spaces
- Promote sustainable compact neighborhoods
- Increase mobility and circulation within jurisdictional lines and improve connectivity with areas outside jurisdictional lines.
- Promote sustainable mass transit that reduces the local levels of greenhouse gas emissions
- Promote walkable/bikeable neighborhood designs
- Promote and integrate clean energy resources and related incentives.
- Improve green infrastructure and resident's participation to this effort
- Increase resiliency to extreme weather events.
- Encourage social diversity and integration.
- Expand planning and implementation efforts across jurisdictional lines, to increase effectiveness, sustainability, and resiliency.
- Promote community and stakeholder collaboration in planning

The Contractor will use the funding/grant for consultant services necessary for the coordination of the planning process and preparation of the Comprehensive Plan.

#### **2. Project Attribution and Number of Copies**

The Contractor must ensure that all materials printed, constructed, and/or produced acknowledge the contributions of the Department to the project. All final and public facing materials must include the Department of State logo and the following acknowledgment:

*"This [document, report, map, etc.] was prepared with funding provided by the New York State Department of State Environmental Protection Fund."*

The contributions of the Department must also be acknowledged in community press releases and other notices issued for the project, including web site postings and other forms of digital distribution. Project press releases and other notices shall be submitted to the Department for review and approval prior to release, to ensure appropriate attribution.

The Contractor must submit to the Department all required products, clearly labeled with the NYS Comptroller's contract number as indicated on the Face Page of this Contract and where applicable, the related task number from this Work Plan.

Unless otherwise specified in the Work Plan tasks, the Contractor shall submit products in the following formats:

- Draft products: one digital copy of each product must be submitted in Microsoft Word and Adobe® Acrobat® Portable Document Format (PDF), created using 300 dpi scanning resolution.
- Final products: one electronic copy of each product must be submitted in Microsoft Word, PDF (20 MB maximum), created using 300 dpi scanning resolution. In addition, one paper copy of each final product (including reports, designs, maps, drawings, and plans) must be submitted.
- Electronic data for all Geographic Information System-based mapping products and associated spatial data must be submitted in either ArcGIS format, or similar product acceptable to the Department, and comply with the requirements for Contract GIS Products. Formal metadata must be provided with all digital GIS data which includes, at minimum, a file summary/abstract, intended use, data, source data, and author information.
- Electronic data for all designs, drawings, and plans must be submitted in the original software that they were created (such as CAD format or other similar product acceptable to the Department), as well as in JPG format.
- Photographs and images must be submitted in JPG format with a minimum resolution of 300 dpi, must be dated and captioned with the location and a brief description of the activity being documented, and include any associated metadata (including the photo's GPS location where available).

### **3. Compliance with Procurement Requirements**

The municipal attorney, chief legal officer or financial administrator of the municipality shall certify in writing to the Department that applicable provisions of General Municipal Law were fully complied with.

### **4. Smart Growth Comprehensive Planning Training**

As part of the Smart Growth Planning Grant Program, the Contractor will participate in a virtual training session or sessions focused on developing smart growth strategies. The purpose of this training session is to build knowledge and provide support to community leaders to advance smart growth planning efforts and advance grant priorities.

### **5. Project Components**

#### **Task 1: Project Initiation Meeting**

The Contractor, the Department, and any partners responsible for managing the project, shall hold an initial meeting to review and agree upon the project scope and schedule, project requirements, budget, roles and responsibilities, the selection process for procuring consultants, State Environmental Quality Review Act (SEQRA) compliance requirements, MWBE requirements, the number of public meetings and techniques for public involvement proposed for the project, and any other information which would assist in project completion. In addition, the composition and role of the Comprehensive Planning Committee shall be discussed during the project initiation meeting. The Contractor, or a designated project partner, shall prepare and distribute to all project partners a brief meeting summary clearly indicating the agreements reached at

the meeting. Work on subsequent tasks shall not proceed prior to Department review of the proposed approach as outlined in the meeting summary.

Products: Project initiation meeting held with appropriate parties. Written meeting summary outlining agreements reached.

## **Task 2: Comprehensive Planning Committee**

Establish a Comprehensive Planning Committee, as a special municipal board (if applicable), to conduct/oversee the development of the Comprehensive Plan in cooperation with municipal officials, other municipal boards, and the project consultant(s), if applicable. The Comprehensive Planning Committee shall have at least one member from the planning board and shall include representatives from a large range of ethnic, social, and cultural backgrounds and a diverse range of stakeholders, such as residents, civic leaders, business owners, elected officials, environmental experts, municipal board members.

