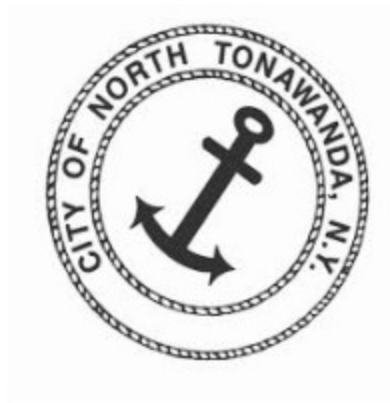


Request For Proposal

*Preparation of*

City of North Tonawanda

City-Wide Zoning Code Update



City of North Tonawanda, New York

April 28<sup>th</sup>, 2025

Mayor, Austin Tylec

Alderman at Large & Council President: Joseph Lavey

Alderman at Large: Joseph Loncar

1<sup>st</sup> Ward Alderman: Robert Schmigel

2<sup>nd</sup> Ward Alderman: Frank DiBernardo

3<sup>rd</sup> Ward Alderman: Joseph Marranca

## **OVERVIEW**

The City of North Tonawanda, New York is inviting firms with qualified staffing of consultants (the “Consultant”) to prepare a City-Wide Zoning Code update pursuant to New York State zoning enabling statutes contained in General City Law §20(24) and §20(25) / Town Law Article 16 / Village Law Article 7, New York State standards and procedures, including the NYS Environmental Protection Fund Smart Growth Program.

The Zoning regulations will be developed in accordance with an adopted Comprehensive Plan, guide future sustainable growth within the municipality; enhance the local identity; and protect natural and cultural local resources.

The Zoning Code update, with input from the City of North Tonawanda and City of North Tonawanda Zoning Board of Appeals, will codify the policies and recommendations that are outlined in the 2025 City of North Tonawanda Comprehensive Plan update, ensuring a development pattern that is consistent with the municipality’s-built form; guide future sustainable growth within the municipality; enhance the local cultural identity; and protect natural and cultural local resources.

## **LOCATION**

The City of North Tonawanda, New York is located in Niagara County and is equidistant between the cities of Buffalo and Niagara Falls. North Tonawanda is surrounded by waterfront assets including the Niagara River, the historic Erie Canal, the Little River, and Tonawanda Creek. With a population of about 30,000, the City of North Tonawanda is home to a diverse and vibrant community.

Historic Webster Street, which is the Downtown core of the city, is anchored by the Riviera Theatre and Gateway Harbor Park. Over the past 20 years, the City of North Tonawanda has undergone a true transformation of its downtown and waterfront areas. Through walkability and placemaking enhancements downtown, and the addition of recreational amenities along the waterfront (bicycle paths, kayak launches, docks, etc.) the city has been able to attract and sustain private development to continue growth and momentum.

## **BACKGROUND**

The existing Zoning code for the city was adopted in 1959, with updates made in 2004. In 2019 through the Brownfield Opportunity Area (BOA) plan, the city was able to make updates to the Downtown District and Waterfront District which utilizes form-based zoning, however, the entire City is in significant need of a zoning code update.

Other areas of the city currently utilize Euclidian zoning principles which separates land uses according to districts. The existing North Tonawanda zoning code is confusing and has a sporadic array of districts, and contains a high level of spot zoning to accommodate property owners.

The City of North Tonawanda is currently in the process of updating their Comprehensive Plan and is anticipating completion by September 2025. Concurrently, the City of North Tonawanda is also updating its Local Waterfront Revitalization Program (LWRP) as an amendment to the approved 1988 City of North Tonawanda Local Waterfront Revitalization Program (LWRP) which is anticipated to be completed by Winter 2026.

The City of North Tonawanda was awarded the Downtown Revitalization Initiative (DRI) by New York State in 2021. As part of the DRI, the city recently completed a Strategic Investment Plan (SIP) through a community driven process with an established Local Planning Committee (LPC) consisting of a diverse group of

community stakeholders. The SIP identifies a range of priority public and private projects that are transformational and catalytic in the defined DRI target area.

The City of North Tonawanda has been awarded funding from the New York State Department of State in 2024 from the Environmental Protection Fund Smart Growth Community Planning and Zoning Program to update its existing city-wide zoning code to align with the 2025 adopted community-driven Comprehensive Plan.

The intent is to create a limited form-based code or architectural design guidelines, as well as to update code provisions throughout the City of North Tonawanda to attract a mix of development types, foster and encourage social diversity and integration, strengthen the City's sense of place, enhance connections and mobility options, and support job creation.

Issues with current code:

- Can be difficult to navigate
- Sections of the code are outdated
- The code can be difficult to interpret and contains standards that are difficult to administer
- The code does not include design guidelines for architectural preservation and includes minimal form-based controls
- Zoning maps are outdated and difficult to read

Through the process of developing code updates throughout the city while incorporating Smart Growth principles, the City of North Tonawanda zoning update will:

- Provide a clearer vision for the character of North Tonawanda
- Examine existing land uses, density and urban form to better understand place types
- Codify historical development patterns and align new development regulations with historical patterns
- Encourage new development, including infill development, as well as the development of vacant and underutilized buildings
- Create affordable and market-rate housing in new, rehabilitated, and repurposed buildings
- Better integrate housing, shopping, and parks and recreation areas
- Protect natural spaces, while encouraging responsible development practices
- Articulate development allowed under existing and proposed development regulations
- Create GIS maps showing proposed final changes and a final zoning map
- Integrate updated land use and building codes into the existing regulatory framework

This scope is intended to be flexible and shall be refined in partnership with the City to best meet project needs and goals.

### **SCOPE OF WORK:**

Respondent's proposal shall address each of the identified tasks, with a separate cost and timeline for each task, using the same identifying language, including any paragraphs or section numbers or letters as used in the RFP. The respondent's proposal shall consider and address (as appropriate) the tasks highlighted in the Department of State's grant work plan included as Appendix I with this RFP, which is the basis for the Scope of Work for this project. The successful respondent will be responsible for assisting the City in meeting its obligations under the terms of its grant with DOS. The full grant agreement is included as Appendix II for reference.

The Zoning Code update must be in accord with the City of North Tonawanda's Comprehensive Plan Update and address the following general Smart Growth principles, in addition to the elements suggested by applicable New York State statutes:

- Develop plans and land use regulations that allow for and encourage mixed-use neighborhoods.
- Enable a diverse mix of housing types, providing opportunity and choice for all.
- Prioritize infill and redevelopment of existing buildings to revitalize neighborhoods and downtowns, including areas around public transit.
- Provide well-planned, equitable, and accessible public spaces.
- Encourage compact neighborhood design and concentrated development around existing infrastructure.
- Preserve open space, agricultural resources, and natural resources.
- Prioritize transportation options such as walking, cycling, and public transportation.
- Promote climate resiliency and adaptation, preferably through nature-based solutions, and reduce greenhouse gas emissions.
- Build on unique traits to create an attractive and welcoming community with a strong sense of place.
- Engage in an inclusive, collaborative public planning process that considers the needs and character of the community.

## **PUBLIC OUTREACH**

The consultant will facilitate public workshops, public meetings, community surveys, and interviews with local stakeholder focus groups to ensure accessibility and outreach to frequently underrepresented populations.

The consultant will also recommend meeting content, prepare public meeting agendas, presentations, documents for distribution, content for the Zoning update website and meeting minutes. There will be benchmark meetings held throughout the process to allow the Zoning Update Committee to effectively monitor the progress of work.

## **PROJECT TIMELINE**

The consultant will be expected to complete the planning process and present final documents to the North Tonawanda Common Council within fifteen (15) months from the date of contract execution.

## **PROPOSAL SUBMISSION REQUIREMENTS**

Responses to this RFP shall consist of:

- A. *Letter of Transmittal* (1 Page)- A letter of transmittal that includes a single contact (Project Manager), mailing address, telephone number and email address.
- B. *Introduction/Summary* (2 Pages Maximum)- A short introduction and summary of the company (ie. How long the company has been in business, number of employees, etc.) In addition, a description of what disciplines are included within the firm.
- C. *Scope of Work* (15 Pages Maximum)- Include a detailed work program that addresses:
  - a. Each task to be completed
  - b. Timeline for each task
  - c. Schedule of work products
  - d. Proposed budget with:
    - i. Cost breakdown for each work task complete with proposed number of hours to complete each task, assigned staff member, and billing rates.
  - e. Not to exceed fee for services required to fulfill the deliverables herein
  - f. Breakdown of MWBE-certified services that will be used for the development of the zoning update, and related costs.

- D. *Project Management and Communication* (1 Page maximum)- Methods the consultant proposes use to manage the project and communicate with the City of North Tonawanda and the public as to project progress, reviews, and conduct of public meetings.
- E. *Personnel Qualifications and Experience* (10 Pages Maximum)- Provide a firm profile that will include the following:
- a. List of past similar projects completed by the firm in the past five (5) years
  - b. Current contact names and telephone numbers for references
  - c. Summary of project(s)
  - d. Public involvement in project(s)
  - e. Project team organizational chart
- F. *Representative Work Sample*- A representative work sample similar to the work being requested. The sample may be provided digitally (ie. PDF) Directing the City to an online document or file-sharing site is also acceptable. Only one (1) representative work sample is required per submittal.
- G. *Subcontractors*- Provide a list of any and all subconsultants or co-collaborators together with their qualifications and experience and a description of their scope of involvement.

