**Lamont Engineers**
ENGINEERS • PLANNERS • FACILITY OPERATIONS
*Dedicated to Service...Committed to Excellence*

Project No. 2023031

# AMENDMENT 1
# TO THE
# PROPOSAL – LETTER FORM OF AGREEMENT

May 6, 2024

Hon. Tistrya Houghtling, Supervisor
and Town Board
Town of New Lebanon
PO Box 328
New Lebanon, NY 12125
Email: supervisor@townofnewlebanon.com

RE: Proposal – Agreement for Engineering Services
**Town of New Lebanon – Water and Wastewater System**
Preliminary Engineering and Project Development

Dear Supervisor Houghtling and Town Board:

Below is a summary of the modifications of the scope of services to be provided as previously defined in the June 15, 2023 Agreement for Preliminary Engineering and Project Development for the Town of New Lebanon. The previous agreement focused on the proposed planning and development of a municipal sanitary sewer system. Following the securing of additional funding for this project, we have proposed a revised scope of the Preliminary Engineering Report to review the needs and feasibility for both a municipal water and/or wastewater system. A summary of this anticipated scope to completed this work is as follows:

SCOPE OF SERVICES

## PRELIMINARY ENGINEERING DESIGN SERVICES

Lamont Engineers proposes to be compensated for the services summarized as follows:

1. Preliminary Engineer's Report prepared in a format compatible for submission to USDA Rural Development, NYSEFC, ESD. The report will contain the following elements:

    A. Project Description.
    B. Review of Existing Conditions and Concerns.
    C. Definition of the problem, including and analysis of available data and mapping, for the Town of New Lebanon to determine suitability of the study area for possible systems. This will be completed in conjunction with a needs assessment that will be coordinated with Town committee members.

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Cobleskill, NY 12043
Tel: 518-234-4028
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www.lamontengineers.com
lamont@lamontengineers.com

D. Review of existing wells and data available on quality and quantity of wells.
E. Documentation of any violations or failures documented by the Code Enforcement Officer, NYSDEC, or NYSDOH.
F. Documentations of impairment to existing water bodies.
G. Flow and design wastewater loadings.
H. Drawings including map of proposed service areas and septic limitations maps.
I. Engineering criteria.
J. Site information.
K. Alternative investigation, review, and selection, including and analysis of the alternatives and their capital and operation costs with projected user fees.
L. Recommended conceptual project design.
M. Income assessment based on census data and identification of funding opportunities and funding scenarios.
N. Description of relevant regulatory impacts and potential environmental concerns.
O. Anticipated project schedule.

Lump Sum Subtotal = $30,000

2. Treatment Site Testing (Excludes deep test pits to be completed by the Town):

A. Percolation testing up to 3 sites.

Lump Sum Subtotal = $5,000

3. A total of six (6) joint meetings with the Town Board and the public plus the project kick-off meeting.

Lump Sum Subtotal = $5,000

**TOTAL Preliminary Engineer's Report Lump Sum Proposal Cost $40,000.00**

## ENVIRONMENTAL REVIEW SERVICES

Lamont Engineers proposes to be compensated for the services summarized as follows:

A. SEQRA Part I and Coordinated Review for **ALL** service areas as shown in **Attachment A** to provide environmental review for current project and possible future expansion. Includes documents for agency coordinated review.
B. SEQRA Parts 2 and 3 documents with Negative Declaration and ENB Notice.
C. Completion of Environmental Report in accordance with USDA Rural Development NEPA requirements.

**TOTAL Environmental Review Services Lump Sum Proposal Cost $6,000**

## SUBCONTRACTED SERVICES:

### AERIAL FLIGHT SERVICES

Lamont Engineers proposes to hire an aerial mapping company under subcontract to complete an aerial flight of the proposed project area. This information will be used to develop preliminary project maps for the report. In addition, having this flight data available will help the Town with any upcoming projects, water/sewer/streets, by having flight data that can be digitized into a CAD model for mapping and project development drawings. This will save on future project design costs.

**TOTAL Aerial Flight Cost $7,500**

### LAB TESTING SERVICES

Lamont Engineers proposes to complete various lab tests on existing wells and storm structures to help indicate the presence of system failures within the project area to provide data to justify the project to funding agencies.