The members of the Comprehensive Planning Committee (CPC) conduct/oversee the planning process and the development of the Comprehensive Plan, participate in meetings, generate ideas and build consensus, provide the consultant team with relevant information reflective of the community's current condition and needs (including a list of completed and ongoing local planning efforts and initiatives), review materials drafted by the consultant team and provide constructive feedback, support each of the proposed public participation and outreach efforts, and set the stage for cooperation and the plan's implementation.

Products: Draft and final list of proposed members of Comprehensive Planning Committee. Project advisory committee established.

## **Task 3: Procurement of Consultant (if applicable)**

Prepare a Request for Proposals (RFP) or similar instrument (if applicable) including a complete project description with site conditions, expected final results, a schedule for completion, MWBE requirements, and criteria for selecting a preferred proposal. Consultant services requested shall include all applicable tasks, activities and responsibilities outlined in the "Project Components" section of this work program.

The Contractor must actively solicit bids for contracts and subcontracts from qualified State certified MWBEs which can be identified using the NYS Directory of Certified Firms (<https://ny.newnycontracts.com/>). The Contractor must retain records of the procurement process including direct solicitation to MWBEs; results; and any actions that its subcontractors have taken toward meeting MWBE contract participation goals. To demonstrate good faith efforts to achieve MWBE contract goals the following should be retained:

- Evidence of outreach to MWBEs: mail, email, phone calls and follow-up.
- Written responses by MWBEs to the grantee/vendor's outreach.
- Copies of search(es) of the directory and advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications.
- Attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the grantee with MWBEs including dates and location.
- Description of how the scope of work maximizes opportunities for MWBE participation.
- Description of how non-MWBE subcontractors' have engaged MWBEs to undertake part of the project's work or to procure equipment/ materials/supplies.



NYS Department of State requires a licensed professional engineer, architect or landscape architect licensed to practice in New York State for preparation and certification of final designs and construction documents, and for supervision of construction.

Submit the RFP or similar instrument to the Department for review and approval prior to release for solicitation of proposals.

Products: Approved RFP or similar instrument released through advertisement in local papers, the New York State Contract Reporter, or other appropriate means. Documentation of procurement including direct solicitation to MWBEs and actions taken toward meeting MWBE contract participation goals.

#### **Task 4: Subcontract and Compliance with Local Procurement Requirements**

Prepare the draft subcontract(s) to conduct project work with the selected consultant(s). The subcontract(s) shall contain a detailed work plan with adequate opportunity for review at appropriate stages of product completion, a payment schedule with payments tied to receipt of products, and project costs.

Incorporate the Department's comments on the subcontract work plan, or scope of services, prior to execution of the final subcontract(s).

The municipal attorney, chief legal officer or financial administrator of the municipality shall certify in writing to the Department that the Contractor fully complied with applicable provisions of General Municipal Law and with local procurement procedures. A procurement certification form will be supplied by the Department.

The Contractor's procurement record and consultant selection are subject to approval by the Department.

The Contractor remains responsible for the legal sufficiency of the subcontract in accordance with the requirements in the Master Grant Contract and Attachment A-1.

Products: Consultant(s) selected and approved by the Department. Executed subcontracts and written certification of compliance with procurement procedures.

#### **Task 5: Comprehensive Planning Committee Meetings**

The Comprehensive Planning Committee will meet on a regular basis during the planning process to advance the preparation, review, and approval of the Comprehensive Plan, and to organize and conduct community participation events.

During the first meeting, the Comprehensive Plan Committee will review project requirements and roles and responsibilities, transfer necessary information to the team of consultants (if applicable), and identify new information needs and next steps. The Comprehensive Plan Committee or the consultant (if applicable) will prepare and distribute a brief meeting summary clearly indicating the understandings reached at the meeting.

All subsequent meetings will advance the preparation of the Comprehensive Plan and assess the evolution of the project, the new information needed, changes in roles and responsibilities, and next steps.

Work on subsequent tasks shall not proceed prior to Department review.

Products: Meetings held with appropriate parties. Written meeting summaries outlining what has been discussed and understandings reached and identifying the participants to the meeting.