**PROJECT ATTRIBUTION**

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

*“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 any press releases and other notices issued for the project, including website 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.

**PROPOSAL REVIEW CRITERIA AND AWARD**

A selection committee consisting of City of North Tonawanda employees and Common Council members will evaluate proposals based on the following criteria:

<b>Review Criteria:</b>	<b>Weight</b>	<b>Max Points</b>	<b>Points X Weight</b>
Understanding of the project goals (scope-of-work)	5	5	25
Past performance on similar projects	3	5	15
Qualifications/Experience of Proposed Staff	3	5	15

Ability to meet schedules and budgets	2	5	10
Ability to meet MWBE goal for each grant	5	5	25
Cost and proposed distribution effort	1	5	5
Overall quality of the RFP submittal	1	5	5
<b>TOTAL</b>			<b>100</b>

The City of North Tonawanda reserves the right to seek clarification of any proposal submitted and to select the consultant that is best able to address the project purpose and to reject any and all of the proposals. The City of North Tonawanda reserves the right to withdraw this request for proposals, to accept or reject any or all proposals, to advertise for new proposals if it is in the best interest of the City to do so, and to award a contract as deemed to be in the best interest of the City. This solicitation of proposals in no way obligates the City of North Tonawanda to award a contract.

**The selection committee at its discretion will conduct interviews of finalists prior to award.**

**EQUAL OPPORTUNITY**

The selection of the consultant shall be made without regard to race, color, sex, age, religion, national origin, or political affiliation. The City of North Tonawanda is an equal opportunity employer and encourages proposals from minority and women-owned businesses.

**CONTRACT REQUIREMENTS**

The consultant must be registered with the Secretary of State to do business in the State of New York prior to contract signing. The consultant shall be solely responsible for all claims of whatever nature arising out of rendering of services by the consultant during the terms of the contract. The consultant shall indemnify the City of North Tonawanda and other participants hold harmless against the same to the extent permitted by law. The selected consultant shall comply with all federal, state, and local laws and regulations in performance of service.

**BUDGET**

The Budget for the City of North Tonawanda Zoning Update is \$150,000. Of this amount, \$135,000 is an EPF Smart Growth grant from the NYS Department of State, and \$15,000 is the local match provided by the City of North Tonawanda. 30% of the grant or \$40,500 must be used for the services of a MWBE-certified firm(s).

**MWBE (MINORITY & WOMEN BUSINESS ENTERPRISE) REQUIREMENTS:**

Pursuant to NYS Executive Law Article 15-A and 5NYCCR Parts 142-144, for purposes of this procurement, the NYS Department of State has established an overall goal of 30 percent for MWBE participation. Please identify how the goals will be met. The MWBE Goals are as follows:

<b>Zoning Code Update:</b>	
MBE Goal:	\$20,250 (15%)
WBE Goal:	\$20,250 (15%)

## **INSURANCE**

The Consultant/Firm shall maintain the following insurance, certificates which will be provided to the City at the time of contract signing.

1. Worker's Compensation and Employer's liability and disability benefits covering the consultant's/firm's employees, as required by law;
2. Professional Liability- \$1,000,000.00

## **RESERVED RIGHT**

The City reserves the right to:

1. Modify or cancel the selection process or schedule at any time
2. Waive minor irregularities
3. Reject any and all responses to this RFP and to seek new proposals when it is in the best interest of the City to do so
4. Evaluate proposals as to their veracity, substance, and relevance to each project task
5. Incorporate this RFP and the selected Proposer's response to this RFP as part of any formal agreement between the City and the Proposer.

## **HOLD HARMLESS**

By participation in this RFP process, Proposer agrees to hold harmless the City of North Tonawanda, its officers, employees and consultants from all claims, liabilities and costs related to all aspects of the selection process.

## **NOTIFICATION OF AWARD**

The successful respondent will be notified via email, followed by written confirmation. For those proposals that are not accepted, respondents will be notified in writing via email.

## **LIABILITY**

The City of North Tonawanda is not liable for any costs incurred by any individual firm(s) for the work performed to prepare its proposal for any travel and/or any other expenses incurred in the preparation and/or submission of its proposal or participation in subsequent interviews or presentations. Further, the City of North Tonawanda is not liable for any costs incurred prior to approval of the contract.

## **EXPENSES**

All expenses related to any Proposer's response to this RFP, or other expenses incurred while the selection process is underway, are the sole obligation and responsibility of the Proposer. The City will not, directly, or indirectly, assume responsibility of these costs. The Proposer shall not offer any gratuities, favors, or anything of monetary value to any official, employee, or outside consultant associated with the project for purposes of influencing consideration of a response to this RFP.

## **PUBLIC INFORMATION**

All documents, conversations, correspondence, etc. between the City and Proposers are public information subject to the laws and regulations concerning disclosure that govern New York State municipalities, unless specifically identified otherwise.

## **PROPOSAL FORMAT AND DUE DATE**

Submit five (5) complete sealed proposal sets. All submissions become the property of the City of North Tonawanda upon submission. Sealed submittals must be hand delivered or mailed to:

**Laura Wilson  
Director of Community Development  
500 Wheatfield Street  
North Tonawanda, New York 14120**

Electronic submissions: The consultant/firm shall provide one (1) electronic copy incorporated into a single PDF file for review. The electronic copy shall be submitted as a single .pdf file via email to

[LWilson@lumbercitydc.com](mailto:LWilson@lumbercitydc.com)

**SUBMISSIONS MUST BE RECEIVED BY:  
4:00 PM ON MAY 27<sup>th</sup> 2025**

Emailed or faxed submissions will not be accepted.

## **QUESTIONS CONCERNING RESPONSES TO THIS RFP**

All questions should be directed in writing to Laura Wilson, Director of Community Development by email to [LWilson@lumbercitydc.com](mailto:LWilson@lumbercitydc.com) or by mail to 500 Wheatfield Street North Tonawanda, NY 14120 no later than 4:00 PM on May 7<sup>th</sup> 2025.

Answers to submitted questions will be posted by **May 8<sup>th</sup> 2025** on the City's website at: [www.northtonawanda.org](http://www.northtonawanda.org)



**Quote Sheet**

<b><u>Work Description</u></b>	<b><u>Unit</u></b>	<b><u>Unit Price</u></b>	
<b>Zoning Update Consultant</b>	<b><u>Lump Sum</u></b>	<b><u>In Numbers</u></b>	<b><u>In Words</u></b>

The City reserves the right to award the contract to any firm, as best meets the needs of the City.

NOTE: Unit prices include all work necessary to complete, in place, each listed item including, but not limited to, labor, materials, and incidentals. Unit prices are to be written in both words and numbers. In case of discrepancy, those shown in words shall govern. All prices are to be in dollars and cents.

Quotes Submitted By:

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(Firm name)

---

(Address)

---

(Telephone Number)

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(Printed Name of Authorized Representative Submitting Quote)

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(Authorized Signature)

Date:

## **APPENDIX I**

### **NYS DOS WORK PLAN**

**Items highlighted in the New York State Department of State Work Plan are the basis for the Scope of Work for this project.**

### **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 Zoning Advisory 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: Zoning Advisory Committee**

Establish a Zoning Advisory Committee to oversee all aspects of the project in cooperation with municipal officials and the project team. For communities with an established planning board and/or zoning board of appeals, the Committee shall have at least one member from each body and shall include a range of stakeholders, such as residents, civic leaders, business owners, elected officials, environmental experts, neighborhood association representatives, and municipal board members from a range of ethnic, social, and cultural backgrounds.

The members of the Zoning Advisory Committee shall conduct and oversee the development of the Zoning Code and participate in Committee meetings. The Committee will generate ideas and build consensus, provide the project team with relevant information reflective of the community's current conditions and regulatory environment, review materials prepared by the project team (if applicable) and provide constructive feedback. The Committee will also support each of the public participation and outreach efforts and assist the project team in integrating the Zoning Code into the existing municipal code. The Contractor shall send a list of proposed members of the Zoning Advisory Committee to the Department for review.

#### Products:

- Draft and final list of members of Zoning Advisory Committee
- Zoning 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 community conditions, expected final products, 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. Scroll down at this link to find MWBE solicitation log and good faith effort instructions: <https://dos.ny.gov/opdci-contract-resources>.
- Written responses by MWBEs to the Contractor/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 Contractor with MWBEs including dates and location.
- Description of how the RFP 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.

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 all attachments.

Products:

- Consultant(s) selected by Contractor and approved by the Department

- Executed subcontracts and written certification of compliance with procurement procedures.

### **Task 5: Zoning Advisory Committee Meetings**

The Zoning Advisory Committee shall meet on a regular basis during the planning process to advance the preparation, review, integration, and approval of the Zoning Code and assist with the organization and conducting of community participation events, to organize and conduct community participation events.

During their first meeting, the Zoning Advisory Committee will review project requirements, roles, and responsibilities, transfer necessary information to the project team, and identify new information needs, and next steps. During their first meeting, the Zoning Advisory Committee will also complete the Community Zoning Assessment.

Subsequent meetings will advance the preparation of the Zoning Code, and assess the evolution of the project, identify new information needed, address changes in roles and responsibilities, and consider next steps. Work on subsequent tasks shall not proceed prior to Department review.