**TOTAL Lab Testing Services $2,500**

### ADDITIONAL ITEMS PROVIDED BEYOND AS REQUESTED BY TOWN

Lamont Engineers proposes the following additional services if requested summarized as follows:

A. District Creation Tasks - Assistance with Bonding Process required for NYSEFC Water Grant Submission. Estimated $3,000 for Bond Counsel Tasks
B. Funding Applications - Assistance with Submission of Various Funding Applications – As Requested, typically $2,000 per agency.

ASSUMPTIONS

The following assumptions were made in the development of the Scope of Services:

- Town will provide Lamont with a copy of the existing engineers' reports and any testing completed, including any previous needs assessment.
- Testing site deep test pits – As discussed in previous meetings, we are assuming as a cost savings match contribution for the grant for this project the Town or local contractors will assist with the deep test pit excavation for the site testing so this would not need to be subcontracted.

DELIVERABLES

Under the terms of this Agreement, Lamont Engineers will deliver to the Town the following:

- Percolation site testing as described above.
- Draft copy of Preliminary Engineer's Report – five (5) hard copies
- Response to 1 round of NYSEFC/NYSDEC/NYSDOH Comments.
- Final copy of Preliminary Engineer's Report – five (5) hard copies, one (1) digital copy in PDF format.

- SEQR documents and draft environmental review documents.
- Final environmental review documentation – one (1) bound hard copy and one (1) digital copy in PDF format.

EXCLUSIONS

The above Scope of Services identifies the services that will be provided by Lamont Engineers, P.C. under the terms of this Agreement. Services not specifically made part of the Scope of Services are excluded services which may be provided as Additional or Subcontracted Service upon written request from the Town. These excluded services consist of, but are not limited to:

- Environmental Review Services beyond those scoped above.
- Deep Test Pits of Treatment Sites
- Funding Application Assistance beyond that scoped above.
- Cultural Resources/Archaeological surveys (if necessary)
- Floodplain Surveys (if necessary)
- Permit Application Fees
- Easement/Property Acquisition (if necessary)
- Facility Plan Report, Final Design Documents, Bidding & Construction Services
- Legal and Bond Counsel Services
- Wetland Delineation

If requested by the Town, such services will be provided as Additional or Subcontracted Services under the terms and conditions described in Terms and Conditions below.

TERMS

Billing monthly as the work progresses and due within 30 days of invoice, based on percent of completion to the date of billing, the ***Lump Sum of $46,000.00*** for Basic Services, inclusive of Direct Expenses and Subcontracted Services (***Estimated not to exceed at $10,000.00***). Additional Services (***Estimated $5,000***) if authorized, will be billed at the rates shown in Attachment A.

The rates shown in Attachment A will govern this contract through December 31, 2024. These rates may increase at the end of the indicated periods to cover individual salary increases and/or overhead cost increases.

This Agreement, the General Provisions and Attachments A (Schedule of Rates) and B (State Financing Bid Packet), all consisting of 34 pages, represent the entire understanding between you and us in respect to the Project and may only be modified in writing signed by both of us. This proposal will be open for acceptance until **June 30, 2024**, unless changed by us in writing.

Should you have any questions or comments, please do not hesitate to call (518-234-4028). If you agree to this proposal, please sign, and return two (2) copies.

Hon. Tistrya Houghtling, Supervisor
Town of New Lebanon
May 6, 2024

Very truly yours,

Brendon Becker

Brendon Becker, P.E.
Assc. Principal Engineer
Lamont Engineers, P.C.

Accepted,

Tistrya Houghtling

Hon. Tistrya Houghtling, Supervisor
Town of New Lebanon

5/14/24 - TB Approved
(Acceptance Date)
Signed - 5/28/24

Attachments: A - Rate Schedule
B – NYSEFC Mandatory State Revolving Funds Terms and Conditions

cc: Bookkeeping

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## GENERAL PROVISIONS

Attached to and made a part of Agreement dated May 6, 2024, between

TOWN OF NEW LEBANON (OWNER) and LAMONT ENGINEERS, P.C. (ENGINEER)

**Reuse of Documents**

All documents including Drawings and Specifications prepared by ENGINEER pursuant to this Agreement are instruments of services in respect to the Project. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other Project. Any reuse without written verification or adaptation by ENGINEER for the specific purposes intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER; and OWNER shall indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses including Attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

**Opinions of Cost**

Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices; or over competitive bidding or market conditions, his opinions of probable project cost or construction costs provided by herein are to be made on the basis of his experience and qualifications and represent his best judgment as an experienced and qualified ENGINEER familiar with the construction industry; but ENGINEER cannot and does not guarantee the proposals, bids or actual project or construction cost will not vary from opinions of probable cost prepared by him. If, prior to the bidding or negotiation phase, OWNER wishes greater assurance as to project or construction cost, he shall employ an independent cost estimator. Engineering services to modify the Contract Documents, to bring the construction costs within any limitation established by OWNER will be considered Additional Services and paid for as such by OWNER.