#### **Task 6: Community Participation Plan**

Prepare a Community Participation Plan that describes the public outreach and participation efforts that will be conducted during the development of the Comprehensive Plan, pursuant to the local and State statutes. At a minimum, the Community Participation Plan shall include (in-person or virtual) interviews with local and regional stakeholders, a community survey, a public information meeting, one or more public workshops, one or more public hearings, and a webpage with links to announcements, presentations and documents prepared during the planning process. The Community Participation Plan shall identify key individuals, organizations, and entities to be involved, and shall identify roles and responsibilities in coordinating the entire outreach process, logistics, and the proposed schedule of the proposed public outreach and participation efforts.

All public outreach and participation efforts will be publicized in the community through press releases, announcements, individual mailings, and any other appropriate means. Public access must be provided to each public meeting or workshop. Outreach efforts should encourage participation from populations who are frequently underrepresented in this process, including immigrants, refugees, and minorities. A summary of each public outreach and participation efforts will be made available to the public in written form and through other appropriate means, such as websites.

Products: Draft and final Community Participation Plan.

#### **Task 7: Community Survey and Stakeholder Interviews**

Develop a relevant and realistic community survey about current local conditions and issues. The survey should be made available to the public as hard copy and online. In addition, identify a set of topics that shall be discussed with stakeholders to obtain additional relevant information and elicit stakeholder reactions and suggestions. Following the completion of the survey, develop a summary of results and analysis.

Products: Draft and final Community Survey. Draft and final list of topics to be discussed during the stakeholder interviews. Summary of survey and interviews responses and analysis.

#### **Task 8: Review Local and Regional Planning Efforts and Ongoing Initiatives**

Identify and review existing local and regional planning documents and ongoing initiatives. This review process will also include consultation with community leaders and with neighboring communities, if applicable, to identify common issues and assess if Smart Growth principals are the basis for addressing those issues.

The Comprehensive Planning Committee and the consultant(s), if applicable, shall develop a written findings report describing and assessing existing planning documents and the issues and opportunities identified by community leaders.

Products: Written findings report.

## Task 9: Community Profile

Draft a Community Profile consisting in an inventory and analysis of existing conditions, including narrative, maps, and relevant data. The inventory will be used to assist in the identification of local issues and potential opportunities. The analysis of the local conditions and issues will be conducted from a Smart Growth perspective and identify potential solutions to existing issues and potential opportunities. A chart of smart growth principles will be provided to be included in the comprehensive plan which will summarize the opportunities and challenges to addressing each principle. The inventory and analysis of existing conditions may include the following, at a minimum:

- History of the municipal jurisdiction and boundaries.
- Description of previous comprehensive plan development and adoption processes.
- Demographic characteristics (population and growth trends, age distribution, average household size, ethnic composition, average household income, social diversity and integration, demographic trends).
- Local and regional economic characteristics (unemployment rates and trends, work force characterization, dominant business sector type, major employers and industries, sales tax information, property tax rates, economic trends and jobs range).
- Housing characteristics (the age, type, and condition of structures, type of occupancy - renters versus owners, vacancy rates and trends in the community and length of residency - percentage of residents five years in home, the extent and availability of low-income housing throughout the community and in identified neighborhoods, assessment of housing opportunities and choices, housing trends and access to jobs).
- Local and regional economies and development trends (including housing, commercial, industrial and agricultural development).
- Land use and smart growth focus areas.
- Agricultural and forest lands, uses, and districts.
- Infrastructure and public utilities (i.e., drinking water supply, sewage disposal, solid waste disposal, stormwater management and green infrastructure, communications, gas and electricity) extent, capacity, age, and maintenance.
- Transportation systems, local levels of greenhouse gas emissions, levels of mobility and circulation, walkable/bikeable neighborhood, connectivity with areas outside jurisdictional lines, distance to jobs.
- Natural resources and climate (air quality, watercourses, wetlands, floodplains, aquifers, forests/tree cover, steep slopes, soil types, and rare plant and animal habitats, precipitations, winds, temperatures, etc.).
- Extreme weather events, flooding, erosion hazards, and local resiliency.
- Health and emergency services and facilities.
- Parks and public spaces, recreation facilities, range of passive and active recreation, capacity and maintenance, accessibility etc.
- Historic, cultural, and scenic resources.
- Waterfront resources and public access.
- Zoning and other relevant local development controls.
- Fiscal resources.

The draft Community Profile shall be submitted to the Department for review before being used to design workshop activities and prepare materials needed to conduct community visioning workshops or to draft the Comprehensive Plan.

Products: Community Profile report, including a comprehensive inventory and analysis in the form of relevant data, narrative, maps, and graphics.