#### Products:

- Meeting summaries for each Zoning Advisory Committee meeting.
- The results of the Community Zoning Assessment.

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

Prepare a Community Participation Plan describing the public outreach and participation efforts that will be conducted during the development of Zoning Code, pursuant to the local and State statutes. The Community Participation Plan should include, at a minimum, the following elements tailored to be most applicable to the community:

- Two or more public workshops
- One or more public hearings
- One or more community survey(s)
- Interviews with local stakeholder focus groups
- Overall outreach and engagement strategy
- Efforts to ensure accessibility and outreach to frequently underrepresented populations, including lower-income residents, youth, immigrants, and minorities
- Roles and responsibilities of individuals, organizations, and entities involved in engagement
- Proposed schedule for implementation
- A website with links to announcements, materials, and input opportunities

All public outreach and participation efforts will be publicized in the community through press releases, announcements, digital media, individual mailings, or other appropriate means as determined by the Contractor, Comprehensive Plan Committee, DOS project manager, and the project team. Such means should be identified within the Community Participation Plan.

Public access must be provided to each public meeting or workshop. Meetings and public engagement sessions should be scheduled at times that are convenient to underrepresented communities (e.g., at night or on

weekends instead of during the day) and at locations that are ADA accessible. Meetings shall be advertised with generous advance notice to garner maximum publicity, awareness, and participation.

Products:

- Draft and final Community Participation Plan to be implemented throughout the planning process.

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

Develop a relevant community survey to identify and gather input on current local conditions and issues. The survey should be made available to the public in hard copy and online. A draft survey should be provided to DOS for review prior to publication of the survey. Following the completion of the survey, develop a summary of results and analysis.

In addition to the community survey, identify a selection of stakeholder groups and a corresponding set of topics that shall be discussed with stakeholders to obtain relevant information and elicit reactions and suggestions.

Products:

- Draft and final Community Survey.
- Summary of survey responses and analysis
- Draft and final list of stakeholder groups and topics,
- Summary of interview findings.

### **Task 8: Public Workshops**

Conduct at least two public workshops, as identified in the Community Participation Plan. The purpose of the two public workshops is to introduce the Zoning Code update to the community, review the comprehensive plan including the recommendations with implications for land use laws, describe findings to date, and elicit input on draft regulations.

Products:

- Published announcements and fliers.
- Draft and final materials prepared for each public workshop.
- Summary of the results/feedback received.

### **Task 9: Local Regulations Assessment and Recommendations Report**

The purpose of the Local Regulations Assessment and Recommendations Report is to evaluate how regulations can be updated to apply Smart Growth principles in line with the community's vision as outlined in their comprehensive plan. The report may include, as applicable, but is not limited to:

- An analysis of existing development regulations,
- Prior and current planning and zoning efforts,
- The physical details of the community, including its current and historic built patterns and architecture, natural resources such as prime agricultural lands, soil types, floodplains,

topography, aesthetic resources, Critical Environmental Areas, current road network, blocks and lots, building types, public spaces, neighborhoods, and

- Other information relevant to drafting land use laws.

The analysis shall also include an examination of existing land uses, density, and community design elements like setbacks, building height, and street width.

The Report shall include tangible, implementable recommendations for changes to the Zoning Code based on the DOS Smart Growth Principles, the Comprehensive Plan, and the findings from analyses conducted in this section. The Zoning Advisory Committee shall work with the project team to collect best practices that could be used by the community to achieve the vision reflected in the Comprehensive Plan and other adopted planning documents.

The Draft Report shall be submitted to the Department for review and comment. Department comments shall be incorporated into the final report.

Products:

- Draft and final Local Regulations Assessment and Recommendations Report

#### **Task 10: Proposed Local Regulations**

Develop a draft Zoning Code based on the local regulations assessment and recommendations report and public input. Zoning Advisory Committee shall work with the project team to integrate the zoning code into the municipality's existing code and ensure the draft code is consistent with the municipality's adopted Comprehensive Plan, the Department's Smart Growth Principles, and other state statutes.

The Draft Zoning Code shall be reviewed by the Zoning Advisory Committee before being submitted to the Department.

Products:

- Draft and revised Zoning Code incorporating DOS comments..
- Completed Smart Growth checklist form, provided by Department of State, identifying how and where Smart Growth principles are addressed within the Zoning Code.

#### **Task 11: Municipal Board Review**

Submit the draft Zoning Code 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 prior to making the draft available for public review.

Products:

- Comments and recommendations received from the local municipal board

#### **Task 12: Environmental Quality Review**

The Contractor's preparation of a Smart Growth Zoning Code funded through the Smart Growth Community Planning Program should comply with the State Environmental Quality Review Act (SEQRA). The local municipal board is the Lead Agency for purposes of SEQRA. The Lead Agency shall undertake a SEQRA review according to 6 NYCRR Part 617 State Environmental Quality Review.

Products:

- Completed SEQRA Documentation

### **Task 13: Agricultural Review and Coordination**

Zoning codes are subject to the provisions of article twenty-five-AA of the agriculture and markets law. The Zoning Advisory Committee and the project team must take into consideration applicable agricultural and farmland protection plans as created under article twenty-five-AAA of the agriculture and markets law.

Products:

- Consideration given to agricultural review and coordination during the development of the Zoning Code.

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

The municipal board shall submit the revised local regulations to the County Planning Board for review and recommendations, pursuant to the required referral under General Municipal Law §239-m of the New York State General Municipal Law. The Zoning Advisory Committee and the project team shall address the comments received from the County Planning Board before the public hearing.

Products:

- Comments received from the County Planning Board and revised proposed local regulations

### **Task 15: Final Draft Zoning Code**

Address all comments and recommendations received from the public and involved local, regional, and State agencies and incorporate into the final draft regulations. Schedule a public hearing and local adoption of the regulations.

Products:

- Final proposed local regulations ready for local adoption.
- Final adopted Zoning Code

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

Conduct a public hearing prior to adoption of the Zoning Code. 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 draft Zoning Code shall be made available for public review during said period at the office of the municipal clerk and shall be posted on the municipal website. The public hearing may also be publicized in the community through press releases, announcements, individual mailings, and any other appropriate means.

The municipal board shall adopt the proposed local regulations pursuant to § 7-706 of the New York State Village Law/§16-264 of the New York State Town Law/§83 of New York State General City Law.



Products:

- Minutes from the public hearing(s) and record of decision.
- Final adopted Zoning Code
- Zoning map data in the GIS format prescribed in Section 2 of the Work Plan.
- Final Smart Growth checklist form, provided by Department of State, identifying how and where Smart Growth principles are addressed within the Zoning Code.

**Task 17: MWBE Reporting**

Comply with MWBE Reporting Requirements by completing the following actions:

- 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 D submitted as necessary to reflect updated MWBE subcontractors.

**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 to the Department during the life of the contract.

**APPENDIX II**  
**NYS DOS FULL CONTRACT**

**STATE OF NEW YORK CONTRACT FOR GRANTS FACE PAGE**

<p>STATE AGENCY (Name &amp; Address):</p> <p>NYS Department of State          One Commerce Plaza          99 Washington Avenue – Suite 1010          Albany, NY 12231</p>	<p>BUSINESS UNIT/DEPT ID:       DOS01/3800000</p> <p>CONTRACT NUMBER:               C1003128</p> <p>CONTRACT TYPE (select one)</p> <p><input type="checkbox"/> Multi-Year Agreement</p> <p><input type="checkbox"/> Simplified Renewal Agreement</p> <p><input checked="" type="checkbox"/> Fixed Term Agreement</p>
<p>CONTRACTOR NAME:</p> <p>NORTH TONAWANDA CITY OF</p>	<p>TRANSACTION TYPE:</p> <p><input checked="" type="checkbox"/> New</p> <p><input type="checkbox"/> Renewal</p> <p><input type="checkbox"/> Amendment</p>
<p>CONTRACTOR IDENTIFICATION NUMBERS:</p> <p>NYS VENDOR ID Number:       1000004318</p> <p>Federal Tax ID Number:       16-6002549</p>	<p>PROJECT NAME:</p> <p>City of North Tonawanda Zoning Code Update</p> <p>ASSISTANCE LISTINGS (formerly CFDA)          NUMBER (ALN) (Federally Funded Grants Only):</p>
<p>CONTRACTOR PRIMARY MAILING ADDRESS:</p> <p>City of North Tonawanda          216 Payne Avenue          North Tonawanda, NY 14120</p> <p>CONTRACTOR PAYMENT ADDRESS:</p> <p><input checked="" type="checkbox"/> Check if same as primary mailing address</p> <p>CONTRACTOR MAILING ADDRESS</p> <p><input checked="" type="checkbox"/> Check if same as primary mailing address</p> <p>CONTRACTOR PRIMARY E-MAIL ADDRESS:</p> <p>atylec@northtonawanda.org</p>	<p>CONTRACTOR STATUS:</p> <p><input type="checkbox"/> For Profit</p> <p><input checked="" type="checkbox"/> Municipality, Code:</p> <p><input type="checkbox"/> Tribal Nation</p> <p><input type="checkbox"/> Individual</p> <p><input type="checkbox"/> Not-for-Profit</p> <p>Charities Registration Number:               n/a</p> <p>Exemption Status/Code:                       3A/02</p> <p><input type="checkbox"/> Sectarian Entity</p>