**Late Payment**

If OWNER fails to make any payment due ENGINEER for services and expenses within 60 days after receipt of ENGINEER's bill therefor, ENGINEER may, without notice, suspend services under this agreement until he has been paid in full all amounts due him for Services and Expenses. The length of such suspension shall be added to the time schedule for Services under this contract.

**Termination**

The obligation to provide further services under this Agreement may be terminated by either party upon 7 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, ENGINEER will be paid for all services rendered to the date of termination, and for all direct and subcontract expenses and for termination expenses.

**Successors and Assigns**

OWNER and ENGINEER each bind himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party of this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other parties, in respect to all covenants, agreements and obligations of this Agreement.

Neither OWNER nor ENGINEER shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except as stated above and except to the extent that the effect of this limitation may be restricted by law unless specifically stated to the contrary in any written consent to an assignment. No assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent consultants, associates, and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

Nothing herein shall be construed to give any rights or benefits hereunder to benefit other than OWNER and ENGINEER.

**Professional Liability**

The Design Professional, and its consultants, partners, agents, and employees, shall not be liable to the Owner, whether jointly, severally or individually, in excess of the compensation paid to the Design Professional under this Agreement, or in excess of the sum of $25,000, whichever is greater, as a result of any act or omission not amounting to a willful or intentional wrong. In no instance shall ENGINEER'S liability exceed the available proceeds of, or coverage afforded by, ENGINEER'S professional liability policy.

**Dispute Resolution**

OWNER and ENGINEER agree to negotiate in good faith for a period of thirty days from the date of notice of all disputes between them prior to exercising their rights under this section of this Agreement, or under law.

All disputes between OWNER and ENGINEER not resolved under the above paragraphs will be decided by formal proceedings in the Supreme Court of the County of Columbia, State of New York.

Formal legal proceedings must be started after the claim, dispute or other matter in question has arisen. In no event may the formal legal proceedings be started after the date when institution of legal or equitable proceedings based on such claim, dispute or other matters in question would be barred by the applicable statute of limitations of the State of New York.

**Fiduciary Responsibility**

OWNER confirms that neither ENGINEER nor any of ENGINEER's subconsultants or subcontractors has offered any fiduciary service to OWNER and no fiduciary responsibility shall be owed to OWNER by ENGINEER or any of ENGINEER's subconsultants or subcontractors, as a consequence of ENGINEER's entering into this Agreement.

# ATTACHMENT A

## 2024 SCHEDULE OF RATES

Engineering and Project Management

| | |
|---|---|
| Principal Engineer | $194/hr |
| Associate Principal Engineer | $167/hr |
| Senior Project Manager | $167/hr |
| Project Manager | $150/hr |
| Project Engineer | $139/hr |
| Assistant Project Engineer | $114/hr |
| Senior Engineering Technician | $108/hr |
| Engineering Technician | $97/hr |
| CADD Operator | $87/hr |
| Junior CADD Operator | $70/hr |
| Senior Environmental Scientist | $150/hr |
| Environmental Scientist | $139/hr |
| Junior Environmental Scientist | $108/hr |

Support Staff

| | |
|---|---|
| Administrative Assistant | $81/hr |

Direct Expenses

| | |
|---|---|
| Mileage | IRS standard rate |
| Other Direct Expenses | At Cost |
| GPS unit | |
| Daily | $200 |
| Weekly | $650 |
| Monthly | $2,000 |
| Pipe Locator | |
| Daily | $75 |
| Weekly | $200 |
| Monthly | $600 |
| Pipe Camara | |
| Daily | $75 |
| Weekly | $200 |
| Monthly | $600 |
| Drone | |
| Daily | $40 |
| Weekly | $150 |
| Monthly | $600 |

**ATTACHMENT B**

***NYSEFC***

# Mandatory State Revolving Fund Terms and Conditions

NEW YORK STATE | Environmental Facilities Corporation

KATHY HOCHUL
Governor

MAUREEN A. COLEMAN
President and CEO

# Mandatory State Revolving Fund Terms and Conditions

## For Contracts Funded with the NYS Clean Water State Revolving Fund or Drinking Water State Revolving Fund

**Identify Contract Type prior to Advertisement for Bid:**

☐ **Construction**
- ☐ **Treatment Works and Drinking Water Projects**
- ☐ **Non-Treatment Works**