#### **Task 10: Community Visioning Workshops**

Conduct at least two public workshops that will inform the public about the findings of the planning process conducted up to this point, present a clear assessment of how Smart Growth policies are integrated in the municipality's planning efforts, governmental decisions, and ongoing initiatives, and will solicit public input on existing resources, community character, and future growth. The workshops are also intended to identify Smart Growth solutions to current issues and future growth.

Each workshop shall be advertised with generous advance notice to garner maximum publicity, awareness, and participation. The site of the workshops must be accessible to the public.

Products: Published workshops announcements and fliers. Materials prepared for each public workshop.  
Workshops held.

#### **Task 11: Draft Comprehensive Plan**

Assemble the draft comprehensive plan that addresses each of the Smart Growth policies and establishes a long-term strategy for future growth and protection of resources, and may include the following topics commensurate with the community's needs and vision for future actions:

- Goals, objectives, principles, policies, and standards upon which proposals for the immediate and long-range enhancement, growth, and development of the community.
- Consideration of regional needs and the official plans of other government units and agencies within the region.
- The existing and proposed location and intensity of land uses.
- Consideration and recommendations for the protection of agricultural and forest lands, historic and cultural resources, natural resources, and sensitive environmental areas.
- Consideration of population, demographic and socio-economic trends and future projections.
- Location and types of transportation facilities that reduce the local levels of greenhouse gas emissions.
- Existing and proposed general location of public and private utilities and infrastructure, including clean energy generation.
- Existing housing resources and future housing needs, including affordable housing.
- The present and potential future general location of educational and cultural facilities, historic sites, health facilities, and facilities for emergency services.
- Existing and proposed recreation facilities and parkland.
- The present and potential future general location of commercial and industrial facilities.
- Specific policies and strategies for improving the local economy in coordination with other plan topics.
- Proposed measures, programs, devices, and instruments to implement the goals and objectives of the various topics within the comprehensive plan.
- All or part of applicable plans of other public agencies.
- Any and all other items which are consistent with the orderly growth and development of the community.

A detailed strategy implementing the community's policies, concepts, projects, and programs shall be identified in the plan. This includes phased implementation approach (short-term, mid, and long-term), as well as anticipated costs, and priorities.

Submit the draft Comprehensive Plan to the Department for review and approval and incorporate the Department's comments in the final plan.

Products: Draft Comprehensive Plan, including relevant data, narrative, maps, and graphics.

#### **Task 12: Review by the Local Municipal Board**

Submit the draft Comprehensive Plan to the local municipal board, for review, comments, and recommendations. The comments received from the local municipal board shall be addressed before the initiation of the SEQRA compliance process.

The comments and recommendations prepared by the local governing board/local legislature shall be addressed and incorporated into the final plan and prior to making the draft available for public review.

Products: Comments and recommendations received from the local municipal board submitted to the Department.

#### **Task 13: Environmental Quality Review**

Prepare materials necessary for compliance with the State Environmental Quality Review Act (SEQRA). The adoption of a new or amended Comprehensive Plan is classified as a Type I action, pursuant to the State Environmental Quality Review Act (SEQRA) and 6 NYCRR Part 617. The Comprehensive Planning Committee or the consultant(s) shall prepare the Generic Environmental Impact Statement (EIS) to provide a review of land use actions proposed in the comprehensive plan. The local municipal board shall declare to be the Lead Agency for the action of adopting the new or amended comprehensive plan.

Copies of all SEQR documents shall be submitted to the Department.

Products: SEQRA documents

#### **Task 14: County Planning Board Review**

Submit the draft Comprehensive Plan to the County Planning Board for review and recommendations pursuant to Section 239-m of the New York State General Municipal Law. Comments received from the County Planning Board shall be addressed in the final version of the Comprehensive Plan that will be locally adopted.

Comments received from the County Planning Board shall be submitted to Department.

Products: Comments and recommendations prepared by the County Planning Board.

### **Task 15: Final Comprehensive Plan**

Address all comments and recommendations received from the public and involved local, regional and State agencies and incorporate into the Final Comprehensive Plan and schedule a public hearing and the local adoption of the plan.

The final Comprehensive Plan and the date of the public hearing and local adoption of the plan shall be submitted to Department.

Products: Final Comprehensive Plan ready for local adoption.

### **Task 16: Public Hearing and Local Adoption**

Conduct a public hearing prior to adoption of the comprehensive plan. Notice of the public hearing shall be published in a newspaper of general circulation in the community at least ten calendar days in advance of the hearing. The proposed comprehensive plan shall be made available for public review during said period at the office of the municipal clerk and public library and shall be posted on the municipal website. The public hearings may also be publicized in the community through press releases, announcements, individual mailings, and any other appropriate means.