**STATE OF NEW YORK CONTRACT FOR GRANTS FACE PAGE**

<b>CURRENT CONTRACT TERM:</b>  FROM: 7/1/2025 TO: 6/30/2025  AMENDED TERM:  FROM: TO:	<b>CONTRACT FUNDING AMOUNT:</b> <i>(Fixed Term - enter current period amount; Simplified Renewal - enter cumulative amount to date; Multi-year - enter total projected amount of the contract)</i>  CURRENT: \$135,000.00  AMENDED:  FUNDING SOURCES:  <input checked="" type="checkbox"/> State <input type="checkbox"/> Federal <input type="checkbox"/> Other
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**ATTACHMENTS INCLUDED AS PART OF THIS AGREEMENT (select all that apply):**

<input checked="" type="checkbox"/> Appendix A	
<input checked="" type="checkbox"/> Attachment A:	<input checked="" type="checkbox"/> A-1 Agency Specific Terms and Conditions
	<input checked="" type="checkbox"/> A-2 Program Specific Terms and Conditions
	<input type="checkbox"/> A-3 Federally Funded Grants and Requirements Mandated by Federal Laws
<input checked="" type="checkbox"/> Attachment B:	<input checked="" type="checkbox"/> B-1 Expenditure Based Budget
	<input type="checkbox"/> B-2 Performance Based Budget
	<input type="checkbox"/> B-3 Capital Budget
	<input type="checkbox"/> B-4 Capital Budget
	<input type="checkbox"/> B-1(A) Expenditure Based Budget (Amendment)
	<input type="checkbox"/> B-2(A) Performance Based Budget (Amendment)
	<input type="checkbox"/> B-3(A) Capital Budget (Amendment)
	<input type="checkbox"/> B-4 (A) Net Deficit Budget (Amendment)
<input checked="" type="checkbox"/> Attachment C: Work Plan	
<input checked="" type="checkbox"/> Attachment D: Payment and Reporting Schedule	
<input type="checkbox"/> Other	

## STATE OF NEW YORK CONTRACT FOR GRANTS

This State of New York Contract for Grants, including all attachments and appendices (hereinafter referred to as “Contract” or “Agreement”), is hereby made by and between the State of New York acting by and through the applicable State Agency (State or Agency) 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 operation of a program or performance of a service; and desires to contract with a responsive and responsible Contractor possessing the necessary resources to provide such services or work; and

**WHEREAS**, the Contractor is ready, willing, and able to provide such services or work 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 and in compliance with the terms of the Contract, specifications outlined in the grant solicitation, resulting award, and other associated documents comprising the Agreement.

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

### STANDARD TERMS AND CONDITIONS

#### I. GENERAL PROVISIONS

**A. Order of Precedence:** In the event of a conflict among (i) the terms of the Contract or (ii) between the terms of the Contract and the original request for proposal, solicitation document, the program application or other documentation that was completed and executed by the Contractor in connection with a grant award, the order of precedence is as follows:

1. Appendix A – Standard Clauses for New York State Contracts
2. Contract for Grants Standard Terms and Conditions
3. Modifications to the Face Page
4. Modifications to Attachment A-2: Program Specific Terms and Conditions; Attachment A-3: Federally Funded Grants and Requirements Mandated by Federal Laws (modifications not required by the Federal government)<sup>1</sup>, Attachment B: Budget, Attachment C: Work Plan, and Attachment D: Payment and Reporting
5. The Face Page

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<sup>1</sup> For modifications required by the Federal government see Section I(M).

6. Attachment A-2: Program Specific Terms and Conditions, Attachment A-3: Federally Funded Grants and Requirements Mandated by Federal Laws, Attachment B: Budget, Attachment C: Work Plan; and Attachment D: Payment and Reporting
7. Modifications to Attachment A-1: Agency Specific Terms and Conditions
8. Attachment A-1: Agency Specific Terms and Conditions
9. Other attachments, including, but not limited to, the request for proposal or program application, if incorporated by reference on the Face Page

The documents above, collectively, comprise the entire Agreement and govern the program for the entirety of the term of the Contract and any resulting renewals.

**B. Funding:** Funding for the term of the 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 Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

**C. Contract Performance:** The Contractor shall perform all services or work, as applicable, and comply with all provisions of the 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 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.

**D. Modifications:** Any modifications to this Agreement, including any budgetary changes, must be mutually agreed to in writing by both parties and be reflected on the Face Page where such terms are modified. Modifications may be subject to the approval of the AG and OSC in accordance with Appendix A, Section 3, Comptroller's Approval. A modification 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 proportion of the total value of the Contract, equal to or greater than ten percent for contracts of five million dollars or less, or five percent for contracts of more than five million dollars. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Contract.

**E. Severability:** Any provision of the 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 Contract shall attempt in good faith to reform the 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.

**F. Interpretation:** The headings in the 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 gender neutral. The 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.

**G. Notice:** All Notices under this Contract, including termination notices, shall be made in writing and directed to the representatives identified herein, or their designees and shall be transmitted by: a) certified or registered United States mail, return receipt requested; b) facsimile transmission; c) personal delivery; d) expedited delivery service; and/or e) e-mail. Notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.

The parties may, on written notice, designate other individuals as their representatives. Such representatives shall request, oversee, supervise, and accept performance of services provided by the Contractor and shall receive any required submissions. Whenever an action is to be taken, or approval for services given by the Agency, such action or approval may be given only by the representatives designated pursuant to this Section.

**H. Indemnification:** The Contractor shall be solely responsible and answerable in damages for all accidents, incidents, 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 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 Contract.

**I. 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 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 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 the State of New York, the State Agency, or any county, or other local government entity.

**J. Partisan Political Activity and Lobbying:** Funds provided pursuant to the 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.

**K. 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 and will comply with requirements therein.

**L. Reporting Risks to Performance:** If any specific event, conjunction of circumstances, or any occurrence involving the staff, volunteers, directors, officers, subcontractors, or program participants of the Contractor threatens the successful completion of this project, in whole or in part, the Contractor agrees to notify the State Agency within three (3) calendar days of becoming aware of the occurrence describing the occurrence and the risk it poses to performance under the Contract. The Contractor's notice shall include a written description of the event and a recommended solution. Such events may include, but not be limited to, death or serious injury, an arrest or possible criminal activity.

**M. Federally Funded Grants and Requirements Mandated by Federal Laws:** All the Specific Federal requirements that are applicable to the Contract are identified in Attachment A-3 (Federally Funded Grants and Requirements Mandated by Federal Laws), attached hereto. To the extent that the Contract is funded, in whole or part, with Federal funds or mandated by Federal laws: (i) the provisions of the Contract that conflict with Federal rules, Federal regulations, or Federal program specific requirements shall not apply and (ii) to the extent that the modifications to Attachment A-3 are required by Federal requirements and conflict with other provisions of the Contract, the modifications to Attachment A-3 shall supersede all other provisions of this Contract; and (iii) 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-3 (Federally Funded Grants and Requirements Mandated by Federal Laws), attached hereto.

**N. Renewal:**

1. **General Renewal:** The Contract may consist of successive periods on the same terms and conditions, as specified within the 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 Contract.

2. **Renewal Notice to Not-for-Profit Contractors:** The Contract, as specified herein, may consist of successive periods on the same terms and condition referred to as a "Simplified Renewal Contract." Each additional or superseding period shall be on the forms specified by the State and shall be incorporated into the Contract. Pursuant to State Finance Law §179-t, if the 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 Contract no later than ninety (90) calendar days prior to the end of the term of the Contract, unless funding for the renewal is contingent upon enactment of an appropriation, than thirty (30) calendar days after the appropriation becomes law, whichever is later. Notwithstanding the foregoing, in the event 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 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. Notification to the Contractor of



the State's intent to not renew the 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 Contractor of its intent not to renew the Contract as required in this Section and State Finance Law §179-t, the 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 Contract.

## II. TERMINATION AND SUSPENSION

### A. Termination:

#### 1. Grounds:

- a) Mutual Consent: The Contract may be terminated at any time upon mutual written consent of the State and the Contractor.
- b) Cause: The State may terminate the 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 Contract and/or any applicable laws, rules, regulations, policies, or procedures. If the termination for cause results from unsatisfactory performance by the Contractor, the value of the work performed by the Contractor prior to termination shall be established by the State.
- c) Non-Responsibility: Upon written notice to the Contractor, and a reasonable opportunity to be heard by the appropriate State officials or staff, this Contract may be terminated by the State at the Contractor's expense where the Contractor is determined by the State to be non-responsible. In such event, the State may complete contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.
- d) Convenience: The State may terminate the 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 or entity entering into the Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Contract, the Contract may be terminated or reduced at the State Agency's discretion. No reduction or termination shall apply to allowable costs already incurred by the Contractor whereby funds are available to the State Agency for payment of such costs. Upon termination or reduction of the 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 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: Performance under the Contract may be terminated or suspended by the State immediately upon the occurrence of a "force majeure" event. For purposes of the Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, declared pandemics, insurrection, riot, strikes, lockout, and any unforeseen circumstances and acts beyond the control of the parties which render the performance of contractual obligations impossible.