☑ **Non-Construction**

Effective October 1, 2022

**New York State Environmental Facilities Corporation**
**625 Broadway, Albany, NY 12207-2997**
**P: (518) 402-6924**
**www.efc.ny.gov**

## Contents


INTRODUCTION ..... 4

REQUIRED CONTRACT LANGUAGE ..... 4
COMMONLY USED TERMS ..... 4
SECTION 1 FEDERAL ARCHITECTURAL AND ENGINEERING PROCUREMENT REQUIREMENTS ..... 5
SECTION 2 REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR WOMEN AND MINORITY GROUP MEMBERS ..... 5
I. General Provisions ..... 5
II. Equal Employment Opportunities (EEO) ..... 6
III. Business Participation Opportunities for MWBEs ..... 7
A. Contract Goals ..... 7
B. MWBE Utilization Plan ..... 8
C. Request for Waiver ..... 8
D. Monthly MWBE Contractor Compliance Report ("Monthly MWBE Report") ..... 8
E. Liquidated Damages - MWBE Participation ..... 9
SECTION 3 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES ..... 9
SECTION 4 AMERICAN IRON AND STEEL (AIS) REQUIREMENT ..... 10
SECTION 5 DAVIS-BACON (DB) PREVAILING WAGE REQUIREMENTS ..... 10
SECTION 6 REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT ..... 16
SECTION 7 RESTRICTIONS ON LOBBYING ..... 16
SECTION 8 CONSTRUCTION SIGNS ..... 16

ATTACHMENTS (Required Forms) ..... 17
Attachment 1 – EFC MWBE Utilization Plan ..... 18
Attachment 2 – AIS Contractor's Certification ..... 19
Attachment 3 – Lobbying Certification ..... 20

## INTRODUCTION

The terms and conditions below must be incorporated verbatim into contracts receiving SRF financial assistance. Additional information relating to each of the requirements is included in the companion guidance document.

# REQUIRED CONTRACT LANGUAGE

## COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

**Broker** means a firm that does not itself perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.

**Construction** means the process by which a contractor or subcontractor builds, alters, repairs, remodels, improves or demolishes infrastructure.

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

**Contractor** means all bidders, prime contractors, non-construction service providers, and consultants as hereinafter defined, unless specifically referred to otherwise.

**Manufacturer** means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.

**MBO** is designated and employed by the Recipient as a Minority Business or Compliance Officer responsible for MWBE/DBE/SDVOB/EEO reporting and compliance.

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

**Recipient** means the party, other than EFC, to a grant agreement or a project finance agreement with EFC through which funds for the payment of amounts due thereunder are being paid in whole or in part. Responsible through Project Finance Agreement (PFA) to comply with EFC requirements.

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

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

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

**Supplier** means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

**Treatment Works** is defined in Clean Water Act (CWA) Section 212. This does not include nonpoint source projects as defined in CWA Section 319 and estuary management program projects as defined in CWA Section 320.

## SECTION 1 FEDERAL ARCHITECTURAL AND ENGINEERING PROCUREMENT REQUIREMENTS

*Any Architectural and Engineering (A/E) services for all CWSRF projects and for DWSRF projects receiving federal grant are required to be procured in compliance with 40 USC 1101 et. seq., and 48 CFR Part 36 Subpart 36.6. The Recipient must certify compliance to receive financing. Disregard this section if it does not apply to this Contract.*

## SECTION 2 REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR WOMEN AND MINORITY GROUP MEMBERS

*The Equal Employment Opportunities requirements of this section apply to all Contracts and Subcontracts, with the exception of: (1) the requirements under Title VII of the Civil Rights Act of 1964 and 41 CFR Part 60-1 Subpart A which apply only to construction Contracts and Subcontracts; and (2) the Federal Affirmative Action Regulations requirements which apply only to construction Contracts and Subcontracts greater than $10,000.*

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

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

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

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

### I. General Provisions

A. Contractors and Subcontractors are required to comply with the following provisions:

1. New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State Contracts meeting Article 15-A thresholds.

2. Title VI of the Civil Rights Act of 1964 and 40 CFR Part 7 ("Title VI") for any program or activity receiving federal financial assistance, as those terms are defined therein.