Copies of the public hearing minutes and the local adoption resolution shall be submitted to the Department.

Products: Minutes from the public hearings and record of decision submitted to Department.

### **Task 17: MWBE Reporting**

Comply with MWBE Reporting Requirements by completing the following actions:

- Submit Form C - Workforce Employment Utilization to report the actual work force utilized for this contract broken down by specified categories (every March 31, June 30, September 30 and December 31).
- Submit Form D - MWBE Utilization Plan to indicate any state-certified MWBE firms selected to work on this contract. Form D must be updated and submitted to the Department whenever changes to the selected MWBE firms occur (addition or removal).
- Record payments to MWBE subcontractors using DOS funds through the New York State Contract System (NYSCS).

Technical assistance for use of the NYSCS system can be obtained through the NYSCS website at <https://ny.newnycontracts.com> by clicking on the "Contact Us & Support" link.

Products: Ongoing reporting through NYSCS during the life of the contract. Form C submitted on a quarterly basis and Form D submitted as necessary.

### **Task 18: Project Status Reports**

Submit project status reports semi-annually (every June 30 and December 31) on the form provided, including a description of the work accomplished, the status of all tasks in this work plan, schedule of completion of remaining tasks, and an explanation of any problems encountered.

Products: Completed project status reports submitted during the life of the contract.

## **Task 19: Final Project Summary Report and Measurable Results**

Submit the Final Project Summary Report and Measurable Results electronically at:

<https://forms.office.com/g/eZERFeEeKM>.

Products: Final Project Summary Report and Measurable Results submitted to the Department

## **5. Project Responsibilities**

The Contractor shall administer the grant, execute a contract with the Department, and ensure the completion of work in accordance with the approved Work Plan and budget.

The Contractor:

- will be responsible for conducting all project work in conformance with the Work Plan included in the executed contract with the Department.
- will be responsible for all project activities including drafting request for proposals and managing subcontracts with consultants and sub consultants.
- will certify to the Department that the procurement record for project consultants and subcontractors complies with the applicable provisions of General Municipal Law.
- will receive approval from the Department for any and all consultant subcontracts before beginning project work.
- will be responsible for submission of all products and payment requests.
- will be responsible for coordinating participation and soliciting comments from local government personnel, project volunteers, and the public.
- will keep the Department informed of all important meetings for the duration of this contract.
- will receive approval from the Department before purchase of any equipment.
- will secure all necessary permits and perform all required environmental reviews.
- will ensure that all materials printed, constructed, and/or produced acknowledge the contributions of the Department to the project.
- will ensure that all products prepared as a part of this contract shall include the NYS Comptroller's contract # as indicated on the Face Page of this contract.
- will ensure the project objectives are being achieved.
- will ensure that comments received from the Department and the project advisory committee, or other advisory group, are satisfactorily responded to and reflected in subsequent work.
- will recognize that payments made to consultants or subcontractors covering work carried out or products produced prior to receiving approval from the Department will not be reimbursed unless and until the Department finds the work or products to be acceptable.

The Department:

- will review and approve or disapprove of subcontracts between the Contractor and consultant(s) and any other subcontractor(s).
- will participate in project initiation meeting and attend meetings that are important to the project.
- will review all draft and final products and provide comments as necessary to meet the objectives.

- must approve or disapprove any and all design, site plan, and preconstruction documents. Department approval must be obtained before construction may begin.



**ATTACHMENT D  
PAYMENT AND REPORTING SCHEDULE**

**I. PAYMENT PROVISIONS**

In full consideration of contract services to be performed the State Agency agrees to pay and the contractor agrees to accept a sum not to exceed the amount noted on the face page hereof. All payments shall be in accordance with the budget contained in the applicable Attachment B form (Budget), which is attached hereto.