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

Upon receipt of notice of termination provided pursuant to the notice requirements prescribed in this Agreement, the Contractor shall stop work immediately and complete only those specific assignments and/or obligations, if any, subsequently approved by the State. In the event of termination other than for cause, the Contractor shall be entitled to compensation for services performed through the date of termination that are accepted by the State, and for any subsequent services that are accepted by the State, rendered in connection with any successor consultants and contractors, including transfer of records, briefing and any other services deemed necessary or desirable by the State. The Contractor agrees to cooperate to the fullest respect with any successor consultants and contractors.

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

Where the 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 Contract for the purposes set forth herein, the State may, at its option, require: a) repayment to the State of any monies previously paid to the Contractor; b) return of any real property or equipment purchased under the terms of the Contract; or c) an appropriate combination of clauses (a) and (b) herein.

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

## 4. **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 formal written notice outlining the specific details 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 Contract.

### **III. ADDITIONAL 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. Notwithstanding the foregoing, the State and the Contractor agree that if the Contractor is a New York State municipality, the Contractor shall be permitted to hold itself out, and claim, to be a subdivision of the State.

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 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 Contract and/or any subcontract entered into under the 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 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 Contract, Contractor shall immediately notify the State.

#### **B. Subcontractors:**

1. If the Contractor enters into subcontracts for the performance of work pursuant to the 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 Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.

2. If requested by the State, 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 Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Contract, and (3) that nothing contained in the

subcontract, nor under the 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. If requested by the State, 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 shall submit a Vendor Responsibility Questionnaire (Questionnaire).

5. If requested by the State, upon the execution of a subcontract, the Contractor shall 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). 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 Contract for any activity other than those provided for under the 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 Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Contract.

**D. Property:**

1. For the purposes of the Contract, "Property" is defined as 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. For Federally funded contracts, if there is any conflict in the definition of "Property" the federal awarding Agency definitions will apply.

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. Such Property shall be returned to the State at the Contractor's cost and expense upon the expiration of the Contract unless the State consents in writing to the Contractor retaining possession of the Property to use for similar purposes.

b) 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.

c) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the 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. The Contractor may not charge rental or use fees under this Contract for use or acquisition of Property to carry out its obligations under the Contract.

d) 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 specified in the 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.

e) 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 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 Contract:

a) For cost-reimbursable contracts, all right, title and interest in Property with a remaining useful life shall belong to the State unless otherwise agreed to, in writing, by the State and the Contractor. However, upon agreement by the State, title shall pass to Contractor upon the end of the Property's useful life (as the phrase "useful life" is defined in Internal Revenue Code § 1.169- 2).

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 Contract shall be governed by the terms and conditions of Attachment A-3 (Federally Funded Grants and Requirements Mandated by Federal Laws).

4. The Contractor shall maintain an inventory of all Property that is owned by the State and obtained by the Contractor under this Agreement.

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 Contract (collectively, Records).

b) The Contractor agrees to produce and retain for the balance of the term of the Contract, and for a period of six years from the later of the date of (i) the Contract and (ii) the most recent renewal of the Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the 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 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.

**F. Confidentiality:**

1. Contractor agrees that it will not use confidential, personally identifiable information relating to individuals who may receive services, or proprietary information disclosed to Contractor in connection with the services or work ("Confidential Information") for any purpose other than in connection with the services or work and in compliance with all applicable provisions of State and federal law. The Contractor is fully responsible for its staff, its subcontractor(s), and any subcontractor's staff with regard to Confidential Information and shall ensure that they meet all obligations with respect to maintaining the confidentiality and security of any information deemed confidential.

2. Information which falls into any of the following categories shall not be considered Confidential Information: a) information that is previously rightfully known to the Contractor without restriction on disclosure; b) information that becomes, from no breach of the Contract on the part of the Contractor, generally known in the relevant industry, or is otherwise publicly available; and c) information that is independently developed by Contractor without use of the Confidential Information.

3. Except as specifically permitted in this Agreement, Contractor shall not, at any time, in any fashion, form or manner, divulge, disclose, communicate, or use, any Confidential Information other than in connection with the services or as otherwise provided herein.

4. Contractor may disclose Confidential Information if such information is required to be disclosed by Contractor by any law, rule, regulation, judicial or administrative process or applicable professional standards, provided that, to the extent permitted by applicable law or regulation, the Contractor notifies the State prior to any such required disclosure.

5. Contractor agrees that, as between the Parties, all Confidential Information in its possession obtained in connection with the services or work hereunder is at all times the sole property of the State.

6. Where allowable by law and agreed to by the State, Contractor may retain one copy of the Confidential Information and any summaries, analyses, notes, or extracts prepared by Contractor which are based on or contain portions of the Confidential Information evidencing its services or work for the State as required by law, regulation, professional standards, or reasonable business practice.

7. In protecting the Confidential Information, Contractor shall exercise the same standard of care used by Contractor to protect its own confidential and proprietary information, to prevent the disclosure of Confidential Information to any third party. Contractor shall not use Confidential Information for any purpose other than in furtherance of its services or work for the State.

**G. Publicity:**

1. Publicity regarding the work, services, performance, and/or project governed by this Agreement may not be released without prior written approval from the State. For the purposes of this Agreement, "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.

2. Any Publicity, publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Contract may not be published, presented or announced without prior written 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 State and the applicable Federal funding agency.

3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) calendar day period in which to review each manuscript for compliance with Confidential Information requirements prior to publication; or (ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Contract (but are not deliverable under the 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 III(F)(2) (Publicity) hereof.

#### **H. Web-Based Applications-Accessibility:**

Any network-based information and applications development, or programming delivered to or by the State pursuant to this Contract or procurement, will comply with Section 508 of the Rehabilitation Act of 1973, as amended, and be consistent with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Information Communication Technology, as such policy may be amended, modified, or superseded (the “Accessibility Policy”). The Accessibility Policy requires that State Entity Information Communication Technology shall be accessible to persons with disabilities as determined by accessibility compliance testing. Such accessibility compliance testing will be conducted by (State Entity name, contractor or other) and any report on the results of such testing must be satisfactory to (State Entity name).

#### **I. 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.

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

2. 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 Contract.

#### **J. 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 Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Contract.

**K. Vendor Responsibility:**

The Contractor hereby acknowledges that the State Vendor Responsibility Questionnaire (Questionnaire) and certification are made part of this Contract and that any misrepresentation of fact in the Questionnaire and attachments, or in any Contractor responsibility information that may be requested by the State, may result in termination of this Contract.

The Contractor shall at all times during the contract term remain responsible. During the term of this Contract, any changes in the provided Questionnaire shall be disclosed to the State Agency, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non- responsibility and termination of this Contract. Furthermore, the Contractor agrees, if requested by the State, it must present evidence of its continuing legal authority to do business in New York State, its integrity, experience, ability, prior performance, and organizational and financial capacity.

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 Contract, based on any information provided in the Questionnaire and/or any updates, clarifications, or amendments thereof; and/or when it discovers information that calls into question the responsibility of the Contractor. 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.

The State reserves the right to suspend any or all activities under this Contract, upon discovery of such information warranting review of responsibility. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under this Contract.

**L. Workers' Compensation Benefits:**

1. In accordance with Section 142 of the State Finance Law, the Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of the 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.

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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

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## STANDARD CLAUSES FOR NYS CONTRACTS

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

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State’s previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **COMPTROLLER’S APPROVAL.** In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.
4. **WORKERS’ COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3- a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.
7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the

time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).
9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.
10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a)**

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

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

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

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

- (a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall



make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

- (b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and
- (c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

- 13. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.
- 14. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
- 15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.
17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules (“CPLR”), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor’s actual receipt of process or upon the State’s receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.
18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.  
In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.
19. **MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.
20. **OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development  
Division for Small Business and Technology Development  
625 Broadway  
Albany, New York 12245 Telephone: 518-292-5100

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development 633 Third Avenue 33rd Floor  
New York, NY 10017 646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. **RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383,

respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain.

NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.**

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

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

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a “procurement contract” as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or

extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

- 27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** 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.

## ATTACHMENT A-1

### New York State Department of State (1/16/24)

#### Agency Specific Clauses

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 is required for all requests for budget modifications, regardless of the amount of the modification, or where the proposed modification 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 contract. All requests for modifications must be done in writing and requires a detailed breakdown of requested changes and justification for the request. 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
2. 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. Documentation of Performance

In addition to the criteria set forth in Section III(E)(1)(b) of the NYS Contract for Grants, documentation of personal service expenditures shall:

1. Be based upon actual work performed;
2. Be supported by internal controls that provide a reasonable assurance that the charges are accurate, allowable, and properly allocated; and

3. Comply with the Contractor's established accounting policies and conform to generally accepted accounting principles.

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(A)(3) of the NYS Contract for Grants, 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 including, but not limited to, 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," as amended.

In addition to the requirements of Section III(D)(4) of the NYS Contract for Grants, the Contractor shall maintain an inventory of all property purchased under this Agreement and owned by the Contractor. Such inventory shall be retained by the Contractor for the time period specified in Section III(E)(1) and available for inspection and copying by the State.