3. Title VII of the Civil Rights Act of 1964 and 41 CFR Part 60-1 Subpart A ("Title VII") for construction Contracts related to any government programs providing federal financial assistance, as those terms are defined therein.

4. 41 CFR Part 60-4 ("Federal Affirmative Action Regulations") for federal or federally assisted construction Contracts in excess of $10,000, as those terms are defined therein.

5. Section 504 of the Rehabilitation Act of 1973 ("Section 504") for any program or activity receiving federal financial assistance, as those terms are defined therein.

6. The Age Discrimination Act of 1975 ("Age Discrimination Act") for any program or activity receiving federal financial assistance, as those terms are defined therein.

7. Section 13 of the Federal Water Pollution Control Act ("Clean Water Act") Amendments of 1972 ("Section 13") for any program or activity receiving federal financial assistance under the Clean Water Act, as those terms are defined therein.

B. Upon request from the Recipient and/or EFC, Contractor will provide complete responses to inquiries and all MWBE and EEO records available within a reasonable time or as otherwise determined by EFC.

C. Failure to comply with all of the requirements herein may result in a finding by the Recipient that the Contractor is non-responsive, non-responsible, and/or has breached the Contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to subsection III(E) of this section, or enforcement proceedings as allowed by the Contract.

D. If any terms or provisions herein conflict with Executive Law Article 15-A, the MWBE Regulations, Title VI, Title VII, or Federal Affirmative Action Regulations, such law and regulations shall supersede these requirements.

**II. Equal Employment Opportunities (EEO)**

A. Each Contractor and Subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

B. The Contractor shall comply with the provisions of the Human Rights Law (Executive Law Article 15), Title VI, Title VII, the Federal Affirmative Action Regulations, Section 504, Age Discrimination Act, Section 13, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

C. Contractors and Subcontractors shall have instituted grievance procedures to assure the prompt and fair resolution of complaints when a violation of Title VI of the Civil Rights Act of 1964 or Title 40 CFR Part 7 is alleged.

D. Pursuant to 40 CFR § 7.95, the Contractor shall display a copy of the EEO notice at the project site in a visible location. The notice shall accommodate individuals with impaired vision or hearing and should be provided in languages other than English where appropriate. The notice must also identify the employee responsible for its EEO compliance. See guidance document for sample notice.

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

F. The Contractor and Subcontractor will comply with the requirements of 41 CFR § 60-1.4(b) and (c), and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor and Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

G. ***For construction contracts in excess of $10,000***, the Contractor and Subcontractor will comply with the Affirmative Action Regulations and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor place affirmative action goals on Contracts and Subcontracts, as established by the United States Department of Labor. See guidance document for goals.

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

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

## III. Business Participation Opportunities for MWBEs

*Applicable to Contracts Meeting Article 15-A Thresholds*

A. Contract Goals

1. ***New York State certified MWBE participation goals for this contract are 20%.*** For projects funded from the sources listed below, the goals may be achieved through any combination of MBE and/or WBE participation.
   a. CWSRF, DWSRF & Green Innovation Grant Program (GIGP).
   b. NYS Water Infrastructure Improvement Act Grants that are also receiving EFC financing.
   c. NYS Intermunicipal Grants that are also receiving EFC financing.

2. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section III-A hereof, the Contractor should reference the directory of New York State Certified MWBEs found at https://ny.newnycontracts.com.

3. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as defined in 5 NYCRR § 140.1, may be applied towards achievement of applicable MWBE participation goals.

   a. For construction and construction-related services Contracts or Subcontracts, the portion of the Contract or Subcontract with an MWBE serving as a Supplier, and so designated in ESD's Directory, that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the Contract or Subcontract. The portion of a Contract or Subcontract with an MWBE serving as a Broker, as denoted by NAICS code 425120, that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.
   b. For Non-Construction Provider Contracts or Subcontracts, the portion of a Contract or Subcontract with an MWBE serving as a Broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.

4. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR § 142.8, the Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as Subcontractors or Suppliers in the performance of the Contract.

5. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of Contract and the Contractor shall be liable to the Recipient for liquidated or other appropriate damages, as set forth herein.

B. MWBE Utilization Plan

1. The Contractor represents and warrants that Contractor has submitted a completed copy of the MWBE Utilization Plan with all required bid forms to the MBO no later than the execution date of this Contract.

2. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this section.

3. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is not responsive.

4. The Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the MBO. The Contractor shall indicate the changes to the MBO in the Monthly MWBE Contractor Compliance Report immediately following the change. At EFC's discretion, an updated MWBE Utilization Plan form and good faith effort documentation may be required to be submitted. When a Utilization Plan is revised due to execution of a change order, the change order should be submitted to the MBO with the Monthly MWBE Contractor Compliance Report or revised Utilization Plan.

5. The Contractor shall submit copies of all fully executed Subcontracts, agreements, and purchase orders that are referred to in the MWBE Utilization Plan to the MBO within 30 days of their execution.

C. Request for Waiver

1. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver to the MBO documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request aligns with the documentation identified on the Request for Waiver form, the MBO shall forward the request to EFC for evaluation, and EFC will issue a written notice of acceptance or denial within twenty (20) days of receipt.

2. If the MBO, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the Recipient may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

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

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

E. Liquidated Damages - MWBE Participation

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

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

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

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

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

## SECTION 3 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES

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

A. New York State Veterans' Service Law Article 3, and 9 NYCRR Part 252, and/or any other related regulations promulgated thereto, provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. New York State recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of EFC Contracts.

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

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

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

SDVOBs on the Contract.

## SECTION 4 AMERICAN IRON AND STEEL (AIS) REQUIREMENT

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

The Contractor shall submit with their bid or proposal documents an executed AIS Contractors Certification on the form attached hereto as Attachment 2 acknowledging to and for the benefit of the Recipient of the Clean Water State Revolving Fund ("CWSRF") or the Drinking Water State Revolving Fund ("DWSRF") financial assistance that the Contractor understands the goods and services under this Agreement are being funded with monies made available by the New York State Environmental Facilities Corporation ("EFC") through the CWSRF or the DWSRF and that such funding is subject to certain statutory restrictions requiring that certain iron and steel products used in the project be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement.

The Contractor hereby represents and warrants that:

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

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

## SECTION 5 DAVIS-BACON (DB) PREVAILING WAGE REQUIREMENTS

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

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

1. Minimum Wages

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

between the Contractor and such laborers and mechanics.

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

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

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

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

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

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

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

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

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

3. Payrolls and basic records.

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

(ii)(A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Recipient. Such documentation shall be available on request of EFC or EPA. As to each payroll copy received, the Recipient shall provide written confirmation in a form satisfactory to EFC indicating whether or not the project is in compliance with the requirements of 29 CFR § 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at https://www.dol.gov/agencies/whd/government-

contracts/construction/forms or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and Subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient, for transmission to EFC, EPA if requested by EPA, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a Subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the Recipient (or the applicant, sponsor, or owner).

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

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

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

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

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

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

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

4. Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above,

shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

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

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

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

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

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

5. In any Contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR § 5.1, the Contractor or Subcontractor shall maintain payrolls and

basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the Recipient and the Department of Labor, and the Contractor or Subcontractor will permit such representatives to interview employees during working hours on the job.

## SECTION 6 REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT

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

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

The Contractor and any Subcontractors have not been debarred from or deemed ineligible for Government Contracts or federally assisted Construction Contracts pursuant to Executive Order 12549.

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

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

## SECTION 7 RESTRICTIONS ON LOBBYING

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

The Contractor and any Subcontractor bidding or proposing a Contract or Subcontract in excess of $100,000 shall submit with their bid or proposal documents an executed Certification Regarding Lobbying pursuant to 40 CFR Part 34 ("Lobbying Certification") in the form attached hereto as Attachment 3, consistent with the prescribed form provided in Appendix A to 40 CFR Part 34.

## SECTION 8 CONSTRUCTION SIGNS

*The requirements of this section apply to all EFC projects. Additional signage is required for projects receiving financing from the federal Bipartisan Infrastructure Law (BIL).*

If Contractor is expected to provide an EFC Construction Sign, a specification will be included in the enclosed contract documents.

# ATTACHMENTS (Required Forms)

## Attachment 1 – EFC MWBE Utilization Plan

NEW YORK STATE | Environmental Facilities Corporation

**NYS Environmental Facilities Corporation**
**Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan**

**Instructions for Contractors & Service Providers:**

Contractors and Service Providers must complete Sections 2 and 3. **Submit the completed, signed (electronic signature box checked and dated) form to the Recipient's Minority Business Officer (MBO) no later than the date of contract execution.** Incomplete forms will be found deficient. If more than 10 subcontractors are used, additional pages for Section 3 can be found on EFC's website.