**A. Advance Payment and Recoupment Language (if applicable):**

1. The State agency will make an advance payment to the Contractor, during the initial period, in the amount of \$0 (0% of the budget) as set forth in the most recently approved applicable Attachment B form (Budget).
2. Recoupment of any advance payment(s) shall be recovered by crediting 100% of subsequent claims and such claims will be reduced until the advance is fully recovered within the contract period.
3. Scheduled advance payments shall be due in accordance with an approved payment schedule as follows:

Period: \_\_\_\_\_ Amount: \_\_\_\_\_ Due Date: \_\_\_\_\_

Period: \_\_\_\_\_ Amount: \_\_\_\_\_ Due Date: \_\_\_\_\_

Period: \_\_\_\_\_ Amount: \_\_\_\_\_ Due Date: \_\_\_\_\_

Period: \_\_\_\_\_ Amount: \_\_\_\_\_ Due Date: \_\_\_\_\_

**B. Interim and/or Final Claims for Reimbursement**

Claiming Schedule (*select applicable frequency*):

☒ Quarterly Reimbursement

Due Date: 3/31, 6/30, 9/30, 12/31

☐ Monthly Reimbursement

Due Date: \_\_\_\_\_

☐ Biannual Reimbursement

Due Date: \_\_\_\_\_

☐ Fee for Service Reimbursement

Due Date: \_\_\_\_\_

- ☐ Rate Based Reimbursement  
Due Date: \_\_\_\_\_
- ☐ Fifth Quarter Reimbursement  
Due Date: \_\_\_\_\_
- ☐ Milestone/Performance Reimbursement  
Due Date/Frequency: \_\_\_\_\_
- ☐ Scheduled Reimbursement  
Due Date/Frequency: \_\_\_\_\_

## II. REPORTING PROVISIONS

### A. Expenditure-Based Reports *(select the applicable report type):*

- ☐ Narrative/Qualitative Report  
The Contractor will submit, on a quarterly basis, not later than \_\_\_\_ days from the end of the quarter, the report described in Section III(G)(2)(a)(i) of the Master Contract.
- ☐ Statistical/Quantitative Report  
The Contractor will submit, on a quarterly basis, not later than \_\_\_\_ days from the end of the quarter, the report described in Section III(G)(2)(a)(ii) of the Master Contract.
- ☒ Expenditure Report  
The Contractor will submit, on a quarterly basis, not later than 30 days after the end date for which reimbursement is being claimed, the report described in Section III(G)(2)(a)(iii) of the Master Contract.
- ☒ Final Report  
The Contractor will submit the final report as described in Section III(G)(2)(a)(iv) of the Master Contract, no later than 60 days after the end of the contract period.
- ☐ Consolidated Fiscal Report (CFR)<sup>1</sup>  
The Contractor will submit the CFR on an annual basis, in accordance with the timeframes designated in the CFR manual. For New York City contractors, the due date shall be May 1 of each year; for Upstate and Long Island contractors, the due date shall be November 1 of each year.

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<sup>1</sup>The Consolidated Fiscal Reporting System is a standardized electronic reporting method accepted by Office of Alcoholism & Substance Services, Office of Mental Health, Office of Persons with Developmental Disabilities and the State Education Department, consisting of schedules which, in different combinations, capture financial information for budgets, quarterly and/or mid-year claims, an annual cost report, and a final claim. The CFR, which must be submitted annually, is both a year-end cost report and a year-end claiming document.

## **B. Progress-Based Reports**

### **1. Progress Reports**

The Contractor shall provide the report described in Section III(G)(2)(b)(i) of the Master Contract in accordance with the forms and in the format provided by the State Agency, summarizing the work performed during the contract period (see Table 1 below for the annual schedule).

### **2. Final Progress Report**

Final scheduled payment will not be due until 60 days after completion of the agency's audit of the final expenditures report/documentation showing total grant expenses submitted by vendor with its final invoice. Deadline for submission of the final report is at project completion. The agency shall complete its audit and notify vendor of the results no later than 60 days later. The Contractor shall submit the report not later than 60 days from the end of the contract.

## **C. Other Reports**

The Contractor shall provide reports in accordance with the form, content and schedule as set forth in Table 1.

**TABLE I – REPORTING SCHEDULE**

| <b>PROGRESS REPORT</b>              | <b>PERIOD COVERED</b>                                   | <b>DUE DATE</b>                   |
|-------------------------------------|---|-----------------------------------|
| Project Status Form                 | Contract period, as amended                             | 6/30*<br>12/31*                   |
| MWBE Utilization Plan               | Contract period, as amended                             | Within 2 weeks of MWBE hire       |
| MWBE Utilization Report (via NYSCS) | Contract period, as amended                             | 3/31*<br>6/30*<br>9/30*<br>12/31* |
| MWBE Workforce Utilization Report   | Contract period, as amended                             | 3/31*<br>6/30*<br>9/30*<br>12/31* |
|                                     |   |                                   |
|                                     | *Due every year during the contract period, as amended. |                                   |
|                                     |   |                                   |