F. Termination

The Department may terminate the Agreement in accordance with the terms and conditions set forth in Section II(A) of the NYS Contract for Grants. 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 forty-five (45) days 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 or the Department may pursue any other remedies available to the State.
2. 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.
3. 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://apps.labor.ny.gov/EDList/searchPage.do>) or is listed on the New York State Office of General Service's list of companies with which New York State cannot do business (available at <https://ogs.ny.gov/debarred-and-non-responsible-entities>); (2) is listed as an entity debarred from federal contracts (available at: [sam.gov](http://sam.gov)); 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://apps.labor.ny.gov/EDList/searchPage.do>) or is listed on the New York State Office of General Service's list of companies with which New York State cannot do business (available at <https://ogs.ny.gov/debarred-and-non-responsible-entities>); (2) is listed as an entity debarred from federal contracts (available at: [sam.gov](http://sam.gov)); 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 including, but not limited to the terms of the Agreement, 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 III(B)(2) of the NYS Contract for Grants, 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. 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, SDVOB requirements set forth in Section N, and any additional requirements imposed by the State as set forth in this Agreement.

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, SDVOB requirements set forth in Section N, and any additional requirements imposed by the State as set forth in this Agreement.

2. For non-municipal entities, 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, SDVOB requirements set forth in Section N, any additional requirements imposed by the State as set forth in this Agreement, any applicable law, and its own policies.

#### I. Vendor Responsibility Determinations

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>. 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.

#### J. State Attorney General Charities Registration

In accordance with the Estates, Powers and Trust Law § 8-1.4 (s), the Contractor certifies that it is in compliance with the requirements of Estate, Powers and Trusts Law sections 8-1.4 (d), (f), and (g), if applicable, 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 I(G) of the NYS Contract for Grants, notice hereunder shall be addressed as follows:

1. Notice to the State

Name: Marybeth Staebell  
Title: Contract Management Specialist 2  
Agency: Department of State  
Division: Office of Planning, Development and Community Infrastructure  
Address: 99 Washington Avenue, Suite 1010  
Albany, NY 12231  
Phone: 518-486-5173  
Email Address: [opdcontracts@dos.ny.gov](mailto:opdcontracts@dos.ny.gov)

2. Notice to the Contractor

Name: Austin Tylec  
Title: Mayor  
Affiliation: City of North Tonawanda  
Address: 216 Payne Avenue  
North Tonawanda, NY 14120  
Phone: 716-695-8540  
Email Address: [atylec@northtonawanda.org](mailto:atylec@northtonawanda.org)

## M. 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/>.
- 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 this Agreement, the Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/>.

Additionally, the Contractor is encouraged to contact the Division of Minority and 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.

- e. 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, age, disability, predisposing genetic characteristic, familial status, marital status or domestic violence victim status, or has filed a complaint, testified, or assisted

in any proceeding under the Human Rights Law, 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 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

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) 474-2754. 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>. 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:
  - i) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - ii) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- 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.

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

Article 3 of Veterans' Services Law, as amended, 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 3.

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://dos.ny.gov/supplier-diversity>.

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 Bureau of Fiscal Management – SDVOB Program at [dos.sm.sdvob@dos.ny.gov](mailto:dos.sm.sdvob@dos.ny.gov). The directory of certified SDVOB vendors can be found at: <https://sdves.ogs.ny.gov/business-search>.

#### O. Refunds and Repayments

The Contractor shall promptly return funds due the State, including repayment of unexpended advances or disallowances. The Contractor shall make payment within forty-five (45) days of the end or termination of the Contract or demand from the Department. The Contractor shall reference the contract number with its payment and include a brief explanation of why the refund is made. Refunds shall be made payable to and addressed, as stated below:

Payable to: NYS Department State  
Mail to: NYS Department of State, Bureau of Fiscal Management  
Address: One Commerce Plaza  
99 Washington Ave, Suite 1110  
Albany, NY 12210

P. Accessibility Compliance Testing

Accessibility compliance testing pursuant to Section III(H) of the NYS Contract for Grants shall be conducted by the Contractor. Any results or reports of such testing shall promptly be provided by the Contractor to Department.

## ATTACHMENT A-2

### PROGRAM SPECIFIC TERMS AND CONDITIONS

Program Specific Clauses – Smart Growth Community Planning and Zoning and Smart Growth Countywide Resiliency (updated 9/1/2024)

- 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 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 applicable laws, rules, and regulations and is executed by all necessary parties.

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 forms or agreements, 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, age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status or status as a victim of domestic violence.

#### 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. 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, age, creed, race, color, sex, sexual orientation, national origin, marital status, gender identity or expression, domestic violence victim status, disability, pregnancy-related condition, military status, favorably resolved arrest record, conviction record, predisposing genetic characteristics, familial status, or citizenship or immigration status.
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. 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.

#### G. 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.



## H. Requirements for Contract GIS Products

1. General GIS Product Requirements -- This document is intended to provide specific requirements and file delivery formats for all GIS materials developed in support of NY Department of State (DOS) projects. These work products include map packages/documents, and associated GIS and imagery files that are created for DOS, including but not limited to products created under grants, interagency agreements and contracts. The following general cartographic requirements must be adhered to by the Contractor:
  - a. Map Products -- The Department requires delivery of digital map products, including all associated GIS and/or CAD digital files. Finished maps should also be provided in a format suitable for viewing and printing (e.g. PDF). All final map products should be submitted to NYSDOS as an ESRI compatible map package (e.g., mpkx, ppkx). For any map products which include derived data, a project package (.ppkx) is the preferred deliverable but any map package that provides the necessary source data and documentation to replicate the methodology and geoprocessing history used to derive such data is acceptable.

When creating a map package or project package please make sure to use relative paths with the following boxes checked:

- 1) Share outside of organization
  - 2) Include toolboxes
  - 3) Include history items
- b. GIS Data -- All final version spatially enabled files acquired or developed to support mapping and/or spatial analysis through a DOS funded project are considered property of the DOS and are required to be submitted to DOS. This includes but is not limited to all GIS, CAD, and image formatted data. Only final versions of each layer are required for delivery, and must be in an approved format as specified in this document. In addition, all electronic geospatial data, whether vector or raster, must have spatial reference information and be projection defined (have its coordinate system identified and embedded in or associated with the data file), and in the case of CAD data must NOT be in page space or a custom site-specific projection.
  - c. Deliverable Format – Contractors responsible for data generation, maintenance, and map/figure production for this task are required to submit all final products as well as all source files and metadata used to derive them on Recordable CD or DVD, external hard drive, via email attachment (size limit of 20MB) or downloadable from an ftp site on the Internet. If the project is complex or contains multiple map packages, a directory structure and readme text file in the upper-level directory that describes the structure are required. File naming conventions should be logical, consistent, and contain no spaces or special characters. An underscore may be used in lieu of a space. A recommended directory structure is as follows:

## City of North Tonawanda Zoning Code Update

- \_ Docs (reports, SOPs, correspondence, and other such documents)
- \_ Images (aerial photos, satellite imagery, logos, DEMs, and other raster type data)
- \_ Maps (MXDs and PDFs. Map names should use the project name as a prefix)
- \_ Shapes (geodatabases, shape files, and other approved vector data formats)
- \_ Source (original unmodified data that may have been acquired from external/internal sources)
- \_ Tables (MS-Access databases, spreadsheets, delimited text files, or other such tabular data not stored in a geodatabase)
  - i. Final Products: Static Digital maps may be submitted in any standard image format such as JPEG (.jpg), Microsoft Windows bitmap (.bmp), or Tagged Image Format (.tiff), or Adobe Acrobat (.pdf) document. A resolution of 150dpi or more is recommended.
  - ii. Source Files: The underlying map products and associated files shall be provided upon product delivery. Map products shall include a map package wherever possible (e.g. mpk, .aprx, .ppkx) with the associated data packaged as relative links. If a map document (e.g., MXD) is provided in lieu of a map package than all associated map layers must be provided and referenced as relative paths in the map document. Acceptable vector spatial data formats are file geodatabases (.gdb) and shapefiles (.shp, .shx, .dbf, and .prj at a minimum). Acceptable raster data formats must be compatible with ESRI Arc Info 10.2 or higher and include:
    1. TIFF image with world reference file or as a GeoTIFF (.tif, .tfw)
    2. JPEG image with world reference file (.jpg, .jpw)
    3. ERDAS Imagine image with pyramid file (.img, .rrd)
    4. MrSid image (.sid)
    5. ESRI Grid
    6. DEM
    7. TINs - appropriate projection/coordinate system for the area depicted
    8. ESRI TIN

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.

### d. Documentation

- 1) A data dictionary must be included along with the map files describing file contents, file names along with the name, description, data type and length for each attribute in a data table. Metadata must be provided for each file and shall

include:

1. Title- In plain language;
2. Summary- One or two sentences of information describing what the data is showing
3. Thumbnail- image of data on map;
4. Description- A paragraph giving a more in-depth description as to the background of the data, the provider of the data, when the data was last updated. The who, what, why of the data;
5. Tags/ Descriptive Words- key descriptive words that help focus a user's search;
6. Bounds of data- Bounding coordinates (N, E, S, W), usage limitation/ general constraints;
7. Publication Dates: When was the data first published. If it has never been published, we will give a published date when it is published on the Gateway;
8. Citation Contact- Who produced the data: Organization name and phone number, email, website of the organization and or individual should be provided;
9. Lineage- information describing the revision history of the data. Start with date of creation, any following update or review dates; and,
10. Use limitations: Please provide any use limitation for the data and creation methodology.

It is important to understand that deliverables are not considered complete without metadata. 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".

- 2) Datums and Coordinate Systems – All vector data and map products should be submitted in geographic coordinate system, decimal degree units, and either NAD83 or WGS84. Raster data, such as aerial photographs, may be submitted in their native projection, and maps should be in the appropriate projection/coordinate system for the area depicted. Where applicable, the National Geodetic Vertical Datum of 1988 (NGVD88) shall be used as the preferred vertical datum.

- e. 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.

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/NYSDOT quadrangle Lat/Long or NYTM coordinates. The maps must be geometrically correct and should register when overlaid on the appropriate USGS/NYSDOT 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 GIS 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.

**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	\$ 150,000.00
F. Other	\$ 0.00
<b>Total Budget</b>	\$ 150,000.00
<b>Local Match (10%)</b>	\$ 15,000.00
<b>State Funds (90%)</b>	\$ 135,000.00

<b>MWBE Goals:</b>		
Grant Award		\$ 135,000.00
MBE Goal	15%	\$ 20,250.00
WBE Goal	15%	\$ 20,250.00

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

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

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

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

<b>E. CONTRACTUAL SERVICES</b>	<b>Total Budget</b>
Consulting services for the preparation of local zoning regulations	\$ 150,000.00
Subcontractor: To be determined	
	<b>\$ 150,000.00</b>

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

# ATTACHMENT C - WORK PLAN

## City of North Tonawanda Zoning Code Update

### 1. Project Description

The City of North Tonawanda will build upon past and ongoing planning efforts by updating its zoning code to help achieve the vision and goals outlined in the City's plans. The citywide zoning code update will extend form-based controls, desegregate land uses, encourage a mix of housing types, promote alternative modes of transportation, support the revitalization of existing neighborhoods and sites, and address other factors contributing to quality of life.

The City of North Tonawanda (Contractor) and its Zoning Advisory Committee shall prepare a Zoning Code pursuant to the zoning enabling statutes contained in General City Law §20(24) and §20(25) / Town Law Article 16 / Village Law Article 7. The Zoning Code will be developed in accordance with an adopted Comprehensive Plan; guide future sustainable growth within the municipality; enhance the local identity; and protect natural and cultural local resources.

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

1. Develop plans and land use regulations that allow for and encourage mixed-use neighborhoods.
2. Enable a diverse mix of housing types that provide for opportunity and choice for all.
3. Prioritize infill and redevelopment of existing buildings to revitalize neighborhoods and downtowns, including areas around public transit.
4. Provide well-planned, equitable, and accessible public spaces.
5. Encourage compact neighborhood design and concentrated development around existing infrastructure.
6. Preserve open space, agricultural resources, and natural resources.
7. Prioritize transportation options such as walking, cycling, and public transportation.
8. Promote climate resiliency and adaptation, preferably through nature-based solutions, and reduce greenhouse gas emissions.
9. Build on unique traits to create an attractive and welcoming community with a strong sense of place.
10. Engage in an inclusive, collaborative public planning process that considers the needs and character of the community.

The Contractor will use the funding/grant for reimbursement of municipal planning staff costs or consultant services necessary for the coordination of the planning process and preparation of the Zoning Code.

### 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. The Contractor must



provide adequate notice, at least two weeks, to the Department prior to any press release and/or events including groundbreaking and ribbon-cuttings to coordinate appropriate DOS attribution and participation. Project press releases and other notices shall be approved by the Department prior to release.

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, per PDF), 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.

### **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. Reporting Documents**

Documents and guidance for regular reporting and payment requests are made available the OPDCI Contract Resources webpage available at <https://dos.ny.gov/opdci-contract-resources>. Documents available include payment requests, status reports, amendment requests, final project closeout document, procurement certification, contract reporting requirements and MWBE forms.

### **5. Project Components**

As part of the Smart Growth Planning and Zoning 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 and zoning efforts and meet the priorities of the grant.

#### **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 Zoning Advisory 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: Zoning Advisory Committee**

Establish a Zoning Advisory Committee to oversee all aspects of the project in cooperation with municipal officials and the project team. For communities with an established planning board and/or zoning board of appeals, the Committee shall have at least one member from each body and shall include a range of stakeholders, such as residents, civic leaders, business owners, elected officials, environmental experts, neighborhood association representatives, and municipal board members from a range of ethnic, social, and cultural backgrounds.

The members of the Zoning Advisory Committee shall conduct and oversee the development of the Zoning Code and participate in Committee meetings. The Committee will generate ideas and build consensus, provide the project team with relevant information reflective of the community's current conditions and regulatory environment, review materials prepared by the project team (if applicable) and provide constructive feedback. The Committee will also support each of the public participation and outreach efforts and assist the project team in integrating the Zoning Code into the existing municipal code. The Contractor shall send a list of proposed members of the Zoning Advisory Committee to the Department for review.

Products:

- Draft and final list of members of Zoning Advisory Committee
- Zoning 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 community conditions, expected final products, 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. Scroll down at this link to find MWBE solicitation log and good faith effort instructions: <https://dos.ny.gov/opdci-contract-resources>.
- Written responses by MWBEs to the Contractor/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 Contractor with MWBEs including dates and location.
- Description of how the RFP 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.

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 all attachments.

Products:

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

#### **Task 5: Zoning Advisory Committee Meetings**

The Zoning Advisory Committee shall meet on a regular basis during the planning process to advance the preparation, review, integration, and approval of the Zoning Code and assist with the organization and

conducting of community participation events, to organize and conduct community participation events.

During their first meeting, the Zoning Advisory Committee will review project requirements, roles, and responsibilities, transfer necessary information to the project team, and identify new information needs, and next steps. During their first meeting, the Zoning Advisory Committee will also complete the Community Zoning Assessment.

Subsequent meetings will advance the preparation of the Zoning Code, and assess the evolution of the project, identify new information needed, address changes in roles and responsibilities, and consider next steps. Work on subsequent tasks shall not proceed prior to Department review.

Products:

- Meeting summaries for each Zoning Advisory Committee meeting.
- The results of the Community Zoning Assessment.

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

Prepare a Community Participation Plan describing the public outreach and participation efforts that will be conducted during the development of Zoning Code, pursuant to the local and State statutes. The Community Participation Plan should include, at a minimum, the following elements tailored to be most applicable to the community:

- Two or more public workshops
- One or more public hearings
- One or more community survey(s)
- Interviews with local stakeholder focus groups
- Overall outreach and engagement strategy
- Efforts to ensure accessibility and outreach to frequently underrepresented populations, including lower-income residents, youth, immigrants, and minorities
- Roles and responsibilities of individuals, organizations, and entities involved in engagement
- Proposed schedule for implementation
- A website with links to announcements, materials, and input opportunities

All public outreach and participation efforts will be publicized in the community through press releases, announcements, digital media, individual mailings, or other appropriate means as determined by the Contractor, Comprehensive Plan Committee, DOS project manager, and the project team. Such means should be identified within the Community Participation Plan.

Public access must be provided to each public meeting or workshop. Meetings and public engagement sessions should be scheduled at times that are convenient to underrepresented communities (e.g., at night or on weekends instead of during the day) and at locations that are ADA accessible. Meetings shall be advertised with generous advance notice to garner maximum publicity, awareness, and participation.

Products:

- Draft and final Community Participation Plan to be implemented throughout the planning process.

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

Develop a relevant community survey to identify and gather input on current local conditions and issues. The survey should be made available to the public in hard copy and online. A draft survey should be provided to DOS for review prior to publication of the survey. Following the completion of the survey, develop a summary of results and analysis.

In addition to the community survey, identify a selection of stakeholder groups and a corresponding set of topics that shall be discussed with stakeholders to obtain relevant information and elicit reactions and suggestions.

Products:

- Draft and final Community Survey.
- Summary of survey responses and analysis
- Draft and final list of stakeholder groups and topics,
- Summary of interview findings.

## **Task 8: Public Workshops**

Conduct at least two public workshops, as identified in the Community Participation Plan. The purpose of the two public workshops is to introduce the Zoning Code update to the community, review the comprehensive plan including the recommendations with implications for land use laws, describe findings to date, and elicit input on draft regulations.

Products:

- Published announcements and fliers.
- Draft and final materials prepared for each public workshop.
- Summary of the results/feedback received.

## **Task 9: Local Regulations Assessment and Recommendations Report**

The purpose of the Local Regulations Assessment and Recommendations Report is to evaluate how regulations can be updated to apply Smart Growth principles in line with the community's vision as outlined in their comprehensive plan. The report may include, as applicable, but is not limited to:

- An analysis of existing development regulations,
- Prior and current planning and zoning efforts,
- The physical details of the community, including its current and historic built patterns and architecture, natural resources such as prime agricultural lands, soil types, floodplains, topography, aesthetic resources, Critical Environmental Areas, current road network, blocks and lots, building types, public spaces, neighborhoods, and
- Other information relevant to drafting land use laws.

The analysis shall also include an examination of existing land uses, density, and community design elements like setbacks, building height, and street width.

The Report shall include tangible, implementable recommendations for changes to the Zoning Code based on the DOS Smart Growth Principles, the Comprehensive Plan, and the findings from analyses conducted in

this section. The Zoning Advisory Committee shall work with the project team to collect best practices that could be used by the community to achieve the vision reflected in the Comprehensive Plan and other adopted planning documents.

The Draft Report shall be submitted to the Department for review and comment. Department comments shall be incorporated into the final report.

Products:

- Draft and final Local Regulations Assessment and Recommendations Report

#### **Task 10: Proposed Local Regulations**

Develop a draft Zoning Code based on the local regulations assessment and recommendations report and public input. Zoning Advisory Committee shall work with the project team to integrate the zoning code into the municipality's existing code and ensure the draft code is consistent with the municipality's adopted Comprehensive Plan, the Department's Smart Growth Principles, and other state statutes.

The Draft Zoning Code shall be reviewed by the Zoning Advisory Committee before being submitted to the Department.

Products:

- Draft and revised Zoning Code incorporating DOS comments..
- Completed Smart Growth checklist form, provided by Department of State, identifying how and where Smart Growth principles are addressed within the Zoning Code.

#### **Task 11: Municipal Board Review**

Submit the draft Zoning Code 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 prior to making the draft available for public review.

Products:

- Comments and recommendations received from the local municipal board

#### **Task 12: Environmental Quality Review**

The Contractor's preparation of a Smart Growth Zoning Code funded through the Smart Growth Community Planning Program should comply with the State Environmental Quality Review Act (SEQRA). The local municipal board is the Lead Agency for purposes of SEQRA. The Lead Agency shall undertake a SEQRA review according to 6 NYCRR Part 617 State Environmental Quality Review.

Products:

- Completed SEQRA Documentation

### **Task 13: Agricultural Review and Coordination**

Zoning codes are subject to the provisions of article twenty-five-AA of the agriculture and markets law. The Zoning Advisory Committee and the project team must take into consideration applicable agricultural and farmland protection plans as created under article twenty-five-AAA of the agriculture and markets law.

Products:

- Consideration given to agricultural review and coordination during the development of the Zoning Code.

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

The municipal board shall submit the revised local regulations to the County Planning Board for review and recommendations, pursuant to the required referral under General Municipal Law §239-m of the New York State General Municipal Law. The Zoning Advisory Committee and the project team shall address the comments received from the County Planning Board before the public hearing.

Products:

- Comments received from the County Planning Board and revised proposed local regulations

### **Task 15: Final Draft Zoning Code**

Address all comments and recommendations received from the public and involved local, regional, and State agencies and incorporate into the final draft regulations. Schedule a public hearing and local adoption of the regulations.

Products:

- Final proposed local regulations ready for local adoption.
- Final adopted Zoning Code

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

Conduct a public hearing prior to adoption of the Zoning Code. 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 draft Zoning Code shall be made available for public review during said period at the office of the municipal clerk and shall be posted on the municipal website. The public hearing may also be publicized in the community through press releases, announcements, individual mailings, and any other appropriate means.

The municipal board shall adopt the proposed local regulations pursuant to § 7-706 of the New York State Village Law/§16-264 of the New York State Town Law/§83 of New York State General City Law.

Products:

- Minutes from the public hearing(s) and record of decision.
- Final adopted Zoning Code
- Zoning map data in the GIS format prescribed in Section 2 of the Work Plan.
- Final Smart Growth checklist form, provided by Department of State, identifying how and where Smart Growth principles are addressed within the Zoning Code.

## **Task 17: MWBE Reporting**

Comply with MWBE Reporting Requirements by completing the following actions:

- 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 D submitted as necessary to reflect updated MWBE subcontractors.

## **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 to the Department during the life of the contract.

## **6. 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.

- 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 be responsible for ensuring that all public engagement communications and opportunities are made accessible to underrepresented communities (e.g., meeting materials, meeting notices, plan documents)
- 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.

## ATTACHMENT D

### PAYMENT AND REPORTING

#### A. General Terms and Conditions:

1. In full consideration of contract performance, 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 and the contract is fully executed. Contractor obligations or expenditures that precede the start date of the Contract shall not be reimbursed.
3. 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 Contract shall be governed by Article 11-B of the State Finance Law.
4. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. However, the State may, in its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. The State may require the Contractor to submit billing invoices electronically.
5. The Contractor shall submit documentation to support its claims for payment pursuant to this Contract. All supporting documentation must be completed and provided in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.
6. Payment for invoices submitted by the Contractor shall be rendered electronically in accordance with OSC's procedures and practices governing electronic payment unless payment by paper check is expressly authorized by the head of the State Agency, in his or her sole discretion after the Contractor establishes extenuating circumstances requiring payment by paper check.
7. If travel expenses are an approved expenditure under the 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.
8. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Contract as security for the faithful completion of services or work, as applicable, under the Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the 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.
9. All vouchers must be submitted by the Contractor 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.

10. All obligations must be incurred prior to the end date of the contract. The final claim of the contract term shall be submitted to the State Agency up to ninety (90) calendar days after the contract end date to make final expenditures if this contract is State Funded. However, if this 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 and submit the claim to the State Agency.
11. The State shall not be liable for payments on the 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.
12. The Contractor may be required to submit a Consolidated Fiscal Reporting System (“CFR”). The CFR is a standardized electronic reporting method accepted by State agencies, 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. 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.

**B. Advance Payments and Claiming Requirements:**

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 for both multiyear and renewal contracts and the provisions of this contract. Federally funded contract advances will be made as set forth by the Federal grant award requirements and applicable Federal regulations and this contract.
2. For simplified renewals, the payment schedule will be modified as part of the renewal process. 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.
3. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims 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.
4. All Claim Submissions including Advance Payments, Initial Payments, and Reimbursements shall be made in accordance with the State Agency approved Schedule A: Claiming Requirements below.

## Schedule A: Claiming Requirements

Period: 7/1/2025 - 6/30/2025			
Claim Number	Claim Type	Claim Period	Due Date
	Payment (Reimbursement) Request	Quarterly throughout life of contract	3/31, 6/30, 9/30, 12/31*
<i>*Due every year during the contract period, as amended.</i>			

5. Milestone/Performance Reimbursement is based upon the Contractor satisfactorily meeting specified and meaningful events or milestones in performance of duties under this Contract. Requests for such payments be 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.
  - For non-performance based contracts, the Contractor’s costs must be allocated pursuant to a plan that meets the requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) at 2 CFR Part 200. 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.
  - 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.
  
6. Fee for Service Reimbursement is based upon a rate established by the Contractor for a service or services rendered. Payment shall be limited to only those fees specifically agreed upon in the Contract and shall be payable in accordance with the State Agency approved Schedule A: Claiming Requirements.
  
7. Rate Based Reimbursement is based upon an established rate per unit at defined intervals to be paid to the Contractor in accordance with the State Agency approved Schedule A: Claiming Requirements. Payment shall be limited to rate(s) established in the Contract and may be requested no more frequently than monthly.
  
8. Fifth Quarter Payments occur when there are scheduled payments and an expectation that services will be continued through renewals or subsequent contracts. 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 generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.
  
9. If the Expenditure Based Budget is used in Attachment B-1 and the Expenditure Report is selected below, the Contractor shall submit, not later than the time period listed in the State Agency approved Schedule A: Claiming Requirements above, a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.

Expenditure Report Required

### **C. Refunds:**

1. In the event that the Contractor must refund the State for Contract-related activities, including repayment of an advance or an audit disallowance, the refund must be made payable as set forth by the State Agency, must reference the contract number with its payment, and include a brief explanation of why the refund is being made.
2. If at the end or termination of the Contract there remains any unexpended balance of the monies advanced under the 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 Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

### **D. Progress Reporting Requirements:**

If the State Agency determines that Work Plan Based Reporting is required to summarize the progress made on the performance measures established in the Contract, such reporting shall be made online as directed by the State Agency.

If Work Plan Based Reporting is not required, the Contractor shall comply with the following applicable provisions and the Contractor shall provide the State Agency with one or more of the following reports as required by the State Agency:

1. *Narrative/Qualitative Report:* The Contractor shall submit no later than the time period identified in Schedule B: Progress Reporting Requirements, below, 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 the 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.
2. *Statistical/Quantitative Report:* The Contractor shall submit, on a quarterly basis, no later than the time period listed in Schedule B: Progress Reporting Requirements, below, 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.).
3. *Final Report:* The Contractor shall submit a final report as required by the Contract, not later than the time period listed in Schedule B: Progress Reporting Requirements, below, 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).
4. *Consolidated Fiscal Report:* The Contractor shall submit a consolidated fiscal report, which includes a year-end cost report and final claim not later than the time period listed in Schedule B: Progress Reporting Requirements below.

## Schedule B: Progress Reporting Requirements

Period 1: 7/1/2025 - 6/30/2025			
Progress Report	Report Type	Report Period	Due Date
	Project Status Form (Status Report)	Every six months throughout life of contract	6/30 and 12/31*
	MWBE Utilization Plan (Form D)	Throughout life of contract	Within 2 weeks of MWBE hire
	MWBE Utilization Report (via NYSCS)	Quarterly throughout life of contract	3/31, 6/30, 9/30, 12/31*
*Due every year during the contract period, as amended.			

### E. Special Payment and Reporting Provisions

The Designated Payment Office for this contract is:

NYS Department of State  
 Division of Fiscal Management  
 One Commerce Plaza  
 99 Washington Avenue, Suite 1110  
 Albany, NY 12231

Completed payment request forms should be emailed to [dos.sm.fiscal.cau@dos.ny.gov](mailto:dos.sm.fiscal.cau@dos.ny.gov), copying [opdcontracts@dos.ny.gov](mailto:opdcontracts@dos.ny.gov), with the following subject line:

Payment request: C1003128, City of North Tonawanda, (EPF SGCP)