**If the prime contract is being performed by the parties to a Joint Venture, Teaming Agreement, or Mentor-Protégé Agreement that includes a certified MWBE, please contact EFC for assistance.**

MWBE firms must be certified by the NYS Empire State Development Corporation (ESD) in order to be counted towards satisfaction of MWBE participation goals. The utilization of certified MWBEs for non-commercially useful functions may not be counted towards utilization of certified MWBEs in the Utilization Plan. Please note whether a firm is serving as a broker or supplier on the contract. A broker is denoted by NAICS code 425120 and is designated as a broker in ESD's MWBE Directory. A supplier is denoted by a NAICS code beginning with 423 or 424, or a NIGP code that does not begin with the number 9 and is designated as a supplier in ESD's MWBE Directory. If a firm is serving as a broker, please additionally provide the percentage of the broker's commission on the contract.

See the Mandatory Terms and Conditions or consult your designated MBO for further guidance.

**Instructions for Minority Business Officers (MBO):**

The MBO must complete Section 1. Email the completed, signed (electronic signature box checked and dated) form to your EFC Program Compliance Specialist.

The subject heading of the email to the EFC Program Compliance Specialist should follow the format "UP, Project Number, Contractor." EFC will review the Utilization Plan and email the MBO an acceptance or denial.

## NYS Environmental Facilities Corporation
### Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan

| SECTION 1: MUNICIPAL INFORMATION | | | |
|---|---|---|---|
| **Recipient/Municipality:** | | **County:** | |
| **Project No.:** | **GIGP No.:** | **Contract ID:** | **Registration No. (NYC only):** |
| **Minority Business Officer:** | | **Email:** | **Phone #:** |
| **Address of MBO:** | | | |
| **Electronic Signature of MBO:** ☐ I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief. | | | **Date:** |

| SECTION 2: PRIME CONTRACTOR / SERVICE PROVIDER INFORMATION | | | | |
|---|---|---|---|---|
| **Firm Name:** | | | **Contract Type:** ☐ Construction ☐ Other Services | |
| **Prime Firm is Certified as:** ☐ MBE ☐ WBE ☐ N/A ☐ Other: If certified, please include Prime information in Section 3. If dual certified, you must select either MBE or WBE. | | | | |
| **Address:** | | **Phone #:** | **Fed. Employer ID #:** | |
| **Description of Work:** | | **Email:** | | |
| **Award Date:** | **Start Date:** | **Completion Date:** | **MWBE GOAL Total** | **PROPOSED MWBE Participation** |
| **Total Contract Amount:** $<br>**MWBE Eligible Contract Amount:** $<br>(MWBE Goals are applied to this amount and includes all change orders, amendments, & specialty waivers) | | | **Total:** % $ | **Total:** % $ |

**NYS Environmental Facilities Corporation**
**Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan**

| SECTION 3: MWBE SUBCONTRACTOR INFORMATION | | | |
|---|---|---|---|
| **This Submittal is:** ☐ The First/Original Utilization Plan ☐ Revised Utilization Plan #: | | | |
| **NYS Certified M/WBE Subcontractor Info** | | **Contract Amount:** | **For EFC Use:** |
| **Business Name:** | **Fed. Employer ID#:** | | |
| **Address:** | **Phone #:** | | |
| **Scope of Work:** | **Email:** | | |
| **Select Only One:** ☐ MBE ☐ WBE ☐ Other: | **Start Date:** | | |
| **Select Only One:** ☐ Broker %___ ☐ Supplier ☐ N/A | **Completion Date:** | | |
| **Full Contract Amount: $** | | | |
| **Business Name:** | **Fed. Employer ID#:** | | |
| **Address:** | **Phone #:** | | |
| **Scope of Work:** | **Email:** | | |
| Select Only One: ☐ MBE ☐ WBE ☐ Other: | **Start Date:** | | |
| **Select Only One:** ☐ Broker % ___ ☐ Supplier ☐ N/A | **Completion Date:** | | |
| **Full Contract Amount: $** | | | |
| **Business Name:** | **Fed. Employer ID#:** | | |
| **Address:** | **Phone #:** | | |
| **Scope of Work:** | **Email:** | | |
| Select Only One: ☐ MBE ☐ WBE ☐ Other: | **Start Date:** | | |
| **Select Only One:** ☐ Broker % ___ ☐ Supplier ☐ N/A | **Completion Date:** | | |
| **Full Contract Amount: $** | | | |
| **Business Name:** | **Fed. Employer ID#:** | | |
| **Address:** | **Phone #:** | | |
| **Scope of Work:** | **Email:** | | |
| Select Only One: ☐ MBE ☐ WBE ☐ Other: | **Start Date:** | | |
| **Select Only One:** ☐ Broker % ___ ☐ Supplier ☐ N/A | **Completion Date:** | | |
| **Full Contract Amount: $** | | | |

**NYS Environmental Facilities Corporation**
**Minority- & Women- Owned Business Enterprise (MWBE) Utilization Plan**

| SECTION 3- MWBE SUBCONTRACTOR INFORMATION continued | | | |
|---|---|---|---|
| **Business Name:** | **Fed. Employer ID#:** | | |
| **Address:** | **Phone #:** | | |
| **Scope of Work:** | **Email:** | | |
| Select Only One: ☐ MBE ☐ WBE ☐ Other: | **Start Date:** | | |
| **Select Only One:** ☐ Broker % ___ ☐ Supplier ☐ N/A | **Completion Date:** | | |
| **Full Contract Amount: $** | | | |
| **Business Name:** | **Fed. Employer ID#:** | | |
| **Address:** | **Phone #:** | | |
| **Scope of Work:** | **Email:** | | |
| Select Only One: ☐ MBE ☐ WBE ☐ Other: | **Start Date:** | | |
| **Select Only One:** ☐ Broker % ___ ☐ Supplier ☐ N/A | **Completion Date:** | | |
| **Full Contract Amount: $** | | | |
| **Business Name:** | **Fed. Employer ID#:** | | |
| **Address:** | **Phone #:** | | |
| **Scope of Work:** | **Email:** | | |
| Select Only One: ☐ MBE ☐ WBE ☐ Other: | **Start Date:** | | |
| **Select Only One:** ☐ Broker % ___ ☐ Supplier ☐ N/A | **Completion Date:** | | |
| **Full Contract Amount: $** | | | |
| **Business Name:** | **Fed. Employer ID#:** | | |
| **Address:** | **Phone #:** | | |
| **Scope of Work:** | **Email:** | | |
| Select Only One: ☐ MBE ☐ WBE ☐ Other: | **Start Date:** | | |
| **Select Only One:** ☐ Broker % ___ ☐ Supplier ☐ N/A | **Completion Date:** | | |
| **Full Contract Amount: $** | | | |

| SIGNATURE | |
|---|---|
| **Electronic Signature of Contractor:** ☐ I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and that all MWBE subcontractors will perform a commercially useful function.<br>**Name** (Please Type): | **Date:** |

## Attachment 2 – AIS Contractor's Certification

NEW YORK STATE | Environmental Facilities Corporation

AIS CONTRACTOR CERTIFICATION

FOR CONSTRUCTION CONTRACTS FUNDED THROUGH

THE NYS CLEAN WATER STATE REVOLVING FUND, OVERFLOW AND STORMWATER GRANTS
OR

THE NYS DRINKING WATER STATE REVOLVING FUND VIA THE

NYS ENVIRONMENTAL FACILITIES CORPORATION

Project Title: _____

Contractor's Name: _____

Contract ID: _____

SRF Project No.: _____

SRF Recipient Name: _____

I certify that the iron and steel products permanently incorporated into the public water system or wastewater treatment works project under this construction contract will be and/or have been produced in the United States, in accordance with the requirements of the United States Environmental Protection Agency and 33 U.S.C. § 1388, 42 U.S.C. § 300j-12(a)(4) and any regulations promulgated thereunder. I will develop and maintain necessary documentation to demonstrate that the iron and steel products permanently incorporated into the project were produced in the United States, and make such documentation available to The New York State Environmental Facilities Corporation or their authorized representatives, upon request.

Signature: _____

Name (print): _____

Title: _____

Date: _____

## Attachment 3 – Lobbying Certification

NEW YORK STATE | Environmental Facilities Corporation

**New York State Environmental Facilities Corporation**
**CERTIFICATION REGARDING LOBBYING**
**FOR**
**CONTRACTS, GRANTS, LOANS, AND**
**COOPERATIVE AGREEMENTS**
**40 CFR Part 34**

SRF Project No.:
Recipient:
Project Description:

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature:
Name:
Title:
Company Name:
Date:
Contract ID: